Outpost of Freedom

The Plan for Restoration of Constitutional Government

A means whereby we can
restore the government and country
which was passed down to us
by the Framers of the Constitution
(with Appendix composed of directly linked articles.)

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Preface

This Plan for the Restoration of Constitutional Government, as explained in "The Question", is purely hypothetical. It is, however, a natural evolution from the "You Have Tread On Me - Petition", as the Revolutionary War was a natural evolution from the Olive Branch Petition.

In adapting this sequence of events to modern times, it needs to be understood that times have changed and the possibility of a gathering of "revolutionary" delegates in one place would be fatal to the cause.

Understanding this difficulty, the expedient for today is that individuals would sign and submit, to their respective representatives in the federal government, individual petitions as "redress of grievances, as per Article I of the Bill of Rights.

Absent a positive response to the Petition, one could safely conclude that the government had no more intention of addressing the grievances than King George III did. This, by colonial standards, would put one in a "state of nature" -- absent an operating Constitutional government -- wherein he, as a free man, has every right to associate with others of similar circumstance.

An earlier article, by the author of this Plan, provides some insight into this aspect of the Founders' thinking process when they realized that they could no longer live under government that did not recognize their rights (see Sons of Liberty #14).

As you progress through this hypothetical Plan, you will note that there are short sketches (Historical Perspective) that provide a brief example of the historical conditions that can be equated with each part of the Plan.

The Plan, then, is an effort to parallel the activities of the Founders into a theoretical plan that emulates the progression of events, culminating in the creation of the United States of America.

The Plan is made as detailed as expedient for the variety of possible circumstances that might arise. Plans, however, can never be made so rigid that they will work under all conditions. Therefore, it is intended to provide sufficient detail so that creative minds could easily refine the Plan into a working model for immediate and local conditions.

Often, elements of the Plan call to mind other works by this author, and, works by others, in which instances, links are provided to those works to provide additional insight which might assist in more detailed planning and understanding.

The Plan is provided for your pleasure and education. What you do with it is up to you, and, what you do not do with it is a point of consideration for your posterity.

G. H.

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The Question:

A question was raised, a few months ago, in a conversation with a friend. The question was, "Could a Revolution be conducted in the modern world considering modern technology, extensive government troops, and battle field weapons?" At first thought, the task seems so ominous, so daunting and against such odds, that it would be impractical, if not impossible.

Upon reflecting on what must have been equally daunting to the Founding Fathers, it is not, as first anticipated, such an ominous task.

The Founding Fathers faced British forces -- the best-trained and most successful military in the world. Its navy was master of the seas; its land forces had recently defeated the French and had forced colonization around the world. It controlled the local government, and had enacted laws that gave it nearly arbitrary control over the colonies.

The colonies had few things working for them. They had a lack of experience, except those who had recently fought alongside the British in the French-Indian Wars; some had learned to defend themselves against hostile Indians, and thus learned fighting tactics used by the Indians. They had local knowledge of the topography. And, they had the fortitude and persistence that had helped their forefathers, and themselves, overcome the obstacles of taming a land that had been little changed from its natural state.

Against them were: Substantial numbers of highly trained soldiers; Unlimited supplies and resources, although most of them were located across the ocean and had to be transported, this taking months; A multitude of locations, bases, within and around the colonies; Mastery of the waterways; And, many of the military leaders had experience both with fighting Indians and working alongside the colonists.

In those first eventful days of April, May, and June 1775, the colonists learned what their weaknesses were and what some of their strengths were. They learned that they were not trained, nor were they inclined to fight face-to-face on the battlefield. They learned that the tactics of the Indians, ambush by surprise and hit and run tactics would damage both morale and manpower of the British. They learned that living to fight another day was more important than victory in a single battle; that skirmishes were the best tactic, unless a major battle had a high degree of probability of being won. One of the major drawbacks in their efforts was that of selecting officers who were astute enough to challenge the ways of traditional warfare.

But, they did, with their persistence and their faith in God, prevail -- not by might, rather by tactics and fortitude.

Just how would they fight, today? Surely, they would adapt their tactics to the 'battlefield' and would realize the political necessity of securing faith and assistance from the non-combatants. There are many other generalities that can be addressed, but of greater importance will be the actual circumstances of today's world and the necessity to develop new tactics in order to overcome obstacles that present themselves, as the battle begins. This is a theoretical answer to that question.

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A Foundation Upon Which to Build

To undertake the task at hand, we must understand some concepts that were common knowledge to those who gave us this great nation though have since been lost, by various means, to our current process of thought. The principle concept is an understanding of "the State of Nature". That is the condition in which we find ourselves, if there is no government.

If we find ourselves in a State of Nature, we are living in a world absent *de jure* government. Each does by only his own moral and ethical constraints, absent legitimate government constraints.

Within a community, it s necessary to moderate each of our individual characteristics and develop a common set which all are bound by. This is the simplest form of government outside of family. It is a community with common goals and constraints -- and, a method of dealing with those who violate others within that community.

Common elements for such a community are language, moral values, and heritage. These three common elements provide for a cohesive community. Similarly, a state and a nation must also have the common characteristics, though being a much more diverse lot, the larger the government, the less imposition on individual rights.

However, those common elements must, to some degree, be existent, for a nation to truly have the proper foundation to preserve the traditions of its past, to have a cohesive present day, and, a model for its future.

For nearly a century, the fundamentals of those elements within the United States were clearly defined. However, in more recent times, those "truths' have been distorted and been lost to our contemporary thoughts. To better understand those founding principles, see "We the People", but, Who are We.

Since our purpose is to Restore Constitutional Government, as intended by the Framers, perhaps it would behoove us to establish some principles on which to judge whether and individual has sufficient understand of, and, respect for, those principles. The Principle Faction its relationship to lesser factions is discussed in "Factions -- the Chains of Oppression".

Some Thoughts

This plan, after years of discussion and contemplation, coupled with an understanding of what the Founders did to challenge the authority of the power of government, was developed as a guideline that would answer the question of whether it would be possible, today, to emulate the actions of those Founders to achieve the same end.

The desire to change government back to its Constitutional limitations would best be served if no blood were shed. The impracticality of achieving that end, along with the knowledge that blood has already been shed, moves us to the second position -- that the minimum amount of blood be shed, and, that of if blood is to be shed, that it include an absolute minimum of innocent blood.

There is little doubt that during a conflict, blood will be shed, when necessary, in the course of that conflict. Knowing that any innocent blood shed is a detriment to the image of those who seek to return

to Constitutional government, every effort should be made to "pick the ground" for open conflict, with special consideration to locations that will have the least impact on innocent bystanders.

In the selection of 'targets', outside of the normal area of conflict (aggravation), the following should be taken into consideration.

Though accident, error, and, perhaps, judging wrongly, the actions of those who might be targeted, it is far better to isolate those errors to people who, if not guilty, at least are in a position and have acted in such a manner that their guilt is probable.

There is also the moral consideration -- that those who are willing to strike, as the Founders did, do so in violation of the laws, as they exist, today. When they make a decision to "target" someone, or, something, they should consider just how the "target" would be construed by those who will, eventually, make judgment on their actions. The most important consideration, however, would be the judgment made by God and the person doing the act. If that act is motivated for purposes of revenge, God will judge, and, the person will have to live with, the consequences.

On the other hand, if the act is one that is surely one of retribution for acts of the target, whether corporate property or an individual life, and has clearly demonstrated by a pattern on the part of the person or entity, then, surely, God will judge as necessary, and, the actor will have a clear mind.

Where possible, all players in the act, and, even more desirable, others who can safely be associated with and brought into, if not the plan, at least the determination of the validity of the 'target', the collective judgment, serving as a sort of jury, considering both the guilt and the demonstrable necessity of the action, will provide the best assurance of a desirable final judgment, and a clear conscience for those involved.

If blood is to be shed, every consideration should be made that the blood deserves to be shed.

Some considerations for the evaluation of a 'target':

- Have lives been lost as direct, or indirect, result of the actions of the 'target', acting in violation of the Constitution or constitutional laws of the land?
- Has there been a continual loss of property by people who should have had that property protected, under the Constitution or constitutional laws?
- If a foreign nation, say, Russia, were to invade the United States, would the target become a collaborator, turning against the United States and the Constitution?

> **Note**: The possibility that if there were sufficient 'friends" (collaborators) of a foreign power, these 'friends' who might encourage participation by that foreign power, is to be considered. The discouragement of his sort of person (potential collaborators) would be as desirable as the discouragement of all other potential 'targets'.

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I. Small units, small acts of aggravation

Overview

Directed activities intended to establish the existence of an air of dissatisfaction among some of the citizens of the country. These actions might include targeted individuals and/or businesses that have proven their disdain for the Constitution; violated the Constitution by their actions or activities; are supportive of those who violate the Constitution, or, have failed in their obligations to the people under contracts, such as insurance companies who have failed to make good under their policies.

Understand that the authority that the sitting (de facto, rebel) government has emanated from the Constitution, and, that this government was instituted under the limits described by of the Constitution. [Note: Let it be understood that the term "rebel", within this article, is applied to the de facto government that has rebelled against the Constitution that created it.]

The Constitution, having been created by the People, is only capable of passing to the government authority that they, themselves, possess (Let's Talk About the Constitution). Understanding, then, that if the rebel government has assumed that it has powers, derived from that Constitution, though not enumerated therein, it has usurped authority, and that it assumes the people, themselves, had. Given that the rebel government has assumed that they have the right to kidnap, torture and assassinate, they have, by their actions, acknowledged that the people, too, have that authority, at least until Constitutional government is restored. If it is used as the means of usurpation, then, surely, it is fairly used by those who intend to restore Constitutional government.

Given the understanding that we must fight our foe from as high a moral ground as possible, it is always our right, and within our lawful authority, to engage that foe in the same manner as they engage us. This, however, only speaks to the state of nature that many have found themselves cast into. Committees of Safety, Militia and judicial bodies are bound by a higher standard, in their official capacity, than those who speak for themselves, or, as members of cells or teams. Consequently, the Committees of Safety, Militia, and judicial bodies created under their authority shall not prosecute or impede those who have found themselves compelled to take individual action against the rebel government.

In all cases, care should be taken to assure that the "target" can be exploited for the benefit of the effort to restore Constitutional government, and should, as much as possible, be conducted so as to have a minimum detrimental impact on the civilian population. If the purpose of the activities being conducted is designed to restore rights and the Constitution, a total regard for those rights, except for those targeted, must be adhered to.

These directed activities should be evaluated for the desired effect, and can include:

Examples:

- Law enforcement officers who have abused citizens, without provocation
- Insurance companies who have not fulfilled their obligations for losses sustained
- People in positions of public trust who have blatantly violated their oath of office
- People in positions of public trust who have blatantly lied to the American public.

- People who have proven themselves inimical to the Constitution (Bad Guys note: this link is external)
- Federal Reserve Banks (nine banks)
- Special Interest Groups inimical to the Constitution (i.e. ACORN, SEIU)

Historical Perspective

In many of the colonies, acts which were illegal, under any form of law, were conducted by various groups and individuals concerned over the imposition of stricter laws and taxes being imposed on the colonists. Those acts of Parliament were deemed outside of the authority of Parliament because the British Constitution secured certain rights, and, the existing Charters, which had created government in the colonies, were being ignored.

Numerous incidents occurred, which we are all familiar with, that would fall within the area of illegal activity. In most of them, the Committees of Safety (or equivalent), and, the militia, were not directly involved in the activities. History leads us to understand, however, that there was, at least, tacit approval of the activity, if they were not ordered and directed by Committees and Militia.

Most of these acts were performed by groups commonly identified as "Sons of Liberty". These groups were most common in Boston and New York, though they existed in other parts of the colony in increasing numbers, as the actions of the British government continued to grow more oppressive.

Holding to that which is most commonly known, we can look to incidents such as the harassment of the soldiers in Boston, one such incident resulting in the Boston Massacre. We can look to the various events where a tax collector, or other official was, "tarred and feathered", often resulting in death. We know that many officials were kidnapped, bound hand and foot, and paraded through town in a cart, or "on a rail", wearing signs "proclaiming" their unlawful activates. We have small groups of colonists tearing down homes, warehouses, and customs offices. And, in perhaps the best-known instance of illegal activity, we have a band of "Indians" marching through the streets of Boston to the wharf, where they boarded ships and dump the tea into the harbor, resulting in the destruction of the equivalent value of millions of dollars in damage.

These Sons of Liberty, as well as other small groups, acted outside of the law. For the most part, they were never identified, in their time, by the government, nor were they prosecuted. There were never any 'witnesses' to any of their activities that would identify the individuals, and, if they had been identified, the likelihood of a jury convicting them was non-existent.

All of these instances were conducted outside of any lawful authority, and, if any trial was held, history does not reflect such. Private Citizens, who felt compelled to demonstrate their feelings against the unlawful actions of the government by unlawful actions of their own, conducted them. They were, quite simply, willing to face the consequences of their actions in order to make clear to the government that the usurpation of authority would not be tolerated.

Interestingly, there were never any 'witnesses' to these events, and, had charges been brought, the jury would surely have come back with a verdict of "not guilty". Most importantly, understand that the people who did not participate in these activities, even though they knew that they were not legal, were willing to hide people, knowledge and anything that might be incriminating from the government.

Role of Committees

The Committees will not be a part of this activity. It would be inappropriate for the Committees to encourage activity that might be considered illegal. This would, of course, only apply to Committee members in their official capacity.

Committees, however, would provide protection for those who might be accused and threatened with arrest without a warrant issued by a Grand Jury, in accordance with Article V, Bill of Rights.

Committees of Safety should enlist individuals with particular expertise to serve on the appropriate committees within the Committee. These will include, though not limited to, Militia, Correspondence, Liaison, and, Intelligence.

Militia committee

The Militia committee should be comprised of people with military experience. Their duties would include making recommendations to the Committee for commissions, determining enlistment and training procedures, consultation with Militia officers regarding tactics, and assuring logistical support, as necessary, for the Militia.

Correspondence committee

The Correspondence committee should be comprised of people with experience in various means of communication, have a desire to exclude controversial information from polluting the communications system, be able to work with other people in other Correspondence committees as well as those in the existing press, and, understand that conflict with others effectively inhibits the flow of positive communications. Specialists in radio, video, and electronic communications should also be enlisted to provide support, as necessary.

Whenever any target is assaulted, the background of the individual or business should provide some cause inimical to the Constitutional government that can be emphasized to provide even a remote justification. Such activity should not be attributed to random acts, if possible. Recognition of loss and sympathy cannot hurt, so long as the disreputable aspects of the character of the target are also brought forward. (Press and the Patriot Community).

Correspondence committee operations should endeavor, constantly, to establish an every-enlarging Network of Correspondents, including other Committee related personnel and establishment press members who have demonstrated a willingness to look at other than the government side of a story.

Liaison committee

The liaison committee should be comprised of people with good personal communications skills. Once assigned, they should start enlisting resources among people in the community who work for, or, have close ties with, the government and industry. Their efforts should include:

- Learning what they can of rebel government plans; develop resources in existing government, and industry.

- Enlistment of government employees or those in contact with the government, who can provide information regarding the activities, plans and intentions of the rebels should be pursued from the very beginning. Intelligence is invaluable. Whenever information is developed that would assist the Intelligence committee, it should be forwarded to that committee as soon as possible.
- Anticipate future needs to communicate with both government and industry leaders to negotiate transfer of authority, as necessary.

Intelligence committee

The Intelligence committee should be comprised of researchers and those versed in intelligence matters. An understanding of some of the methods that will be used by the rebels to infiltrate, redirect (misdirect), and otherwise create problems for the Constitutional side is explained in Vortex**.**

Their duties will include (initially, only within their own county):

- Investigation of Committee and Militia members, if questions arise as to the loyalties, experience, or any other background deemed important for the security of the Constitutional forces.
- Gathering, analyzing, and disseminating information regarding rebel activities and personnel.
- Identification of government, service, and other resources that will require attention and involvement for continuity of services.
- Identification of industry that will require attention for the continuation of production and distribution of necessary goods.

Militia Duties

The militia, operating in the capacity of Militia, will not be involved at this level. Members of the Militia, not acting in the official capacity of Militia, members of Security Teams and individual cells, would be the primary elements in this activity. They will be operating outside of the law and without authority, though they should be protected as much as the members of the French Resistance were during World War II.

Every effort should be made, so long as additional risk to the operation is not created, to avoid loss of life to those not specifically targeted.

II. Units join together in small regions (counties), greater acts of aggravation

Overview

As units acquire experience and others join the ranks, larger targets become viable, and, will produce, in many cases, more effective results, as well as other objectives that were impractical with smaller units.

Units in close proximity to other units might join forces to conduct even larger operations.

Historical Perspective

During the Revolutionary War period, it was much easier for a group of people, whether militia, or not, to exert their influence in matters of concern. Sons of Liberty organizations grew and became more prolific in their activities.

There was no massive police force structure, as there is today. At best, constables, sheriffs and justices of the peace, along with the citizens, themselves, formed as a posse, were 'law enforcement'. Today, militarily armed mini-armies comprise the Law Enforcement community. See Are Cops Constitutional? What we have, today, would have been considered the "standing Army" that was addressed in the Declaration of Independence.

Within their playing field, the colonists could muster forces to effect illegal activities in support of their desire to return to the British Constitution and their respective charters. Thus, in the Carolinas and Massachusetts, we have examples of such activity. The most well known, of course, is those militia members who stood defiant at Lexington, under authority of their Committee of Safety, on April 19, 1775. Clearly, they were in violation of the law, as were those in Concord, North Bridge and along Battle Road, that same day.

Other events preceded April 19, 1775, and which would be considered illegal, but were conducted by units from different communities working together, can be found in The End of the Revolution and the Beginning of Independence.

Understand that the changed playing field has precluded such direct actions, though similar actions, were conducted by the Founders; a consideration of the expediency and necessity of covert actions does nothing to detract from emulating the actions of the Founders.

Role of Committees

Once again, the Committee cannot participate in activities that might be considered illegal. They can, however, by any means available to them, begin to promote a positive response to the activities that are occurring. Feelers should be put out through liaison committees to sense the attitude of local government employees, and the findings should be evaluated and provided, publically, so that others might be able to adjust their targeting for better effect.

Anticipating that the activities going on inside of the country might be precursors to other events, the Committee should review the Militia status; membership rolls, commissioning of officers; and, understand that they have a responsibility to assure the safety and integrity of the Militia, its membership, and the community. Any suspicious activity by members of the Militia or of the Committee should be investigated, by the intelligence committee, with due consideration of government tactics of infiltration.

They should also begin to consider defensive matters, since some will associate them (as they already have been by the Department Homeland Security and MIAC) with the activities going on about them. Special consideration should be made for those more active in the community who might be targeted by government, most likely without cause, to provide for their safety, security and means to remove them to a safe location, should there be reason to believe that they would be apprehended if they were to remain in the area.

All Committee members actively working on, or privy to, measures being taken to provide for the necessary protection, as well as all Militia Members who have a working relationship with the Committee, should be required to take both the Oath of Association and the Oath of Secrecy. These are modeled after the Committee of Safety, Albany, New York (used in 1775). Understanding that, without regard to statutory law, these oaths are sacred and the consequences of violation of the oaths will not be taken lightly.

It might also be worth considering making changes to the schools within the county, returning to the concept of Public Education that was practiced during that era that we became, truly, a nation with initiative. See Some Thoughts on Public Education.

Militia committee

As smaller Militia units are consolidated under a larger Committee of Safety, review of abilities, performance and unit size provide information necessary for recommendations to the Committee of promotions, commissions, and decommissioning, if necessary, of officers, as well as the command structure of the incorporated Militia.

Logistics and assignments will warrant more attention to assure that public safety is provided for, and, for the Militia to act, under orders from the Committee, in an Officer of the Peace capacity.

Correspondence committee

Correspondence committee should continue, as before. Every effort should be made to direct any anger at these events to the cause of the problem, not at those who dealt with the problem. Hopefully, there would be some degree of coordination between the Correspondence committee and the "units" that were conducting activities so that the Correspondence committee would be privy to the information that resulted in targeting, and would have some time to further supplement the 'grievances' against the target.

Liaison committee

Activities continue, as before. If any media relations are developed, they should be shared with, or passed on to, Correspondence committees.

Contact should be made with those in government and industry that have been identified as necessary to achieve transition of authority, in the event that this becomes necessary. If the contacts are reluctant to talk, or unconstructive, communications must continue so that those who are not willing to transition are fully apprised that the door will always be open, when the time comes for action.

Intelligence committee

Identification and prioritization of government and industry targets necessary for the continuity of services and goods should be attended to, since it can be anticipated that, soon, the Committee will have to step in and provide for that continuity.

Key personnel in government and industry should be identified, as well as lower level employees who might serve, should there be reluctance on the part of key personnel. Members of the Constitutional

forces who have experience in the respective industry should be identified, should their services be required.

Militia Duties

Once, again, the Militia duties would be limited to operations that were to protect against government abuse of authority or violations of the Constitution. They might also begin to consider that something is happening that will lead to even more activity, and begin to prepare (train) for what they might anticipate to be required of them.

III. Connections created between county elements, offensive and defensive operations

Overview

By this time, there will be a clear indication to the people that the occurrences of the recent past are not random, nor are they temporary and limited. It will be apparent, to most of those who are not tied to their daily regimen, that there is something afoot.

Forces will have begun gathering, on both sides, and it is time to consider that activities will, of necessity, become more open and notorious.

Logical conclusions will begin to direct the rebel forces (those in rebellion against the Constitution) to assert their 'presumed' authority to groups of individuals who they suspect of any involvement in the ongoing activities.

As operations become larger and more frequent, there will be efforts to create open confrontation, which should be avoided, however, must be prepared for. If a raid is anticipated against the Committee or Constitutional elements, an ambush should be planned.

Consideration of just who might be an enemy (rebel); whether the protection of the community warrants; and, what might be done to prevent participation by certain people suspected of being in support of the rebel forces, should be included in operational planning.

The objective is to secure, by peaceful means, if possible, otherwise, by carefully applied force, both the government and the facilities of the government. Laying siege to a government facility, or law enforcement station, may be necessary. The objective however, is to, whether by peaceful means, siege, or force, secure and transition all aspects of local government to a Constitutional basis and remove all restrictions against personal use of private property as well as public use of public property.

Historical Perspective

On April 12, 1775, John Hancock, President of the Massachusetts Provincial Congress (Massachusetts Committee of Safety) called for all counties to appoint Committees of Safety. This call was not in anticipation of the events to occur exactly one week later, it was over the realization that the events occurring in Western Massachusetts would, without a doubt, lead to an escalation of the confrontations between colonies and the Crown. (See The End of the Revolution and the Beginning of Independence)

The Militia at Lexington, and, shortly thereafter, Militia from around the area of Lexington and Concord found that they were being called to defend the Rights of Englishman. It was no surprise and had been anticipated for a while. The time, however, had come to put words into action. The law, if you will, was set aside, at least with regard to opposition to Royal government forces.

Militia from four colonies rose to the occasion, flooding the area around Boston with tens of thousands of militiamen. Jurisdictional boundaries ceased to exist when the fight for Independence began.

Many Committees of Safety charged some people with being inimical to the cause of American Liberty; barred them from keeping their long arms; seized their property; and jailed them.

There were some larger cities that were not brought under permanent colonial control throughout the entire war. Boston was held by the British for months, until finally secured; New York was occupied shortly after Boston was evacuated by the British, and held until well after the end of the war; Charleston, South Carolina, remained in British control through most of the war; and, Philadelphia Was under absolute British control, for many months. Each, however, with the exception of New York, was relinquished, eventually, with Yorktown being the epitome of submission to siege tactics.

Role of Committees

Committees need to continue to expand their defensive measures and direct the Militia to perform, as necessary, any defensive actions. The might also begin evaluating certain rebel government agencies which are acting inconsistent with the Constitution, and anticipate emulating the activities that might be necessary (public protection, judicial, public safety) in the event of a failure in the existing system, and, preparing to take over those responsibilities for the community, should the need arise.

Local or county government can be secured by peaceful means through cooperative transition. A committee form the Committee of Safety can approach the existing government and explain the objectives of this Plan. If the local government, or any portion of the government is receptive, then they should be recruit and retain their capacity, allowing, however, that town meetings -- the will of the people -- will prevail in all decision making and will be consistent with the constitution, allowing land owners any reasonable use of their land and doing away with administrative agencies, unless compliance with such agencies is voluntary.

Where cooperative transition is not practical and resistance is met, well-planned use of the Militia to secure local or county government is required. This can be accomplished by arresting members of existing government and replacing them by appointment of replacements by the Committee, until such time as elections can be held.

In coordination with other local Committees, conduct a study of the region in which they are situated to determine what facilities need to be maintained operational, should be conducted.

This should include:

- Hospitals and other medical facilities
- Communications facilities
- Public utilities
- Public transportation

- Production of food and other necessities
- Commercial transportation of necessary products
- Emergency operations centers
- Reestablishment of local government on constitutional principles.

Plans should be prepared to 'take over' the operation of these facilities, using militia teams to assure that those who regularly work in those facilities, continue to operate efficiently, or, to replace those with Militia members or volunteers where the reliability of existing personnel comes into question. Both a loyalty oath and separation, as much as possible, of existing employees as to working locations to protect against conspiracy and sabotage will offered some protection

Consideration should also be made to provide county or city government, where necessary. This would include only performing necessary functions of government.

It will also be necessary to establish a format for elections and electors. See Some Thoughts on the Election Process.

Creation of a working judicial system will be necessary to replace those that are no longer operational, or, are operating outside of Constitutional restraints. A Judicial committee should be formed of people versed in legal functions.

Any consideration of continued judicial activities should exclude any civil actions. Forthcoming changes in valuation of currency, legitimacy of contracts, etc., is a burden that need not be addressed until Constitutional government is fully restored. Only criminal charges of crimes against persons, property, or the Constitutional restoration should be heard.

Occupation of any emergency operations centers would be beneficial, since these are self-contained, self-supporting, and very defensible facilities. If the Militia were to secure them, they would make ideal operations centers for both the Committee and the Militia. With their communications equipment, they might provide better communication with other Constitutional forces and, would provide liaison committees means of communicating with rebel government agencies.

Ways and Means need to be developed so that supplies for the Militia and other necessary supplies can be provided, as well as compensation for active Militia duty. Securing property of those inimical to the Constitution, and other financial resources need to be developed.

Another consideration, at this point, is what to do about large, heavily populated areas. Though a rather lengthy subject, it is, without a doubt, a serious concern, especially if bypassing such an area might leave a flank or rear subject to attack from such "obstacles" that don't warrant a commitment that would deplete your resources in the continuation of the Plan. This objective is addressed, in detail, below, in Scenario for Large Population Areas.

Militia committee

Along with previous duties, the Militia committee needs to begin setting up liaison with other Militia Units for both joint actions as well as future consolidation into a larger, multicounty Militia Unit.

A Code of Conduct for the conduct of Militia members as well as instructions for conduct and treatment of people and property in occupied areas needs to be developed. A model code can be found at Lieber Code.

Correspondence committee

This point in activity begins a transition in the approach to public relations. Prior to this point, most of the public relations have been for justification, or, at least, mitigation of activities that have been taken in accordance with this plan.

Correspondence committee should become more aggressive in encouraging support for the activities and encouragement of others, who have previously sat on the fence, to make decisions regarding the future of their lives and that of their children.

Correspondence committee should work with the County Recorder's Office to assure that copies of all county records, including minutes, ordinances, public records and other documents, be made available, without charge, through the Internet.

Having successfully achieved this point in the progression of the plan, belief in the ability to achieve the goal of Constitutional government can be looked upon more favorably. The potential for success is, perhaps, the greatest motivator for participation by those who have, previously, sat and watched. Patriotism (to the Constitution) should be highly promoted.

Judicial committee

Judicial systems are necessary to the safety of a community. If the local judiciary is unable to perform its function properly, it will be necessary to establish a new system, for criminal complaints and to try those inimical to the Constitution. The judge's role in court is to assure that a fair and orderly trial is conducted. Determination of guilt and punishment should be left to the jury.

The Judicial committee will be dealing with crime and disloyalty matters but not with civil (contractual) matters. It should be comprised of people versed in Common Law instead of the statutory law.

Judicial committees or appointees should coordinate with others judicial committees in similar positions to provide for a degree of standardization to the practices to be employed.

Some Thoughts on the Judiciary can be found at Some Thoughts on the Judicial Process

Liaison committee

Liaison committees should be exerting efforts in "feeling out" rebel government agencies, explaining that their cooperation now would best serve the entire country, and their commitment to the cause might secure their future employment in their current positions. Identification of those sympathetic, even remotely, to the purpose of restoration, need to be nurtured so that when the opportunity comes to "bring them over to the right side", the groundwork is prepared for a smooth transition.

Intelligence committee

Intelligence committees should be preparing organizational charts for both governmental and industrial facilities to act independent of other government agencies or corporate operations. Operating plans for these entities should also be prepared, including supply sources for the continuation of services.

Personnel records should be stored in a shared database to make them available to others who may have need for such information.

Militia Duties

At the direction of the Committees, the Militia may become active, at this point. Much of what they will be involved in will be Garrison type duty, securing facilities; defensive, to assure that anything that has been gained is maintained; and, offensive actions to secure additional facilities, as directed by the Committee.

It is important to understand that the Committee must take into consideration certain political ramifications, public relations, logistics, overall tactics, etc., that should not be the concern of Militia commanders. The commander's concerns should be applied to the safety and success of any missions assigned.

Offensive actions to secure areas, displace rebels, and confront rebel forces will become an active part of the Militia duties. Recruitment and cooperation with other units will be necessary. Command structure will be determined by Committees of Safety cooperating with other Committees within the county, or, a newly created county Committee of Safety can be established.

Maintaining flow of goods, communications, and utilities is a primary duty for those not otherwise assigned. As the acquisition of facilities increases, so, too, will the manpower needs to maintain and continue the operation of those facilities.

Scenario for Larger Population Areas

Such enterprises should not be conducted until the area around the large population area (all towns around the perimeter and substantial area under control) has been secured.

As expansion within the more rural areas occurs, the large population areas allow that an enemy (rebel forces) exists on your flank and must be protected against. These are, except in rare circumstances, more "clean up" operations and are not necessary to be secured prior to expansion of the controlled areas through the remainder of the county or state., so long as the don't pose a direct threat to other operations.

Considerations

Smaller populations areas are more easily brought into cooperation with the Constitutional Forces for a number of reasons:

- A tendency of the people to be responsive to the effort, since they are already more independent and self-sufficient.
- Smaller, and probably more sympathetic, existing government forces and personnel.

- Great numbers of Constitutionally sympathetic people versus smaller numbers of opposition (rebel) forces.
- Geography, logistics, communication and coordination are easily utilized for achievement of obtaining control.

On the other hand, larger population areas pose a number of obstacles to achieving control:

- Larger existing rebel forces
- More potential for outside rebel forces to maintain control over these areas.
- Dependency of the population on existing rebel government structure for daily lifestyle
- High density of 'security' cameras to allow tracking of Constitutional Forces.
- Urban topography requiring large numbers of Constitutional Forces broken into small, more vulnerable groups to secure areas.

Looking at these larger population areas, we can look at what might be used to our advantage:

- Large populations amassed in a relatively small area provides a means of a form of imprisonment (confinement).
- Dependency on regular supply lines for provisions.
- Communications, power and energy sources concentrated into a few corridors.

Siege

So, we can look at what effect the colonists had on certain cities such as Boston, New York and Philadelphia, and what affect the British had on Charleston, to understand that siege tactics can be effective.

Boston was encircled by colonial forces within days. The British were confined to the area and could only obtain supplies from residents of Boston or through ships entering the harbor, unopposed. The siege created abnormal hardship on the British, especially in colder weather when fences and buildings were torn down to provide fuel for cooking and heating.

In New York, the British were pretty much isolated in New York and on Long Island. Any effective move beyond those boundaries had to be in sufficient force to provide protection, forage locally for provisions, and lines of supply and communication had to be maintained open.

During the British occupation of Philadelphia, supply was no problem as the Delaware Rover provided passage of large ships for resupply. A brief effort at Fort Mifflin (Mud Island) was defeated after a British assault on the Fort. However, with Washington's army nearby, expeditions outside of Philadelphia were ineffective.

The British besieged Charleston and ultimately forced the largest colonial surrender of the Revolutionary War. Though well fortified, the colonial forces could not withstand the constricted supply lines imposed by British forces on available routes.

Now, times have changed. Instead of relying upon shipping for most supplies, ground routes and aircraft have become the means of resupply. When Russia blocked the ground routes to Berlin, Massive airlifts supplied all of the needs of a major city for ten months. This required over 200,000 flights delivering 13,000 tons (26 million pounds) of supplies, every single day, to provide for the 2 million people in the Western sectors of Berlin.

The problem exists, however, when you have larger population areas, the ability of that area to sustain itself is not possible.

Means of Convenience (soft siege)

There are two means available to begin a siege that would have an effect of converting residents of such an area to the Constitutional side. The first "of convenience", the second, a fallback position, "of necessity".

The first would begin by securing major transportation arteries with checkpoints. These checkpoints would define the limits of the besieged area, and would be placed in practical locations -- easily supplied and defendable against minor attacks. (Bridges, mountain passes and valley and other "choke points".)

The checkpoints would serve the purpose of limiting traffic to and from the besieged area. Those who might be supportive of the rebel forces would not be allowed in. All that wished to exit would have to take a loyalty oath, and would not be allowed to return until the area was secured.

Denial of any exiting commercial transportation of other than necessities (food, medical supplies, etc.) would result in reduction or closing of manufacturing facilities not necessary to the benefit of those outside of the besieged area. Commercial traffic going into the besieged area would be controlled. Over time, if the area was not tending toward acceptance of the Constitutional forces and Plan, the flow of necessities could continue. If there was a reluctance or resistance, restricting of supplies would begin to pressure those within to submit.

Both rail and water transportation could be effected in the same way. These should be controlled, as above, at convenient locations, and may often be quite removed from the site of the siege.

Large population areas need massive amounts of power, water and other transportable or transmittable supplies to maintain themselves. Distribution centers, way-points, pumping stations, aqueducts, or other elements of the various systems can be utilised to effect control of what supplies reach the besieged area.

Any reduction begins to bring pressure upon those inside of the besieged area. Pressure can be brought to the level of inconvenience to "send a message" to those inside. As time goes on, and resistance continues, greater restrictions will move that inconvenience into the realm of hardship. Only the hardcore will remain, under such conditions. Complete closure is decimating. If an assault is to be mounted, by the total cutoff of supplies, the will and abilities of any resistance can be reduced to almost nothing.

The above means of convenience in besieging will, most likely, come under attack. Preparation for security and defense should be implemented at the outset of any such operation.

Means of Necessity (hard siege)

If it is determined that any of the above means creates an unsustainable risk to Constitutional Forces, the means of necessity might be implemented. The practicality of the convenience means is that it is controllable -- that constrictions in supplies are controlled, as well as ingress and egress to the besieged area. Less risk to life is created since the impositions would escalate at a controlled rate, allowing people to leave, so long as they are willing to take the loyalty oath, and relocated where they can resume live without the inconveniences.

The means of necessity provide far less control over the results of activities, and, consequently, put life at greater risk than the means of convenience. This is a consideration to be taken by the Correspondence committee, along with the Intelligence and Liaison committees, in formulating news releases and for negotiation with rebel forces.

The means of necessity require destruction, not control, of all of the above mentioned services. There is no means by which to allow people to leave the besieged areas unless they have escaped and are found and provided an opportunity to take the loyalty oath or be returned to the besieged area.

If one ground route for people leaving the area can be maintained with a degree of safety, it can be utilized to allow those wishing to leave to provide a safe route of evacuation. If not, then roving patrols should be utilized to the extent necessary to provide as high a degree of control over those leaving as possible.

This would suggest that alternate ground routes out of the area should be damaged or destroyed to prohibit exit by those means. This is not a controlled exit, rather, it is a denied exit.

Likewise, all exiting necessities would be restricted, unless a single route were maintained open. Due to the reversion of means, any traffic attempting to enter the besieged area would be deemed hostile (contraband) and destroyed, or sequestered for the use of the Constitutional forces.

Regarding the necessity means being applied to utilities, consideration should still be made for the preservation of life, where possible. This would mean that in colder climates, continuation of power or supplies for heating should be near last on the targeting of such services. Water, too, so necessary for life, should be the last consideration for interruption. Communication should be one of the first services to be denied. It will easily be reestablished for communication between Constitutional Forces and rebel representatives, for the purpose of negotiations.

Discontinuance of electrical services would impose a great inconvenience on the majority of the population, while not being that detrimental to life. All hospitals and many other sources have emergency generators. Those who rely on electricity for heating can find efficient non-electrical means of heating. Refrigeration will be curtailed, so the inconvenience of not having frozen (preserved) food would take an emotional toll on the people.

Where possible, and without creating additional risk, notice of utilities to be effected should be given. Hearts and Minds is, of necessity, a major concern of the Constitutional forces.

IV. Coordinated efforts, securing facilities, allegiances and prisoners

Overview

Firmly established, in small pockets, primarily in rural locations, it is time to begin "breaking out" with aggressive actions to expand the areas controlled by the Constitutional forces.

The first consideration should probably be sabotage. Sabotage is disruptive, generates fear, and has a negative impact on the supplies and manpower of the rebels. Targets should be selected for maximum impact on the rebel forces and facilities with a minimum impact on civilians, wherever possible.

If power, communications, or other utilities are to be targeted, they should be targeted at locations that will close to the targeted rebel facilities or functions, thereby causing as little disruption as possible to the civilian infrastructure.

Convoys and supply transportation facilities provide dual benefit. They deprive the rebels of supplies while supplementing Constitutional force supplies, often providing equipment and materials that might otherwise not be readily available to those forces.

National Guard armories and Reserve unit training facilities are ideal targets. Personnel within these facilities might be enlisted against the rebels, while supplies, materials, munitions, transportation and communication equipment, and a facility from which to conduct operation, is a result of such actions.

The more facilities that are taken, the more difficult the rebel's ability to attempt to recover what was lost, becomes. It does spread the Constitutional forces out, so plans should be made to assure that reserve capabilities are maintained to support against such efforts by the rebels.

Historical Perspective

The first historical instance of cooperation between various Committees and Militia occurred on April 19, as militia, at the direction of their respective Committees, and, individuals concerned with what was happening, secured all but the shipping lanes to Boston and the harbor.

Artemas Ward was appointed General of the Army of Observation encircling Boston by the Massachusetts Provincial Congress. He was displaced later when George Washington was appointed General of the Army by the Continental Congress and resigned as a delegate to take his place in command at Boston. This transition of authority (and responsibility) was directed by the civil authority, in both assignments. It was a consolidation of forces.

In the South, many local militia joined with others to mount actions against Royal forces and/or Tories. The Battle of Kings Mountain stands out as a very successful assault conducted by forces from various militia units, consolidated under a single command, which resulted in the defeat and capture of a significant Loyalist force.

Courts were established by Committees of Safety to deal with crimes and Tories. Civil matters were left unattended to for the duration of the war.

Many people in positions of authority, or, who had been questioned regarding their allegiances, were required, during the war, to take a loyalty oath. One such oath ended with the following phrase, "If I betray this oath, I agree to suffer the punishment of a traitor."

* * *

Role of Committees

Committees should have recruited many new members, by now. Administrative responsibilities become greater, and, the need to join with other -- Committees, County Committee of Safety, and, more importantly, a State Committee of Safety. Delegates would be sent from the lower tier Committees to the next level (County). Each county, then, would provide delegates to the State Committee of Safety.

A loyalty oath should be developed, and records kept of who has taken them. In person in any position of authority, or, who has had his loyalty question and is to be continued in any capacity, should be required to take said oath.

Coordination of efforts, decision requiring entire state cooperation or action, and, communication with other State Committees of Safety are in order. Each requires greater commitment from all members based upon the increased responsibilities.

General direction and policy, as well as military objectives, for the Militia should be provided, on a daily bases, by the Committee or a designated Militia committee, leaving to the command structure the detail of activities. As Militia units join within Command structures, commissioning for higher rank officers, consistent with the size of the command, must be accomplished. Supplies and compensation for active Militia service has to be provided for. Logistics warrants special consideration, for much can be lost if the Militia are not always properly provided for.

As this stage is entered, the probability of general (near battlefield) engagements is heightened. Integration of local and county units under State coordination must be as seamless as possible to minimize confusion, disorientation, discipline, and, overcoming reluctance toward the new Command structure.

Correspondence committee

Correspondence committee moves into the mainstream. Now, it must act as the primary source of information for the contained communities. It will be assuming the role of the mainstream media, including written press, radio, television and other necessary forms of communication. The enlistment of additional manpower, knowledgeable in the various capacities, should be a high priority.

More extensive news stories regarding the expansion of the held areas, successes of operations, civil activity, and, generally, as much as possible, information as to the conduct and activities of the Committee (Constitutional) government should be provided to the public.

Arrangements should be made with cooperative existing press writing, distribution, and syndication.

Militia committee

Militia committees, coordinating with their counterparts of secured areas of the state, need to begin evaluating the consolidation of the Militia forces. Recommendations for officer's commissions should be based upon the size of a command.

Common rank of officers and size of militia units:

Squad	8-16	corporal or Sergeant
Platoon	25-60	Lieutenant & Staff Sergeant
Company	70-250	Captain & First Sergeant
Battalion	300-1000	Major & Sgt. Major
Regiment	2000-3000	Colonel & staff
Brigade	4000-5000	Brigadier General & staff
Division	10,000-20,000	Major General & staff
Corps	30,000-80,000	Lt. General & staff
Army	60,000-100,000	General & staff

Correspondence committee

Correspondence committees should begin coordinating with local and statewide media organizations. Start identifying controlled media (syndicated or otherwise controlled) for future localization of control for local media.

The Correspondence committees should develop policies by which fair and truthful reporting can be assured.

Judicial committee

Coordination of a formal judiciary, consistent with the Common Law, the intent of both Grand and Petit juries, and, to provide restitution to victims of criminal activities is to be the objective at this level. Matters of loyalty will be brought before the courts, requiring coordination with other judiciaries around the country, to assure that standards in dealing with those inimical to the Constitution, spies, traitors and other political enemies are properly dealt with, utilizing fair and equitable standards, and that adequate records are kept to avoid infiltration at a different location.

Liaison committee

At this point, the Liaison committees become a very important function of the effort to restore Constitutional government. Any agency that can be brought over without violence and bloodshed becomes a "portrait child" for a smooth transition of authority away from the rebel government and to the role of proper government.

Intelligence committee

As access to state records, criminal and otherwise, become accessible, dossiers should be created for all people brought into question as to their allegiances. Interrogation of those employed by government

(local, state or federal) should be conducted to provide to the Militia committee to assist them in planning their operations.

Militia Duties

Militia units should be expected to be integrated into new Command structures as units are joined together as battalions, regiments and brigades. In resistance areas, commanded by rebel forces, significant battles might ensue. The small unit identity will begin to become absorbed into larger, more formal, military units.

Additional duties such as Garrison, guard and other appropriate functions will become increasingly necessary. Logistics will become more complex, and forage operations will probably become necessary. Any property taken should be supported by a receipt, for the value taken, to the owner and a copy to the Committee of Safety.

Operations and objectives will become much more significant and difficult. These, however, are a consequence of the success of the Militia units in earlier operations. Compensation for active service and more extensive medical facility will assure a healthier, happier, and more capable Militia.

V. Institution of governmental elements (county)

Overview

As entire, or nearly entire, county areas come into the control of the Constitutional forces, the necessity of reestablishing necessary government functions will require participation by all existing Committees within the county. What is instituted at this point is anticipated to be a final and permanent government within the geographic area. It is to replace the existing structure of government with one intended to provide only the services necessary for the function of county government, in accordance with the constitutions. Its purpose is to create a comfortable environment and protection of private property. It is not to be assumed to be legislative, except as deemed absolutely necessary.

Once sufficient County Committees are created, a State Committee of Safety should be created.

Historical Perspective

As Royal government was displaced, Committees of Safety began filling the void created by that absence. The Continental Congress had been populated by delegates sent up from either local Committees, or, where a Provincial Committee had been established, by the Provincial Committee.

There was no concerted effort by the Crown to subdue such gatherings, until it was too late. The Third Continental Congress approved the Declaration of Independence.

Geographically, there was no problem convening the Continental Congress. Today, however, once such endeavor is begun, it would most surely, be a target of attack, kidnap, or assassination. An alternate means of assembling should be considered until security can be provided for larger meetings.

Role of Committees

County Committees of Safety will be required to merge themselves into a permanent role of county governance. They will have to determine which agencies within that government are to be retained (consistent with the Constitution); what personnel within the existing government are to be retained, after taking a loyalty oath to both the United States and State constitutions; The sale of surplus county property, if necessary, can provide funds for necessary operations. The Committee shall establish a procedure to provide for elections of the county supervisors (or equivalent), without regard to political parties.

The Committee (those members who are not elected to official county positions) is to remain as advisory committees to the County government until they are released from that responsibility by the State Committee of Safety or reconstituted State government.

Militia supervision and control will transfer to the State Committee of Safety, once it is formed. Judicial functions will transfer to the reconstituted County government.

Property taxes and sales taxes collected will be held in the coffers of the Committee, to be used to continue services and provide for other needs of the activities of the Committee and the Constitutional forces. Taxes will be brought into compliance with the Constitution and by the Committee or Committee approved government, once the State has been secured. In the interim, the existing tax rates and collections will apply. No property will be seized for failure to pay taxes, nor will any liens issue or penalties apply.

The initiating of the State Committee of Safety, until such time as it is geographically practical, will have to be accomplished by whatever means of communication are available, with due consideration of the safety of the delegates. This will largely depend upon the degree of cooperation by existing states agencies. If the liaison committee has done well, it can be expected that large portions of the state agencies, including law enforcement, will have taken the loyalty oath and will work toward restoration of Constitutional government. Those found to be inimical to the state and/or federal constitutions shall be dealt with as determined by the Committee, preferring parole (on their honor) to incarceration.

Militia committee

Militia committee should continue to coordinate consolidating contiguous Militia forces into larger, units and recommend the commissioning officers to accommodate the expanded units.

Correspondence committee

Correspondence committee will have accomplished their task, for the most part, once the County government has been reinstituted. Their energy can now be directed at assisting other counties; providing communication networks, especially of newsworthy activity, to other Correspondents.

They will continue to oversee local media to assure that the information being disseminate is accurate and consistent with any polices adopted by the Committees.

Judicial committee

Judicial function will include reviewing local judicial facilities and personnel to determine what is to be used and which personnel, not inimical to the Constitution, should be retained as members of the County judiciaries. Those retained must take the Loyalty Oath and agree to ignore existing statutory law.

Operations of both criminal and civil courts can be convened, as soon as the Committee judiciary is satisfied that it can operate in a Constitutional manner, including judging both fact and law by the jury. In civil matters regarding loans and mortgages, they should be continued pending a national determination of currency values and other matters regarding substance of loans. This will be addressed at the national level (part "X. Restoration of Constitutional Government").

Both County (if they exist) and State Rules of the Court will be abandoned, as they are inconsistent with justice. Any new Rules of Court to be established should be structured upon fairness to all parties; should not preclude any evidence that either party deems pertinent, and should never allow testimony in exchange for any benefit, favor, or other consideration.

Existing statutes will be abandoned in favor of evaluating injury received in criminal matters and breach of contract in civil matters, until the State Legislature is prepared to operate in accordance with the Constitution and restrict its police powers to only that which is absolutely necessary to the function of the state.

Grand Juries for criminal matters will be instituted, without supervision, except by the Jury Foreman. No law enforcement or legal professionals are to be included in either Grand or Petit juries. They are to be considered third party to any proceedings.

Liaison committee

As local government agencies are brought into their proper role, an expansion to include communications with state and federal agencies with facilities within the county should be incorporated into the workings of the committee.

Opening doors for smooth transition cannot begin too early, and may result in earlier and more significant successes in transition at higher levels of government. Contact should be made, and then continued, with those within any organization that would be affected by the Plan.

Intelligence committee

Intelligence committee should begin investigating senior employees at utilities, government agencies, and industry, to ascertain those who might be willing to continue operations under the conditions to be imposed.

Militia Duties

Militia reassignment to State Commands will remove them from subordination to their respective Committees. They will be considered a part of the State Militia, though they may retain their local identity and officers, absent any State Militia decisions to the contrary. Effectively, they will have transitioned from a Militia to a State army.

VI. Continuation of flow of goods, utilities and communications

Overview

Though addressed earlier, a very important responsibility that must be accepted by the Committees, the Militia and the Correspondents, is that it is vital to the interest of the country to do all that is possible to maintain a flow of food and utilities, and to maintain communication and transportation for the general population.

It can be anticipated that the rebels will attempt to lay blame on the citizens that are seeking to return to Constitutional government as the cause of any disruption of services. On the other hand, if those who are seeking return to proper government can maintain them available, as best they can, it will be reflected in the minds of the people that they are doing all that they can to assure that those services remain available.

There may be times when disruption is necessary, for example, to refuse power or communication to a facility that has been targeted. Once the operation is completed and the objective attained, restoration of any services disrupted can only be to the Constitutional forces' advantage.

This same spirit must extend to the point of extreme courtesy to the general population. The Constitutional forces image will be easily maintained by thoughtful consideration of the desire for the people to be as little effected by the implementation of the Plan as possible.

The rebels, however, after years of presumption of authority ("them or us mentality") are prone, by their training, to be abusive, arbitrary, and authoritarian. By comparison, the Constitutional forces will be encouraging a pleasant relationship, as servants of a free people. It is to be constantly addressed, that we are here to serve the people.

In time, the manifestation of the character of the players will make what is happening more easily accepted by the general population, and more conducive to cooperation on their part, and, hopefully, recruitment.

Historical Perspective

During the course of the Revolutionary War, postal services, currency, roads and bridges, ports and harbors, to the extent possible, were maintained by the colonial forces. A number of new roads were built, and, in many instances, old trails were converted into roads.

Every effort was made to continue the importation of goods, both military and others. Trade relations were established with France, Holland and other nations.

Though local supplies, especially food and forage, were deficient in quantity, many other products continued to be available throughout the war.

Role of Committees

Committees need to be ever vigilant, within their area, as to the needs, and, especially, the absence of services. If disruption occurs, they need to respond, quickly and effectively, to assure restoration as soon as practical.

They also need to assure that all personal within their authority extend the greatest consideration possible to the general public, and, when abuses occur, to discipline, as necessary, those who would undermine the sacred responsibility of honest consideration to the public.

Encourage more people to join the Committee of Safety, as the role of the Committee will be expanding rapidly.

Sub-committees may be formed to deal with certain industry and agencies. They should be comprised of people who have a working knowledge of the organization that they might be required to supervise.

Understanding the necessity to maintain the flow of goods and services, two scenarios are given, below. The ultimate decision is to be made by the Committee or appropriate sub-committee, so these scenarios are provided to demonstrate the presumption of authority that may be required to achieve the required continuity:

Monsanto

Monsanto makes genetically modified seeds that are licensed to farmers with severe licensing restrictions; they also make specialized agricultural chemicals. Here is a possible scenario on the supervision required to provide that the food supply, which is now primarily dependent on Monsanto, might be addressed.

Monsanto is a multi-national corporation with facilities all over the world. The corporate structure will be ignored and each plant will be treated as a stand-alone business. The business has a right to make a profit, though, through transition, and subsequent legislation, that will reduce corporate power and influence to constitutional levels, so a profit of 10% over cost of production and distribution will be allowed. There will be no advertising budget or bonuses paid.

Examples of actions that may be necessary, as will others not included herein, are:

- The facility will be instructed to increase production of heirloom seeds (seeds that can develop seed bearing plants).
- All licenses restricting use of seeds by any time constraints will be void.
- Production of genetically modified seeds will be prohibited, unless approved by the Committee.
- A balance will be sought to assure that there is an increase in production of food crops.
- Fuel crops will only be supported when ample surpluses of food crops are available and in storage.

Energy Industry

Fuel for transportation, heating, and energy industries is essential. Since this industry relies upon various elements in the chain of production, and committees assigned to assure continuity in the energy

industry (including natural gas) must coordinate with other committees at locations within the chain of production and distribution.

Since there are varied corporations involved, they individual facilities in the chain will be treated as standalone businesses. A profit of 10% will be allowed, though advertising and bonuses will not be necessary or authorized.

Examples of actions that may be necessary, as will others not included herein, are:

- All energy producing companies will be required to operate at 100% of capacity (or within safe limits), unless otherwise authorized. Safe limits would be defined as the highest rate possible without producing local environmental problems or safety concerns. Local Committees need to secure input from local residents who have taken the loyalty oath regarding damage or potential for damage, by such facilities.
- Competent personnel will be retained, where possible, if they have taken the loyalty oath. Operation of all facilities must be continued with trained personnel, wherever possible.
- All energy transporting systems will operate at full capacity, or equivalent to the capacity needed to not impede the flow of the production wells.
- Refineries and other processing facilities will operate at described capacities as long as the source material supply is available.
- Distribution system of refined products will operate as necessary to assure that ample supplies of products are delivered to outlets.
- Gasoline stations and other retail facilities for the distribution of oil and natural gas products will remain open during their normal business hours, and will be limited to a 10% profit. All retail sales prices will be based upon the value of the last bulk delivery. There will be no manipulation of prices based upon previous deliveries, unless averaged based upon existing and new supplies of product.
- If demand exceeds supply, local Committees may devise rules for rationing, including exclusion of certain vehicles, or types of driving, from being fueled.
- Energy supplies shall not be restricted when weather conditions warrant increased supplies.
- These policies shall remain in effect until such time as proper Constitutional government is restored and appropriate laws regarding energy are enacted.

Militia committee

Coordinate with the Liaison and Intelligence committees to assure availability of militiamen for duty securing facilitates brought under the control of the Constitutional forces.

If rationing occurs, Militia forces may be required to assure that there are no problems with rationing and distribution.

Correspondence committee

It is necessary that the Public Relations people effectively disseminate information showing that the rebel side is responsible for outages and that the Constitutional forces are vigilant in addressing maintenance of services, if at all possible. This single area of concern may quite easily be identified as the most important element of our activities. Government, after all, is there to assure that general welfare is maintained.

Incorporate as much of the mainstream media as possible. Assure that untruthful stories do not get airing. Isolate controlled or syndicated media so that local control is established to meet the needs of the local communities.

Judicial committee

Prepare procedures of continuing local control over production, utility services, transportation, communication, etc., without external influence. This might be served by determining breach of contract or unconstitutionally influenced public services.

Liaison committee

Work with existing utility, transportation, communication and productions operations to develop efficient management and continuity of services, absent external control. This will include influencing existing personal to take greater responsibility for the product of their respective entities.

Influencing government employees to align themselves with the Constitutional forces is essential. Every effort to retain personnel will best serve this purpose.

Intelligence committee

Enlarged areas of control will require more extensive intelligence operations and sharing of information with other secured areas. Statewide coordination should be anticipated.

Militia Duties

Militia will always, unless life is at stake, maintain a very high regard for all orders and policies directed at maintaining services to the general population.

VII. Extension of influence into State government

Overview

As occurred at the county level, when sufficient progress has been made in securing substantial areas within the State, even if the capitol of the state remains in rebel hands, an interim government can be established to enhance the efforts of the Committees, Militia, and Network of Correspondents.

Many state agencies have operations centers throughout the state. These facilities can be secured, personnel evaluated, loyalty oaths administered, and continuance of service provided, if within Constitutional authority. Roads and bridges need to be maintained open. Those facilities exist and can be supervised by Militia, Committee members or existing personnel who have taken a loyalty oath. This will be true of other state facilities, as well. Those facilities that operate outside of Constitutional authority (such as Child Protective Services, Welfare offices, etc.) should remain closed, rented out, sold, or otherwise utilized to provide financial assistance to the efforts to restore the Constitutional government. Determination of what is operating outside of Constitutional authority will be determined by the Committee of Safety.

Since all of the states have adopted Constitutions, those existing constitutions should, in most cases, provide sufficient security for the people and their rights. It should be understood that at the end of the Civil War, many states were required to submit new constitutions to the federal government, for approval, prior to ratification. During that same period, many states amended their constitution to come in line with federal 'requirements'. States that entered the Union after the Civil War had ratified constitutions that were, in some aspects, inconsistent with the Constitution.

It is recommended that all states revert to their respective Constitution, and laws, as they existed on July 4, 1860 (prior to the civil war and changes subsequent thereto). States admitted to the Union after that date should review their respective Constitution with regard to what is inconsistent with the purpose of the Constitution, or, appears to be a federal requirement for admission to the Union.

This course precludes the necessity of the review of thousands of laws to determine if they are constitutional and in the best interest of the people. Constitutional amendments can be re-ratified, if they are in the best interest of the people, and laws that serve that purpose can be reenacted. It would appear to be far less difficult to begin from then and work forward than to, piecemeal, undo the plethora of legislation that has not been enacted with the best interest of the people in mind.

One other concern is that of people who are a threat, by their nature, to the success of Restoration of Constitutional Government. There are many who have come here illegally; come here legally, and overstayed their permitted visit; and, those who have obtained citizenship who do not have allegiance to the country and the Constitution.

It is also time, as each state reenters the Constitutional Union, to declare their purpose. A Declaration of the Dissolution of Government, which purpose is to present to the world the cause for which Constitutional return is sought, should be declared and made public. The following is a proposed document to that end. This should be considered only as a model. During the course of conflict, as occurred during the Revolutionary War, more elements of tyrannical or unconstitutional events occurred. Some of those elements that had been suggested, earlier, by the colonists, were abandoned as insignificant to the overall. At the time that the participating states subscribe to the Declaration, it should have been brought up to the needs and exigencies of the time.

Historical Perspective

On May 10, 1776, the Continental Congress recommended that the various states "*adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general.*"

Even though they had existing charters, the colonies chose to determine their futures in accordance with what the people felt most conducive to their future security. Though new constitutions were not adopted by all of the states, the form of government within each of the colonies was revised to meet the exigencies of the day. Many continued to operate under their original charters, with the exception of any appointments made by, or allegiances made to, the Crown.

Two months later, on July 4, 1776, the States, united, declared to the world their purpose with the adoption of the Declaration of Independence.

During this period, many people who would be considered "Tories" or "those inimical to American Liberties" were treated little less than enemy forces. They might be placed under house arrest; jailed, or sending scurrying for save refuge with the British in Boston, New York, Charleston, and other safe havens, as refugees. The possibility of a threat to the security, safety, and intelligence, of the colonial assemblies and military activities was not allowed to be jeopardized by the presence f such people that did not have the same objective as the colonists.

Declaration of Dissolution of Government

When a government, properly instituted under the authority of the People, by virtue of the Constitution for the United States of America, has abrogated its responsibility under said Constitution, and has removed itself from responsibilities imposed upon it by said Constitution, and, when those People choose to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to recognize such Dissolution of Government.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and property. That to secure these rights within a society, governments are instituted among men of that society, deriving their just powers from the consent of the governed.

When that government becomes destructive of these ends, by usurpation of authority not granted by the People, or by abrogation of responsibilities, it is the right of the people to reinstitute that government on its original foundation, and to amend that foundation to assure that such usurpations and abrogations do not recur.

Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they have become accustomed. But when long trains of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide for new guards for their future security.

Such has been the patient sufferance of these States united under and by said Constitution; and such is now the necessity which constrains them to amend their former systems of government. The history of all three branches of the present government is a history of repeated injuries and usurpations, all having direct object the establishment of an absolute tyranny over these States. To provide this, let facts be submitted to a candid world.

- They have created a fourth branch of government (Administrative Agencies) that is independent of, and not subject to the will of the People;
- Their courts have refused to rule upon the Constitutionality of matters before them;
- They have imposed taxes that appropriate fully one-third of the value of one's earnings;
- They have generated a debt obligation on our posterity, still unborn, into the unforeseeable future;
- They have seduced millions of their people into dependence upon that government, at the expense of their neighbors;

- The have secured for themselves benefit packages approaching those realized by members of Royal courts;
- The have allowed the appointment of officials in capacities not recognized by the Constitution, barred from recourse by the People;
- They have established control over State and local governments by funding and obligations associated therewith;
- The have supported the creation of a standing army amounting to over one million officers who have both civil and military authority given them by the government;
- They have expanded the standing army by granting policing powers to many agencies of government who have no need to be armed and authorized to use those arms;
- The have provided undue immunity and impunity to those who have been given such powers;
- They have enacted laws that have effectively limit the selection of government office holders from two primary parties.
- They have endeavored to create empire around the world, which serves not the People of this nation;
- They have waged war without a proper Deceleration of War stating who the enemy is and what event will conclude those wars;
- They have enacted laws well outside of any police powers anticipated by the Framers of the Constitution;
- The have subjected States to arbitrary control of the federal government contrary to the guaranteed form of Republican Government within the States;
- They have allowed the use of fiat currency, contrary to the Constitution, and have continued this practice under the guise of a national emergency, which has existed for over 80 years;
- They have allowed favored financial institutions to loan money that does not exist to the people, at usurious rates;
- They have loosened the immigration laws that have served this country well through its history, and refuse, now, to enforce those laws that had been enacted to protect our nation from invasion;
- They have taken States of the Union to court for the State enforcing laws that the federal government refuses to enforce;
- They have extended their jurisdiction over the jurisdiction of the States, nullifying the State's right to a Republican Form of Government;
- They have assumed jurisdiction in foreign lands, enforced by kidnapping, torture and assassination;
- They have suppressed traditions held dear, for centuries, in this nation;
- They have removed the rights of traditional churches and have granted rights to churches foreign to our heritage;
- They have assumed authority not granted by the Constitution;
- They have denied the States and the People rights guaranteed and protected by the Bill of Rights;
- They have refused to abide by the "Separation of Powers" doctrine by allowing members of the judicial branches of government to hold office in the legislative and executive branches of government;
- The have granted to fictitious entities (corporations, associations, unions and other organizations) rights that are recognized to be granted by the Creator only to the people, in their individual capacity;
- They have formed alliances with foreign nations which are objectionable to the intent of the Constitution, and grant favors to foreign interests over the interest of the People;

- They have accused large groups of our population, including veterans who have fought for the country, of being a source of threat to that government, naming them as terrorists;

Nor, have we been deficient in informing the government of their failure to acknowledge their obligations under the Constitution. Campaigns, letters, phone calls, and demonstrations have been ignored by the government, and those who have voiced objection have been slandered by representatives of the government. A government that has become so inured to its belief in its own supremacy so as not to recognize their obligation to respond, with truthful answers, to the question posed by large numbers of People, proves a distain for those governed by that government. We have appealed to their magnanimity and, in return, have been chastised as incompetent and called names indicative of their supposed superiority. They have been deaf to the voice of the People and of Justice.

For these reasons, we have found that this government has dissolved itself, and, our allegiance thereto, and forced us into a state of nature, until such time as the Constitution is restored as the Supreme Law of the Land.

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Solution for Unwanted Immigrants

Immigrants

One problem that will be of continuous concern is illegal immigrants and other recent immigrants who may pose a threat to the security of the country as well as the Constitutional forces.

Dealing with this problem takes on different characteristics in different parts of the country, as well as having the two types of immigrants to deal with. First, we will deal with the two types of immigrants.

Illegal immigrants

This category includes those who have crossed the border illegally or have attained citizenship status through means inconsistent with the intent of the Constitution (anchor babies). For the most part, an inability to speak fluent English is an indicator of someone possibly within this category. Once identified, these illegals should be separated from the general populations and returned to their country of origin, as expeditiously as possible. Sports stadiums, schools, and other larger facilities can be utilized for temporary housing and basic food provided for preparation by those so interred.

The liaison committee should contact embassies of countries and arrange for deportation, if possible. If suitable arrangements cannot be made, they should be transported to the southern or northern border (if Canada will cooperate) for to be released. To assure that they do not return, or, if they do return, to be easily identified, a means needs to be established for positive identification. Modern technology will not serve this purpose, during these trying times, so alternative methods need to be developed that are easily recognized by any proper people.

Tattooing or branding are the only practical means. Tattooing would be the preferred method, if means are available. The alternative of branding should be done with an effort to minimize discomfort. Both should be administered inside of the upper arm so as to be inconspicuous, yet easily found and

identifies. The brand, or tattoo should be the characters "PNG" for persona non grata (persons not wanted) about 1/2 inch in height.

They should also take an oath to not return, subjecting them to very severe penalties, if they are found in this country, again.

Recent immigrants

Immigrants from Muslim countries and other countries which have a hostile relationship with the United States need to be evaluated as efficiently as possible, under the current circumstances. If they entered the country prior to 1990 (three years before the first World Trade Center bombing), their immigration may have been proper and their intention to assimilate as Americans established. The intelligence committee should review their accomplishments and other available information to determine if they have been supportive of American values. If they have been, they may be approved to remain in this country.

Those who came after that date may well have come here with intentions of fitting into our society as sleepers to carry out evil when called upon to do so. The burden should be put upon these people, whether citizens of the United States, or not, to prove to the intelligence committee that their immigration to the United States is valid. Otherwise, those in this group and those who did not satisfy the criteria of proving that they intended to assimilate, will have visas and citizenship revoked. They should be given up to 60 days to dispose of their property and make arrangements for their own transportation to their country of origin.

Those unwilling or unable to cooperate in the disposal of property or arranging their own transport to their country of origin will have their property confiscated and it will become the property of the appropriate Committee of Safety.

The need to house those legally here, though to be deported, does not exist, unless they refuse to comply with and accept the above provisions, or if the intelligence committee believes that they are a risk. They should be allowed to continue to stay in their homes, unless they refuse to comply, which will require detaining them along with the illegal immigrants. Having to impose this condition will result in confiscation of all property.

Transportation of Immigrants to Borders

The transportation of those who are illegal immigrants warrants the same consideration as their ingress into the country. This means that if they walked in, they can walk out. Receiving points can be established near the southern border (northern border, too, if Canada agrees to allow their entry). These should be located within 200 miles of the border.

Transportation to these receiving points is most expedient if done by rail. Trucks can be utilized to transport illegals to railheads. Rail transport can then be provided to the receiving points.

If the corridor to the border can be easily secured by Militia, a continuous flow of illegals can be provided for. Food and water should be made available at reasonable distances. Where securing the corridor is impractical, groups of from twenty to two hundred, depending on resources, can be marched to the border, providing food and water, as necessary.

At the receiving points, a thorough search should be made. Any cash in excess of $500 per person should be confiscated and applied to providing food and water. The search should also assure that the "PNG" mark has been applied.

Secured Borders

The Canadian border does not, at this time, require monitoring. On the other side, the southern border, known for its porosity, signs should be posted, facing south, very 1/4 to 1/2 mile, advising that an area 1/4 mile in width, abutting the border, is declared to be a "Free Fire Zone". Those found within that area are subject to being shot simply by their presence. This, of course, applies only in the more remote areas. Narrower Free Fire Zone may be required in some areas where potential illegal crossing may occur.

Committees of Safety near border areas should arrange for roving patrols to assure compliance. For the most part, absent any activity, these patrols can be composed of older volunteers, though if activity increases, reassignment of older units and securing the areas with more active personnel might be in order.

Role of Committees

The State Committee of Safety will need to transition into the interim role of State governance, until such time as Constitutional government is restored to the State. They will have to determine which agencies within that government are to be retained (consistent with the Constitution); what personnel within the existing government are to be retained, after taking a loyalty oath to both the United States and State Constitution; The sale of surplus county property, if necessary, to provide funds to continue operations; and, establish a procedure to provide for elections of the county supervisors (or equivalent).

The Committee (those members who are not elected to official capacities) is to remain as advisory committees to the State government until they are released from that responsibility by the State Committee of Safety or reconstituted State government.

Militia supervision and control will transfer to the State government once the State Committee of Safety has determined that it is functioning sufficiently to do so. Judicial functions will transfer to the reinstituted Sate government, as necessary, with most cases being dealt with at the County level.

Property taxes and sales taxes collected will be held in the coffers of the Committee, to be used to continue services and provide for other needs of the activities of the Committee, until the Committee determines that the State government is functioning sufficiently to resume that responsibility. Taxes will be brought into compliance with the Constitution and the de jure government once the state has been secured. In the interim, the existing tax rates and collections will apply. No property will be seized for failure to pay taxes, nor will any liens issue or penalties be applied.

Perhaps consideration should be given to taxation by the Federal government and the effect it has had on subjugation by the State to the Federal government. Preparation to implement a Constitutional form of taxation at the federal level will require adaption by the State government to that means. See Some Thoughts on Taxation.

A State Legislature will be made of non-attorney members of the existing Legislature who have taken an oath of loyalty, and have been determined to not be inimical to the Constitution. Any vacancies

remaining will be filled by elections held within the locales which were represented by the vacated seat (no loyalty oath, or any other cause for the vacancy), where both electors and candidates will have taken the loyalty oath and deemed not inimical to the Constitution. This Legislature is to enact laws and pass bills within the limitations imposed by the Constitution accepted, as stated below. All other laws, except those enacted prior to the Civil War, will be presumed to be null and void until the Advisory Council shall resubmit them to the Legislature, as described below.

The State Constitution will be replaced with the last version of the Constitution preceding the Civil War, or, for those states admitted after the Civil War, the first version adopted at statehood. All other laws shall be suspended.

In civil matters, once an original of the contract or affidavit stating the nature and details of the contract, explaining the nature of the breach of contract is submitted to the court, the court may docketed for trial. Any mortgage or loans shall continue to be held in abeyance until the national government is properly reinstituted and determination made as to value of currency and effect of fractional reserve banking on obligations made under such methods.

The State Committee of Safety should select delegates who are versed in the Constitution for the United States of America, and its origin and history, to serve, eventually, on the Constitutional Compliance Convention (See "Part VIII. Extension of influence into federal government agencies"). It is these delegates who will work with delegates from other states to complete the Declaration of Dissolution of Government and will serve on a national level, as the Convention, which purpose will be defined in greater detail.

State Advisory Council

A State Advisory Council will be created, composed of citizens of the state, no one of which shall be in law enforcement or the legal profession, with each county sending one delegate to the Council. Delegates should be well versed in both the State and United States constitutions. The delegates, once assembled, may determine an alternate method of delegate selection.

The State will have reverted to a previous Constitution, as described, above. Any amendments to that Constitution ratified after July 4, 1860 will be suspended until such time as the State Advisory Council has reviewed and determined that the amendment was Constitutional and in the best interest of the people. If so determined, the Council will forward to the State Legislature a report recommending the acceptance of the amendment. The Legislature may accept, or refuse, such report, however, no amendment will be considered lawful unless reported by the Council, approved by the legislature, and ratified in accordance with the Constitution.

The State Advisory Council will then begin a review of all laws enacted after July 4, 1860 to determine their authority based upon the Constitution above adopted. If the law is deemed Constitutional, it shall be submitted to the Legislature, including an explanation of the authority in the Constitution from which it was derived. The Legislature may pass, or reject, any law, in accordance with the Constitution, only if submitted to them with approval of the Council.

No other enactments or bills may be considered by the legislature unless submitted to the State Advisory Council, along with a report, as described above, and verified and returned from the Council to the Legislature. If the report indicates that the proposed legislation is contrary to the Constitution, the

legislature may not act upon it. If the proposed legislation is deemed consistent with the Constitution, the Legislature may pass such legislation, in accordance with the Constitution.

The State Advisory Council will sit in the above describe capacity for a minimum of two years after the federal government has been returned to its Constitutional capacity, and no more than five years after such return. The Council may determine the completion of its purpose before the five-year term, or will extinguish, automatically, upon that anniversary. At the extinguishment of the Council, the legislature will have sole constitutional authority for enacting laws.

The State Advisory Council shall accept and review any referendum submitted in accordance with the State Constitution, if that Constitution has such a provision. If deemed Constitutional, it will be handled in accordance with said Constitution.

The purpose of the State Advisory Council is twofold. It is to be composed of people well versed in the Constitution and law, though not a member of law enforcement or legal profession. By utilizing the Council, the responsibility for review and recommendation will not burden the legislative body, detracting from the necessary operation of the State government. In that capacity, it will be an interim function to assure that the State government gets back on track to providing the service that it was created to do.

Limitations and Requirements

The State Advisory Council will revise, as necessary, and present to the State Legislature, the following Limitations and Requirements:

- It is to be understood that "public" is the people, not the government. That any religious displays on public property cannot be restricted or prohibited by government action.
- That the local jurisdictional body, only, may approve or disapprove of any display, consistent with the desires of that community
- That no law may be enacted which will allow any religion to receive preferential treatment under the law.
- That the Advisory Council shall prepare for presentation to the State government an Amendment to the Constitution which would limit terms of office, for all State elected offices, to a maximum of two terms, and, with the exception of the Governor, shall have one intervening term out of office, which shall then be submitted to the citizens, in accordance with the Constitution, for their ratification.
- That State will recognize the "separation of Powers", and will prohibit any member of the Judicial Branch, whether state, federal, or both, by virtue of any membership, association, license, employment, partnership, or fiduciary relationship with any firm practicing under such authority, from pursuing an office in the Legislative or Executive branches of government.
- That the Legislature shall enact legislation which would provide that, by petition of 0.01 percent of the lawful adult population, a State Citizen's Grand Jury be empanelled, within 30 days of receipt of such petition, to hear charges of violations of the Constitution and other laws of the State, and, if a True Bill is issued by the Grand Jury, a jury trial shall be held, peopled by citizens of the State, and the verdict and punishment in such trial shall not be questioned by any other authority. That those who sit on either Grand or Petit juries shall not be employees or under any contract with the government, nor shall they be members of law enforcement or the legal profession.

- That all administrative agencies of the State government shall be stripped of rule making authority; that all rules enforced by any such agency shall henceforth be created, directly and specifically, by an enactment of the Legislature and passed into law as prescribed by the Constitution.
- That any agreement currently existing between any administrative agency of the federal government which binds, obligates, or otherwise coerces compliance by any state, state agency, is and shall be null and void, and, that no future attempts to create such relationship may ever be enacted or accepted.
- That the Legislature will prohibit its members from receiving any emolument (except his prescribed salary), gift, benefit, or favors, while in office. Any member accused to be in violation shall be reviewed by the appropriate house's ethics committee, and if found to have received such emolument, gift, benefit or favor, shall be immediately expelled from that house and not be qualified to return.
- That the Legislature is not a benefactor or philanthropic organization and is prohibited from redistribution of any revenue, under the form of grants, scholarships, endowments, research funds, or any other form which does not have a direct and identifiable return of the value of all funds provided.
- That the Legislature is senior to any private organization and cannot contract with, support, depend upon, restrict to, or allow any State employee to be a member of, any union, or any collective bargaining unit, in any shape, form, or relationship, nor shall any law be enacted that establishes any prevailing wage requirements for contracts.
- That any and all enactments by the Legislature shall, from this time forward, provide a statement as to which portion of the Constitution grants the government authority over the subject matter contained in the enactment, specifically explaining how that authority was derived.
- That any and all enactments will stand alone and bear on a specific and singular object, without riders and amendments that deal with matters that are not directly related to the titled subject.
- That no compacts may be made with the federal government or with any other state, as such would impinge upon the sovereignty of this State.
- That the only provision in the nature of a compact between this State and any other state is the provision in Article IV, Section 2 of the United States Constitution.
- That all Bills submitted to the Legislature shall be read in their entirety, including the Constitutional authority, when said Bill is first introduced to the respective houses and just prior to voting on such Bill; and, the entire text of any such Bill shall be made available to the public by publication in all major newspapers, and, on the Internet.
- For the purpose of reduction of the deficit and the debt incurred by previous Legislature, the Legislature shall enact no new legislation which grants money that was otherwise unearned (i.e. welfare, block grants, etc.) and shall adjust all such existing programs to reduce expenditures by 25%, or more, of the current expenditure, each year until said program is reduced to nothing; and, That all grants, loans, or other payments to other nations, domestic organizations, non-domestic organizations or entities, shall cease at the end of the current fiscal year, and not be reinstated until such time as the budget of the State shall be balanced and there is no future encumbrance or obligations for repayment of any debt, accept that any provision removed and not reinstated by the Advisory Council and the Legislature shall not be considered an obligation
- The Legislature shall enact laws which act upon entities or corporations, which are created by the State government, that will provide oversight into their operations, to include: limiting any corporation to act only within a limited scope (industry), and not extend itself into areas where it

has not been specifically authorized to conduct business by the articles of its creation; Prohibit corporations from investing in other corporations, the stock market, securities, futures, or any other enterprise for the purpose of making a profit or creating a loss; Prohibit importation of any goods, products or material from other countries, unless unavailable within the United Sates, unless the Congress provides an alternative; Prohibit outsourcing of any aspect of the business; provide that no foreign or domestic corporation my hold stock in the corporation; and, provide that no more than ten percent of the shares of the corporation may be held by other then Citizens of the United States.

- That the Congress shall enact legislation which provides for fair access to all elections by removing any enactments, laws or rules which give favor to any political party over another political party or individual seeking office, and shall limit the fees required to such office not to exceed $1,000.00 for any State office
- That the Congress shall enact a law regarding campaign contributions which will limit any contribution to a single candidate to $200.00; that contributions can be made only by Citizens of this State; and, that corporations, political parties, unions, and other organizations are not provided freedom of speech by the Constitution, and are disqualified and subject to criminal penalties for any contributions, or any activities which are intended to influence the outcome of any election.

Militia committee

Organization of command and commissioning of officers will be a top priority in establishing the State Militia.

Correspondence committee

Correspondence committee will assure that media provides news of the accurate and complete dealings of the State Advisory Council and the Legislature. They will also continue their previous duties, as necessary, especially in providing a complete and accurate flow of news to other states.

They will also work with the state government printing office to develop means to make all public records available, without charge, through the Internet. This will include all legislation, Congressional Records, Memorials, federal court proceedings, County Public Records, without restriction, or any other issuance made by any branch of government.

Judicial committee

Coordination of the various Judicial committees will begin to establish a revised state judiciary based on the Limitations and Requirements and subsequent enactments by the Legislature.

Liaison committee

Contact should have been made with all state and federal agencies, and agreements reached, where possible, for transition to the Constitutional forces government.

Intelligence committee

Dossiers and loyalty oaths will be required or large numbers of people, as the transition is made. Coordination between the various Intelligence committees will reduce duplication and provide results that are more reliable.

VIII. Extension of influence into federal government agencies

Overview

Many federal agencies have operations centers throughout the states. These facilities can be secured, personnel evaluated, and continuance of service provided, if within Constitutional authority. Most federal agencies serve no useful purpose, within Constitutional guidelines, so their facilities can be used for other purpose. No federal taxes should be collected from individuals, however, any revenue that is or funds received should be seized and held, to be provided to the Constitutional Compliance Convention, once established.

Since many agencies of the federal government have offices in the states, as the states are secured, their offices are within the geography controlled by the Constitutional forces. Securing these facilities, and encouraging participation by their employees, should be pursued as diligently as possible.

It is also time for putting the de facto government on notice. Understanding the need to advise the government, the people, and, the world, of the intentions of the Constitutional forces, a Declaration of Dissolution of GovernmentDeclaration of Dissolution of Government should be executed by all states that have been secured sufficiently to have created an Advisory Council. This step might be warranted earlier in the process, though by this stage in the progression of events, becomes imperative. States coming into the ability to execute the Declaration may add their voice as that capability is realized.

Historical Perspective

During the course of the Revolutionary War, there was an ebb and flow of areas controlled. Boston, Charleston, New York, and Philadelphia are the most pronounced instances. The securing of enemy positions, extending the areas of control facilitated the colonist's needs for mobility, communication and equipment, forage and food. Similarly, as secured areas were enlarged, the British found greater difficulty in obtaining supplies, forage, and food. Ultimately, this lead to the downfall of Cornwallis at Yorktown.

When sufficient numbers of colonies had decided that the failure of the Olive Branch Petition (See You Have Tread On Me Petition) was indicative of the course that must be pursued, at all hazard, they joined together to Declare Independence from the British government, on July 4, 1776. This declaration was a restatement of their grievances and was notice to the World of the position that they had taken in regard to the "mother country". That Declaration was a necessary step in garnering recognition and aid in pursuit of their goals.

Role of Committees

Committees should be involving themselves in the operations of any federal agencies, once taken. The facilities can be used for various purposes, or may be disposed of. They will provide revenue for the Constitutional Compliance Convention, once established.

Once these agencies are brought into control, their communications systems can be used to contact other agencies, not yet secured, explaining that a new day is dawning, and endeavoring to have them relinquish control and join the Constitutional forces, or otherwise participate in the overall effort, according to their expertise. Absent a loyalty oath, house arrest, seizure of arms and other equipment, or, imprisonment might be warranted.

All County and State Committees of Safety should be requested to participate in refinement, if necessary and execution of the Declaration of Dissolution of Government (see above), so as to put the de facto government, the people, and the world on notice as to the intention and purpose of the Constitutional forces.

Committees of Safety will need to begin selecting delegates to a Constitutional governing body, at the federal level. Three delegates from each state, well versed in the Constitution should be selected and sent to a Constitutional Compliance Convention to be called when 30 states have been secured, at the state level. All states are to participate, whether contained, or not. Delegates cannot have been in law enforcement or the legal profession. They shall have declared allegiance to the Constitution in the early stages of this process. Duties and responsibilities of the Constitutional Compliance Convention are described, below.

Militia committee

Plans should have completed creating the State Militia. Coordination with other State Militia committees should be pursued contemplating joining contiguous states to create Regional Commands. Review of officers' records and sharing them with contiguous state Militia committees in preparation for revised Command structure.

Correspondence committee

Assuring that other parts of the country are apprised of successful operations, and, the taking of federal facilities is very important, at this stage. Since the change of government, back to within Constitutional constraints, is at hand, whatever methods might reduce bloodshed and encourage acceptance to the proper government should be encouraged.

Once the Declaration of Dissolution of Government has been executed, it is imperative that this information be gotten out as rapidly and broadly as possible.

Liaison committee

Every federal agency within the state should be contacted regarding their submitting to the Constitutional forces and coordinating necessary (constitutional) activities for continuation of services. Enlisting management within those agencies to assist in reaching out to other federal agencies outside of secured areas might have far-reaching impact in consolidation under Constitutional forces.

Constitutional Compliance Convention

The Constitutional Compliance Convention will meet in person, or by whatever means are agreed upon, to begin the process of restoration of Constitutional government to the United States of America.

Members of the Constitutional Compliance Convention will review the proposed "Declaration of Dissolution of Government" and come to agreement on final wording. The final document will be signed and made public as the first official act of a restored Constitutional government.

Their first task will be to adopt the Constitution and Amendments, as they existed on July 4, 1860. As with the states, this precludes the necessity of undoing many thousands of unconstitutional laws.

The next task will be to review subsequent Amendments to the Constitution to determine if they were ratified in accordance with the Constitution and without coercion. The subsequent Amendments, if deemed Constitutional, will be resubmitted to the Congress, at the appropriate time, to be approved and submitted to the states for ratification, or rejected and not submitted to the states.

The Constitutional Compliance Convention may propose Amendments to the Constitution to clarify the intent of the Framers, and, when necessary, to recommend Amendments to preclude abuse of government powers based upon the experience of the last two centuries.

The Constitutional Compliance Convention will then begin a review of all laws enacted after July 4, 1860 to determine their authority based upon the Constitution. If the law is deemed Constitutional, it shall be submitted to the Congress, at the appropriate time, including an explanation of the authority in the Constitution from which it was derived. The Congress may pass, or reject, any law, in accordance with the Constitution, only if submitted to them with approval of the Convention.

All government Administrative Agencies will be suspended unless and until a review by the Constitutional Compliance Convention determines that they are consistent with the Constitution. The Convention may impose restrictions upon them that can only be removed through the legislative process by the Congress.

No other enactments or bills may be considered by the Congress unless submitted to the Constitutional Compliance Convention, which will prepare a report, as described above, and return same to the Congress. If the report indicates that the proposed legislation is contrary to the Constitution, the Congress may not act upon it. If the proposed legislation is deemed consistent with the Constitution, the Congress may pass such legislation, in accordance with the Constitution.

The Constitutional Compliance Convention will sit in the above describe capacity for a minimum of five years after the federal government has been returned to its Constitutional capacity, and no more than ten years after such return. The Convention may determine the completion of its purpose before the ten-year term, or it will extinguish, automatically, upon that anniversary. At the extinguishment of the Convention, the Congress will have sole constitutional authority for enacting laws.

Members of the Constitutional Compliance Convention can be replaced by their respective state Committees of Safety (or Legislature, if the Committee has dissolved itself) on July 4 of any year of the existence of the Convention, or on the death or removal for cause of any delegate.

The Constitutional C\Compliance Convention will have addition duties, as outlined in Part X. Restoration of Constitutional Government.

The Constitutional Compliance Convention shall appoint a Free Market Advisory Committee.

Free Market Advisory Committee

The Free Market Advisory Committee shall be comprised two members from each state, who shall be well versed in Free Market Economies.

The Free Market Advisory Committee shall prepare a policy for instituting a Free Market Economy, in accordance with the Constitution, and shall submit said Report to the Constitutional Compliance Convention for their evaluation as to the Constitutionality thereof. If deemed Constitutional, it shall be forwarded, with the appropriate report, to the Congress.

Dealing with the diverse world economy, a dual level economic system is in order. A proposed guideline for such an economy can be found at An Economic Solution.

Militia Duties

The militia will continue with garrison duties, securing facilities, as necessary, and will assume combat roles, as necessary.

IX. Extension of influence into federal government

Overview

All liaison committees should be actively initiating contact, discussion, and conversion of federal employees, military or any other agents of the de facto government, regarding participating in the effort to restore Constitutional government in the United States.

As agencies of the rebel government come under the control of the Committees, what remains of rebel authority will be, for the most part, contained in Washington, D.C. Their ability to function and control the country will be jeopardized to the point of ineffectiveness.

Historical Perspective

On March 1, 1781, the colonies, united, adopted the Articles of Confederation for "The United States of America", and, a nation was born. Subsequently, due to defects in the Articles, a "Constitution for the United States of America" was submitted to the then 13 states and was ratified by the nine requisite states on June 21, 1788. That Constitution, and the government created by it, stood well for over half a century.

At the end of the Civil War, amendments were "ratified", under the condition that states that did not ratify the amendment would not be allowed full status as a state until they did ratify those amendments, beginning with the "Anti-Slavery Amendment".

That Amendment was not ratified in accordance with the Constitution, since duress was the motivation for many of the states, whose place in the Union was subjugated to federal military districts.

Role of Committees

The Committees, as well as the state legislatures that have been brought back in to the Union by the expansion of these efforts, need to provide any requested assistance from the State Advisory Council.

The will continue to provide delegates, as necessary, until the Council deems that their services are no longer necessary.

They will continue to work with local and county government until constitutional compliance is achieved.

Militia

The Militia will carry out duties assigned by the Committees, including both garrison and combat. Their structure will be maintained, though they will become a part of the United States Militia, with all benefits, uniforms all supplies being provided by the provisional government. The United States Militia general officers will be commissioned by the Constitutional Compliance Convention.

Liaison Committee

Liaison committee will continue to reach out to secure agreement by government agencies to accept the transition, as designed herein and modified, as necessary, by Committees or other advisory groups. They will also communicate, as necessary, with any foreign government, until completion of the transition.

X. Restoration of Constitutional Government

Overview

The Constitutional Compliance Convention shall serve as an interim government until elections can be held. Requirements for Electors shall have been established at the State level (see part III, Judicial committee).

Ballots shall be open to any candidate qualified to hold the office sought, except that, the Candidate shall have been a citizen in which state he chooses for at least two years; shall not, for any legislative or executive position, have been an attorney or any way affiliated with the legal profession; and, shall have taken the loyalty oath and never have been found inimical to the Constitution. Any party affiliation shall not be shown on the ballot.

The Executive Office of Government shall be occupied by an interim Executive Council, comprised of 5 members of the Constitutional Compliance Convention , selected by that Convention, and hold that office until an election for President and Vice-President is held, in accordance with the Constitution.

Constitutional Compliance Convention

The Constitutional Compliance Convention will be constituted as described above. Each year (on the anniversary of its creation), new delegates will be selected, to hold office for one year, unless reelected

This convention will be held at a location to be announced, and will constitute the lawful government of the United States of America. Their primary function, at this point, will be administrative, to assure that commerce, communication, transportation, etc, coordinated, as necessary, and continued, on a national level.

As soon as practicable, the Convention will begin working as an advisor to the Congress. Their purpose will be as follows, though they may begin preparing reports, recommendations, etc., at their first convening.

Legislative actions shall not be conducted by the Constitutional Compliance Convention; however, the Convention shall adopt the Constitution for the United States of America, as it existed on July 4, 1860. All laws enacted after that date shall be declared null and void, anyone imprisoned under federal law shall have his case reviewed by the Convention, or a Committee comprised of delegates to the Convention. Those found guilty of crimes without victims shall be paroled pending a final decision, once the judicial branched is reconstituted. Those found to have committed crimes which have result in injury or damage shall be held pending the reconstitution of the judicial branch and a determination of proper restitution. Those who are deemed violent, and a threat to society, will remain imprisoned, though all cases may be appealed to the reconstituted judicial branch, once the lesser cases have been disposed of.

Civil matters will not be heard until the Constitutional government is fully restored.

The Constitutional Compliance Convention shall, once the House of Representatives, the Senate, and the Executive have been reestablished in accordance with the Constitution, assume an advisory capacity to the Congress.

The Constitutional Compliance Convention will review all amendments to the Constitution that were ratified after July 4, 1860. This will include all Thirteen Amendments published in existing law books, at that time. Any amendments ratified after that date will be suspended until the Convention has reviewed and determined that the amendment was Constitutional. If so determined, the Advisory Council will forward to the State Legislature a report recommending the acceptance of the amendment. The Legislature may accept, or refuse, such report, however, no amendment will be considered lawful unless accepted by the legislature.

The Advisory Council will then begin a review of all laws enacted after the July 4, 1860 to determine their authority based upon the Constitution above adopted. If the law is deemed Constitutional, it shall be submitted to the Congress, including an explanation of the authority in the Constitution from which it was derived. The Congress may pass, or reject, any law, in accordance with the Constitution, only if submitted, with approval, by the Advisory Council.

Any law so enacted will be subject to Veto by the Executive, and override of Veto by the Congress.

No other enactments or bills may be considered unless submitted to the Advisory Council, which will prepare a report, as described above, and return same to the Congress. If the report indicates that the proposed legislation is contrary to the Constitution, the Congress may not act upon it. If the proposed legislation is deemed consistent with the Constitution, the Congress may pass such legislation, in accordance with the Constitution.

The Constitutional Compliance Convention will sit in the above-described capacity for a minimum of two years after its creation, though it may extend its operation for up to ten years, at its discretion. The Convention may determine the completion of its purpose before the ten-year term, or will extinguish, automatically, upon that anniversary.

Limitations and Requirements

The Constitutional Compliance Convention will revise, as necessary, and present to the Congress, the following Limitations and Requirements:

- Return all troops to the United States, as soon as possible. Exceptions only where the Constitutional Compliance Convention sees fit to leave troops under existing, constitutionally sound agreements.
- This will be accomplished immediately preparing troop withdrawal plans, including rearguard.
- The withdrawal plan should allow for recovery of as much equipment as practical to be return to the United States for use or for scrap.
- Outlaw fractional reserve banking, immediately.
- Create no additional currency (Federal Reserve Notes) for circulation.
- Begin planning for 'Greenback' (full faith and credit of the United States, without interest or surcharge) and gold/silver based currencies.
- Prepare plan for "Exchange Credits", so that gold and silver do not leave the country, in exchange for foreign goods.
- Plan withdrawal from Federal Reserve Act, to be accomplished within Five years.
- Impose a moratorium on immigration for 5 years to provide sufficient time for an assessment of what the role and impact of immigration and immigrants is to our country.
- Enforce border protection to prohibit illegal entry of people and objects.
- That ownership of land within the boundaries of the United States shall be limited to Citizens of the United States or by corporations authorized by the United States, or the States. Ownership of land outside of those described shall be prohibited, by law, after five years.
- It is to be understood that "public" is the people, not the government. That any religious displays on public property cannot be restricted or prohibited by government action.
- Any laws previously enacted which limit religious practices, holidays, displays or exercises shall be immediately repealed.
- That the local jurisdictional body, only, may approve or disapprove of any display, consistent with the desires of that community.
- That no law may be enacted which will allow any religion to receive preferential treatment under the law.
- The government of the United States was created by authority of the People, by means of the Constitution, which is the charter of that government. The government is thereby bound in all of its actions, whether on United States owned and ceded lands; within the States of the Union; or,

outside of the boundaries of the United States, by the prohibitions and limitations set forth in that Constitution.

- That, in light of Article I, Section 8, clause 17; the Ninth Article in Amendment to the Constitution; and, the Tenth Article in Amendment to the Constitution, the authority of the States and the People shall not be limited by any acts of the Congress, the Executive or the Judicial Branches of the federal government.
- That Article I, Section 8, clause 18 shall be strictly construed with regard to "necessary and proper for carrying out the foregoing Powers", and shall not be broadly construed to extend authority where it was not intended.
- That the Congress shall prepare for presentation to the States of the Union an Amendment to the Constitution which would limit terms of office, for all federal elected offices, to a maximum of two terms, and, with the exception of the President, shall have one intervening term out of office, which shall then be submitted to the States for their ratification
- That Congress will recognize the "separation of Powers", as envisioned by the Founding Fathers, and will prohibit any member of the Judicial Branch, whether state, federal, or both, by virtue of any membership, association, license, employment, partnership, or fiduciary relationship with any firm practicing under such authority, from pursuing an office in the Legislative or Executive branches of government. That any person, at present holding such office, shall, at the expiration of his current term, be bound by this condition.
- That the Congress shall enact legislation which would provide that, by petition of 0.01 percent of the lawful population, a federal Citizen's Grand Jury be empanelled, within 30 days of receipt of such petition, to hear charges of violations of the Constitution and other laws of the United States, and, if a True Bill is issued by the Grand Jury, a jury trial shall be held, peopled by Citizens of the State which the accused claims as resident, and within that State, and the verdict and punishment in such trial shall not be questioned by any other authority. That those who sit on either Grand or Petit juries shall not be employees or under any contract with the government, nor shall they be members of law enforcement or the legal profession. This to be created as an "inferior court" under authority of Article III, Section 1 and Article I, Section 8, clause 9.
- That all administrative agencies of government shall be stripped of rule making authority; that all rules enforced by any such agency shall henceforth be created, directly and specifically, by an enactment of the Congress and passed into law as prescribed by the Constitution.
- That any agreement currently existing between any administrative agency of the federal government which binds, obligates, or otherwise coerces compliance by any state, state agency, or any other entity within any of the states, is null and void, and, that no future attempts to create such relationship may ever be enacted or otherwise imposed.
- That the Congress will prohibit its members from receiving any emolument (except his prescribed salary), gift, benefit, or favors, while in office. Any member accused to be in violation shall be reviewed by the appropriate house's ethics committee, and if found to have received such emolument, gift, benefit or favor, shall be immediately expelled from that house and not be qualified to return.
- That the Congress is not a benefactor or philanthropic organization and is prohibited from redistribution of any revenue, under the form of grants, scholarships, endowments, research funds, or any other form which does not have a direct and identifiable return of the value of all funds provided.
- That the Congress is senior to any private organization and cannot contract with, support, or allow any federal employee to be a member of, any union, or any collective bargaining unit, in any shape, form, or relationship.

- That any and all enactments by the Congress shall, from this time forward, provide a statement as to which portion of the Constitution grants the government authority over the subject matter contained in the enactment, specifically explaining how that authority was derived.
- That any and all enactments will stand alone and bear on a specific and singular object, without riders and amendments that deal with matters that are not directly related to the titled subject.
- That no federal enactment will override, or undermine, or in any way discourage any legislation or referendum of a States of the Union which is exercising its right under Article IV, Section 4 of the Constitution.
- That all Bills submitted to the House of Representatives and the Senate of the United States shall be read in their entirety, including the Constitutional authority, when said Bill is first introduced to the respective houses and just prior to voting on such Bill; and, the entire text of any such Bill shall be made available to the public by publication in all major newspapers, and made readily available on the Internet.
- For the purpose of reduction of the deficit and the debt incurred by previous Congresses, the House of Representatives shall enact no new legislation which grants money that was otherwise unearned (i.e. welfare, block grants, etc.) and shall adjust all such existing programs to reduce expenditures by 25%, or more, of the current expenditure, each year until said program is reduced to nothing; and, That all grants, loans, or other payments to other nations, domestic organizations, non-domestic organizations or entities, shall cease at the end of the current fiscal year, and not be reinstated until such time as the budget of the United States shall be balanced and there is no future encumbrance or obligations for repayment of any debt.
- Congress shall enact laws which act upon entities or corporations, which are created by the federal government, that will provide oversight into their operations, to include: limiting any corporation to act only within a limited scope (industry), and not extend itself into areas where it has not been specifically authorized to conduct business by the articles of its creation; Prohibit corporations from investing in other corporations, the stock market, securities, futures, or any other enterprise for the purpose of making a profit or creating a loss; Prohibit importation of any goods, products or material from other countries, unless unavailable within the United Sates; prohibit outsourcing of any aspect of the business; Provide that no foreign or domestic corporation my hold stock in the corporation; and, provide that no more than ten percent of the shares of the corporation may be held by other then Citizens of the United States.
- Congress shall abide by the intent of the 27th Article in Amendment to the Constitution and shall repeal any law contrary to that intent; and, shall not create any pension, benefit, medical coverage (except while in office) that is subsidized by the government, unless that same program is available to all Citizens of the United States.
- That the Congress shall enact legislation which provides for fair access to all elections by removing any enactments, laws or rules which give favor to any political party over another political party or individual seeking office, and shall limit the fees required to such office not to exceed $5,000.00 for any federal office, under authority of Article I, Section 4, clause 1.
- That the Congress shall prepare for presentation to the States of the Union an Amendment to the Constitution which would provide for the States to repeal the Seventeenth Amendment to the Constitution, and, if the States so desire, by ratification of said Amendment, return to the State Legislature that authority to select the Senators of their choice.
- That the Congress shall enact a law regarding campaign contributions which will limit any contribution to a single candidate to $200.00; that contributions can be made only by Citizens of the United States; and, that corporations, political parties, unions, and other organizations are not

provided freedom of speech by the Constitution, and are disqualified and subject to criminal penalties for any contributions, or any activities which are intended to influence the outcome of any election.

XI. Conclusion

The Network of Correspondence will work with the Government Printing Office (GPO) to develop means to make all public records available, without charge, through the Internet. This will include all legislation, Congressional Records, Memorials, federal court proceedings, or any other issuance made by any branch of government.

The history of this "Restoration of Constitutional Government" shall be recorded and should be required learning in all phases of education. Rather than leaving our posterity to restore constitutional government, at some later date, it behooves us to assure that what evolves from this activity results in a "fixed" government and that teeth are provide to the people to assure that such abuses as this is design to cure do not recur.

Punishment for abuse of authority that is necessarily granted to those who are elected, or hired, to serve us must be exemplary and carried out swiftly and harshly, to assure that the abuse of that authority is minimal to non-existent. As laws are passed and enforced to discourage criminal behavior, so must it be when it some to those who are paid to serve the public, for those abusers are no less criminal than those who may sneak in your house during the night and seize your property or impose injury on your person. By virtue of the appointment to office, they don't become saints, rather, they have been placed in a position where temptation may be greater than it is elsewhere in society. Succumbing to those temptations must be controlled and curtailed. It is not faith, rather, it is fear that must be the barrier against such abuses.

If these goals are properly pursued, then the achievements of our generations will secure, for far more than the historical two-hundred years, the Blessing of Liberty to our Posterity.

We will be Praised, or, We will be Damned.

Appendix

You Have Tread On Me Petition

Under One Banner

Petition for Redress of Grievances

This Petition is directed to those who allege to represent us in the halls of the Congress of the United States of America. You, who during your campaign for the votes of the People, made promises which you have failed to keep. Those promises became the cause or reason for which the Votes of the People were cast in your favor. It was the reliance on what you claimed to be your course that was the bond of representation that was create when those votes were cast. It is your deviation from what you campaigned for that leads us to conclude that you no longer represent the will of the People who elected you to the office that you hold.

On July 4, 1776, the Declaration of Independence was formally signed. This magnificent document provides an insight into the thinking of the Founding Fathers. For example, it provides their explanation of the purpose of government: *"That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed..."* Those rights therein mentioned are enumerated as *Life, Liberty, and the Pursuit of Happiness*. Clearly, they have provided us an understanding the government was instituted to serve the interests of the people, not to serve the interests of the ruler, or large corporations, which concept was so prevalent in Europe.

They also provide us the reason that they had taken on the formidable task of separating from England, "that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

They also explain the difficulty in coming to the point of action with the explanation that " *Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."*

Next, they explain the obligation that they impose upon the future, should events demonstrate that the government has deviated from its proper purpose.

"But when long trains of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide for new guards for their future security."

Twelve years later (1788), the states ratified a Constitution, which was the document that authorized and created a government under the authority of the People.

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

The government of the United States of America is a creation of the People of the United States of America. It is not a power unto itself; rather, it is a governing body, not a ruling body, which was created to manage the affairs of the government, not the affairs of the People.

As a condition of ratification, the People made a call for a Bill of Rights. The Bill of Rights, when ratified (1791), was, as the Constitution, preceded by a Preamble, setting forth its purpose. The Preamble anticipated that some of the People's concerns not addressed in the Constitution should be addressed to assure that the proper role of government be observed. It read:

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.

The Bill of Rights contained two articles that are significant in light of our concerns.

Article 9 *The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

Article 10 *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*.

Understanding that We are the Posterity identified in the Preamble to the Constitution, We come forward, today, to present to you, the Congress of the United States of America - the creation of We the People, with demands that must be resolved by you who serve us in Washington, D. C. These demands are consistent with the Constitution and the rights retained by the States and the People. They are demands that must be met for the People to continue to allow the existence of that government created by them. Should these Demands not be met by the sitting Congress, the People will conclude that this Congress no longer serves the People, and that you have, by that absence of respect for the People, and their will, dissolved any obligation of respect once due you by the People.

You, by your refusal to act in accordance with the Constitution, have become rebels to that Constitution, and to the People.

These Demands are presented You, the Members of the Congress as our plea that you right yourselves by acting on our behalf.

If you fail to act, you have, by that omission, dissolved the bonds that have, so long, bound us together.

What we are demanding is that you pursue, with vigor, each and all of the following, to fulfillment:

1. **Military:**

   Return all combat troops to the United States within 6 months

   Devise plan for recovery of as much equipment as practical to be return to the United States for use or for scrap.

   Prepare troop withdrawal plan including rearguard

2. **Banking**
   Stop all fractional reserve banking, immediately

   Create no additional currency (Federal Reserve Notes) for circulation

Begin planning for 'Greenback' (full faith and credit of the United States, without interest or surcharge) and gold/silver based currencies.

Plan withdrawal from Federal Reserve Act, to be accomplished within Five years

3. Immigration

There shall be a moratorium on immigration for 5 years to provide sufficient time for a assessment of what the roll of immigration and immigrants is to our country

Existing immigration laws regarding entry into the country will be rigidly enforced

Enforce border conditions to prohibit such illegal entry of people and objects

That ownership of land within the boundaries of the United States shall be limited to Citizens of the United States or by corporations authorized by the United States, or the States. Ownership of land outside of those described shall be prohibited, by law, after five years.

4. Religion

It is to be understood that "public" is the people, not the government. That any religious displays on public property cannot be restricted or prohibited by government action.

Any laws previously enacted which limit religious practices, holidays, displays or exercises shall be immediately repealed.

The Christian Religion, having been fundamental to the creation of this country, shall have preference over all other religions, in any matters where a conflict might arise.

5. Governmental Authority

The government of the United States was created by authority of the People, by means of the Constitution, which is the charter of that government. The government is thereby bound in all of its actions, whether on United States owned and ceded lands; within the States of the Union; or, outside of the boundaries of the United States, by the prohibitions and limitations set forth in that Constitution.

That, in light of Article I, Section 8, clause 171; the Ninth Article2 in Amendment to the Constitution; and, the Tenth Article3 in Amendment to the Constitution, the authority of the States and the People shall not be limited by any acts of the Congress, the Executive or the Judicial Branches of the federal government.

That Article I, Section 8, clause 184 shall be strictly construed with regard to "necessary and proper for carrying out the foregoing Powers", and shall not be broadly construed to extend authority where it was not intended.

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[1]Art. I, Sec. 8, cl 17 (Constitution): *To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;*

[2] Ninth Amendment (Bill of Rights): *The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

[3] Tenth Amendment (Bill of Rights): *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.*

[4] Art. I, Sec. 8, cl 18 (Constitution): *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.*

That the Congress shall prepare for presentation to the States of the Union an Amendment to the Constitution which would limit terms of office, for all federal elected offices, to a maximum of two terms, and, with the exception of the President, shall have one intervening term out of office, which shall then be submitted to the States for their ratification

That Congress will recognize the "separation of Powers", as envisioned by the Founding Fathers, and will prohibit any member of the Judicial Branch, whether state, federal, or both, by virtue of any membership, association, license, or, employment, partnership, or fiduciary relationship with any firm practicing under such authority, from pursuing an office in the Legislative or Executive branches of government. That any person, at present holding such office, shall, at the expiration of his current term, be bound by this condition.

That the Congress shall enact legislation which would provide that, by petition of 0.01 percent of the lawful population, a federal Citizen's Grand Jury be empanelled, within 30 days of receipt of such petition, to hear charges of violations of the Constitution and other laws of the United States, and, if a True Bill is issued by the Grand Jury, a jury trial shall be held, peopled by Citizens of the State which the accused claims as resident, and within that State, and the verdict and punishment in such trial shall not be questioned by any other authority. This to be created as an "inferior court" under authority of Article III, Section 1 and Article I, Section 8, clause 95.

That all administrative agencies of government shall be stripped of rule making authority; that all rules enforced by any such agency shall henceforth be created, directly and specifically, by an enactment of the Congress and passed into law as prescribed by the Constitution.

That any agreement currently existing between any administrative agency of the federal government which binds, obligates, or otherwise coerces compliance by any state, state agency, or any other entity within any of the states, is null and void, and, that no future attempts to create such relationship may ever be enacted or otherwise imposed.

That the Congress will prohibit its members from receiving any emolument (except his prescribed salary), gift, benefit, or favors, while in office. Any member accused to be in violation shall be reviewed by the appropriate house's ethics committee, and if found to have received such emolument, gift, benefit or favor, shall be immediately expelled from that house and not be qualified to return.

That the Congress is not a benefactor, or philanthropic organization, and is prohibited from redistribution any revenue, under the form of grants, scholarships, endowments, research funds, or any other form which does not have a direct and identifiable return to the government of all of the funds received.

That the Congress is senior to any private organization, and cannot contract with, support, depend upon, restrict to, or allow a federal employee, to be a member of, any union, or any collective bargaining unit, in any shape, for, or relationship.

6. Legislation:

That any and all enactments by the Congress shall, from this time forward, provide a statement as to which portion of the Constitution grants the government authority over the subject matter contained in the enactment, specifically explaining how that authority was derived.

That any and all enactments will stand alone and bear on a specific and singular object, without riders and amendments that deal with matters that are not directly related to the titled subject.

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[5] Art. III, Sec. 1 (Constitution): *The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office. -- Art I, Sec 8, cl 9 (Constitution): To constitute Tribunals inferior to the supreme Court.*

That any federal enactment will not override, or undermine, or in any way discourage any legislation or referendum of a States of the Union which is exercising its right under Article IV, Section 46 of the Constitution.

That all Bills submitted to the House of Representatives and the Senate of the United States shall be read in their entirety, including the Constitutional authority, when said Bill is first introduced to the respective houses and just prior to voting on such Bill; and, the entire text of any such Bill shall be made available to the public by publication in all major newspapers.

For the purpose of reduction of the deficit and the debt incurred by previous Congresses, the House of Representatives shall enact no new legislation which grants money that was otherwise unearned (i.e. welfare, block grants, etc.) and shall adjust programs that reduce expenditures in domestic programs by 25%, or more, of the current expenditure, each year until said program is reduced to nothing; and, That all grants, loans, or other payments to other nations, domestic organizations, non-domestic organizations or entities, shall cease at the end of the current fiscal year, and not be reinstated until such time as the budget of the United States shall be balanced and there is no future encumbrance or obligations for repayment of any debt.

Congress shall enact laws which act upon entities (corporations) which are created by the government that will provide oversight into their operations, to include: limiting any corporation to act only within a limited scope (industry), and not extend itself into areas where it has not been specifically authorized to conduct business; Prohibit corporations from investing in other corporations, the stock market, securities, futures, or any other enterprise for the purpose of making a profit or creating a loss; Establishing salary and benefit limits, including stock options, so as to limit the financial gain of the officers to reasonable amounts, equitable to the productivity and profitability of the corporation; require all corporations to provide benefit packages to employees that will enhance their future, including, but not limited to health, retirement, and the welfare of their families; Prohibit importation of any goods, products or material from other countries, unless unavailable within the United Sates; prohibit outsourcing of any aspect of the business; provide that no foreign or domestic corporation may hold stock in the corporation; and, provide that no more than ten percent of the shares of the corporation may be held by other then Citizens of the United States.

Congress shall abide by the intent of the 27th Article7 in Amendment to the Constitution and shall repeal any law contrary to that intent; and, shall not create any pension, benefit, medical coverage (except while in office) that is subsidized by the government, unless that same program is available to all Citizens of the United States.

7. Elections

That the Congress shall enact legislation which provides for fair access to all elections by removing any enactments, laws or rules which give favor to any political party over another political party or individual seeking office, and shall limited the fees required to such office not to exceed $1,000.00 for any state office and $5,000.00 for any federal office, under authority of Article I, Section 4, clause 18.

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[6] Art. IV, Sec. 4 (Constitution): *The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.*

[7] Twenty-seventh Amendment to the Constitution: *No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.*

[8] Art. I, Sec 4, cl 1 (Constitution): *The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.*

That the Congress shall prepare for presentation to the States of the Union and Amendment to the Constitution which would provide for the States to repeal the Seventeenth Amendment9 to the Constitution, and, if they so desire, by ratification of said Amendment, return to the State Legislature that authority to select the Senators of their choice.

That the Congress shall enact a law regarding campaign contributions which will limit any contribution to a single candidate to $200.00; that contributions can be made only by Citizens of the United States; and, that corporations, political parties, unions, and other organizations are not provided freedom of speech by the Constitution, and are disqualified and subject to criminal penalties for any contributions, or any activities which are intended to influence the outcome of any election.

Petitioner: _____(SEAL)

County: _____ State: _____

Date: _____

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Sons of Liberty #14

Sons of Liberty

№ 14

August 22, 1995

When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands...

...That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles and organizing its Powers in such Form, as to them shall seem most

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[9] Seventeenth Amendment (Constitution): *The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures....*

likely to effect their Safety and Happiness... it is their Duty, to throw off such Government, and to provide for new Guards for their future Security...

The unanimous Declaration of the thirteen united States of America

Frequently we speak of dissolution of the government, in one form or another. How often, however, do we consider what, exactly, this means?

Governments can be dissolved by a number of means. What used to be the most common was forceful encroachment by a conquering army. The effect was dissolution of the government and subsequent dissolution of the society, for every nation is composed of both government and society. Generally, under these circumstances, society was disrupted and scattered to the winds. This form of dissolution has not existed for quite some time.

Another form is when an enemy force dissolves government, and replaces that government with a government of their own choosing. The result, in this instance, is dissolution of government by non-violent means, and subsequent dissolution of the society, which is replaced, through a slow transitional process, by a society unlike the one that was first the source of the original government. We must not assume, in this circumstance, that the dissolution of government will, necessarily, take a forceful effort. The likelihood, in modern times, is that the dissolution of government, and subsequent dissolution of society will go unnoticed until history is revised and the transition is lost from existence, without a notice of its demise. Unless, of course, the efforts to dissolve the government and society is recognized in sufficient time to cast out the encroachers and restore both the society and the government.

If the form of government within a nation has any form of representative capacity, the means by which dissolution may occur will take one of three forms. First, the executive may begin to arbitrarily impose his will on the elected representatives and the people. Slowly the rule of law deviates from its original intent, and slowly the dissolution process occurs.

Second, by delivery of the people to the influence of a foreign power. Eventually, the legislative body finds themselves subjected to a set of rules not of their making, but to which they must adhere, which, again, results in the demise of the government, as was originally intended, and the society as it becomes subject to that foreign power.

Third, when the trust bestowed upon the legislative is betrayed, by whatever means, these same results of dissolution will occur. That trust, generally in the form of a constitution, forms a set of rules by which the government is empowered, with the belief that it will abide by such contract. Faith is necessary because there is a need to pass power to government so that it can conduct its business. When that power is directed in violation of the trust, ultimately it will be used to dissolve the society. The question here is, is the government dissolved as well? That answer shall be forthcoming.

Governments, of the nature of legislative authority, are created by, and subject to the will of the people. They are creatures of the will of the people, and their purpose for existence is only to administer the rights of the people, to the extent delegated, for the preservation of property and the protection of the

rights of the people. THERE IS NO OTHER PURPOSE FOR GOVERNMENT WHOSE AUTHORITY IS OF THE PEOPLE, THAN THE PRESERVATION AND PROTECTION OF THE PEOPLE'S RIGHTS AND PROPERTY.

Once it is recognized that government has begun to deviate from its intended purpose, and the delivery to a foreign power is apparent, the people are more likely to presume that there is nothing that can be done to change that course. Many will accept that those chosen to legislate and administer are far wiser than they, and willingly subject themselves to the change that results in the conversion and dissolution. Within any society, it is far easier, especially so long as there is sufficient bread on the table, to allow the trend to continue, accepting that this is the evolution of government as it should be. Little do they recognize that what they are experiencing is tyranny in the same form that has imposed itself upon people throughout history. The despotic nature of government will advise them that they are freemen while they are, at the same time, wrapping the chains of slavery gently around their lives. This is a form of mockery that is little understood by most. What is understood even less is that they not only have the right to get out of it, but to prevent it.

The protection of property being the most significant cause for government, the power given to government must be limited to preclude any theft of property. When government, in an artful and crafty manner, begins the slow and meticulous theft of the property of the people, it has violated the sacred trust granted to it at its inception.

Government, then, when it does begin this process of conversion (dissolution of the intended government), has breached the trust of the people. The people, however, have not lost their right to the fundamental liberties, for the preservation of which the government was first formed, instead they have a responsibility to revise that form of government, to correct the errors and to rewrite the contract to provide for the protection of the property and the rights of the people to be secured.

What occurs that allows this action to be taken? Surely a resort to force of arms against those who have been granted the authority to use force of arms in the preservation of property is not an easily undertaken measure. What would rouse the people to return government to the place and to the ends that it was first erected?

Rebellion is the term that applies to those who seek to dissolve government, and society, from within. The determination of who the rebels, the usurpers, truly are is the question that must first be asked. If the government has drifted from the course first intended, and, after due notice, continues to deviate even further therefrom, and in that process imposes force of arms against the very people it was created to protect -- then that government, and all within it, have become the rebels, they are the ones that have sought to undo that which was first intended, and they are the ones that have resorted to armed force to impose their will upon the people. It is they who are *guilty* of rebellion. It is they who have created a *state of war*.

Who is it that would suggest to the populace that any who would denounce the actions of government, under the circumstances presented, are being the rebels? Those very people who had been selected as our representatives for the purpose of protection of property would proclaim that those who have found the need to protect their own fortunes are the usurpers, the rebels. They would denounce them and accuse them of crimes against the state and against the people themselves. They would argue that these rebels must be subdued, yet they are the pirates, the robbers and the thieves.

If the innocent, honest man must quietly quit all he has for the sake of peace -- to those that would impose violence upon him for protecting his own property, what kind of peace will we be subjecting ourselves? Violence would be maintained only for the preservation of the robbers and oppressors.

The end of government is the good of mankind, and what is best for mankind is that they not be subjected to this form of tyranny. The duty of government is to resist these evils, and protect the people from them. The exorbitant use of government's power, when used for the destruction of that very government or the society, and not for the preservation of the property of their people, is the worst form of tyranny that can befall mankind, for it came of trust, and results in slavery.

Most of the people will believe accusations against those that proclaim the evils of government in this regard. Those who first recognize the tyranny will be scorned. When only a few stir against this tyranny, they are looked upon as mischievous and as likely to seek their own ruin. Until such time as the design of the despots has become visible to a sufficient number, the greater numbers will be content to suffer rather than to right themselves by resistance to the tyranny. Who, then, assumes responsibility to correct the problem before the goal of dissolution of both government and society has been achieved?

That determination is not one for earthly consideration. Simply, if the matter were cast before a court of the government, the ruling, without question, would be that those who support the dissolution are mistaken in their thoughts, and criminal in their nature. Under these circumstances, the course is set, and the goal will be achieved. The only recourse that can allow a just consideration of action is the ruler of the universe, who speaks to each individually, but sets no mandate from which we can seek guidance. The judgment will come, not in our lifetimes, but when the final determination as to our destiny is made. History will tell a story and the evidence of the actions must stand on the merit of the arguments presented and the actions taken. History is as likely to condemn those who sat idly by as to look favorably upon those who sought to retain the institutions for which they have cast their lot for the protection of their property. Each of us must make his own decision as to what course must be taken, but my feelings are that those who would usurp the faith and trust granted them are the worst criminals that can exist on the face of the earth, and should be treated accordingly -- punishment for crimes committed not only serves as a deterrent, but is just reward for those that commit those crimes.

Whoever uses force without right, who does so without true law, puts himself in a state of war against those against whom he so uses it -- and in this circumstance all former conditions of consideration cease to exist, all ties are canceled, all rights cease and each retains the right to defend himself as he sees fit, and to resist the aggressor. And, he who resists, by the very nature of resistance, must be allowed to strike. Resistance when backed into a corner is as cowardly as it is unsuccessful.

We all understand that an inferior cannot punish a superior, at least so long as he is the superior. When the state of war comes into existence, all former relations are canceled, and all respects and reverence for the superior ceases to exist. Since the original superior was the citizen who allowed the existence of government for the preservation of property, that condition returns, and it is the superior who now comes forward to subdue the inferior, the aggressor.

What then may happen that the people may, of right, and of their own authority, take up arms and set upon the government? Nothing can ever justify this form of action, for then, truly, the aggressor would be the rebel. Not, at least, so long as the government remains the government. The people can never

come by power over the government unless the government ceases to be a government and divests itself of its authority. Only when the people must revert to the state of private man, and bear the responsibility for the protection of his own property can they become *free* and *superior*.

Each must judge for himself whether government continues to serve as government, or ceases to be that government to which his allegiance is owed. Each must resolve his own mind, his own heart and seek advice from heaven. The power that each person gave as his share of the authority of government can never be removed. It is the nature of community that requires that we all abide by that shared authority. Without that trust, that commitment, there can be no society, no commonwealth, no community, for that would be contrary to the original agreement, and a violation of the trust of our neighbors. The government can never revert to the people while the government lasts, not should it divest itself of that authority. It is assumed that government will last forever, for that is the purpose for which it was first created.

When the miscarriages of those in authority have achieved a point so far removed from the original purpose, the government has forfeited its existence, and upon forfeiture, divests itself, and returns to each of us his share of the cumulative authority. Government reverts to society and the people have the right to act as the supreme, to continue to legislate as they see fit -- to erect a new form, or to repair the old, assuring that what has been learned has also been corrected.

Has that time come when government has ceased to be? Has it now cast upon us the responsibility of assumption of that original right of self government? Has it bestowed us with the need to make a determination as to what course our future shall be? Has government become the true rebel and representative of a foreign interest and power?

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"We the People", but, Who are We?

"We the People", but, Who are We?

Gary Hunt
Outpost of Freedom
August 3, 2011

Chapter I

In some research for another article (The Fourteenth Article in Amendment to the Constitution), I ran across a rather enlightening revelation. It was, just 60 years after the Constitution, a clear and concise definition of just (and only) who the "We the People", in the Preamble to the Constitution, really are.

Now, most of us will assume that any citizen of the United States is one of, "We the People". I must admit that until recently, I, too, believed this to be the case.

Regardless of the (political) correctness of this assumption, we must understand that the law is what it was intended to be, not what we might want it to be. There is only one means by which that can be changed, and that is the amendment process defined in Article V, of the Constitution.

So, here is what was revealed to us, by the Supreme Court of the United States, with regard to a definitive answer to the question. The case is Dred Scott v. Sandford - 60 U.S. 393 (1856)

As recently as ten years before the Fourteenth Amendment was submitted to the States by the Congress, an historical, and often referred to, case was heard by the Supreme Court.

Scott was born a slave, in Missouri. As such, he was not a citizen. His "owner" laid hands on Scott, his wife and 2 children. Scott sued Sandford for assault. Scott was awarded his freedom by a Saint Louis County, Missouri, Circuit Court. The case was appealed to the State Supreme Court and reversed. The Circuit Court then reheard the case. Scott made exception to the instructions to the jury. The jury then ruled against Scott. Based upon the "Exception".

The case eventually ended up in the Supreme Court. In its decision (below), the Court pointed out that Scott had claimed to be a citizen of Missouri, which would give him standing to sue Sandford. It found that though Scott was not a citizen of Missouri, or, of the United States, that standing for the Court to hear the case was based upon the Courts acting on the fact that the question of citizenship was not in the plea that brought the matter before the Court.

You will see that even though Scott had no standing, the Court decided to hear the case, anyway. If you do not challenge jurisdiction (Sandford's obligation), the Court may assume jurisdiction, the laws of the land notwithstanding..

Chief Justice Taney delivered the opinion of the Court. Excerpts are from that decision.

> *"That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated. If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed. It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court."*

Since the matter of citizenship was not in the plea that brought the matter before the Court, the Court will not rule on Scott's standing.

However, the Court now finds that it has a forum to define just what a citizen is -- a point that had only been addressed in rather ambiguous terms in the Constitution, and not since addressed by the Congress, or the Court.

Taney goes on to ask this important question:

> *Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? "*

Further defining the question, he says:

The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States.

While the decision covers many aspects, and many ways, of addressing the question, I will provide only those that are concise and indicative of the sense of the Court and the decision held to. Remember, as you read, that this decision predates the 14th Amendment.

The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

Well, there is an interesting phrase, used in the discussion of the Fourteenth Amendment by the Senate, "remained subject to their authority".

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character of course was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the Constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endow him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts."

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, ***but for no one else****. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.*

Well, that makes pretty clear who could not be a "citizen of the United States". So, let us look, from the other side, at who was a "citizen of the United States".

"It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognised as the people or citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

Now, clearly, it is those who initiated the fight for independence that are of the class recognized by the Constitution as "citizens of the United States". Many have pointed out that one of the first to "die for the cause" was a negro named Crispus Attucks, who was shot to death in the "Boston Massacre", in 1770. This, however, in the eyes of the Court, does not qualify him as one of the people -- for which the country was intended.

Though the decision of the Court continues to give examples of just how the Court perceived this relationship, I would prefer to not include too many more of the over one-hundred and ten thousand words in the Decision. There are some words, however, that warrant our attention in fully understanding what was intended by the founding of this nation, and so I will provide these few additional paragraphs:

"The language of the Declaration of Independence is equally conclusive:

It begins by declaring that, 'when in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.'

It then proceeds to say: 'We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed.'

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men-high in literary acquirements-high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by

indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language.

The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood, that no further description or definition was necessary.

Therefore, an attempt to apply the standards upon which this nation was founded to the morality of today, or, even, of 1856, when this case was heard, would be to deny the intention of the founders. This does not preclude the utilization of the Fifth Article (Amendment Process) of the Constitution to effect change, which was to be partially achieved eleven years later. It simply explains what a "citizen of the United States" was, prior to the Fourteenth Amendment.

Now the question arises as to whether the 14th Amendment changed who "We the People" are, or not.

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Chapter II

In the first Chapter, Justice Taney [Chief Justice of the Supreme Court who delivered the Decision in Dred Scott v. Sandford, 60 U.S. 393 (1856)], speaking from the past, explained who was, and, who was not of that class of people known as "We the People. Recapping that post:

*We think they [descendents of slaves, whether free, or not] are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the **rights** and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.*

* * *

*It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, **but for no one else**. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State*

> *communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.*

So, the rights and privileges were not conferred upon those who were not citizens at the time of adoption of the Constitution, and their descendents and others. Those rights, too, are defined as inclusive, regardless of whether he is in his state or another state.

So, in 1867, the 14th Amendment to the Constitution was ratified. However, it did not convey rights, only privileges and immunities, to wit [Fourteenth Amendment]:

> Section 1--All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

However, this Amendment did not change or undo that which Taney had described as the "citizens of the United States", though a new class was created by the 14th Amendment.

Now, I know a lot of people don't see it that way. They believe that the 14th Amendment merged the ex-slaves and their descendents into the same class of people that had previously held the title of "citizens of the United States", or, "We the People". However, if you will note the wording of the 14th Amendment, you will see that "rights" were not conveyed, only "privileges and immunities". Now, this may seem small, or insignificant, though that is because we have been subjected to "political correctness" and mountains of legislation establishing "civil rights". However, the Framers never referred to the rights protected by the Constitution as civil, since civil implies granted by government -- which is exactly what the legislature has done -- enact laws granting civil rights. These fundamental rights granted by God are not granted by government, and, they are not civil rights. They were the object and goal of the colonists from April 19, 1775 to the ratification of the Constitution, 14 years later.

What is very important to understand is that when a law is enacted, or a constitution or amendment ratified, the intent at the time of enactment or ratification is, and must be, what was intended -- at that time. To think otherwise is to allow the legislation, or even the Constitution, to mean what was not intended by the sleight of redefining words, concepts, or even enforcement. If that is how we are to operate, we are not a nation of laws rather, of man, and that man who sits in Washington; Member of Congress, President,. Justice or Administrative Agency head is free to promulgate what he wants the law to be and applies not what was intended to be, rather, what he desires it to be.

As James Madison said, in Federalist Papers #62:

> It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

So, as you contemplate what is said in this Chapter, understand that only the words of those who were alive at the time of these activities can tell is what they meant. It is only their words, not what some ACLU lawyer might try to make them out to be, that we must be obedient to. To be obedient to any other interpretation is, at best, disobedience to the Constitution.

We have seen the affect of the 14th Amendment on the right, privileges and immunities of those who were and were not of the class known as "We the People". Now the question arises as to whether the 14th Amendment changed who "We the People" are, and, if so, what proof do we have that only "privileges and immunities, not rights, were conveyed by that Amendment.

* * * * * * * * * * * * *

Chapter III

So, we have established that "rights" were not conveyed by the Fourteenth Amendment, only "privileges and immunities". Or, have we? Of course, to this point, it is only words and omission of words that can lead us to that conclusion.

Understand, however, that the Constitution, the Bill of Rights and early legislation was written so that all could understand what was being required. After all, as James Madison said (Federalist Papers #62), "Law is defined to be a rule of action". If it is a rule of action, then it must be written so that anybody can understand it.

Let's see if we can determine whether the premise that rights were not conveyed is properly construed, as presented. To do so, we must, once again, return to the past -- to those who lived the times and understood what the intention of the 14th Amendment really was.

Our answer can be found in another Supreme Court decision, decided just 7 years after the ratification of the 14th Amendment. The case is Minor v. Happersett, 88 U.S. 162 (1874).

At issue was whether the Fourteenth Amendment conveyed the right to vote to a woman, since she was made "a citizen of the United States" by that Amendment. Understand that many states did not recognize woman as being full citizens and they were denied the right to vote, own land, sue in court, inherit property, or hold office; or portions of some of these restrictions, depending on the state.

Understand that this case was heard just seven years after the ratification of the 14th Amendment, and all parties were fully aware of the Amendment, its interpretation and ramifications. They lived the times, unlike those of us who have to search back to find the intent of laws and amendments.

The case introduces the problem with the following statement of facts:

> The fourteenth amendment to the Constitution of the United States, in its first section, thus ordains:
>
> > 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.'
>
> And the constitution of the State of Missouri thus ordains:

'Every male citizen of the United States shall be entitled to vote.'

Minor, as described by the Court, set forth the following arguments:

> 1st. As a citizen of the United States, the plaintiff was entitled to any and all the 'privileges and immunities' that belong to such position however defined; and as are held, exercised, and enjoyed by other citizens of the United States.
>
> 2d. The elective franchise is a 'privilege' of citizenship, in the highest sense of the word. It is the privilege preservative of all rights and privileges; and especially of the right of the citizen to participate in his or her government.
>
> 3d. The denial or abridgment of this privilege, if it exist at all, must be sought only in the fundamental charter of government,-the Constitution of the United States. If not found there, no inferior power or jurisdiction can legally claim the right to exercise it.
>
> 4th. But the Constitution of the United States, so far from recognizing or permitting any denial or abridgment of the privileges of its citizens, expressly declares that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'
>
> 5th. It follows that the provisions of the Missouri constitution and registry law before recited, are in conflict with and must yield to the paramount authority of the Constitution of the United States.

The Court (in the decision) then posed the question:

> The question is presented in this case, whether, since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States and of the State of Missouri, is a voter in that State, notwithstanding the provision of the constitution and laws of the State, which confine the right of suffrage to men alone.

In providing an answer to the question, we find:

> Looking at the Constitution itself we find that it was ordained and established by 'the people of the United States [Preamble to the Constitution],' and then going further back, we find that these were the people of the several States that had before dissolved the political bonds which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth [Declaration of Independence], and that had by Articles of Confederation and Perpetual Union, in which they took the name of 'the United States of America,' entered into a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever [Articles of Confederation].
>
> Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen-a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have

arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.

* * *

Other proof of like character might be found, but certainly more cannot be necessary to establish the fact that sex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men. In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship. The amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her, that she had before its adoption.

* * *

It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. This makes it proper to inquire whether suffrage was coextensive with the citizenship of the States at the time of its adoption. If it was, then it may with force be argued that suffrage was one of the rights which belonged to citizenship, and in the enjoyment of which every citizen must be protected. But if it was not, the contrary may with propriety be assumed.

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power. Thus, in New Hampshire, 'every male inhabitant of each town and parish with town privileges, and places unincorporated in the State, of twenty-one years of age and upwards, excepting paupers and persons excused from paying taxes at their own request,' were its voters; in Massachusetts 'every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds;' in Rhode Island 'such as are admitted free of the company and society' of the colony; in Connecticut such persons as had 'maturity in years, quiet and peaceable behavior, a civil conversation, and forty shillings freehold or forty pounds personal estate,' if so certified by the selectmen; in New York 'every male inhabitant of full age who shall have personally resided within one of the counties of the State for six months immediately preceding the day of election . . . if during the time aforesaid he shall have been a freeholder, possessing a freehold of the value of twenty pounds within the county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to the State;' in New Jersey 'all inhabitants . . . of full age who are worth fifty pounds, proclamation-money, clear estate in the same, and have resided in the county in which they claim a vote for twelve months immediately preceding the election;' in Pennsylvania 'every freeman of the age of twenty-one years, having resided in the State two years next before the election, and within that time paid a State or county tax which shall have been assessed at least six months before the election;' in Delaware and Virginia 'as exercised by law at present;' in Maryland 'all freemen above twenty-one years of age having a freehold of fifty acres of land in the county in which they offer to vote and residing therein, and all freemen having property in the State above the value of thirty pounds current money, and

having resided in the county in which they offer to vote one whole year next preceding the election;' in North Carolina, for senators, 'all freemen of the age of twenty-one years who have been inhabitants of any one county within the State twelve months immediately preceding the day of election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election,' and for members of the house of commons 'all freemen of the age of twenty-one years who have been inhabitants in any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes;' in South Carolina 'every free white man of the age of twenty-one years, being a citizen of the State and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot), hath been a resident within the election district in which he offers to give his vote six months before said election, and hath paid a tax the preceding year of three shillings sterling towards the support of the government;' and in Georgia such 'citizens and inhabitants of the State as shall have attained to the age of twenty-one years, and shall have paid tax for the year next preceding the election, and shall have resided six months within the county.'

[Note: you may want to review the list of voter qualifications, above, and consider that we were strong and building our country into the greatest nation in the world, when the voters had to be above debt to vote -- rather than able to vote themselves "a chicken in every pot".]

* * *

And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows: 'The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.' The fourteenth amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c.? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?

* * *

... Women were excluded from suffrage in nearly all the States by the express provision of their constitutions and laws. If that had been equivalent to a bill of attainder, certainly its abrogation would not have been left to implication. Nothing less than express language would have been employed to effect so radical a change. So also of the amendment which declares that no person shall be deprived of life, liberty, or property without due process of law, adopted as it was as early as 1791. If suffrage was intended to be included within its obligations, language better adapted to express that intent would most certainly have been employed. The right of suffrage, when granted, will be protected. He who has it can only be deprived of it by due process of law, but in order to claim protection he must first show that he has the right.

So, clearly, from this decision, rendered shortly after the Fourteenth Amendment was ratified, we see that there is a distinction between "rights" and "privileges and immunities", and that any grant of right would require a constitutional amendment to confer it on any other than "We the People".

This does beg the question of whether the Fifteenth Amendment confers more than the right to vote. Does it also confer the right to hold office, when the requisite for that office is "Citizen of the United

State" [Art. I. Section 2, clause 2, and, Art. I, Section 3, clause 3, Constitution], and, "a natural born Citizen of the United States" [Art. II, Section 1, clause 5, Constitution], unless such "right" is specifically conferred?

* * * * * * * * * * * * *

Chapter IV

This must lead us to question whether there is any substance to these very significant acts and decision. Is there any long-lasting affect, as a result of them? If so, has anything changed them? If there have been no changes, are there still two distinct classes of people in this country?

Do answer these questions, we need only jump forward another 34 years, to 1908. This Supreme Court decision will clearly lay out that there are, indeed, two classes of people, and that one is subject to federal jurisdiction and protection, while the other is not.

The case is Twining v. State of New Jersey - 211 U.S. 78 (1908). It has two elements, at least pertinent to this discussion. First was whether there was jurisdiction, under the Fourteenth Amendment, to a state citizen; and, what did the Fourteenth Amendment extend to a "citizen of the United States".

Albert C. Twining and David C. Cornell were indicted by a Grand Jury, and, convicted of providing "false papers" to a state banking examiner. They were sentenced to prison terms, and Twining appealed the action of the New Jersey Court. He held that the requirement to turn over papers to the examiner, absent a court order, denied him "due process" under the Fourteenth Amendment. He lost that case and pursued a remedy in the Supreme Court.

Justice Moody provided the decision of the Supreme Court. In summing up the case, he posed the following:

> *". . . whether such a law [state law] violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States, or by depriving persons of their life, liberty, or property without due process of law. In order to bring themselves within the protection of the Constitution it is incumbent on the defendants to prove two propositions: First, that the exemption from compulsory self- incrimination is guaranteed by the Federal Constitution against impairment by the states; and, second, if it be so guaranteed, that the exemption was in fact impaired in the case at bar. The first proposition naturally presents itself for earlier consideration. If the right here asserted is not a Federal right, that is the end of the case. We have no authority to go further and determine whether the state court has erred in the interpretation and enforcement of its own laws.*

Well, that last point, "*If the right here asserted is not a Federal right, that is the end of the case*.", will lead to the final decision of the Court, though we must first look at why they denied Twining the protection, under the Fourteenth Amendment, that he sought.

The Court brought out that two states, Iowa and New Jersey, had provisions that did not allow compulsory testimony against one's self, and, that those two did have limits on compulsory testimony, though not as broad as the other states. This was felt to satisfy the intent, since it was a state decision based upon their view of the intention of the Fifth Amendment ("No person . . . shall be compelled in any criminal case to be a witness against himself"), that established the right of the state to enact a law requiring the turning over of the papers to the examiner.

So, the question resolved itself to whether the federal interpretation of the Fifth Amendment was superior to the state law, and, if so, under what circumstances.

Since Twining and Cornel were both citizens of New Jersey, and the case was not between parties of different states, or any other qualifiers for federal intervention, they retained their status as state citizens, dealing with the laws of that state, without "*Federal right[s]*" being conferred to them.

Let's separate the points of significance in this case:

1. Is there a difference between state citizens and "citizens of the United States", as established by the Fourteenth Amendment?
2. If so, to what extent does the Fourteenth Amendment confer rights to those who are protected thereby?

The Court goes on to give us some insight into the second point.

> *"It is obvious . . . that it has been supposed by the states that, so far as the state courts are concerned, the privilege had its origin in the Constitutions and laws of the states, and that persons appealing to it must look to the state for their protection. Indeed, since, by the unvarying decisions of this court, the first ten Amendments of the Federal Constitution are restrictive only of national action, there was nowhere else to look up to the time of the adoption of the 14th Amendment, and the state, at least until then, might give, modify, or withhold the privilege at its will."*

So, the states were within their rights, as they existed prior to the Fourteenth Amendment, and that those rights did not, until the Fourteenth was ratified, include the restrictive first ten amendments. Prior to the Fourteenth Amendment, the Court recognized that the Constitution did not apply to the states, so long as they were not in conflict with the Constitution. Essentially, they are conferring all privileges of those first ten amendments, to those who so qualify, for the protections afforded by the Fourteenth.

The Court continues:

> *"The 14th Amendment withdrew from the states powers theretofore enjoyed by them to an extent not yet fully ascertained, or rather, to speak more accurately, limited those powers and restrained their exercise. There is no doubt of the duty of this court to enforce the limitations and restraints whenever they exist, and there has been no hesitation in the performance of the duty. But, whenever a new limitation or restriction is declared, it is a matter of grave import, since, to that extent, it diminishes the authority of the state, so necessary to the perpetuity of our dual form of government, and changes its relation to its people and to the Union."*

So, the Court recognizes an obligation to "enforce the limitations and restraints whenever they exist". This implies that they are addressing both points, mentioned above. First, to determine the extent of the authority (jurisdiction of the state) imposed by the Fourteenth; and, Second, to determine to what extent the first ten amendments convey obligations to the state.

The Court continues:

> *"The defendants contend, in the first place, that the exemption from self incrimination is one of the privileges and immunities of citizens of the United States which the 14th Amendment forbids the states to abridge. It is not argued that the defendants are protected by that part of the 5th Amendment which provides that 'no person . . . shall be compelled in any criminal case to be a witness against himself,' for it is recognized by counsel that, by a long line of decisions, the first ten Amendments are not operative on the states."*

Twining has asserted that he is of the nature of a "citizen of the United States", and, therefore, the state may not abridge those "privileges and immunities". He has declared a status as a "citizen of the United States".

The Court then, referring to a previous case (subsequent to the Fourteenth Amendment), In Re Slaughter-House Cases, 83 U.S. 36 (1872), and citing with the decision of that case, given by Justice Miller, in affirming that there were two classes of citizen.

> *"The 14th Amendment, it is observed by Mr. Justice Miller, delivering the opinion of the court, removed the doubt whether there could be a citizenship of the United States independent of citizenship of the state, by recognizing or creating and defining the former. ' It is quite clear, then,' he proceeds to say, 'that there is a citizenship of the United States and a citizenship of a state, which are distinct from each other and which depend upon different characteristics or circumstances in the individual.*

So, this Court is affirming what the Court decided 34 years prior, in that there are distinct differences between the "citizenship of the United States and a citizenship of a State". One case, shortly after the ratification of the Fourteenth Amendment, and another, three decades later, that affirm the conclusion of just who are "We the People". Can there be any doubt as to the existence of a distinction between the two classes?

The Court, after a lengthy discussion of "due process", concludes:

> *The decisions of this court, though they are silent on the precise question before us [due process], ought to be searched to discover if they present any analogies which are helpful in its decision. The essential elements of due process of law, already established by them, are singularly few, though of wide application and deep significance. We are not here concerned with the effect of due process in restraining substantive laws, as, for example, that which forbids the taking of private property for public use without compensation. We need notice now only those cases which deal with the principles which must be observed in the trial of criminal and civil causes. Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction.*

And, they conclude that the court that has jurisdiction over the parties will prevail in a conflict of interpretation. Since they leave the interpretation to the state court, there must be an absence of federal jurisdiction in the current case. The Court sees Twining and Cornell to be state citizens, therefore, not afforded the" privileges and immunities", meaning that federal jurisdiction fails to include them -- an absence of federal jurisdiction.

In affirming that view, the Court said:

> *"Much might be said in favor of the view that the privilege was guaranteed against state impairment as a privilege and immunity of national citizenship, but, as has been shown, the decisions of this court have foreclosed that view."*

They tighten up on that conclusion, to wit:

> *We do not pass upon the conflict, because, for the reasons given, we think that the exemption from compulsory self-incrimination in the courts of the states is not secured by any part of the Federal Constitution.*

Now, this would not be true if the case involved a party of one state against a party from another state, nor would it be true in the extension of "privileges and immunities" conferred by the Fourteenth Amendment, to "citizens of the United States".

So, we can conclude that the "citizen of the United States" is a separate and distinct entity than the citizen of a state. That the jurisdiction of the United States Supreme Court extends only to those who have been brought into jurisdiction by the Constitution (parties of different states, etc.) or by virtue of they being the subjects brought into that jurisdiction by the Fourteenth Amendment.

Now, some will say that this case is over one hundred years old, and things have changed, since then. But, have they? And, if so, how have they been changed? I can find no amendment that changes what is presented here, and must suppose that nothing has been changed.

* * * * * * * * * * * * *

Chapter V

In Chapter I, we established what the Supreme Court determined to be "We the People", or, "citizens of the United States", prior to the ratification of the Fourteenth Amendment.

In Chapter II, we saw that the Fourteenth Amendment conferred to those not of "We the People", regardless of prior status, a new class of people who are granted "privileges and immunities", though not the rights inherent with "We the People".

In Chapter III, we see that within a few years of ratification of the 14th Amendment, the Supreme Court confirms that "rights" were not conveyed by that Amendment.

In Chapter IV, we found that the Supreme Court did recognize that there was a difference between a citizen of a state and a citizen of the United States, and that the latter was protected (jurisdiction existed) by the Fourteenth Amendment and to the former, it did not (no jurisdiction).

Now, we will move forward, 56 years, to 1964, to a case that reaffirms the classes of citizen, though begins to erode the protections previously provided to citizens of the United States.

The case is Malloy v. Hogan, 378 U.S. 1, and involves a discussion by the Court of just which Amendments (Bill of Rights) are extended to those who seek protection under the Fourteenth Amendment, when it says:

> "*It was on the authority of that decision that the Court said in 1908 in Twining v. New Jersey, supra, that "it is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, because a denial of them would be a denial of due process of law."*

So, the question that arose in this case is, to what extent does the Fourteenth Amendment apply to the protection of rights, and, which rights are protected. It redefines what was said in Twining, and requires that any right being protected "*be a denial of the due process of law*". This is a simple paraphrase of "the equal protection of the laws", from the Fourteenth Amendment. So, it simply expands that singular authority to include speech, press, and other rights within the first eight amendments, so long as "due process" can be brought into the equation.

It did not, however, even begin to address anything that would remove, or affect, the nature of the two classes of citizen. They remain unimpaired and intact.

Since the Courts will use a stepping stone process in "revising" laws to a more modern "interpretation", Malloy afforded the Court the opportunity to undermine the distinction between the two classes. However, they chose not to walk upon that sacred ground. Their absence of comment on the two classes leaves that distinction intact.

So, we can see that from Dred Scott (Chapter I), in 1854, the Court established a foundation of this country as being built upon, by, and for, a certain class of people. This is probably best defined by the wording of Justice Taney, in that decision, to wit:

> "*It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity,* ***but for no one else*** *and privileges guaranteed to citizens of this new sovereignty were intended to embrace* ***those only*** *who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the* ***Constitution*** *and the* ***principles*** *on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen* ***rights*** *and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to* ***rights*** *of person and* ***rights*** *of property; it made him a citizen of the United States.*

For the sake of discussion, this sacred class (within the United States) shall be referred to as "We the People". But, perhaps, we should endeavor, with a bit more precision, to define just what/who those "We the People" were/are, in light of what Justice Taney said.

After much thought, I can only come up with three possibilities that might shed light on Taney's description of that class known as "We the People".

1. That it would include only those who are defined by the rather common acronym, "WASP", meaning "White Anglo-Saxon Protestant". When we consider that in the Seventeenth and Eighteenth Centuries, Jews were not allowed to reside in some of the colonies; that loathing of Catholics (Popists) was common through most of the colonies, during that period, more effectually demonstrated by the objection to the Quebec Act of 1774, allowing Catholics to vote and hold office in Canada, are indicative of the sympathies of the times;
2. Caucasians of European descent, which would include perhaps 99% of those who had immigrated to the colonies to begin life, anew; or,
3. Those of Indo-European language groups (first defined in 1647 and including English, Dutch, Greek, Latin, Persian, German, Slavic, Celtic and Baltic languages), thus having a common heritage and culture, at least in the distant past.

There is no way that we can interpret, from what Justice Taney said, just who "We the People" were, though it is clear by the context of his description that it would include those above described peoples, or combinations thereof, "***but for no one else.***

Then, the Fourteenth Amendment was ratified and granted citizenship to people who were not of this class, "We the People". Further, it granted then only privileges and immunities. It did not grant them rights.

This position (distinction between classes) is further supported by the ratification of the 15th Amendment (granting the **right** of suffrage (voting), regardless of "race, color, or previous condition of servitude".

Then, in 1874, the Court, in Happersett (Chapter IV), made clear that the Fourteenth Amendment did not convey rights. However, the Constitution makes clear that there are rights retained by the people (We the People), so since there cannot be conflict between the Constitution and an AMENDMENT (unless expressly resolved in the amendment), the distinction is further enhanced.

So, for all intents and purposes, there are four classes of people in this country, today:

- "We the People", those descended from the Framers, or otherwise within the principles of the original Constitution, who have retained their rights;
- Those made citizens by the Fourteenth Amendment, with the privileges and immunities granted therein, and any rights specifically bestowed, by subsequent amendments;
- Those who are here, lawfully and in accordance with all laws, as visitors, and who have not violated any conditions of the permission granted to visit; and,
- Those who are here unlawfully, that have entered in violation of our laws or have violated the conditions of their permissive visitation.

The foundation of this country, then, rests upon an understanding that the purpose of the Constitution, and the country, is to provide a home for those of the class, "We the People". That others who choose to assimilate into the American Culture do so with that understanding, and the understanding that they are the beneficiaries of all privileges and immunities, though only those rights specifically granted.

It can also be concluded that any who have designs contrary to the support and continuation of the United States, as intended by the Framers, and described herein, are inconsistent with the purpose of the country, and, as such, are against the Constitution and should be deemed unacceptable and unwanted visitors.

If the United States is to return to its former stature as the beacon to the world of freed enterprise by a free people, we must return, also, to the concept that allowed such concepts of freedom to prosper, and grow, in a rather short history, to what it had become by the end of the Nineteenth Century.

It can return to that stature only if we do return to those principles that made this nation great. Absent a dedication to that purpose, we are destined to be nothing more than a footnote in history. And, that will be our rightful place, if we fail to act to secure that which we hold so dear.

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Factions -- The Chains of Oppression

Factions -- The Chains of Oppression

The Greatest Obstacle to Restoration of Constitutional Government

Gary Hunt
Outpost of Freedom
August 25, 2011

Factions

Factions are rather interesting, though often ignored by most, in the world we live in. Factions are "somebody else", and we, individually, have no part in them, except those that we are a part of -- though we don't really see them as factions, only truth. We know what we believe; we know our moral values; we know what right and wrong are; we know what we want to know; everybody else is, if they don't agree with us, simply wrong.

So, let's begin by understanding what a faction is.

Webster's 1828 Dictionary:

A party, in political society, combined or acting in union, in opposition to the prince, government or state; usually applied to a minority, but it may be applied to a majority. sometimes a state is divided into factions nearly equal.

> *... whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.*

Or, the more simplistic:

A group of persons forming a cohesive, usually contentious minority within a larger group.

Factions are, however, a way of life. We are all in factions and in many different areas.

For the most part, people perceive, with very few exceptions, that there are two political factions in this country; Democrats/Liberals, and, Republicans/Conservatives. What the political philosophies of the two "factions" are is inconsequential, at least at this point, to the discussion. The point to be made here is that we have perceived that there are only two factions, and anything else is hardly worthy of our consideration.

With regard to other aspects of our lives and our society, there are minor factions that we see, all of the time. For example, the queer community is recognized as a faction, though most fail to recognize that there is a large faction, which is opposed to the smaller, recognized, faction. That larger faction is those of us who, whether Christian, or not, understand the necessity for moral values and standards within a country.

However, legislation, political correctness, and/or influence through the press tend to either render illegal, or, at least minimally subject those who are a part of that larger faction, to ridicule for expressing themselves, in dispute with the faction's principles.

The net effect is to render that larger faction as inconsequential, or illegitimate, providing a strong platform for the assertion of the values of the lesser faction, even to the point of additional legislation on their behalf.

Factions in history

We can look at history, and around the world, today, and see the affect of factions.

Let's start by looking at revolutions. After all, there have been many revolutions throughout history, though there has only been one that provided a rather smooth transition of government. And all of them have been lead by factions -- sometimes one, sometimes multiple, and, sometimes, begun by one faction where another faction became dominant before the job was done.

The French Revolution began in 1789, the same year that our Constitution became the framework of our own government. That revolution lasted for a number of years, and during the entire course of it, the control of government passed from hand to hand, each hand being the one that, at any given time, had the most influence and power. Often, those in power for the moment would require the execution (guillotine) of someone that was a partner in power, just months before. The groundwork was laid, as the Revolution needed, to restore monarchy and the emperor, Bonaparte (twice). So much for a smooth transition.

The Russian Revolution began in 1917. The Mensheviks began the turmoil, and, eventually, the Bolsheviks gained control. Then, the Bolsheviks became factionalized, Red verse White, leading, eventually, to Lenin obtaining power. Again, not a very smooth transition.

Revolutions, at least those of the ordinary sort, tend to have factions that vie for power, even while the revolution is going on. The resultant government is, generally, unstable and retains its authority by force.

Today, we see the beginnings of revolution in Egypt, Lebanon, Syria, Libya, and Yemen. These "street" revolutions are lead by factions. Most often those factions have a religious foundation, though often, there are factions within a religious group, of an ethnic nature. There can be little doubt that the stronger faction will take control, though the conflict will not cease -- until the opposition is exiled, imprisoned, or killed.

Factions in the United States

So that we can put in perspective the factions and the roles that they play in the maintenance of a country, or its destruction, we must first understand just what factions exist, what their role is, and whether they are acceptable, in terms of maintaining the United States of America, as intended.

In a recent article, 'We the People', but, who are We?, a review of the Founding documents, subsequent amendments, and, Supreme Court Decisions, provides us an understanding of just who "We the People" are, and, as Justice Taney described in one Decision, that this country is only for these "We the People", but for no one else".

Now, right there, with that last statement, I would expect that many would cringe and began to react in accordance with the decades of conditioning that we have been subjected to. After all, haven't we been raised to believe that this country was made for anybody who wants to come here, for any reason, even if their purpose is to change the nature and purpose of what the Founders willingly gave their lives for? But, is it in the best interest of this country, our future, and our progeny, to accept that what was created just over 200 years ago should fall prey to changes which will destroy that which is our birthright?

So, let's begin by understanding that though there may be smaller factions, with their own respective interest and objectives, that there is, and should be, a Principle Faction -- upon which all else is subordinate.

Principle Faction

As explained in the "We the People" series, there are two classes of people that comprise the Principle Faction. These are those who are described as the cause and purpose of the existence of the United States and its Constitution; and, those who were made citizens, though not fully empowered with the rights inherent within the Constitution, through the enactment of the Fourteenth Amendment, and are, or should be, of the Principle Faction.

However, within both of these classes, there may be many who, though of the nature and class of "We the People" or citizens of the United States, for other reasons, reject the principles upon which the country was founded. These, though they may have rights, privileges and immunities, as described in that series, that do not adhere to the principles are no more a part of the Principle Faction as one who joins an organization to change its nature.

Absent adherence to the Constitution and the principles upon which it was founded, makes one a citizen by birth, though a traitor by attitude -- as much as any spy who endeavors to subvert the country by his actions.

Subordinate, or lesser, factions

Factions are created when a significant number of people, having similar ideologies or purposes, realize that they are sufficient in number to create a "body politic" to champion their purpose.

That purpose can take two forms; First, to achieve a recognition, though in so doing, not to affect the Constitution, the laws, or obtain any favor other than those enjoyed by all of the people; Second, to achieve recognition for the purpose of political gain, changing of laws, and obtaining favor that is not enjoyed by others.

The former has existed in this country throughout its history, and is comprised of people who were born into or have assimilated into the American culture -- without intentions of changing that culture.

The latter, on the other hand, is inclined to adapt the culture to his beliefs, to effect change that is inconsistent with that which the Founders gave us, and, will often employ the pretense of Constitutional right, though the result will be the diminishment of the rights of others, in favor of their object, whether financial, legal, or both. They choose not to assimilate, rather, to force change upon the Principle Faction and force that Faction to subordinate to their will.

Now, as we begin to look at lesser factions (any subordinate to the Principle Faction), they will come under two categories. First will be those who are not in serious conflict with the Principle Faction. Second, those who are in conflict with the Principle Faction.

Factions not in conflict with the Principle Faction

Let's look at some factions that are examples of those consistent with the Principle Faction:

Christians: Our nation was founded, without doubt, upon Christian moral values. Some of those values, however, have been disputed between various sects of Christianity since before the Founding of this great nation. In fact, the First Amendment, "Congress shall make no law respecting the

establishment of religion, or prohibiting the free exercise thereof", was adopted to assure that the ability to practice one's religion, as one might chose to practice it, was a fundamental (God given) right. Even "Mohametmen" were allowed to practice their religion, though the principles established by the Constitution retain the moral values of Christianity. It was never implied that laws could be passed based upon Islam -- only those based upon Christian moral values, and those, only locally, in order to provide a comfortable community for those who chose to live therein. The idea that a law would be passed allowing the wearing of a Burka, contrary to norms for the community and country, was inconceivable. It was the need for assimilation, in order to maintain that which was created by the Revolutionary War, that is necessary to maintain the greatness of the country.

Outlawing prostitution, gambling, alcohol, done at the local community level (often county level), was paramount in the concepts adopted by the Founders. To assume that a state could enact and enforce such laws was not even under consideration during those formative years, and efforts to establish moral laws on a state-wide level were inconceivable.

Many Christians have beliefs that are not consistent with the beliefs of others, though there is a tendency to suppress expressing them outside of one's own circle, in recognition of the rights of others to believe as they wish. However, if we look back in history, we find that these ideals were expressed in newspaper articles, on soap boxes, and by legislators in assemblies, without fear of repercussion or arrest. Absent the ability to express such feelings, we are denied the right to pursue legislation that we believe to be for the good of the country, the state, the county, or the town, in which we live -- not to impose upon others, but rather to refrain from leaving those moral values behind.

So long as Christians adhere to the Principle Faction, and subordinate their beliefs, except as addressed above, to that Principle Faction, they are adherents to, and a product of, the United States. They are what America stands for.

Boy Scouts of America: Why would we even consider discussing a private organization such as the Boy Scouts of America under the heading of factions? Well, they are a faction -- one that has been around for over a hundred years. Their principles are based upon the Christian religion, and the Constitution and principles of this great country. Recently, however, the courts in this country have endeavored to impose upon the Boy Scouts rules of admission and acceptance that are absolutely contrary to the foundation of that organization. They, like Christians, are able to practice as they choose, and allow only those who conform to their beliefs to become members of that organization.

Instead, the courts have ruled that the Boy Scouts cannot prohibit membership to those who don't espouse the objectives of the Boy Scouts. They are forcing change upon an organization that exists totally within the concept of adherence to the Principle Faction, and have every right, under the Constitution, to allow membership only to those who adhere to the principles of that organization.

The Boy Scouts of America adhere to the Principle Faction, and subordinate their beliefs, except as addressed above, to that Principle Faction, they are adherents to, and a product of, the United States. They are what America stands for.

Jews: Jews don't believe, with few exceptions, that Christ existed, or, that if he did, he was not the Messiah. Well, this is definitely not consistent with Christianity, though it is not inconsistent with

Christian moral values. In fact, for many years, many Christians despised the Jews and held them in contempt. Often crimes were committed against them, in the name of Christianity. In those instances, the Christians stepped outside of their adherence to the Principle Faction, though such instances are few and far between.

The Jews have established their own communities where they adhere to the precepts of their religion, and do not endeavor to impose their beliefs into the law, or upon others. They adhere to the Principle Faction, and subordinate their beliefs, except as addressed above, to that Principle Faction, they are adherents to, and a product of, the United States. They are what America stands for.

National Socialist Movement (in certain of its various forms): Much like the Jews, the beliefs of many National Socialists are inconsistent with the general tenor of the country, and though outspoken in their beliefs, they have, for the most part, adhered to the Principle Faction.

Some participants in this faction have stepped outside of the law and impose injury, unjustly, on others. These few, however, do not speak for the whole; the majority adhere to the laws, and their expression of their beliefs is consistent with the Constitution, though, perhaps, not politically correct.

Though they have chosen symbols (swastika and other Nazi representations) that are considered evil by most, what they hold to is not much different than the government's support of Japan and Germany, since the end of World War II. It was the whole of the people of each of those countries that stood firmly behind their governments -- responsible for death and devastation, around the world.

So long as National Socialists do not break the law and adhere to the Principle Faction, and subordinate their beliefs, except as addressed above, to that Principle Faction, they are adherents to, and a product of, the United States. They are what America stands for.

Anarchists (in certain of their various forms): The Founders enacted very few laws that acted directly on the people. For the most part, the laws enacted in the first few decades of the United States were laws to define, enhance, or protect the government. The exceptions were the moral laws, also known as Blue Laws, which generally existed within the confines of a town's ordinance, or, perhaps, even county ordinances, in an effort to establish a moral foundation that was comfortable to the majority of those residing there. Otherwise, a degree of anarchy, at least by one definition, was a part of life of the times.

There is an old adage that Liberty is existent so long as your fist stops before it reaches my nose. Our individual constraint on our own actions, so that we do no harm to others, is, perhaps, the best definition of that which should be.

The modern anarchist, even those who might espouse absence of government, altogether, are not inconsistent with much of what the Founders believed. A minimum of government is, perhaps, best, and, is without a doubt, consistent with the Constitution and most state constitutions, at least as originally ratified.

So long as Anarchists adhere to the Principle Faction, and subordinate their beliefs to that Principle Faction, they are adherents to, and a product of, the United States. They are what America stands for.

The Patriot Community: This is the most loose-knit community within the factions adhering to the Constitution. It is comprised of people who have, generally, taken one issue or aspect of the Constitution, to be their cause. Some of those aspects are taxation, the monetary system, the judicial system, the immigration policies (laws) that are not enforced, the First Amendment, the Second Amendment (either, or both, right to bear arms and militia), and, other lesser and greater causes. They are as diverse, and, perhaps more so, than the Founders, at the beginning of the Revolutionary War, yet they are probably the most vociferous of factions that comprise the adherents to the Principle Faction. They do, without a doubt, adhere to the Principle Faction, and subordinate their beliefs to that Principle Faction. They are adherents to, and a product of, the United States. They are what America stands for.

Factions in conflict with the Principle Faction

Illegal immigrants: It is often said that the first impression is the most important impression that you will make upon others. Suppose that the first impression that you make is an unwillingness to abide by the rules/laws of the host, when you are a guest; suppose someone came, invited, or not, into your home and started telling you that the wall colors were wrong, that they didn't like the pictures you had hung, that they didn't like carpeted floors, or that you should prepares them a meal and a bed. It would not be surprising if you caused them to exit your home, and assured them that they would never, again, have entry into your home. That impression that they gave was not what is expected of the guest, and any reaction you had to that belligerence is justified, even if force is necessary to remove them.

We are the collective owners of the country (our collective home), and, as such, have established rules/laws for entry into that home. They were enacted in accordance with the Constitution and are, as such, the law of the land. Those who enter with their first step being a violation of those rules/laws have, as the unwanted guest in your house, established an impression that is lasting, and totally unacceptable.

Those who wipe their muddy feet on your clean carpet are not a part of any acceptable class of people, visitors, or those here by right. They have, by their actions, spit in the face of what this country stands for. It is not a melting pot for the entire world, nor was it intended to be destroyed from within, by a cancer that grows at astronomical rates, and, quite often, at the expense of our own depleted treasury. Each person that enters illegally, or overstays their permitted visit, is a greater threat to the future of our country than any military threat, from any other country, without comparison. The military threat, we have proven, cannot prevail against us. This insidious intrusion, however, eats away at our country's soul with every day that they remain.

Illegal immigration advocates: Those who would advocate forbearance in dealing with these intruders are not adherents to the Principle Faction, nor are they adherents to the laws, concepts, traditions, manners, customs, nor anything else, that we hold dear -- and must continue to hold dear, if we are to survive as the United States, our birthright.

These people, though they may otherwise not be in conflict with the Principle Faction, and may even be of the class of "We the People", or "citizen of the United States", are, by their support of violation of the law of the land, in conflict with the Principle Faction. They have denied the concept of assimilation, and have thereby provided a means of destruction of the entire purpose of the Founders and Framers, for the creation of this great nation.

Anti- religious groups, Atheists, Agnostics: When we understand our heritage, we recognize that the Founders and Framers were religious, though perhaps not pious, men. Both Washington and Jefferson had problems with organized religion, as many of us do today. Regardless, they had beliefs founded on both Old and New Testaments, and adhered to the Christian moral values, without question. Never did they challenge the concept that was, eventually, embodied in the First Amendment.

The Supreme Court Building (built 1932-35) in Washington, D.C., contains over a dozen depictions of Moses and/or the Ten Commandment, sculpted in stone, and permanent not only in that building, but in the hearts and heritage of this country. Congress begins each daily session with prayer, and has done so from their first gathering. President's have called for days of prayer and thanksgiving, in official proclamations, throughout our history.

However, there are those advocates who have challenged the right of a state, a county, school, or even a small town, to begin with prayer; display the same representation found in the Supreme Court building, or erection of seasonal displays of Christian holidays on public land.

And, in a somewhat surprising response, they have found proponents of their advocacy in those very halls of government mentioned above. All under the guise that such actions and displays are "unconstitutional".

How can that be unconstitutional which was practiced by the very authors of that document, and those who ratified it? Their practices and beliefs were not in question then, and there is the more serious question as to whether even an amendment to the Constitution would be Constitutional if it abrogated the First Amendment.

Surely, we cannot even begin to consider that we may remain as even a vestige of the United States if we allow the denigration of those practices considered by most to be fundamental to the establishment of the country -- by those very people who caused to be carved in stone the underpinnings of the moral compass by which we found our course.

So long as they adhere to the Principle Faction, and otherwise meet the requirements of class, and distance themselves from those who advocate to the contrary, they may be considered to be of the Principle Faction.

Those who continue to advocate legal sanctions, removal of displays, or any other means of undermining that which has stood so long, are in conflict with the Principle Faction, and have no place in this country, since they choose not to assimilate, rather to change that which is our heritage.

Homosexual rights groups: Some will argue that homosexuality is a disease, others that it is a lifestyle choice. Each is a diversion from the crux of the matter. It is considered by the Christian moral values adopted by this country, 220 years ago, to be immoral. Though with the exception of some local jurisdictions, and some states, it has not been considered criminal -- just immoral.

Even when criminal, it was seldom prosecuted, since it was conducted between consenting parties, in private circumstances. To intrude on that privacy was as much a crime as the behavior itself, at least under the principles of the Constitution. However, if we look at a few of the steps taken to endeavor to

assign legitimacy and morality to the practice, we will find an excellent example of the destructiveness of factions. The common terminology used to describe homosexuals was often "queer" (which is rather what their behavior was considered to be), or the more objectionable "fag" or "faggot" (a derogatory term).

As late as the fifties and sixties, homosexual, or, queer, bars and clubs were not uncommon. Their public behavior was normal, and their private behavior, in such facilities, was, to use the expression of the time, "done in the closet". And, very few had objection to such behavior, so long as it did not "spill onto the streets".

There was an effort in California, back in that period, to establish a homosexual community in the village of Alpine, in the High Sierra. Even then, there was no general outrage, since the village would be their own 'closet'.

Next came a change in terminology. A word that was frequently used to indicate jovial, happy, light, was adopted by the homosexuals. Back then, people would go to a "gay party" meaning that it was going to be sitting around in a light and humorous atmosphere, perhaps telling jokes and stories. However the theft, yes, I mean theft, of that word, which had only positive connotations, was a move to give an air of legitimacy and acceptance to a behavior that was, heretofore, considered immoral. A major coup by this faction managed to change the image of the homosexual, and to remove from usage a word that was commonly used, even then.

Since that time, this once frowned upon group has managed to use the courts and legislative process to provide special protection and special privileges from what was, through most of our history, a subject unworthy of discussion. They have taken a word, "marriage", with millennia of understanding of the definition, and still recognized in US Code as between a man and woman, and have managed to steal that word for their own uses and economic gain.

They have successfully lobbied for legislation that forces the government schools to encourage such behavior, contrary to the wishes of the parents who are clearly among the Principle Faction, and are advocating a moral degeneration of our society.

Those advocates of homosexuality are in conflict with the Principle Faction, and have no place, with the exception of the closet, in our country.

Black rights advocates: As explained in the "We the People" series (linked above), a second class of citizen was established by the Fourteenth Amendment, and confirmed by a subsequent amendment and decisions of the United States Supreme Court. However, through a subtle process of indoctrination, beginning in the late fifties and early sixties, the intent of that Amendment has been converted to an application that has generated havoc, loss of property, and even loss of life.

The "civil rights" movement of that period moved us from a society that recognized the Principle Faction (basically, a fundamentally white culture) to one that has legislated, encouraged, and enforced against, that society, undermining it, in favor of granting privileges to those citizens of the United States, as well as other without such standing, under the guise of equality, greater even than that afforded to "We the People".

Society, itself, had moved in that direction, at the rate that was warranted by the people, not the government. Whether Jackie Robinson, Nat King Cole, or Fats Domino; acceptance of negros as a part of our culture, was in the works. Society, itself, was approaching a degree of equality, voluntarily.

Instead, it turned to demonstrations (not the preferred form of legislative influence), by both sides. And, since those early days of civil rights demonstrations, they often turned to violence, instigated by both sides. America has been in a near constant state of turmoil, since the time that the government stepped in and tried to privilege the second class even above the first class. And some of that violence, today, perpetrated by those who believe that "change has not come fast enough", is nothing more than rioting and thievery, perpetrated under the guise of equality, couched in phrases about social and economic 'justice'.

These, groups, relying upon judicial intimidation and violence, have proven that their methods and goals are in conflict with the Principle Faction, the Constitution and its principles, and our way of life.

Woman's right advocates: Abigail Adams, wife of John Adams, is probably the best known advocate of women's rights. However, as much as she discussed the subject in correspondence with her husband, he never did advocate such a change in the legal relationship of women within that society.

Over the years, the nation evolved, not turning against the Founding principles, rather, in a social or societal form, with Wyoming being the first to enact women's suffrage laws. Rights of ownership of land and/or inheritance were becoming common, and barriers were falling, as well as advancing women in the society, without intervention by the federal government.

Finally, in 1920, with the ratification of the Nineteenth Amendment, the federal government intervened in an area that was reserved by the Constitution to the states. As with the Fifteenth Amendment (race suffrage), the right of the states to determine who could vote in elections, both state and national, as protected by the Constitution, was now being assumed by the federal government.

Not that it was a bad move, rather, that it was the abrogation of the right of the states to make such a decision, that was so appalling. It was just seven years earlier that the right of the states to be represented, by senators chosen by their respective legislatures, in Congress, was removed by the Seventeenth Amendment. This was, effectively, the end of states' rights.

As contrary to the original construction of the Constitution as this was, it also opened a means of the presumption of federal authority in manipulating the society to the will of the powers in Washington, D.C., and those who influence such social change.

Over time, unconstitutional legislation has resulted the reduction of the male to a subordinate position in our society, where lawsuits and intimidation work in only one direction, to the detriment, and at the expense of, one half of the society.

Our society, which was based upon rewards for performance, was converted to one where rewards are mandated by quotas, with little regard to ability and performance. This denies to society the making of the choices that were assured and protected by the Constitution.

The advocacy of federal intervention, as opposed to the normal evolution of these norms in our culture, is in conflict with the Constitution and its principles, and is inconsistent with the Principle Faction.

Christian militia: Militia, the right to collective self-defense, is embodied in the Second Amendment, and has been a part of our heritage and culture since the Magna Carta. Since 1215, that right has existed, and, since that time, the Militia have always been subordinate to civil authority and have been geographic in their composition. From the Shires of England, to the counties, townships, villages and plantations of the seventeen hundreds, participation in the militia was a right and was a duty. The only exceptions were exclusions for certain people because of vocation, and those that were "inimical to the cause of American Liberty" (Tories). To exclude people who do not claim to be of the Christian faith is contrary to the Constitution and the principles upon which it was founded.

Christian militia are inconsistent the Principle Faction

Islamic groups: Islam is not just a religion. Islam, in its current manifestation, is a social and political system, as well. It is a social system that includes a number of practices that are considered abhorrent, by our culture. Its social/judicial system manifests extreme punishments for what our culture might perceive to be a minor transgression or no crime at all.

Though two hundred years ago, "Mohametmen" simply practiced as a religion, and were accepted as a religion by the Framers, their character has changed to be anything but just a religion.

We can look to Europe and see the consequences of the intrusion of Islam into a society. Eventually, the demand for change or legal reform to comply with their social/political system takes many forms, including physical abuse against people that oppose them; and the obstruction of roadways so that they can hold collective prayer absent a facility for such service; exercising their form of justice, including capital punishment, contrary to the host country's laws, and often exempt from prosecution for crimes that would otherwise result in incarceration, or worse.

Much like the illegal immigrants, members of the Islamic faith come here with a total disregard for our laws, our culture, and our society. They come with the intention of forcing change, by intimidation, by their numbers, or any means that suits them. Their presence in the country, under their present manifestation, is contrary to the Constitution and its principles, and contrary to the Principle Faction.

The Congress: Congress, especially after their vote for the Debt Ceiling Increase, has demonstrated that they are a faction unto themselves, without regard for the Constitution or the will of the people.

The Congress acts in conflict with the Principle Faction of this country.

The Executive Branch: The Executive Branch, tasked with enforcing the laws of the land, has continued to ignore existing laws regarding immigration, and when forced into enforcing such laws, does so with a leniency that is more encouraging to the violation of the immigration laws than deterring them.

The Executive Branch has declared that Tea Party members; Constitutionalists; Gun Rights (Second Amendment) advocates, combat veterans, and others, who fall well within the Principle Faction as "terrorist".

The executive Branch of the government is in conflict with the Principle Faction of this country

The US government: The government "erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance", to lie, steal and even murder, members of the Principle Faction, and has done so with immunity from prosecution.

The Administrative Branches of government are in conflict with the Constitution and its principles, and the Principle Faction.

State governments: State governments, with rare exception, do not defy federal intrusions against the Principle Faction, and often participate in the enforcement of unconstitutional polices and laws, receiving compensation from the federal government for the submission to its assumed and unconstitutional authority.

The state governments are acting in conflict with the Constitution and its principles, and the Principle Faction.

Of course, within each of these factions are members who are adherents to the Principle Faction and the Constitution, though they may be facilitating that faction in opposition to the Principle Faction. Rather than suffering guilt by association, they would be well advised to understand that adherence to the Principle Faction and assimilation is imperative.

Utilizing factions for political purposes

Let's suppose that a faction (a group of people with power and control in mind) wanted to create a situation where this country was filled with factions; each being against one or more of the other factions. As in times past, coalitions will be formed, but they will be weak.

However, at that point, it would be easy for those who have the best control, now, to increase that control; under the guise of maintaining "law and order" -- without regard to the Constitution.

This would allow them to manipulate the lesser factions, turning them one against the others.

So, if we were looking from the government's perspective, what is the first step in the implementation of that plan? Well, first we need some factions. However, our immigration policy was designed to foster assimilation, not faction. So, we will have to revise the immigration policy (quotas, education or experience requirements, criminal records checks, etc.) so that we can remove what we can, without exposing our plan. We can even provide amnesty to allow large amounts of people, even those who could care less about being Americans; only concerned about what they can get for free and how much money they can make to send home. By granting amnesty, we will have removed any requirement, or for that matter, any incentive to learn the language and assimilate into the American way of life.

That, however, will not be enough to get the job done as quickly as we would like. So, what can we do to create factions large enough to generate the conflict that we need to strengthen our control over the people?

Suppose we ignore the laws on immigration that are on the books, and then we can also keep the states from enforcing federal law, since it is "our duty", not theirs. We can allow hundreds of thousands to cross the borders, illegally. If they are caught by the charade we have in front of the people to catch them (U.S. Border Patrol and Immigration and Customs Enforcement), we can let them go on their own recognizance until their hearing. That will give them the opportunity to 'disappear' and still stay within the country.

Everybody that comes in will be a part of a faction, so we will set no limits on what/who is allowed to bypass our immigration laws. That will shorten the time to the uprising of the factions, considerably.

So, what else can we do? Well, if we can create inflation, the purchasing power of the average citizen will be down, so they will be primed and ready to blame any faction for whatever befalls them. They will not blame us because we are going to act like we know what we are doing, and that it is not the government, rather, the foreigners, who are creating the problem.

We can aggravate the situation even more by having looser laws for immigrants than we have for citizens. We are trying it in California, where when someone is stopped for DUI, if they are a citizen, their car gets impounded. If they are not a citizen, we will let them keep their car -- even if they don't have a driver's license. That should really begin to create tension, and, if it works, we can spread it to other states.

We will also keep the wars going so that people are thinking about waving the flag, while we trample it into the dirt. They think that we are protecting them, though we are actually distracting them and keeping their attention on the wars rather than seeing what is "behind the curtain".

Our final tool has been in place for many years. It includes the sociological implications of "political correctness" and "diversity". We have planted that seed well, so that if anybody steps out of line, those around them will force them back into compliance. We can see how well that is working by not allowing anybody to recognize that different factions with different interests, working at odds with each other, even exist.

I don't believe that it will be very long before we are "forced" to rule this country, with an iron fist. Our plan is so well laid that we cannot fail!

Conclusion

On December 12, 1774, the Deputies of the province of Maryland passed a number of Resolves. Perhaps the most significant was the last, to wit:

"Resolved unanimously, that it is recommended to the several colonies and provinces to enter into such or the like resolutions, for mutual defense and protection, as are entered into by this province. As our opposition to the settled plan of the British administration to enslave America will be strengthened by a

union of all ranks of men in this province, we do most earnestly recommend that all former differences about religion or politics, and all private animosities and quarrels of every kind, from henceforth cease and be forever buried in oblivion; and we entreat, we conjure every man by his duty to God, his country, and his posterity, cordially to unite in defense of our common rights and liberties."

Four months before the outbreak of war, the colonists had realized the necessity of having a common interest. Avoiding any factionalization that might be detrimental to the cause.

Though the goal at the time was for "rights of Englishmen", over time, it evolved into independence from British Rule. Our goal is much simpler, it is simply restoration of Constitutional government.

However, if we cannot learn from the past, and realize that the Principle Faction is our common element -- and, that subordinate faction issues must be, at least until such time as we have returned to government, in obedience to the Constitution, *buried in oblivion*. We cannot expect the success that Providence granted to the Founders, and us, their Posterity.

Adherence to the Principle Faction, above all else, is the goal that we need to pursue, and achieve, in as short a time as possible. For, until that goal is achieved, and we have identified those who are in opposition to that Faction, we cannot even begin to pursue that ultimate goal of restoration.

To all who are members of the subordinate factions, consistent with the Constitution, it is only necessary to set aside the lesser for the more important faction.

For those who are members of subordinate factions, inconsistent with the Constitution, you have a more difficult decision to make. Can you subordinate your faction so that it is not inconsistent with the Constitution? If not, then you should find a country that allows and supports such a faction as you choose to adhere to.

To achieve the proper recognition of the Principle Faction, we cannot allow ourselves to succumb to the political correctness, which has relegated our Constitution to the back seat. To allow lip service to the Constitution to undermine its very tenets and purpose is to fail before we have begun.

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Let's Talk About the Constitution

Let's talk about the Constitution

Gary Hunt
March 17, 2010

Patriots have, for decades, challenged the assertion by the courts that the Constitution does not apply to you (the Defendant). The Defendant's reaction is that the court is ignoring the Constitution. So, to begin with, let's make one thing clear about the Constitution -- It does not operate on you.

Now, most of you are probably scratching your head and wondering what I have been smoking. Well, I have been smoking tobacco. Tobacco was one of the principal means by which we were able to fund the Revolutionary War. The use of that tobacco is my right, and is without the authority of government to intrude upon.

The government was given no authority, by the Constitution, to act upon the people, nor were the people in any way bound by the Constitution.

The Preamble to the Constitution for the United States of America sets forth its (the Constitution's) purpose:

> *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.*

Read very carefully that the purpose is to provide for certain things, especially "*secure the Blessings of Liberty to ourselves and our Posterity*". Now, how is that to be accomplished? Quite simply, by framing a government that will achieve those ends.

As was so eloquently stated in the Declaration of Independence:

> *That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.*

So, the Constitution set out to complete that which was proposed in the Declaration of Independence, "That *to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed...*" So, clearly, the intention of both the Declaration and the Constitution is to provide a government -- not a people, but a government -- which purpose is to secure those blessings.

So, a government is created by that Constitution. If you read it, carefully, it is instructions for the creation and management of the government. It also provides for both authorities and limitations on what the government is allowed to do, even to the point of separating the national functions from the functions of the states.

Now, let us consider what we have given the government. We have given it "authority" to do certain things, and, have withheld from it the authority to do other things. We have not said what we could do, or what we could not do, with only a few exceptions (counterfeiting, treason, etc.). And, absent those exceptions, there is nothing that is imposed upon us.

Going a bit further, it must be presumed that if we granted the authority, to the government, to do certain things, that we must have had the authority to make such grant. After all, how can I grant to someone, or something, that which I do not have, myself?

But, that is what government is (at least under our Constitution), the transfer of authority that we hold to the collective instrument of government. For example, I have the right to protect my property. Though I do not give up that right, I have assigned a portion of my authority to protect my property to the government. However, this does not preclude me from protecting my property in the absence, or failure, of government to do so. However, once the government has interceded, by, say, apprehension of someone who stole from me, I relinquish my right to shoot him in the act of stealing, and subordinate my authority to the collective authority, by virtue of the right to a trial by jury.

Similarly, we have granted the government the authority to wage war on our behalf. We have conditioned that grant of authority in the requisite that only the Congress can Declare War, since war is, by its nature, a community affair and, if we go to war, the majority of the community must agree to it. Otherwise, if only one member of a community is allowed to declare war on another community, he has, by his act, embroiled all of the other members of his community, and the other community, in a blood contest. Quite clearly, the authors of the Constitution realized this relationship when they set forth the requisite that the Congress, both the House of Representatives and the Senate, concur on war, and did not give that authority to one man, even though he be the executive of that community.

So, we can see how the Constitution was a grant of collective authority, for the purpose of consolidating our individual authority into a government, for the purposes laid out in the preamble.

Now, if we look at the limitations and restrictions, we will see that they are not laid out to protect us. Quite simply, they were laid out to limit the authority that we have granted.

So, the question arises as to whether that authority is only valid in the United States, or, even only applicable to citizens of the United States.

Well, the Constitution does not define where it is applicable, it only states that the government (the creation of the people) can, or cannot, do certain things. It is the chains that bind the government. It is the authority by which they exist. The government cannot do what it is not authorized to do.

If you give someone a position of management in your company, and you set limitations on that management authority, the authority (under the laws of agency) extends only to what and where that authority is given. The authority is a grant based upon what you have, and the limitations on location are, quite obviously, limited by what you own and have authority over.

So, do you have the right to kidnap someone? If not, then you cannot grant that right to government. In fact, the necessity of retraining someone is clearly defined, though as an afterthought (clarification) in Article V, Bill for Rights. This was an assurance that the government could not presume to be able to do what we could not, deprive someone of their Liberty, without the consent of the people, via the Grand Jury. Having not the power to kidnap, how can the government assume that we could give them that authority?

Punishment, likewise, is restricted to that which is not cruel, nor is unusual. And, punishment is always a consequence of crime, that crime to have been determined to have been committed by the accused by a jury of his peers.

This, when coupled with the right not to be required (forced) to witness against yourself (again, an afterthought included in Article V. Bill of Rights), the right to be secure in your person, house, papers and effects (Article IV, Bill of Rights, again a prohibition on the government), together provide a prohibition on the government from forcing you to give up your secrets, incriminate yourself, or to any other form of duress, especially when that duress is imposed by physical means (torture).

In the final extreme, the government has withdrawn previous laws that prohibited assassination. They have assumed that they have the authority to 'impose capital punishment', without benefit of a trial.

To presume that authority was granted to punish, without conviction, for the purpose of obtaining information, or to execute him without trial, is repugnant to the Constitution, and without any authority that was vested in the government by the people.

As Thomas Jefferson said, in his draft of the Kentucky Resolves (1798), *"It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights... Confidence is everywhere the parent of despotism. Free government is founded in jealousy, and not in confidence. It is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power... Our Constitution has accordingly fixed the limits to which, and no further, our confidence may go... In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."*

If we assume that these limitations (restraints) upon the government are not to be imposed, when the person being subjected to such unauthorized actions is in another country, and we acquiesce to the government's presumed authority to exceed its written authority, either by enactment, or simply by actions, we have also acquiesced to the government ignoring the contract which created that government. Once 'granted' that authority by the people refusing to object to such violations, we have established the precedence that the Constitution is to be interpreted by those who exist only because of it, as they see fit. Once the government realizes that it has circumvented the Constitution, without objection, what is to stop those encroachments from going contrary to the Constitution (which it has, as explained, already done) to a point of total submission to the omnipotent power of the government?

In consideration of a solution to the problem, let us reflect on the significance of what we have learned.

Authority comes from us. We must assume, then, that either we, or the government, will define that which we authorized. If it be us, then we must object, whenever any such abuse of authority exists, or, we must concur. Ironically, if we object, and that objection is not heard, our recourse is what the Founders utilized in disposing of a government that did not adhere to its contract.

On the other hand, we might assume that, since we have allowed the government to decide what we have granted them, and, barring any justification that prevents us from exercising that same right, as in the case of defending our property, we must assume that we have the right to kidnap, torture and assassinate, as the government can have not authority which we do not possess.

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Press and the Patriot Community

Press and the Patriot Community

Gary Hunt
Outpost of Freedom
July 31, 2010

For decades, the patriot community has been demonized by the government, and, by the mainstream media. We can understand why the government desires to impose a negative image upon those who would require them to abide by the Constitution, the document that created that government that supports them and subsidizes their rather pretentious lifestyle. We can also understand that the media, through various organizations and affiliations, is closely-knit with the government, and will, absent an easy alternative, present news in a manner that is acceptable to those who pretend to govern.

It's not so much that the press wants to deceive the American public, though there is, to some extent (see The Press in Waco), that motivation, more significantly, it wants life to be easy, and, once committed to a story line, it becomes even more difficult to admit errors in previous stories.

An example of the tendency of a "story" gaining strength, even though inaccurate, and the perception, by the public, of that story, tending to become truth, is explained in A Prima Facie Story.

Understanding how the press works provides us a means to have a more significant effect on what s, ultimately, presented to the public. If we provide fuel of a negative nature, they will use that fuel, since it will, most likely, support the government line. This makes it very important for us to provide fuel that cannot be turned against us. In addition, this has to be early in the game, before the press becomes fixed in their story line.

In Waco, the press was not as bad as it could have been. Part of this can be explained by the duration, since over time, more truths, and more fallacies, come to light. The number of foreign reporters who often avoided the press conferences, and, in a traditional manner, sought people with knowledge to understand what was happening can also explain the source of a bit of pressure for more truthfulness. However, the full truth was not presented, in a forum for public consumption, until accurate documentaries managed to push aside the inaccurate documentaries, and truth did, finally, prevail.

In April 1995, Timothy McVeigh bombed a United States courthouse in Oklahoma City. Between Waco and that bombing, thousands of patriots, outraged over what had happened in Waco were crying for action. Going to Washington, D.C. and hanging the traitors, bombing government buildings, and military action against the FBI and BATF were discussed, and agreed to as practical polices, in light of what occurred in Waco, though, as we understand now, bravery is easy at a distance.

To provide some insight into what happened in Oklahoma City, I did extensive research, including responding to invitations from a number of people in Oklahoma City to go there and speak with them.

These included the press, Glenn Wilburn (grandfather to the twins that his stepdaughter lost in the bombing, and the McVeigh defense team. Though I had already mailed McVeigh most of what I had written (Oklahoma City Bombing) up to that point, I sent copies into him through Richard Reyna, of the defense team. I was trying to get an interview with McVeigh. Reyna thought it would be a good idea, but Stephen Jones quashed the meeting. The best that I could get was Reyna bringing a message from Tim, "Close, real close", regarding what I had written. Subsequently, I corresponded with McVeigh up until his execution (see McVeigh's Forum, which is comprised, except for introductory statements, only information send to me by McVeigh, including the picture). I have also read "American Terrorist" by Michel and Herbeck, which was recommended by McVeigh, though was not published until after the Execution.

Given the information that I have compiled, and setting aside unsubstantiated claims and 'technical facts', that can be disputed by other experts, I can only conclude that McVeigh did what he did for the reasons that he said he did it. However, assuming that he did, in fact, follow the direction set out by those thousands of patriots, and bomb the Murrah Building, something went awry, and the patriot community picked up a story line that lead the government in providing bad press to the patriot community. This "public relations" lapse resulted in a near total decimation of the patriot community and the militia, which lasted for years. So, what went wrong?

When McVeigh bombed the building, even before his name was mentioned, certain outspoken members of the community (Bo Gritz, Linda Thompson, Mark Koernke, to name a few) began 'disclaiming' that there could be any involvement by the patriot community. I have often wondered how they managed to be so sure that others in the community would have obtained their blessings, or felt obligated to inform them of any actions that were contemplated or conducted. It is a bit presumptuous to assume that we had then, or have now, a command structure that would allow spokesmen to have full knowledge of goings on.

It is important to understand that the recognized (by the press) spokesmen for the patriot community achieved their prominence because the pres let them achieve that prominence. However, they did not speak for much more than themselves, the press said that they spoke for us, and, we believed them.

Now, what might be referred to as "The McVeigh Syndrome" comes into play. Because of the onslaught against McVeigh, tendered by the government, supported by "our spokesmen", and supported, to the hilt (since there was no strong opposing story line) by the press, we find that probably 98% of the patriot community signed on" to that line. They had, so to speak, gotten on the bandwagon. To get off of that bandwagon is not an easy task, so most chose to stay on the bandwagon and support the story that had be shoved down our throats by the press.

Back to Waco, there was a video presented (by a member of our community) that purported to show a flame throwing tank being used on the Church in Waco. Though there were many indications that it could not be a flame-throwing tank, the story line (bandwagon) maintained top billing for many years. Finally, however, the truth did prevail, and most of the community realizes that there was no flame-throwing tank.

It appears that we do prefer to hear what we want to hear. It also appears that when choices are presented, early on, that we will choose from those available and then design what we want to hear upon

that which we have select. At that point, little else matters. We will support our bandwagon regardless of evidence, logic, common sense, or indisputable proof to the contrary.

This leaves us with the necessity to get information out, as early as possible, so that those who broadcast, and formulate the opinion that most will develop, will have an opportunity to have a positive consideration of the matter available to them, while they are forming their stories. It is rather apparent that they cannot think while standing, so the information has to be provided to them so that it is, at least, available for their consideration. If it is sufficient to the purpose, it may provide them the means to keep from looking like a fool, and perpetuating that foolishness, since other possibilities might just make more sense than what the government has said.

We can look back to incidents in the past, such as the Viper Militia, in Phoenix, and the West Virginia Militia, back in the nineties. Arrests were made, stories got out, and then they were held to. Even though informants were involved in both instances, the public opinion was formulated without our participation. The result was that nobody was let out on bail, nor did the press every really deal with many of the truths of those incidents.

More recently, the Hutaree Militia was charged with planning to attack a funeral procession for a police officer, hoping to kick off a war with the government. The press picked up the story and started with their pronouncement of guilt. However, there were a number of articles written that questioned the entire 'crime' (see Thought Crimes). Surprisingly, the press seemed to back down, and, bail was set for the accused. Once another side is presented, it becomes more difficult for the press to participate in the demonization, and, it may trickle down, if not to the government, at least, to the courts.

People have suggested that the government does not care what we write or what we say. I would suggest that this is only partly true. During the Waco siege, I sent out, vie American Patriot Fax Network, daily reports of what was happening in Waco (Waco White Papers). I had arranged that the FBI headquarters in Waco would be one of the first to receive the reports, which were sent out nightly. To things occurred that showed that there is concern if what we write makes sense and poses a threat to the government line. Though I was 'removed' from the press conferences on March 21, I did follow them. Quite often, what I had written the night before would be addressed by the government in their opening monologue at the press conference. It appears that they wanted to do damage control, and were concerned about what was being written

Most of the people from out of town, government and patriot alike, ate at the Waco IHOP restaurant. It was the only decent 24 hour restaurant (Denny's had lousy food and worse service). Bob Ricks did not smoke, but he was sitting in the smoking room, one morning, as we came in for breakfast. When I walked into the smoking room, I noticed that one of my faxes was on top of his pile of paperwork. He glanced up, noticed me, and slid the fax under some other papers and look back down to his coffee. There is little doubt that, though they will never admit it, they are concerned about what we write if it is well written especially in opening other thoughts up for discussion.

Probably most important, however, is what we write and what we say. The government will pounce (as they did in OKC) on outlandish or unsupportable stories. If the story is not well written and includes conjecture or theory, especially some of the more outlandish ones, the government loves the, On the

other hand, if it poses legitimate questions; presents plausible scenarios; and, does not include anything that will subject it to public ridicule, the government is, well, quite concerned.

Another problem arises when the press wants to interview someone. If that person is not well versed in the trickery and chicanery that the press uses to entice statements that can be misconstrued, they will trap the novice into providing a sound bite that will end up biting the interviewee. And, it is amazing how far some bad press can go.

The press will be there. The press will cover the story. It is up to us to do what we can to assure that we get the best coverage that we can -- for the message that goes out across the country will garner support for our side, or make us enemies, it will depend on how we work with that necessary evil -- the press.

The bottom line is that we need to improve the competence in our communication with the MSM. We need to designate well-qualified people to act as spokesmen for a group or activity. These spokesmen need not be members of the activity or organization, and when security requires it, it is probably better that they not be. This always allows, if necessary, for avoidance or disclaimer.

It is important to have contact information when press releases are sent out, but the contact can anticipate spending a lot of time dealing with communicating, for failure to respond is, often, worse than any response could be. It tends to generate a "we don't care about you" attitude, which forces the other side, doing their job, to resent the lack of willingness to respond. Further, it often leaves unanswered questions to the other person to "fill in the blanks". Even if the question cannot, or should not, be answered, the courtesy of politely stating such will help establish the rapport that will, in the long run, benefit our side, and our story.

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Vortex

Vortex

The threat that keeps us apart

Gary Hunt
Outpost of Freedom
May 24, 2012

Vortex

Noun: 1. a mass of whirling fluid or air, esp. a whirlpool or whirlwind.
2. Something regarded as a whirling mass.

So, why Vortex? Well, when something goes down into the bottom of a vortex, it is spun around and emitted in a different form than when it went in.

Background:

A recent discussion brought up an issue that has been close to me, for quite some time. I have seen many succumb to entrapment, or, just plain deceived, by agents, informants, infiltrators and other such ilk.

It seems that many think the government is squeaky clean, or, that issues, not being of national security levels of interest, don't warrant the effort that would be necessary to 'move in' on the patriot community.

A few years ago, I learned that as many as fifty percent of the members of Richard Butler's Aryan Nation Church (Randy Weaver country), and of the old Posse Comitatus, were people who, for whatever reason, had changed sides, or were not quite honest in their dealings with the respective organizations.

I had read the following memorandum, which is included in the Appendix of Congressman George Hansen's book, "To Harass Our People", while traveling through the Washington, D.C. area, after Waco. I met with an associate of George Hansen. He gave me a Xerox copy of the memorandum, and I have no doubt as to its authenticity.

As you read the excerpts from the memorandum, take note of the extent in which the government is willing to 'get involved' in the "Tax Rebellion Movement" (see note 5 to District Directors). Remember, also, that this memo was written nearly 40 years ago. It would be ludicrous to think that they have not enlarged and perfected their program. [Emphasis, mine]

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Memorandum
FEB 26, 1973

to: Participants in Conference on Tax Rebellion Movement
from: Western Region
subject: Tax Rebellion in California

I am sending you the minutes of our meeting of February 9, 1973, on the Tax Rebellion Movement. These minutes enumerate action items for the Los Angeles and San Francisco District Directors and for Regional Office officials.

I appreciate your past attention to this serious matter, and feel confident that all of us working together can successfully overcome this challenge to our tax system.

/S/
Homer O. Crossman
Regional Commissioner

Mr. Howard advised he has been conferring with state tax officials who are anxious to cooperate with IRS in the attack on tax rebels who also do not pay state taxes; often the state can move quickly to close up a tax rebel's business or revoke his license; that we should see that the State uses its enforcement machinery on those cases which are not our targets.

Mr. Crossman reported on his discussions with Assistant U.S. Attorney Courts and Judge Crocker, Fresno, and of their interest in enforcement of the law in tax rebel cases. Mr. Hansen commented on the problem of federal judges appearing to be anti-IRS based on a belief that IRS is "highhanded". Mr. Howard reported on a change of attitude in federal judges in San Francisco after he met with a number of them and discussed the gravity of the Tax Rebellion Movement and the importance of giving prison sentences as deterrents.

There was a general discussion of the importance of meeting with U.S. Attorneys and federal judges to acquaint them with the full picture of the tax rebellion movement. Mr. Crossman pointed out that after his meeting with Mr. Couris and Judge Crocker, they requested background information on the Movement which was furnished them.

Mr. Kingman suggested the possibility of requesting religious leaders to warn their following against participation in the movement, pointing to the beneficial effects of Mormon Church President Lee's message.

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Mr. Krause pointed out the importance of close planning on common targets by the tax rebellion project supervisors of the Los Angeles and San Francisco districts with planning meetings as needed.

Action items for District Directors:

1. **Maintain the initiative in the attack on the tax rebels**.
2. Know their plans before they arrive at our door to execute them.
3. **Identify the leaders of the Movement and concentrate on them**.
4. **Have a plan of action** in coordination with the Region rather than hit and miss defensive reactions.
5. Continue to **step up the infiltration in-depth of the Movement**.
6. Use all available federal, state, and local laws.
7. Use civil penalties on Porth-type cases.
8. Wage a campaign to educate U.S. Attorneys and federal judges with the importance of prison sentences on cases.

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At the same time that the IRS was acting out the above to deal with what the termed "tax rebels", the federal government also had to contend with the anti-war (Vietnam) movement. In dealing with what was going on at the time, infiltration into that movement was also a part of the government's program.

One of the larger groups that were active in the anti-war movement was a broad based group known as Student for a Democratic Society (SDS). They were of so much concern to the government that the

government actually started some of the SDS chapters so that they had a degree of control, and, received intelligence from other SDS chapters. If they didn't start them, they, at least, had agents and informants join the various chapters.

Another target of the government, during the anti-war movement, was Vietnam Veterans against War (VVAW). Some of the VVAW members were from Gainesville, Florida. Among them, however, were informants and agents. The agents fed them information that the 1972 Republican National Convention (Miami Beach) was being set up to set up the anti-war demonstrators. They were told that the police would shoot some protesters. This would lead to sealing off Miami Beach by raising all of the drawbridges, trapping the protesters, and making for shooting fish in a barrel. To counter this tactic, the Eight made plans to attack government buildings, police and fire stations, and then force the lowering of the drawbridges. This was to draw the police away from the Beach and allow the demonstrators to leave the Beach, avoiding the catastrophic scenario that had been fed to them. Of course, the informants and agents testified against them, however, their correspondence (which was seen by the jury) said that their plan was "for defensive purposes, only", which lead to an acquittal. However, it does demonstrate that forty years ago, the ability, means, and practice, of infiltration and entrapment were standard government tools.

For a detailed study of the infiltration of the anti-war movement, see http://www.outpost-of-freedom.com/library/provoca.pdf

Who are the agents and informants?

There are any number of reasons and means by which some people will become agents of the government, or informants for the government. Though there are variations of each of these, we will cover the more general types of people and what their relationship to government is.

Agents

Starting at the top, we have undercover agents. They can be undercover agents for nearly any branch of the federal or state government. Most often, they are very well trained, to include psychology, so that they can get close to the people they are supposed to encounter and infiltrate. They generally receive very explicit instructions when they go on an operation, though they can also adjust, quite well, when a "Target of Opportunity" arises. They are full time agents (Type I) and will become very close to those in leadership. They will engross themselves in their work, often living a life outside of what would be normal for an FBI agent. They have "handlers" that are often, for months or years, the only contact they have with the parent organization.

There is second type of agent, Type II, who is called in for support; for example, the FBI agent who alleged to have explosives and other material for sale in the Georgia Militia bust. Often they have desk or other duties and are called only when needed.

A good example of the Type I is FBI agent Steven Haug. Haug, who went by "Jersey Steve", had infiltrated the Hutaree Militia. He got so close to the Hutaree leader, David Stone, he was asked to be the best man at Stone's wedding. Later, he would testify against Stone.

Another was a man, back in the nineties, who went by the name of Bob Chapman. Later, when he testified against the Florida Common Law Court, he identified himself as Robert Quigley, "IRS deep undercover agent" and instructor at the IRS undercover school. (See "Let me tell you about a man named Quigley")

These agents are often 'wired', and the recorded conversations are transcribed to be used for evidence, when their task is completed and they have turned witness against former 'friends'. A partial transcription of such a recording can be found at "Record of Activity". BC = Bob Chapman = S/I Quigley is the agent. You may note how he tries to blend in but does ask some questions attempting to entice information that can be used against the parties, later. This is from the 1995 investigation of the Florida Common Law Court that sent all but one of the defendants to prison for 12 years.

These paid agents, regular employees of the government, on special duty, are a blight on our concept of self-government. Though such agents go back to the Revolutionary War, where Washington had a staff of agents that mingled with the British to gain intelligence information, they did not join the British army or other government forces. It wasn't until early in the 20th century that the practice became common, to deal with organized crime. However, currently, the government claims to have thousands of agents working within various patriot or political groups. Must we assume that political activism is now criminal?

The other form of agent is the paid agent of a private organization. These are best described as "infiltrators". One such organization using this tactic is the Southern Poverty Law Center (SPLC) that claims to have many infiltrators within the various patriot groups, from militia to Tea Party groups, and everything in between. Their primary purpose is strictly information gathering, though if given the opportunity, they will exploit a situation.

Informants

Informants come in different varieties. Some are induced into informing on friends and associates when they are charged with a crime, themselves. They will sign a "plea agreement" (plea agreement informants) and exchange their efforts for, most often, a "withheld adjudication" -- meaning that so long as they provide good information (not necessarily truthful), and testimony, if required, they will not be prosecuted for the crime that they are alleged to have committed. See "Informants Amongst Us?" for an explanation of this process. In desperation, these informants are capable of lying (since they have already given up their integrity) and participate in entrapment, to 'save their own skin'. They are, by nature, weak and unwilling to stand up for their convictions.

A lesser version of this is the "states evidence" witness that will tell all to save his own neck. Though not an agent, active informant, or infiltrator, he is often the source of conviction of patriots because he does not have the fortitude to be a true patriot. An example of this is one of Schaeffer Cox's

fellow Alaska Peacemaker Militia members, Michael O. Anderson. Cox, Lonnie Vernon, and Coleman Barney are currently (May 2012) on trial. Anderson, who was arrested, along with the other, in March 2011, has had his charges dropped and will be testifying for the state, against the other three. (Reference: Alaska Militia Trial Opens With Former Defendant as Key Witness)

Others might become informants in custody (jailhouse informants), seeking favor, or reduction of sentence. These jailhouse informants will usually testify to anything that is requested of them, to bring "jailhouse confessions" to trial. They are often used to 'enhance' the evidence against a defendant to assure conviction.

Volunteer informants come in two categories. First are those who have been charged with, or know that they have charges pending, for a crime. They will contact a government agency and offer their services, hoping for a reduction, withheld adjudication, or dismissal of charges. This is the probable scenario in the Joe Sims involvement with the Georgia Senior Militia, this past year. Joe, according to an Esquire magazine article, was in jail pending child abuse charges. He contacted the FBI and volunteered to provide information about members of the Georgia Militia.

Other volunteer informants are often James Bond wannabes or government employees seeking beneficial treatment by freelance work to aid law enforcement. There was the Viper Militia, Phoenix, Arizona, in 1996, where about a dozen concerned patriots prepared for a Red Dawn type of event. An aspiring firefighter joined the group. In his John Wayne machismo, he began suggesting more active pursuits. Later, he brought in an undercover Sheriff's Deputy, and both encouraged testing bombs, often made with materials provided by the informant or agent, and making plans to attack government buildings. Prison was the outcome for those that followed the lead of the informant and agent. What bright future lay in store for the informant, we do not know. Presumably, however, he was rewarded favorably.

Another type of informant, though not always intentional, is the "easily swayed informant". These sort don't usually have any idea that they are an informant, though they are, just the same, because they pass on information that might have destructive ends, or, they are duped into passing information that is erroneous and, potentially, destructive to the patriot community. They have, usually, been contacted by a law enforcement agent (often FBI Special Agents), or even others down the chain, including others who have been easily swayed, who convince them that they are really good guys, and an asset to their country. They are then beguiled, and act in concert with agents against the best interest of the patriot community, most often thinking that they are doing right to the community. Often, they will sway others (usually larger numbers) away from any activity that is not easily controlled. If the person is susceptible to the charms of the agent, he can go beyond that easily swayed and become a de facto agent, and never realize that he is being used. It is the psychological training that the agent uses to manipulate the person and use him to influence others, most often away from a professed course. He is, in essence, a sleeper, and can always be put to greater purpose, if the need arises. These relationships tend to be long-term, and quite congenial between the parties.

Of these last, a friend refers to them as "useful idiots". However, I think it more appropriate that they should be referred to as "guess what I know" types. Often, they pass on information just because they have found it and think that everyone should be apprised of this "wonderful;" or "dreadful" information. Rumors of foreign troops across the Mexican border, for example, have been circulating

for twenty years, each time, with new adherents and a new life, with only minor revisions to the original story, and, most often, without any identifiable source.

All of those described above are contrary to the Framers concept of government. They are, by their very practice, violating the concept of the Fourth Amendment, the right to "be secure in their persons, houses, papers, and effects".

How do they function in the patriot community?

All of the above identified sources of benefit to the government enter the patriot community, though they do so in various ways.

First is the coward who turns state's evidence, but began by believing in a cause. Once the chips were down, he cowers and turns against those that do hold the principles highly. The turncoat, in a sense, is the worst of those who find themselves on the wrong side of the battle. There is nothing, except his nature, that would lead one to believe that he is not really on the right side -- since he was on the right side until imminent threat to his future freedom caused him to turn against those who had every reason to believe that he was as sincere as they were, and had nothing to hide.

Next, are those who become paid informants. Often, they have joined with a true belief that something is wrong; however, somewhere along the line they change ideologies. It may be the result of less conviction toward the cause; the fear of doing something 'illegal' (as the Founders did); or simply a change of heart. However, they are in and, perhaps, they can make a little money by offering their services to the government. This sort is as bad as the first; perhaps even worse, for he continues to gather and pass on intelligence, and may even go further, acting against the best interest of the Patriot Community and those he has gotten to know.

Next are those informants who have been charged with a crime and decide to "cop a plea" and become an informant for the government. Like the first, those that turn state's evidence, they are cowards and will send others to prison to avoid their own stay in the "gray bar hotel". However, since they continue to "play along" with you, they can pass on even more information, and often will set traps for you to fall prey.

Finally, in the informant category, are those who have joined in hopes of increasing their "job opportunities" with the government. Most often, they are already employees of government, as noted above, but they are playing the "spy game" in hopes of enhancing their resume. (Reference: My Life as a White Supremacist)

Now, we get into the realm of professional spies. These are the agents whose job is to invade your privacy, get dirt on you, and even more, which will be discussed later. We'll begin with the Type II agent. His job is to be available and act the part, when the need arises. Otherwise, he is just an employee with other duties. He will be a witness only to what transpired during the course of his brief interlude with the subject of the investigation.

Next comes the Type I agent. His dress, his manner, his whole life, revolves around his active participation in the group that is the target, or contains the target, of an investigation. Since his job is playing spy, he will do whatever is necessary to obtain the accolades he will get for obtaining a conviction and getting the job "well done", regardless of what techniques he uses to achieve that end.

Often, this person, let's call him the Vortex, will use others to insulate himself from exposure, if things don't go smoothly. He will also use others to achieve specific ends. He is, however, the point of contact between the government and the patriot community, hence, Vortex. The information swirls in and out, on the patriot side of the Vortex. His job is to sort out, manipulate, control that information, and pass it thorough to the government for their nefarious purposes. He is also the source of misinformation, coming from the government side, and then thrown into the swirl on the patriot side, though more about this, later.

Often, the Vortex will never even see a patriot, though he could be directing the operation from a distance. This is common with certain types of informants, where the Vortex is most often referred to as the "handler". However, for any such investigation, there will always be a Vortex; the agent or other government employee who passes information in both directions; plans, or passes on plans, for the control or expansion of the operation; and is the person, who, if exposed by the patriot community, damages or defeats the government's operation.

These agents have a plan when they go into their job. That plan can be revised to meet the exigency when circumstances warrant a change, or an expansion, of an investigation. They will also know who most of, if not all of, those who are lower level informants involved in any case they are working on. However, the informants will seldom, if ever, know who the agents are, until both find themselves on the witness stand. (Reference for Type I and Type II agents: Patriot Games)

Agents, especially Type I, will seldom be used to testify, if informants can became the "fall guys" and provide sufficient testimony to obtain a conviction. Once an agent testifies, he has probably blown his cover and will have to retire to some other duties. His effectiveness is lost, so he is a commodity that has to be protected, unless exposure is absolutely necessary.

Often, these agents will create an organization to give itself legitimacy within the patriot community. In so doing, they have established their "credentials", though you may have never heard of the organization before meeting the agent. If he can demonstrate that he has created a following, you will drop you guard, as he has apparently, achieved what all are trying to accomplish. (See Patriot Games link, above)

In all cases, if the abilities of the individual, in whatever capacity, are such that he can move up the chain of command of an organization, he will do so. This allows him to obtain access to information that others might not have access to. It allows him to obtain information from individuals in casual conversation, when that individual doesn't suspect that anything he says is going beyond the two of them. It also allows him to move upward in command, and perhaps, replace the existing command, once it is taken out because of his efforts.

Objectives of infiltration - Surveillance, profiling, disruption

We must begin to understand just what capabilities the government's has to keep track of patriots. They have an identification program that includes anybody who is likely to read this article. It will include most militia members, even those who have never gone on line, through use of informants and other means. It will include almost any attendee at a Tea Party gathering, and, probably, anybody who had gone to a Ron Paul rally, if the participant gave a name, by any means. Intelligence gathering is the source/foundation of the entire government verses the people program.

Once they get the information, they have to retain, store, manipulate, and provide access, to that information. They also have to sort that information into meaningful data. So, we'll begin by looking at what the sorting aspect entails.

The government has developed a program for categorization of everybody in this country (except, perhaps, illegal immigrants). The program is called "C3CM". It defines three major categories, though we will only concern ourselves with the first one. That is those who have, to some degree, expressed their disenchantment with government -- the patriot community. This doesn't require disobedience, or even advocacy. It only requires that you don't believe that the government is working the way that it should be.

If you are among this group, you will be categorized into one of three sub-categories. Those who are simply dissatisfied, those who are prone to act because of their dissatisfaction, and, those who are capable of leading others into exerting effort to effect change. It doesn't matter if those leaders are of a violence oriented militia, or a group that encourages voter registration and voting outside of the mainstream agenda. The fact that they are leaders and can obtain followers poses a problem for government, though the government may direct more resources at the more militant. This does not mean that the peaceful sorts are beyond efforts of government to affect their ability to lead. On the contrary, each of us has entered the patriot community rather naive, and has learned, as time went on, which can move us, inevitably, toward the more extreme means of dealing with the despotic government that we find in control of our country. If someone can influence large numbers, he is more of a threat than a few isolated die-hards.

Where would the government be able to store and manipulate such a large amount of data? Well, that goes back to a story from the past. Inslaw, Inc., had a contract with the Department of Justice to develop some tracking software -- "Promis" could be plugged into the 12 petabyte (if you were wondering about the next level, a petabyte is 1,024 terabytes) database that Sybase (the company that developed SQL for Microsoft) is developing. So, once all of the pieces fall into place, there will be little that you can do to keep from being tracked, along with almost everything that you do, by the government. (References: see http://www.profoundstates.com/promis.htm)

Now, as they take out any leadership, if they have moved their resource up into the upper echelons of any organization, they have attained a position that may soon leave the government resource in charge of the organization.

We began this article with a memo from the IRS Western Division, nearly forty years ago, about a tactic to be used to disrupt the "tax rebels'. Not that this was the beginning of government efforts to

manipulate both people and truth, only to demonstrate, with a provable piece of evidence, that influencing, by whatever means, including judges and churches, is and has been a part of the plan for total control of the people and their actions. Would we be doing ourselves any favors to think that they would not use these same tactics, today, enhanced by both technology and experience?

Methods of Disruption

So, now, let's look at objectives that the government might pursue through their various types of informant, agents, and infiltrators:

- Discredit, or, take out, leadership or those who pose a threat to the continuation of the government's effort to gain absolute control over the people, removing them from their means of influence over those who might follow them.
- Discredit those who might bring attention to government tactics by suggesting questionable behavior, or, accusations, that will occupy them and remove them from any effective contribution to the patriot community.
- Move those who are within government control or influence into positions of influence within the patriot community
- Create division, wherever possible, any organization that begins to grow and may become effective. If possible, splinter the group into two, or more, factions, so that they don't flee elsewhere, and the government can retain controlling interest, or at least positions of influence, within each faction.
- Use of a group the government has control of to create conflict with another group, creating doubt, disenchantment, and, perhaps, dissolution of the targeted group.
- If a group has a structure (rules) that would make it more difficult to create disenchantment, challenge, ridicule, or ignore the rules, to create as much disturbance as possible -- hopefully to disrupt any group that might really organize into a cohesive and effective group working together for a common goal.
- Stimulate discussion of controversial subjects (Waco, Oklahoma City bombing, 911, Birth Truthers, etc.) to bring division and, perhaps, conflict, oral or physical, between adherents of each side of the issues.
- Promote identification of theoretical enemies (Rothschild, Illuminati, Free Masons, etc.) so that members pursue un-provable resolution, thereby creating endless squandering of time on insignificant objectives.
- For those with legal pursuit as means of attacking the government, direct them on fanciful flights with erroneous objectives such as Admiralty Law, Maritime Law, Uniform Commercial Code, United States government is a corporation, etc. (reference for the last three items: Divide and Conquer)
- Use of "trolls" on Internet discussion groups and other forums to detract from discussions that might cause some to think; includes ridiculing opponent, specious arguments, diversion from the subject of discussion, and other tactics intended to discourage active participation in what might otherwise be productive discussions.

Consequences

The consequence of the government meddling in our affairs, if we are truly self-governed (We the People), is that the government manipulates us to achieve an increase in power and control over us. It is not our disenchantment with government that is the problem; it is the government overreaching its authority that has caused us to be concerned as to the direction of the government and its impact on us and our posterity.

To achieve their goals, they must devise means for keeping the will of the people from being manifest and force them into compliance with that will. By their efforts to fragment the patriot community, they have achieved their goal and will continue to do so.

When their efforts have identified targets of any effort at political change, outside of the two controlling parties (Democrats and Republicans), and have manipulated the others into ineffectiveness, they have effectively created a one party system, not unlike the Soviet Union's Communist Party where all power was granted only to party members.

Effectively, the government has become the master and we have been subjected to their will -- through the divisive means explained herein.

Solution

The solution to this otherwise overwhelming problem is to resist the infiltration, by whatever means necessary.

To begin with, look in to the background of all who join your organization. In the modern world that we live in, we are obliged to provide a Social Security Number (SSN) to arrange for utilities to be turned on, to borrow money or establish credit, and for many other purposes. If we wish to get a job, we are obliged to provide background information regarding previous work history, education, criminal and military records.

Why should something as important as our Liberty not require at least such evidence of background and personal history as our daily lives do? After all, there is far more at stake than whether I can buy something when I don't have the money, or even having electricity at my home.

Thorough background information should be required of all who wish to join any patriot organization, even those currently members. If someone is reluctant to provide such information, then you must wonder if they have something to hide from you that they don't have to hide from their employer or bank. If the position they are seeking might have potential risk to others, then not only the background information, but a review of records* would be in order. If any questions arise that are not properly addressed, then realize that absent satisfactory answers, you may be subjecting yourself to influence that is not in your best interest, or, worse, being set up to take a fall.
[*There are a number of sites on the Internet where court, criminal, and other records can be purchased for very nominal fees – perhaps a good investment for the security of your organization]

If someone has been charged with a crime and adjudication withheld, then they may have worked a deal with the government. Don't put them in a position that would allow them to work a deal with you.

If someone demonstrates any characteristics that lend to the possibility that they are pursuing any of the "Objectives" listed above, there may not be an indication that they have someone else's interest at heart, though the method by which they pursue such objectives should be carefully considered.

Disagreement can be resolved through reasoned discussion/debate. It should be organized and open to all, or many, of the existing members. It should be void of both personal attacks and unsubstantiated (with real evidence) accusations.

Any organization would be wise to adopt some rules and methods of evaluating all of its personnel, including existing officers and members, as well as recruits. They should be based upon the above information as well as interviews with the individual concerned.

Any organization should include within their structure a means to evaluate new members, investigate any member who comes into question, and, establish a review procedure that includes a review board, composed of already approved members, to evaluate any information, conduct hearings, and, proscribe remedies, including removal of membership.

There is no doubt that on occasion, someone may have the appearance of having the characteristics that would lead one to believe that their interest is elsewhere, though it may only be that the person's personality brings about such suspicion. However, is it better to exclude someone by error rather than allow a potential risk to the entire organization. Weigh the risk against the lesser objection to hurting someone's feelings.

> *These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it NOW, deserves the love and thanks of man and women. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict the more glorious the triumph. What we obtain to cheap, we esteem too lightly -- Tis dearness only that gives every thing its value. Heaven knows how to put a proper price upon its goods; and it would be strange indeed if so celestial an article as FREEDOM should not be highly rated.*
>
> **Tom Paine, The American Crisis (December 19, 1776)**

Absent our policing ourselves, our groups, and, our own patriot community, we only leave ourselves open to the disruption that the government has desired to create.

Conclusion

At this point in time, we have many thousands of people being deprived of their productive time and participation by "chasing ghosts" created by the government to do just that -- deprive us of time and confuse us with distractions.

At the same time, they have addressed and attacked many who would be useful to our purpose by accusations of crime, as explained in the IRS letter, in violation of federal, state, or local laws. The have, thorough seminars, advised judges to "throw the book at" patriots charged with made up crimes, removing them from any active participation in our cause.

The time has come for us to change the game. They laugh at us, now, because they are far more in control than we want to recognize. We don't recognize it because we have faith in the government -- we just want some changes that return us to the Constitutional government that is our birthright.

They, however, are playing a serious, and often deadly, game, with every intention of winning.

We fear them, yet they have no reason to fear us -- because they have subverted most elements of our movement, and have at least some influence or control on the reminder.

It is time for us to change the game around and get them to fear us. Not through violence, rather, through exposure and removal of those who would seek to undermine our ability to function productively. It is time for us to be as serious about ridding ourselves of these subversive elements as we are about our individual causes, for all are doomed to failure unless we regain control of our own activities.

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Security Teams

Our Security Team

Gary Hunt
Outpost of Freedom
May 10, 2009

Back in about the middle of 1992, a number of us had gotten together. We were concerned over the future of America and wanted to be prepared for the changes that we expected to come. Five of us (all men) met and decided to establish a network that could act to protect ourselves and provide aggressive action, if necessary.

We used to meet every Thursday, for lunch. All would meet at my office and then we would pick a restaurant, rather randomly, so as to minimize the possibility of establishing a pattern that would leave us open to surveillance during our meetings. Upon arrival at the restaurant, we observed all who come,

after our arrival. Not so much that we were concerned, at the time that we might be watched, rather, to establish a habit so that we were less likely to be subject to scrutiny during our future meetings.

After the third or fourth meeting, one of the members (George Sibley) asked if his common law wife (Lynda Lyon) could become a member, as well. It was decided that we would have an answer by the next meeting. We had decided that, once we were established, we would open the door to no new members.

I had not met Lynda, nor had two of the others. George and the other member, however, had spoken very highly of her, so, by the next meeting, she was brought in to the group. The decision had been made at the office, so she joined us at that meeting. Now, we were six.

Something that that we had been discussing and working on developing was creating cells under leadership of each of the members. Each member could enlist cell members, up to seven in number, which would be subordinate to that member. George & Lynda opted for a single cell. Cell members would be recruited, trained, understand that there was a larger unit, but no information about who, where, or anything else, which might jeopardize the other cells, was ever to be presented to the cell members.

Each member was to train his cell, as he saw fit. We began, however, to work on standardizing the training, so that the best ideas of each of our members could be incorporated into the overall scheme.

We discussed how we would come together in the event that circumstances warranted it. We picked a location in a heavily forested area northwest of Orlando for the meeting place. We had arranged our communications so that if that meeting was ever called, by voice communication and contingent signals that we were to meet.

We discussed the possibility of infiltration of the cells. It was decided that, if we were called up, once the cell was brought together, and long before they had any idea where the meeting place was, that any observable attempt at delay, communication or suspicious activity would warrant the immediate 'dismissal' of that cell member. The whole was too important to observe any rules of etiquette or justice in assuring that all laws done to best provide for the protection of the whole.

George and Lynda began publishing a magazine called "Liberatus" (http://www.outpost-of-freedom.com/liberatus.htm) and I was setting up to begin a newspaper, "Outpost of Freedom" (http://www.outpost-of-freedom.com). The others, their names, functions, etc., are not relevant to the remainder of this story. But, as a concern over whether there would be any attempt to 'cause trouble' for any of us, we set up a "dead man switch" phone system, so that if it was suspected that anyone was doing anything risky, or had reason to be concerned, the dead man system was activated. The persons that we were concerned about would have to contact a designated member, at regular intervals. That interval would be set, as was deemed best serve the situation. Provision was made for night time, and sleep. If the member did not make the call by the required time, the designated contact person would contact the others and efforts would commence to find, or find what happened to the concerned about member.

As it was, I went to Waco on March 5, 1993. My writings (fax network) were going out to, perhaps, ten thousand people, every night. We know that we riled the FBI, because they excluded me from Press Conferences after March 21. Unlike the regular networks, we were contacting Davidians who were no in jail or Mt. Carmel, and digging in to the actions of the FBI.

On April 21, I returned to Florida. The Security Team had my schedule, and arranged for three members, armed, to be in the airport, outside of the security area, to provide for my protection on returning from Waco. Though, as it turned out, the Team wasn't necessary, the exercise was a good one in that it showed that we could and would respond, should the need arise.

My first night back, George and Lynda spent the night with me in a motel, as an additional precaution.

The next day, the dead man calling system was implemented. I was required to call the designated person every half hour, for the first two days back. Then we shifted to 1 hour intervals for two days. Finally, we determined that the need for the calling system no longer existed.

We never did have to call an alert, to gather in the woods with our respective cells. But, we were able to develop, and test a system to see how it worked. We found deficiencies, and corrected them.

Though I have only touched on some aspects of the Team, our development was much broader than it appears. The whole exercise was an invaluable lesson, and one that might provide some ideas to those of you who wish to pursue some sort of organization for your own protection.

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Individual Cells

Leaderless Resistance

An Essay by Louis Beam

"Leaderless Resistance" -- Part One

The concept of leaderless resistance was proposed by Col. Ulius Louis Amoss, who was the founder of International Service of Information Incorporated, located in Baltimore, Maryland. Col. Amoss died more than 15 years ago, but during his life he was a tireless opponent of Communism, as well as a skilled intelligence officer.

Col. Amoss first wrote of leaderless resistance on April 17, 1962. His theories of organization were primarily directed against the threat of eventual Communist takeover in the United States. The present writer, with the benefit of having lived many years beyond Col. Amoss, has taken his theories and expounded on them.

Col. Amoss feared the Communists. This author fears the federal government. Communism now represents a threat to no one in the United States, while federal tyranny represents a threat to EVERYONE. The writer has joyfully lived long enough to see the dying breaths of Communism, but may unhappily remain long enough to see the last dying gasps of freedom in America.

In the hope that, somehow, America can still produce the brave sons and daughters necessary to fight off ever-increasing persecution and oppression, this essay is offered. Frankly, it is too close to call at this point. Those who love liberty, and believe in freedom enough to fight for it, are rare today; but within the bosom of every once great nation, there remains secreted the pearls of former greatness.

They are there. I have looked into their sparkling eyes; sharing a brief moment in time with them as I passed through this life. Relished their friendship, endured their pain, and they mine. We are a band of brothers native to the soil, gaining strength one from another as we have rushed headlong into battle that all the weaker, timid men say we can not win. Perhaps not... but then again, perhaps we can. It's not over till the last freedom fighter is buried or imprisoned, or the same happens to those who would destroy their liberty.

Barring any cataclysmic events, the struggle will yet go on for years. The passage of time will make it clear to even the more slow among us that the government is the foremost threat to the life and liberty of the folk. The government will no doubt make today's oppressiveness look like grade school work compared to what they have planned in the future. Meanwhile, there are those of us who continue to hope that somehow the few can do what the many have not.

We are cognizant that before things get better they will certainly get worse as government shows a willingness to use ever more severe police state measures against dissidents. This changing situation makes it clear that those who oppose state repression must be prepared to alter, adapt, and modify their behavior, strategy, and tactics as circumstances warrant. Failure to consider new methods and implement them as necessary will make the government's efforts at suppression uncomplicated. It is the duty of every patriot to make the tyrant's life miserable. When one fails to do so he not only fails himself, but his people.

With this in mind, current methods of resistance to tyranny employed by those who love our race, culture, and heritage must pass a litmus test of soundness. Methods must be objectively measured as to their effectiveness, as well as to whether they make the government's intention of repression more possible or more difficult. Those not working to aid our objectives must be discarded, or the government benefits from our failure to do so.

As honest men who have banded together into groups or associations of a political or religious nature are falsely labeled "domestic terrorists" or "cultists" and suppressed, it will become necessary to consider other methods of organization, or as the case may very well call for: non- organization.

One should keep in mind that it is not in the government's interest to eliminate all groups. Some few must remain in order to perpetuate the smoke and mirrors for the masses that America is a "free democratic country" where dissent is allowed. Most organizations, however, that possess the potential for effective resistance will not be allowed to continue. Anyone who is so naive as to believe the most powerful government on earth will not crush any who pose a real threat to that power, should not be active, but rather at home studying political history.

The question as to who is to be left alone and who is not, will be answered by how groups and individuals deal with several factors such as: avoidance of conspiracy plots, rejection of feebleminded malcontents, insistence upon quality of the participants, avoidance of all contact with the front men for the federals - the news media - and, finally, camouflage (which can be defined as the ability to blend in the public's eye the more committed groups of resistance with mainstream "kosher" associations that are generally seen as harmless).

Primarily though, whether any organization is allowed to continue in the future will be a matter of how big a threat a group represents. Not a threat in terms of armed might or political ability, for there is none of either for the present, but rather, threat in terms of potentiality. It is potential the federals fear most. Whether that potential exists in an individual or group is incidental. The federals measure potential threat in terms of what might happen

given a situation conducive to action on the part of a resistive organization or individual. Accurate intelligence gathering allows them to assess the potential. Showing one's hand before the bets are made is a sure way to lose.

The movement for freedom is rapidly approaching the point where, for many people, the option of belonging to a group will be non-existent. For others, group membership will be a viable option for only the immediate future. Eventually, and perhaps much sooner than most believe possible, the price paid for membership will exceed any perceived benefit. But for now, some of the groups that do exist often serve a useful purpose either for the newcomer who can be indoctrinated into the ideology of the struggle, or for generating positive propaganda to reach potential freedom fighters. It is sure that, for the most part, this struggle is rapidly becoming a matter of individual action, each of its participants making a private decision in the quietness of his heart to resist: to resist by any means necessary.

It is hard to know what others will do, for no man truly knows another man's heart. It is enough to know what one himself will do. A great teacher once said "know thyself." Few men really do, but let each of us promise ourselves not to go quietly to the fate our would-be masters have planned.

The concept of leaderless resistance is nothing less than a fundamental departure in theories of organization. The orthodox scheme of organization is diagrammatically represented by the pyramid, with the mass at the bottom and the leader at the top. This fundamental of organization is to be seen not only in armies, which are, of course, the best illustration of the pyramid structure, with the mass of soldiery (the privates) at the bottom responsible to corporals; who are in turn responsible to sergeants, and so on up the entire chain of command to the generals at the top. But the same structure is seen in corporations, ladies' garden clubs, and in our political system itself. This orthodox "pyramid" scheme of organization is to be seen basically in all existing political, social, and religious structures in the world today, from the Federal government to the Roman Catholic Church.

The Constitution of the United States, in the wisdom of the Founders, tried to sublimate the essential dictatorial nature pyramidal organization by dividing authority into three: executive, legislative, and judicial. But the pyramid remains essentially untouched.

This scheme of organization, the pyramid, is not only useless, but extremely dangerous for the participants when it is utilized in a resistance movement against state tyranny. Especially is this so in technologically advanced societies where electronic surveillance can often penetrate the structure, thus revealing its chain of command. Experience has revealed over and over again that anti-state political organizations utilizing this method of command and control are easy prey for government infiltration, entrapment, and destruction of the personnel involved. This has been seen repeatedly in the United States where pro-government infiltrators or agent provocateurs weasel their way into patriotic groups and destroy them from within.

In the pyramid form of organization, an infiltrator can destroy anything which is beneath his level of infiltration, and often those above him as well. If the traitor has infiltrated at the top, then the entire organization from the top down is compromised and may be traduced at will.

"Leaderless Resistance" -- Part Two

A recent example of the cell system taken from the left wing of politics are the Communists. The Communists, in order to get around the obvious problems involved in pyramidal organization, developed to an art the cell system. They had numerous independent cells which operated completely isolated from one another and particularly with no knowledge of each other, but were orchestrated together by a central headquarters. For instance, during WWII, in Washington, it is known that there were at least six secret Communist cells operating at high levels in the United States government (plus all the open Communists who were protected and promoted by

President Roosevelt), however, only one of the cells was rooted out and destroyed. How many more actually were operating, no one can say for sure.

The Communist cells which operated in the U.S. until late 1991 under Soviet control could have at their command a leader who held a social position which appeared to be very lowly. He could be, for example, a busboy in a restaurant, but in reality a colonel or a general in the Soviet Secret Service, the KGB. Under him could be a number of cells, and a person active in one cell would almost never have knowledge of individuals who were active in other cells; in fact, the members of the other cells would be supporting that cell which was under attack and ordinarily would lend very strong support to it in many ways. This is at least part of the reason, no doubt, that whenever in the past Communists were attacked in this country, support for them sprang up in many unexpected places.

The effective and efficient operation of a cell system after the Communist model is, of course, dependent upon central direction, which means impressive organization, funding from the top, and outside support, all of which the Communists had. Obviously, American patriots have none of these things at the top or anywhere else, and so an effective cell organization based upon the Soviet system of operation is impossible.

Two things become clear from the above discussion. First, that the pyramid form of organization can be penetrated quite easily and it thus is not a sound method of organization in situations where the government has the resources and desire to penetrate the structure, which is the situation in this country. Secondly, that the normal qualifications for the cell structure based upon the Red model does not exist in the U.S. for patriots. This understood, the question arises "What method is left for those resisting state tyranny?"

The answer comes from Col. Amoss who proposed the "Phantom Cell" mode of organization which he described as Leaderless Resistance. A system of organization that is based upon the cell organization, but does not have any central control or direction, that is in fact almost identical to the methods used by the committees of correspondence during the American Revolution. Utilizing the Leaderless Resistance concept, all individuals and groups operate independently of each other, and never report to a central headquarters or single leader for direction or instruction, as would those who belong to a typical pyramid organization.

At first glance, such a form of organization seems unrealistic, primarily because there appears to be no organization. The natural question thus arises as to how are the "Phantom Cells" and individuals to cooperate with each other when there is no inter-communication or central direction?

The answer to this question is that participants in a program of leaderless resistance through "Phantom Cell" or individual action must know exactly what they are doing and how to do it. It becomes the responsibility of the individual to acquire the necessary skills and information as to what is to be done. This is by no means as impractical as it appears, because it is certainly true that in any movement all persons involved have the same general outlook, are acquainted with the same philosophy, and generally react to given situations in similar ways. The previous history of the committees of correspondence during the American Revolution shows this to be true.

Since the entire purpose of leaderless resistance is to defeat state tyranny (at least in so far as this essay is concerned), all members of phantom cells or individuals will tend to react to objective events in the same way through usual tactics of resistance. Organs of information distribution such as newspapers, leaflets, computers, etc., which are widely available to all, keep each person informed of events, allowing for a planned response that will take many variations. No one need issue an order to anyone. Those idealists truly committed to the cause of freedom will act when they feel the time is ripe, or will take their cue from others who precede them. While it is true that much could be said against this kind of structure as a method of resistance, it must be kept in mind that leaderless resistance is a child of necessity. The alternatives to it have been shown to be unworkable or

impractical. Leaderless resistance has worked before in the American Revolution, and if the truly committed put it to use themselves, it will work now.

It goes almost without saying that Leaderless Resistance leads to very small or even one-man cells of resistance. Those who join organizations to play "let's pretend" or who are "groupies" will quickly be weeded out. While for those who are serious about their opposition to federal despotism, this is exactly what is desired.

From the point of view of tyrants and would-be potentates in the federal bureaucracy and police agencies, nothing is more desirable than that those who oppose them be UNIFIED in their command structure, and that EVERY person who opposes them belong to a pyramid style group. Such groups and organizations are easy to kill. Especially in light of the fact that the Justice (sic) Department promised in 1987 that there would never be another group to oppose them that they did not have at least one informer in! These federal "friends of government" are ZOG or ADL intelligence agents. They gather information that can be used at the whim of a federal D.A. to prosecute. The line of battle has been drawn.

Patriots are REQUIRED, therefore, to make a conscious decision to either aid the government in its illegal spying (by continuing with old methods of organization and resistance), or to make the enemy's job more difficult by implementing effective countermeasures.

Now there will, no doubt, be mentally handicapped people out there who will state emphatically in their best red, white, and blue voice, while standing at a podium with an American flag draped in the background and a lone eagle soaring in the sky above, that, "So what if the government is spying? We are not violating any laws." Such crippled thinking by any serious person is the best example that there is a need for special education classes. The person making such a statement is totally out of contact with political reality in this country, and unfit for leadership of anything more than a dog sled in the Alaskan wilderness. The old "Born on the Fourth of July" mentality that has influenced so much of the Aryan-American Patriot's thinking in the past will not save him from the government in the future. "Reeducation" for non-thinkers of this kind will take place in the federal prison system where there are no flags or eagles, but an abundance of men who were "not violating any laws.".

Most groups who "unify" their disparate associates into a single structure have short political lives. Therefore, those movement leaders constantly calling for unity of organization, rather than the desirable Unity of Purpose, usually fall into one of three categories:

1. They may not be sound political tacticians, but rather, just committed men who feel unity would help their cause, while not realizing that the government would greatly benefit from such efforts. The Federal objective, to imprison or destroy all who oppose them, is made easier in pyramid organizations.

2. Or, perhaps, they do not fully understand the struggle they are involved in, and that the government they oppose has declared a state of war against those fighting for faith, folk, freedom, property and constitutional liberty. Those in power will use any means to rid themselves of opposition.

3. The third class calling for unity, and let us hope this is the minority of the three, are men more desirous of the supposed power that a large organization would bestow, than of actually achieving their stated purpose.

Conversely, the LAST thing federal snoops want, if they had any choice in the matter, is a thousand different small phantom cells opposing them. It is easy to see why. Such a situation is an intelligence nightmare for a government intent upon knowing everything they possibly can about those who oppose them. The Federals, able to amass overwhelming strength of numbers, manpower, resources, intelligence gathering, and capability at any given time, need only a focal point to direct their anger [ie Waco]. A single penetration of a pyramid style

organization can lead to the destruction of the whole. Whereas, leaderless resistance presents no single opportunity for the Federals to destroy a significant portion of the resistance.

With the announcement of the Department of Justice (sic) that 300 FBI agents formerly assigned to watching Soviet spies in the U.S. (domestic counter-intelligence) are now to be used to "combat crime," the federal government is preparing the way for a major assault upon those persons opposed to their policies. Many anti-government groups dedicated to the preservation of the America of our Forefathers can expect shortly to feel the brunt of a new federal assault upon liberty.

It is clear, therefore, that it is time to rethink traditional strategy and tactics when it comes to opposing state tyranny, where the rights now accepted by most as being inalienable will disappear. Let the coming night be filled with a thousand points of resistance. Like the fog which forms when conditions are right, and disappears when they are not, so must the resistance to tyranny be.

(Leaderless Resistance first appeared in The Seditionist in 1992. The author, Louis Beam, is one of the most respected racialist leaders in the world (within racialist circles, that is).

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Are Cops Constitutional?

Seton Hall Constitutional L.J. 2001, 685

ARE COPS CONSTITUTIONAL?

Roger Roots*

ABSTRACT

Police work is often lionized by jurists and scholars who claim to employ "textualist" and "originalist" methods of constitutional interpretation. Yet professional police were unknown to the United States in 1789, and first appeared in America almost a half-century *after* the Constitution's ratification. The Framers contemplated law enforcement as the duty of mostly private citizens, along with a few constables and sheriffs who could be called upon when necessary. This article marshals extensive historical and legal evidence to show that modern policing is in many ways inconsistent with the original intent of America's founding documents. The author argues that the growth of modern policing has substantially empowered the state in a way the Framers would regard as abhorrent to their foremost principles.

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PART I

PART II

PART I

INTRODUCTION

Uniformed police officers are the most visible element of America's criminal justice system. Their numbers have grown exponentially over the past century and now stand at hundreds of thousands nationwide.10 Police expenses account for the largest segment of most municipal budgets and generally dwarf expenses for fire, trash, and sewer services.[11] Neither casual observers nor learned authorities

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[10] As of June, 1996, there were more than 700,000 full- and part-time professional state-sworn police in the United States. *See* BUREAU OF JUSTICE STATISTICS, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 1996 (1998). Figures for earlier decades and centuries are difficult to obtain, but a few indicators suggest that the ratio of police per citizen has grown by at least four thousand percent. In 1816, the British Parliament reported that there was at that time one constable for every 18,187 persons in Great Britain. *See* Jerome Hall, *Legal and Social Aspects of Arrest Without a Warrant*, 49 HARVARD L. REV. 566, 582 (1936). Conventional wisdom would suggest that American ratios were, if anything, lower. Today there is approximately one officer for every 386 Americans.

[11] The City of Los Angeles, for example, spends almost half (49.1%) of its annual discretionary budget on police but only 17.7% on fire and 14.8% on public works. *See City of Los Angeles 1999-2000 Budget Summary* (visited Dec. 2000). The City of Chicago spends over forty percent of its annual budget on police. *See Chicago Budget 1999* (visited Dec. 2000). Seattle spends more than $150 million, or 41 percent of its annual budget, on police and police pensions. *See* City of Seattle 2000 Proposed Budget (visited Dec. 2000). The City of New York is one exception, due primarily to New York State's unique system for funding education. Police and the administration of justice constitute the third largest segment, or twelve percent, of the City's budget, after education and human resources. *See* THE CITY OF NEW YORK, EXECUTIVE BUDGET, FISCAL YEAR 2000 1 (2000) (pie chart).

regard the sight of hundreds of armed, uniformed state agents on America's roads and street corners as anything peculiar -- let alone invalid or unconstitutional.

Yet the dissident English colonists who framed the United States Constitution would have seen this modern 'police state' as alien to their foremost principles. Under the criminal justice model known to the Framers, professional police officers were unknown.[12] The general public had broad law enforcement powers and only the executive functions of the law (e.g., the execution of writs, warrants and orders) were performed by constables or sheriffs (who might call upon members of the community for assistance).[13] Initiation and investigation of criminal cases was the nearly exclusive province of private persons.

At the time of the Constitution's ratification, the office of sheriff was an appointed position, and constables were either elected or drafted from the community to serve without pay.[14] Most of their duties involved civil executions rather than criminal law enforcement. The courts of that period were venues for private litigation -- whether civil or criminal -- and the state was rarely a party. Professional police as we know them today originated in American cities during the second quarter of the nineteenth century, when municipal governments drafted citizens to maintain order.[15] The role of these "nightly watch" officers gradually grew to encompass the catching of criminals, which had formerly been the responsibility of individual citizens.[16]

While this historical disconnect is widely known by criminal justice historians, rarely has it been juxtaposed against the Constitution and the Constitution's imposed scheme of criminal justice.[17] "Originalist" scholars of the Constitution have tended to be supportive, rather than critical of modern policing.[18] This article will show, however, that modern policing violates the Framers' most firmly held conceptions of criminal justice.

The modern police-driven model of law enforcement helps sustain a playing field that is fundamentally uneven for different players upon it. Modern police act as an army of assistants for state prosecutors and gather evidence solely with an eye toward the state's interests. Police seal off crime scenes from the purview of defense investigators, act as witnesses of convenience for the state in courts of law, and instigate a substantial amount of criminal activity under the guise of crime fighting. Additionally, police enforce social class norms and act as tools of empowerment for favored interest groups to the

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12 See Carol S. Steiker, Second Thoughts About First Principles, 107 HARV. L. REV. 820, 830 (1994) (saying twentieth century police and "our contemporary sense of 'policing' would be utterly foreign to our colonial forebears").
13 See id.
14 *See id*. at 831 (saying the sole monetary reward for such officers was occasional compensation by private individuals for returning stolen property).
15 *See* CHARLES SILBERMAN, CRIMINAL VIOLENCE, CRIMINAL JUSTICE 314 (1978). The City of Boston, for example, enacted an ordinance requiring drafted citizens to walk the streets "to prevent any danger by fire, and to see that good order is kept." *Id*.
16 *C.f. id*. (mentioning that cops' role of maintaining order predates their role of crime control).
17 *But see, e.g*., Steiker, *supra* note 3, at 824 (saying the "invention ... of armed quasi-military, professional police forces, whose form, function, and daily presence differ dramatically from that of the colonial constabulary, requires that modern-day judges and scholars rethink" Fourth Amendment remedies).
18 *See, e.g*., ROBERT H. BORK, SLOUCHING TOWARDS GOMORRAH: MODERN LIBERALISM AND AMERICAN DECLINE 104 (1996) (criticizing Supreme Court rulings that have "steadily expanded" the rights of criminals and placed limitations upon police conduct).

disadvantage of others.[19] Police are also a political force that constantly lobbies for increased state power and decreased constitutional liberty for American citizens.

THE CONSTITUTIONAL TEXT

The Constitution contains no explicit provisions for criminal law enforcement.[20] Nor did the constitutions of any of the several states contain such provisions at the time of the Founding.[21] Early constitutions enunciated the intention that law enforcement was a universal duty that each person owed to the community, rather than a power of the government.[22] Founding-era constitutions addressed law enforcement from the standpoint of individual liberties and placed explicit barriers upon the state.[23]

PRIVATE PROSECUTORS

For decades before and after the Revolution, the adjudication of criminals in America was governed primarily by the rule of private prosecution: (1) victims of serious crimes approached a community grand jury, (2) the grand jury investigated the matter and issued an indictment only if it concluded that a crime should be charged, and (3) the victim himself or his representative (generally an attorney but sometimes a state attorney general) prosecuted the defendant before a petit jury of twelve men.[24]

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[19] *Cf*. E.X. BOOZHIE, THE OUTLAW'S BIBLE 15 (1988) (stating the true mission of police is to protect the status quo for the benefit of the ruling class).

[20] As a textual matter, the Constitution grants authority to the federal government to define and punish criminal activity in only five instances. Article I grants Congress power (1) "[t]o provide for the Punishment of counterfeiting the Securities and current Coin of the United States," art. I, § 8, cl. 6; (2) "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations," *id*, cl. 10; (3) "[t]o make Rules for the Government and Regulation of the land and naval Forces," *id*. at cl. 14; (4) "[t]o exercise exclusive Legislation in all Cases whatsoever, over" the District of Columbia and federal reservations. *id*. at cl. 17; *see also* Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 426 (1821) ("Congress has a right to punish murder in a fort, or other place within its exclusive jurisdiction; but no general right to punish murder committed within any of the states"). Likewise, (5) Article III defines the crime of "Treason against the United States" and grants to Congress the "Power to declare [its] Punishment...." U.S. CONST. art. III, § 3.

[21] Several early constitutions expressed a right of citizens "to be protected in the enjoyment of life, liberty and property," and therefore purported to bind citizens to contribute their proportion toward expenses of such protection. *See* DELAWARE DEC. OF RIGHTS of Sept. 11, 1776, § 10; PA. CONST. of Sept. 28, 1776, Dec. of Rights, § VIII; VT. CONST. of July 8, 1777, Chap. 1, § IX. Other typical provisions required that the powers of government be exercised only by the consent of the people, *see, e.g*., N.C. CONST. of Dec. 18, 1776, § V, and that all persons invested with government power be accountable for their conduct. *See* MD. CONST. of Nov. 11, 1776, § IV.

[22] The constitutions of several early states expressed the intent that citizens were obligated to carry out law enforcement duties. *See, e.g*., DELAWARE DEC. OF RIGHTS of Sept. 11, 1776, § 10 (providing every citizen shall yield his personal service when necessary, or an equivalent); N.H. CONST. of June 2, 1784, Part I, art. I, § XII (providing that every member of the community is bound to "yield his personal service when necessary, or an equivalent"); VT. CONST. of July 8, 1777, Chap. 1, § IX (providing every member of society is bound to contribute his proportion towards the expenses of his protection, "and to yield his personal service, when necessary").

[23] *C.f*. JAMES BOVARD, LOST RIGHTS: THE DESTRUCTION OF AMERICAN LIBERTY 51 (1st ed. 1994) (discussing Revolution-era perception that the law was a means to restrain government and to secure rights of citizens).

[24] Originally, all criminal procedure fell under the rule of private vengeance. A victim or aggrieved party made a direct appeal to county authorities to force a defendant to face him.

Criminal actions were only a step away from civil actions -- the only material difference being that criminal claims ostensibly involved an interest of the public at large as well as the victim.[25] Private prosecutors acted under authority of the people and in the name of the state -- but for their own vindication.[26] The very term "prosecutor" meant criminal plaintiff and implied a private person.[27] A *government* prosecutor was referred to as an attorney general and was a rare phenomenon in criminal cases at the time of the nation's founding.[28] When a private individual prosecuted an action in the name of the state, the attorney general was required to allow the prosecutor to use his name -- even if the attorney general himself did not approve of the action.[29]

Private prosecution meant that criminal cases were for the most part limited by the need of crime victims for vindication.[30] Crime victims held the keys to a potential defendant's fate and often negotiated the settlement of criminal cases.[31] After a case was initiated in the name of the people, however, private prosecutors were prohibited from withdrawing the action pursuant to private agreement with the defendant.[32] Court intervention was occasionally required to compel injured crime victims to appear against offenders in court and "not to make bargains to allow [defendants] to escape conviction, if they ... repair the injury."[33]

See ARTHUR TRAIN, THE PRISONER AT THE BAR 120 n. (1926). From these very early times, "grand" or "accusing" juries were formed to examine the accusations of private individuals. *Id*. at 121 n. Although the accusing jury frequently acted as a trial jury as well, it eventually evolved into a separate body that took on the role of accuser on behalf of aggrieved parties. It deliberated secretly, acting on its members' own personal information and upon the application of injured parties. *Id*. at 124 n.

[25] In the early decades of American criminal justice, criminal cases were hardly different from civil actions, and could easily be confused for one another if "the public not being joined in it." Clark v. Turner, 1 Root 200 (Conn. 1790) (holding action for assault and battery was no more than a civil case because the public was not joined). It was apparently not unusual for trial judges themselves to be confused about whether a case was criminal or civil, and to make judicial errors regarding procedural differences between the two types of cases. *See* Meacham v. Austin, 5 Day 233 (Conn. 1811) (upholding lower court's dismissal of criminal verdict because the case's process had been consistent with civil procedure rather than criminal procedure).

[26] *See* Respublica v. Griffiths, 2 Dall. 112 (Pa. 1790) (involving action by private individual seeking public sanction for his prosecution).

[27] *See, e.g*., Smith v. State, 7 Tenn. 43 (1846) (using the term prosecutor to describe a private person); Plumer v. Smith, 5 N.H. 553 (1832) (same); Commonwealth v. Harkness, 4 Binn. 193 (Pa. 1811) (same).

[28] *See* Harold J. Krent, *Executive Control Over Criminal Law Enforcement: Some Lessons From History*, 38 AM. U. L. REV. 275, 281-90 (1989) (saying that any claim that criminal law enforcement is a 'core' or exclusive executive power is historically inaccurate and therefore the Attorney General need not be vested with authority to oversee or trigger investigations by the independent counsel).

[29] *See* Respublica v. Griffiths, 2 Dall. 112 (Pa. 1790) (holding the Attorney General must allow his name to be used by the prosecutor).

[30] Private prosecutors generally had to pay the costs of their prosecutions, even though the state also had an interest. *See* Dickinson v. Potter, 4 Day 340 (Conn. 1810). Government attorneys general took over the prosecutions of only especially worthy cases and pursued such cases at public expense. *See* Waldron v. Turtle, 4 N.H. 149, 151 (1827) (stating if a prosecution is not adopted and pursued by the attorney general, "it will not be pursued at the public expense, although in the name of the state").

[31] *See* State v. Bruce, 24 Me. 71, 73 (1844) (stating a threat by crime victim to prosecute a supposed thief is proper but extortion for pecuniary advantage is criminal).

[32] *See* Plumer v. Smith, 5 N.H. 553 (1832) (holding promissory note invalid when tendered by a criminal defendant to his private prosecutor in exchange for promise not to prosecute).

[33] Shaw v. Reed, 30 Me. 105, 109 (1849).

Grand jurors often acted as the detectives of the period. They conducted their investigations in the manner of neighborhood sleuths, dispersing throughout the community to question people about their knowledge of crimes.[34] They could act on the testimony of one of their own members, or even on information known to grand jurors before the grand jury convened.[35] They might never have contact with a government prosecutor or any other officer of the executive branch.[36]

Colonial grand juries also occasionally served an important law enforcement need by account of their sheer numbers. In the early 1700s, grand jurors were sometimes called upon to make arrests in cases where suspects were armed and in large numbers.[37] A lone sheriff or deputy had reason to fear even approaching a large group "without danger of his life or having his bones broken."[38] When a sheriff was unable to execute a warrant or perform an execution, he could call upon a *posse* of citizens to assist him.[39] The availability of the *posse comitatus* meant that a sheriffs resources were essentially unlimited.[40]

LAW ENFORCEMENT AS A UNIVERSAL DUTY

Law enforcement in the Founders' time was a *duty* of every citizen.[41] Citizens were expected to be armed and equipped to chase suspects on foot, on horse, or with wagon whenever summoned. And when called upon to enforce the laws of the state, citizens were to respond "not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities [were] convenient and at hand."[42] Any person could act in the capacity of a constable without being one,[43] and when summoned by a law enforcement officer, a private person became a temporary member of the police department.[44] The law also presumed that any person acting in his public capacity as an officer was rightfully appointed.[45]

Laws in virtually every state still require citizens to aid in capturing escaped prisoners, arresting criminal suspects, and executing legal process. The duty of citizens to enforce the law was and is a constitutional one. Many early state constitutions purported to bind citizens into a universal obligation to perform law

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[34] *See* In re April 1956 Term Grand Jury, 239 F.2d 263 (7th Cir. 1956).
[35] *See* Goodman v. United States, 108 F.2d 516 (9th Cir. 1939).
[36] *See* Krent, *supra* note 19, at 293
[37] *C.f.* Ellen D. Larned, 1 History of Windham County, Connecticut 272-73 (1874) (recounting attempts by Windham County authorities in 1730 to arrest a large group of rioters who broke open the Hartford Jail and released a prisoner).
[38] *Id*. at 273
[39] *See* Buckminster v. Applebee, 8 N.H. 546 (1837) (stating the sheriff has a duty to raise the posse to aid him when necessary).
[40] *See* Waterbury v. Lockwood, 4 Day 257, 259-60 (Conn. 1810) (citing English cases).
[41] See Jerome Hall, Legal and Social Aspects of Arrest Without A Warrant, 49 HARV. L. REV. 566, 579 (1936).
[42] Barrington v. Yellow Taxi Corp., 164 N.E. 726, 727 (N.Y. 1928).
[43] *See* Eustis v. Kidder, 26 Me. 97, 99 (1846).
[44] By the early 1900s, courts held that civilians called into posse service who were killed in the line of duty were entitled to full death benefits. *See* Monterey County v. Rader, 248 P. 912 (Cal. 1926); Village of West Salem v. Industrial Commission, 155 N.W. 929 (Wis. 1916).
[45] United States v. Rice, 27 Fed. Cas. 795 (W.D.N.C. 1875).

enforcement functions, yet evinced no mention of any state power to carry out those same functions.[46] But the law enforcement duties of the citizenry are now a long-forgotten remnant of the Framers' era. By the 1960s, only twelve percent of the public claimed to have ever personally acted to combat crime.[47]

The Founders could not have envisioned 'police' officers as we know them today. The term "police" had a slightly different meaning at the time of the Founding.[48] It was generally used as a verb and meant to watch over or monitor the public health and safety.[49] In Louisiana, "police juries" were local governing bodies similar to county boards in other states.[50] Only in the mid-nineteenth century did the term 'police' begin to take on the persona of a uniformed state law enforcer.[51] The term first crept into Supreme Court jurisprudence even later.[52]

Prior to the 1850s, rugged individualism and self-reliance were the touchstones of American law, culture, and industry. Although a puritan cultural and legal ethic pervaded their society, Americans had great toleration for victimless misconduct.[53] Traffic disputes were resolved through personal negotiation and common law tort principles, rather than driver licenses and armed police patrol.[54] Agents of the state

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[46] The Constitution is not without provisions for criminal procedure. Indeed, much of the Bill of Rights is an outline of basic criminal procedure. *See* LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 118 (2d ed. 1985). But these provisions represent enshrinements of individual liberties rather than government power. The only constitutional provisions with regard to criminal justice represent *barriers* to governmental power, rather than provisions for that power. Indeed, the Founders' intent to protect individual liberties was made clear by the language of the Ninth Amendment and its equivalent in state constitutions of the founding era. The Ninth Amendment, which declares that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," provides a clear indication that the Framers assumed that persons may do whatever is not justly prohibited by the Constitution rather than that the government may do whatever is not justly prohibited to it. *See* Randy E. Barnett, *Introduction: James Madison's Ninth Amendment, in* THE RIGHTS RETAINED BY THE PEOPLE 43 (Randy E. Barnett ed., 1989).

[47] *See* JAMES S. CAMPBELL ET AL., LAW AND ORDER RECONSIDERED: REPORT OF THE TASK FORCE ON LAW AND LAW ENFORCEMENT TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE 450 (1970) (discussing survey by the President's Commission on Law Enforcement and Administration of Justice).

[48] The term "policing" originally meant promoting the public good or the community life rather than preserving security. *See* Rogan Kersh et al., *"More a Distinction of Words than Things": The Evolution of Separated Powers in the American States*, 4 ROGER WILLIAMS U. L. REV. 5, 21 (1998).

[49] *See, e.g.*, N.C. CONST. of Dec. 18, 1776, Dec. of Rights, § II (providing that people of the state have a right to regulate the internal government and "police thereof); PA. CONST. of Sept. 28, 1776, Dec. of Rights, art. III (stating that the people have a right of "governing and regulating the internal police of [the people]").

[50] *See* Police Jury v. Britton, 82 U.S. (15 Wall.) 566 (1872). The purpose of such juries was 1) to police slaves and runaways, (2) to repair roads, bridges, and other infrastructure, and (3) to lay taxes as necessary for such acts. *Id*. at 568. *See also* BLACK'S LAW DICTIONARY 801 (abridged 6th ed. 1991).

[51] When Blackstone wrote of offenses against "the public police and economy" in 1769, he meant offenses against the "due regulation and domestic order of the kingdom" such as clandestine marriage, bigamy, rendering bridges inconvenient to pass, vagrancy, and operating gambling houses. 4 WILLIAM BLACKSTONE, COMMENTARIES 924-27 (George Chase ed., Baker, Voorhis& Co. 1938) (1769).

[52] *See, e.g.*, Wolf v. Colorado, 338 U.S. 25,27-28 (1948) (proclaiming that "security of one's privacy against arbitrary intrusion by the police" is at the core of the Fourth Amendment (clearly a slight misstatement of the Founders' original perception)).

[53] *See* Roger Lane, *Urbanization and Criminal Violence in the 19th Century: Massachusetts as a Test Case, in* NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES 445, 451 (Graham & Gurr dir., 1969) (saying citizens were traditionally supposed to take care of themselves, with help of family, friends, or servants "when available").

[54] *See, e.g.*, Kennard v. Burton, 25 Me. 39 (1845) (involving collision between two wagons).

did not exist for the protection of the individual citizen. The night watch of early American cities concerned itself primarily with the danger of fire, and watchmen were often afraid to enter some of the most notorious neighborhoods of cities like Boston.[55]

At the time of Tocqueville's observations (in the 1830s), "the means available to the authorities for the discovery of crimes and arrest of criminals [were] few,"[56] yet Tocqueville doubted "whether in any other country crime so seldom escapes punishment."[57] Citizens handled most crimes informally, forming committees to catch criminals and hand them over to the courts.[58] Private mobs in early America dealt with larger threats to public safety and welfare, such as houses of ill fame.[59] Nothing struck a European traveler in America, wrote Tocqueville, more than the absence of government in the streets.[60]

Formal criminal justice institutions dealt only with the most severe crimes. Misdemeanor offenses had to be dealt with by the private citizen on the private citizen's own terms. "The farther back the [crime rate] figures go," according to historian Roger Lane, "the higher is the relative proportion of serious crimes."[61] In other words, before the advent of professional policing, fewer crimes -- and only the most serious crimes -- were brought to the attention of the courts.

After the 1850s, cities in the northeastern United States gradually acquired more uniformed patrol officers. The criminal justice model of the Framers' era grew less recognizable. The growth of police units reflected a "change in attitude" more than worsening crime rates.[62] Americans became less tolerant of violence in their streets and demanded higher standards of conduct.[63] Offenses which had formerly earned two-year sentences were now punished by three to four years or more in a state penitentiary.[64]

POLICE AS SOCIAL WORKERS

Few of the duties of Founding-era sheriffs involved criminal law enforcement. Instead, *civil* executions, attachments and confinements dominated their work.[65] When professional police units first arrived on the American scene, they functioned primarily as protectors of public safety, health and welfare. This

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[55] Lane, *supra* note 44, at 451.
[56] ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 96 (J.P. Mayer ed., Harper Perennial Books 1988) (1848).
[57] *Id*.
[58] *See id*. at 96.
[59] See Pauline Maier, Popular Uprisings and Civil Authority in Eighteenth-Century America, 27 WM. & MARY Q. 3-35 (1970).
[60] DE TOCQUEVILLE, *supra* note 47, at 72.
[61] Lane, *supra* note 44, at 450.
[62] See id.
[63] *Id*.
[64] *See id*. at 451.
[65] *See, e.g*., Lamb v. Day, 8 Vt. 407 (1836) (involving suit against constable for improper execution of civil writ); Tomlinson v. Wheeler, 1 Aik. 194 (Vt. 1826) (involving sheriff's neglect to execute civil judgment); Stoyel v. Edwards, 3 Day 1 (1807) (involving sheriffs execution of civil judgment).

role followed the "bobbie" model developed in England in the 1830s by the father of professional policing, Sir Robert Peel.[66]

Early police agencies provided a vast array of municipal services, including keeping traffic thoroughfares clear. Boston police made 30,681 arrests during one fiscal year in the 1880s, but in the same year reported 1,472 accidents, secured 2,461 buildings found open, reported thousands of dangerous and defective streets, sidewalks, chimneys, drains, sewers and hydrants, tended to 169 corpses, assisted 148 intoxicated persons, located 1,572 lost children, reported 228 missing (but only 151 found) persons, rescued seven persons from drowning, assisted nearly 2,000 sick, injured, and insane persons, found 311 stray horse teams, and removed more *than fifty thousand* street obstructions.[67]

Police were a "kind of catchall or residual welfare agency,"[68] a lawful extension of actual state 'police powers.'[69] In the Old West, police were a sanitation and repair workforce more than a corps of crime-fighting gun-slingers. Sheriff Wyatt Earp of OK Corral fame, for example, repaired boardwalks as part of his duties.[70]

THE WAR ON CRIME

Toward the end of the nineteenth century, police forces took on a brave new role: crime-fighting. The goal of maintaining public order became secondary to chasing lawbreakers. The police cultivated a perception that they were public heroes who "fought crime" in the general, rather than individual sense.

The 1920s saw the rise of the profession's second father -- or perhaps its wicked stepfather -- J. Edgar Hoover.[71] Hoover's Federal Bureau of Investigation (FBI) came to epitomize the police profession in its sleuth and intelligence-gathering role. FBI agents infiltrated mobster organizations, intercepted

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[66] If the modern police profession has a father, it is Sir Robert Peel, who founded the Metropolitan Police of London in 1829. *See* SUE TITUS REID, CRIMINAL JUSTICE: BLUEPRINTS 58 (5th ed. 1999) (attributing the founding of the first modern police force to Peel). Peel's uniformed officers -- nicknamed 'Bobbies' after the first name of their founder -- operated under the direction of a central headquarters (Scotland Yard, named for the site once used by the Kings of Scotland as a residence), walking beats on a full-time basis to prevent crime. *See id*. Less than three decades later, Parliament enacted a statute requiring every borough and county to have a London-type police force. *See id*.
The 'Bobbie' model of policing caught on more slowly in the United States, but by the 1880s most major American cities had adopted some type of full-time paid police force. *See id*. at 59 (noting that the county sheriff system continued in rural areas).
[67] *See* LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 151-52 (1993) (citation omitted).
[68] *Id*. at 151.
[69] *See id*. at 152 (describing early police use of station houses as homeless shelters for the poor). This same type of public problem-solving still remains a large part of police work. Police are called upon to settle landlord-tenant disputes, deliver emergency care, manage traffic, regulate parking, and even to respond to alleged haunted houses. *See id*. at 151 (recounting 1894 alleged ghost incident in Oakland, California). Police continue to provide essential services to communities, especially at night and on weekends when they are the only social service agency. *See* SILBERMAN, *supra* note 6, at 321.
[70] *See* GARRY WILLS, A NECESSARY EVIL: A HISTORY OF AMERICAN DISTRUST OF GOVERNMENT 248 (1999) (citation omitted).
[71] *See* REID, *supra* note 57, 65 (5th ed. 1999).

communications between suspected criminals, and gathered intelligence for both law enforcement and political purposes.

This new view of police as soldiers locked in combat against crime caught on quickly.[72] The FBI led local police to develop integrated repositories of fingerprint, criminal, and fraudulent check records. The FBI also took over the gathering of crime statistics (theretofore gathered by a private association),[73] and went to war against "Public Enemy Number One" and others on their "Ten Most Wanted" list.[74] Popular culture began to see police as a "thin blue line," that "serves and protects" civilized society from chaos and lawlessness.[75]

THE ABSENCE OF CONSTITUTIONAL CRIME-FIGHTING POWER

But the constitutions of the Founding Era gave no hint of any thin blue line. Nothing in their texts enunciated any governmental power to "fight crime" at all. "Crime-fighting" was intended as the domain of individuals touched by crime. The original design under the American legal order was to restore a semblance of *private* justice. The courts were a mere forum, or avenue, for private persons to attain justice from a malfeasor.[76] The slow alteration of the criminal courts into a venue only for the *government's* claims against private persons turned the very spirit of the Founders' model on its head.

To suggest that modern policing is extraconstitutional is not to imply that every aspect of police work is constitutionally improper.[77] Rather, it is to say that the totality and effect of modern policing negates the meaning and purpose of certain constitutional protections the Framers intended to protect and carry forward to future generations. Modern-style policing leaves many fundamental constitutional interests utterly unenforced.

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[72] *See* JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 129 (1993).
[73] See id.
[74] *See id*. at 130
[75] *See* E.X. BOOZHIE, THE OUTLAW'S BIBLE 15 (1988).
[76] Private prosecution was not without costs to taxpayers. The availability of free courtrooms to air grievances tended to promote litigation. In 1804, the Pennsylvania legislature acted to allow juries to make private prosecutors pay the costs of prosecution in especially trifling cases. Act of Dec. 8, 1804 PL3, 4 Sm L 204 (repealed 1860). Private persons were thereafter liable for court costs if they omitted material exculpatory information from a grand jury, thereby causing a grand jury to indict without knowledge of potential defenses. *See* Commonwealth v. Harkness, 4 Binn. 194 (Pa. 1811). This protection, like many others, was lost when police and public prosecutors took over the criminal justice system in the twentieth century. *See* United States v. Williams, 504 U.S. 36 (1992) (holding prosecutor has no duty to present exculpatory evidence to grand jury).
[77] In the American constitutional scheme, the states have 'general jurisdiction,' meaning they may regulate for public health and welfare and enact whatever means to enforce such regulation as is necessary and constitutionally proper. *See, e.g.*, Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985), National League of Cities v. Usery, 426 U.S. 833 (1976) (both standing for the general proposition that states have constitutional power to provide for protection, health, safety, and quality of life for their citizens). *See also* Lawrence Tribe, American Constitutional Law, §§ 6-3, 7-3 (2d ed. 1988). State and municipal police forces can therefore be viewed as constitutional to the extent they actually carry out the lawful enactments of the state.

Americans today, for example, are far more vulnerable to invasive searches and seizures by the state than were the Americans of 1791.[78] The Framers lived in an era in which much less of the world was in "plain view" of the government and a "stop and frisk" would have been rare indeed.[79] The totality of modern policing also places pedestrian and vehicle travel at the mercy of the state, a development the Framers would have almost certainly never sanctioned. These infringements result not from a single aspect of modern policing, but from the whole of modern policing's control over large domains of private life that were once "policed" by private citizens.

THE DEVELOPMENT OF DISTINCTIONS

The treatment of law enforcement in the courts shows that the law of crime control has changed monumentally over the past two centuries. Under the common law, there was no difference whatsoever between the privileges, immunities, and powers of constables and those of private citizens. Constables were literally and figuratively clothed in the same garments as everyone else and faced the same liabilities -- civil and criminal -- as everyone else under identical circumstances. Two centuries of jurisprudence, however, have recast the power relationships of these two roles dramatically.

Perhaps the first distinction between the rights of citizen and constabulary came in the form of increased power to arrest. Early in the history of policing, courts held that an officer could arrest if he had "reasonable belief both in the commission of a felony and in the guilt of the arrestee.[80] This represented a marginal yet important distinction from the rights of a "private person," who could arrest only if a felony had *actually* been committed.[81] It remains somewhat of a mystery, however, where this distinction was first drawn.[82] Scrutiny of the distinction suggests it arose in England in 1827 for more than a generation after ratification of the Bill of Rights in the United States.[83]

Moreover, the distinction was illegitimate from its birth, being a bastardization of an earlier rule allowing constables to arrest upon transmission of reasonably reliable information from a third person.[84] The earlier rule made perfect sense when many arrests were executed by private persons. "Authority" was a narrow defense available only to those who met the highest standard of accuracy.[85] But when

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[78] *See infra* notes 285-398 and their accompanying text.
[79] *See* Silas J. Wasserstrom, *The Incredible Shrinking Fourth Amendment*, 21 AM. CRIM. L. REV. 257, 347 (1984).
[80] See Jerome Hall, Legal and Social Aspects of Arrest Without A Warrant, 49 HARV. L. REV. 566, 567 (1936).
[81] See id.
[82] *See id*. at 567-71 (discussing earliest scholarly references to the distinction). A 1936 Harvard Law Review article suggested the distinction is a false one owed to improper marshalling of scholarship. *See id*. (writing of "the general misinterpretation" resulting from a 1780 case in England).
[83] *See id*. at 575 n.44 (citing the case of *Beckwith v. Philby*, 6 B. & C. 635 (K. B. 1827)).
[84] *See id*. at 571-72. Although official right was apparently considered somewhat greater than that of private citizens during much of the 1700s, the case law enunciates no support for any such distinction until *Rohan* v. *Sawin*, 59 Mass. (5 Cush.) 281 (1850). It was apparently already the common practice of English constables to arrest upon information from the public in the 1780's. *See id*. at 572. The "earlier requirement of a charge of a felony had already been entirely forgotten" in England by the early nineteenth century. *Id*. at 573. According to Hall, the only real distinction in practice in the early nineteenth century was that officers were privileged to draw their suspicions from statements of others, whereas private arrestors had to base their cause for arrest on *their own* reasonable beliefs. *See id*. at 569.
[85] *See* Rohan v. Sawin, 59 Mass. (5 Cush.) 281, 285 (1850).

Americans began to delegate their law enforcement duties to professionals, the law relaxed to allow police to execute warrantless felony arrests upon information received from third parties. For obvious reasons, constables could not be required to be "right" all of the time, so the rule of strict liability for false arrest was lost.[86]

The tradeoff has had the effect of depriving Americans of certainty in the executions of warrantless arrests. Judges now consider only the question of whether there was reasonable ground to suspect an arrestee, rather than whether the arrestee was guilty of any crime. This loss of certainty, when combined with greater deference to the state in most law enforcement matters, has essentially reversed the original intent and purpose of American law enforcement that the state act against stern limitations and at its own peril. Because arrest has become the near exclusive province of professional police, Americans have fewer assurances that they are free from unreasonable arrests.

Distinctions between the privileges of citizens and police officers grew more rapidly in the twentieth century. State and federal lawmakers enshrined police officers with expansive immunities from firearm laws[87] and from laws regulating the use of equipment such as radio scanners, body armor, and infrared scopes.[88] Legislatures also exempted police from toll road charges,[89] granted police confidential telephone numbers and auto registration,[90] and even exempted police from fireworks regulations.[91] Police are also protected by other statutory immunities and protections, such as mandatory death sentences for defendants who murder them,[92] reimbursement of moving expenses when officers receive threats to their lives,[93] and even special protections from assailants infected with the AIDS virus.[94] Officers who illegally eavesdrop, wiretap, or intrude upon privacy are protected by a *statutory* (as well as case law) "good faith" defense,[95] *while* private citizens who do so face up to five years in prison.[96] The tendency of legislatures to equip police with ever-expanding rights, privileges and powers has, if anything, been strengthened rather than limited by the courts.[97]

But this growing power differential contravenes the principles of equal citizenship that dominated America's founding. The great principle of the American Revolution was, after all, the doctrine of limited government.[98] Advocates of the Bill of Rights saw the chief danger of government as the

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[86] See id.
[87] *See* 18 U.S.C. § 925 (a)(l) (2000) (exempting government officers from federal firearm disabilities).
[88] *See, e.g.*, CAL. PENAL CODE § 468 (West 1985) (releasing police from liability for possession of sniper scopes and infrared scopes).
[89] *See, e.g.*, FLA. STAT. CH. 338. 155 (1990).
[90] *See, e.g.*, FLA. STAT. CH. 320.025 (1990) (allowing confidential auto registration for police).
[91] *See* ARK. CODE ANN. § 20-22-703 (Michie 2000).
[92] *See* 18 U.S.C. § 1114 (amended 1994) (providing whoever murders a federal officer in first degree shall suffer death).
[93] *See* CAL. PENAL CODE § 832.9 (West 1995).
[94] *See, e.g.*, CAL. HEALTH & SAFETY CODE §§ 199.95-199.99 (West 1990) (mandating HIV testing for persons charged with interfering with police officers whenever officers request).
[95] *See* Electronic Communications Privacy Act, 18 U.S.C. 2511 (2000); United States v. Leon, 104 S. Ct. 3405 (1984).
[96] *See* Williams v. Poulos, 11 F.3d 271 (l[st] Cir. 1993).
[97] *See, e.g.*, People v. Curtis, 450 P.2d 33, 35 (Cal. 1969) (speaking of the "[g]eneral acceptance" by courts of the elimination of the right to resist unlawful arrest).
[98] *See* HERBERT J. STORING, WHAT THE ANTI-FEDERALISTS WERE FOR: THE POLITICAL THOUGHT OF THE OPPONENTS OF THE CONSTITUTION 53 (1981). The statements of James Madison when introducing the proposed amendments to the Constitution before the House of Representatives, June 8, 1789, also support such a reading of the Bill of

inherently aristocratic and disparate power of government authority.[99] Founding-era constitutions enunciated the principle that all men are "equally free" and that all government is derived from the people.[100]

RESISTING ARREST

Nothing illustrates the modern disparity between the rights and powers of police and citizen as much as the modern law of resisting arrest. At the time of the nation's founding, any citizen *was privileged* to resist arrest if, for example, probable cause for arrest did not exist or the arresting person could not produce a valid arrest warrant where one was needed.[101] As recently as one hundred years ago, but with a tone that seems as if from some other, more distant age, the United States Supreme Court held that it was permissible (or at least defensible) to shoot an officer who displays a gun with intent to commit a warrantless arrest based on insufficient cause.[102] Officers who executed an arrest without proper warrant were themselves considered trespassers, and any trespassee had a right to violently resist (or even assault and batter) an officer to evade such arrest.[103]

Well into the twentieth century, violent resistance was considered a lawful remedy for Fourth Amendment violations.[104] Even third-party intermeddlers were privileged to forcibly liberate wrongly arrested persons from unlawful custody.[105] The doctrine of non-resistance against unlawful government action was harshly condemned at the constitutional conventions of the 1780s, and both the Maryland and New Hampshire constitutions contained provisions denouncing nonresistance as "absurd, slavish, and destructive of the good and happiness of mankind."[106]

By the 1980s, however, many if not most states had (1) eliminated the common law right of resistance,[107] (2) *criminalized the* resistance of any officer acting in his official capacity,[108] (3)

Rights. House of Representatives, June 8, 1789 Debates, *reprinted in* THE ORIGIN OF THE SECOND AMENDMENT: A DOCUMENTARY HISTORY OF THE BILL OF RIGHTS 1787-1792 647, 657 (David E. Young, ed.) (2d ed. 1995) (stating "the great object in view is to limit and qualify the powers of Government").

[99] *See* STORING, *supra* note 89, at 48.

[100] *See, e.g.*, MD. CONST. of 1776, art. I (declaring that "all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole"); MASS. CONST. of 1780, art. I ("All men are born free and equal, and have certain natural, essential, and unalienable rights"); N.H. CONST. of 1784, art. I ("All men are born equally free and independent").

[101] *See* Coyle v. Hurtin, 10 Johns. 85 (N.Y. 1813).

[102] *See* Bad Elk v. United States, 177 U.S. 529 (1900).

[103] *See* Rex v. Gay, Quincy Mass. Rep. 1761-1772 91 (Mass. 1763) (acquitting assault defendant who beat a sheriff when sheriff attempted to arrest him pursuant to invalid warrant).

[104] See Wolf v. Colorado, 338 U.S. 25, 30 n. 1, 31 n. 2 (1948) (citing cases upholding right to resist unlawful search and seizure).

[105] *See* Adams v. State, 48 S.E. 910 (Ga. 1904).

[106] *See* MD. CONST. of 1776, art. IV; N.H. Const. of 1784, art. X.

[107] *See, e.g.*, State v. Kutchara, 350 N.W.2d 924, 927 (Minn. 1984) (saying Minnesota law does not recognize right to resist unlawful arrest or search); People v. Curtis, 450 P.2d 33, 36 (Cal. 1969) (holding California law prohibits forceful resistance to unlawful arrest).

eliminated the requirement that an arresting officer present his warrant at the scene,[109] and (4) drastically decreased the number and types of arrests for which a warrant is required.[110] Although some state courts have balked at this march toward efficiency in favor of the state,[111] none require the level of protection known to the Framers.[112]

But the right to resist unlawful arrest can be considered a *constitutional* one. It stems from the right of every person to his bodily integrity and liberty of movement, among the most fundamental of all rights.[113] Substantive due process principles require that the government interfere with such a right only to further a compelling state interest[114] -- and the power to arrest the citizenry unlawfully can hardly be characterized as a compelling state interest.[115] Thus, the advent of professional policing has endangered important rights of the American people.

The changing balance of power between police and private citizens is illustrated by the power of modern police to use violence against the population.[116]

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[108] *See, e.g.*, CAL. PENAL CODE § 243 (criminalizing the resistance, delay or obstruction of an officer in the discharge of "any duty of his office"). CAL. PENAL CODE § 834(a) (1957) ("If a person has knowledge ... that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest").

[109] *See, e.g.*, United States v. Charles, 883 F.2d 355 (5th Cir. 1989) (excusing as harmless error the failure of officers executing warrant to have the warrant in hand during raid); United States v. Cafero, 473 F.2d 489, 499 (3d Cir. 1973) (holding failure to deliver copy of warrant to the party being searched or seized does not invalidate search or seizure in the absence of prejudice); Willeford v. State, 625 S.W.2d 88, 90 (Tex. App. 1981) (upholding validity of search and seizure before arrival of warrant). Not only has the requirement that officers show their warrant before executing it been eliminated, but the requirement that officers announce their authority and purpose before executing search warrants has been all but eliminated. *See* Richards v. Wisconsin, 570 U.S. 385 (1997) (eliminating requirement that officers be refused admittance before using force to enter the place to be searched in many cases).

[110] *See* William A. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 MO. L. REV. 771 (1993) (discussing the erosion of requirements for arrest warrants in many jurisdictions).

[111] *See, e.g.*, Polk v. State, 142 So. 480, 481 (Miss. 1932) (striking down statute allowing warrantless arrest for misdemeanors committed outside an officer's presence); Ex Parte Rhodes, 79 So. 462, 462-63 (Ala. 1918) (holding statute unconstitutional which allowed for warrantless arrest for out-of-presence misdemeanors).

[112] *See* Schroeder, *supra* note 101, at 793.

[113] *See* Thor v. Superior Court, 855 P.2d 375, 380 (Cal. 1993) (saying the developing consensus "uniformly recognizes" a patient's right to control his own body, stemming from the "long-standing importance in our Anglo-American legal tradition of personal autonomy and the right of self-determination.") (citations omitted). "For self-determination to have any meaning, it cannot be subject to the scrutiny of anyone else's conscience or sensibilities." *Id.* at 385.

[114] *See* Michael v. Hertzler, 900 P.2d 1144, 1145 (Wyo. 1995) (stating if a statute reaches a fundamental interest, courts are to employ strict scrutiny in making determination as to whether enactment is essential to achieve compelling state interest).

[115] "[Only] the gravest abuses, endangering paramount interests, give occasion for permissible limitation." Thomas v. Collins, 323 U.S. 516, 530 (1945). A "compelling state interest" is defined as "[o]ne which the state is forced or obliged to protect." BLACK'S LAW DICTIONARY 282 (6th ed. 1990) (citing Coleman v. Coleman, 291 N.E.2d 530, 534 (1972)).

[116] The American constitutional order grants to every individual a privilege to stand his ground in the face of a violent challenger and meet violence with violence. A "duty to retreat" evolved in some jurisdictions, however, where a defender contemplates the use of *deadly force. See* WAYNE R. LAFAVE & AUSTIN W. SCOTT, CRIMINAL LAW 461 (2d ed. 1986). But with police, the courts have never imposed a duty to retreat. *See id.* This, combined with the recurring police claim that an attacker might get close enough to grasp the officer's sidearm, has meant, in practical terms, that an officer may repel even a minor physical threat with deadly force.

The effect of this exception for law enforcement officers has been to grant an almost absurd advantage to police in 'self-defense' incidents. Not only do cops have no duty to retreat, but they seem privileged to kill whenever a plausible threat of any injury manifests itself. *See infra*, notes 115-147, and accompanying text. Cops -- unlike the general public -- appear

As professional policing became more prevalent in the twentieth century, police use of deadly force went largely without clearly delineated guidelines (outside of general tort law).[117] Until the 1970s, police officers shot and killed fleeing suspects (both armed and unarmed) at their own discretion or according to very general department oral policies.[118] Officers in some jurisdictions made it their regular practice to shoot at speeding motorists who refused orders to halt.[119] More than one officer tried for murder in such cases -- along with fellow police who urged dismissals -- argued that such killings were in the discharge of official duties.[120] Departments that adopted written guidelines invariably did so in response to outcries following questionable shootings.[121] Prior to 1985, police were given near total discretion to fire on the public wherever officers suspected that a fleeing person had committed a felony.[122] More than 200 people were shot and killed by police in Philadelphia alone between 1970 and 1983.[123]

In 1985, the United States Supreme Court purported to stop this carnage by invalidating the use of deadly force to apprehend unarmed, nonviolent suspects.[124] *Tennessee v. Garner*[125] involved the police killing of an unarmed juvenile burglary suspect who, if apprehended alive, would likely have been sentenced to probation.[126] The Court limited police use of deadly force to cases of self defense or defense of others.[127]

As a practical matter, however, the *Garner* rule is much less stringent. Because federal civil rights actions inevitably turn not on a strict constitutional rule (such as the *Garner* rule), but on the perception of a defendant officer, officers enjoy a litigation advantage over all other parties.[128] In no reported case

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excused whenever they open fire on an individual who threatens *any* harm -- even utterly nonlethal -- against them, such as a verbal threat to punch the officer combined with a step forward. *See infra*, notes 123-147, and accompanying text.

[117] *See* James J. Fyfe, *Police Use of Deadly Force: Research and Reform, in* THE CRIMINAL JUSTICE SYSTEM: POLITICS AND POLICIES 134-40 (George F. Cole & Mare G. Gertz eds., 7th ed. 1998).

[118] *Id*. at 135 (quoting Chapman and Crocket).

[119] *See* People v. Klein, 137 N.E. 145, 149 (Ill. 1922) (reporting that "numerous" peace officers testified that shooting was the customary method of arresting speeders during trial of peace officer accused of murder).

[120] *See id*.; Miller v. People, 74 N.E. 743 (Ill. 1905) (involving village marshal who shot and killed speeding carriage driver).

[121] *See* Fyfe, *supra* note 108, at 137.

[122] See id. at 140.

[123] *See id*. at 141 (table showing fatal shootings per 1,000 police officers, Philadelphia). A study of Philadelphia P.D. firearm discharges from 1970 through 1978 found only two cases that resulted in departmental discipline against officers on duty. *See id*. at 147 n.2. One case involved an officer firing unnecessary shots into the air; the other involved an officer who shot and killed his wife in a police station during an argument over his paycheck. *See id*.

[124] See Tennessee v. Garner, 471 U.S. 1 (1985).

[125] 471 U.S. 1 (1985).

[126] *See* Fyfe, *supra* 108, at 136.

[127] The *Garner* decision has been interpreted in different ways by different courts and law-making bodies. *See* Michael R. Smith, *Police Use of Deadly Force: How Courts and Policy-Makers Have Misapplied Tennessee v. Garner*, 1 KAN. J. L. & PUB. POL'Y, 100, 100-01 (1998). Smith argues that many of these interpretations stem from inaccurate readings of *Garner* and that lower courts have failed to hold police officers liable according to the standard required by the Supreme Court. *See id*.

[128] On behalf of modern police, courts have adopted a qualified immunity defense to police misconduct claims. Essentially, where cops can justify by plausible explanation that their conduct was within the bounds of their occupational duties, there is a "good faith" defense. *See* Harlow v. Fitzgerald, 457 U.S. 800 (1982); Procunier v. Navarette, 434 U.S. 555 (1978); Imbler v. Pachtman, 424 U.S. 409 (1976); Wood v. Strickland, 420 U.S. 308 (1975). But as David Rudovsky points out, the "good faith" defense is an artificial ingredient to normal tort liability. "The standard rule," notes Rudovsky, "is that a violation of another's rights or the failure to adhere to prescribed standards of conduct constitutes grounds for liability." David Rudovsky, *The Criminal Justice System and the Role of the Police, in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE, 242,

has a judge or jury held an officer liable who used deadly force where a mere "reasonable" belief that human life was in imminent danger existed.[129] Some lower courts have interpreted *Garner* to permit deadly force even where suspects pose no immediate and direct threat of death or serious injury to others.[130] The U.S. Ninth Circuit Court of Appeals recently denied the criminal liability of an agent who shot and killed an innocent person to prevent another person from retreating to "take up a defensive position," drawing criticism from Judge Kozinski that the court had adopted the "007 standard" for police shootings.[131]

Untold dozens, if not hundreds, of Americans have been shot in the back while fleeing police, even after the *Garner* decision. Police have shot and killed suspects who did nothing more than make a move,[132] reach for their identification too quickly,[133] reach into a jacket or pocket,[134] "make a motion" of going for a gun,[135] turn either toward or away from officers,[136] 'pull away' from an officer as an officer opened a car door,[137] rub their eyes and stumble forward after a mace attack,[138] or allegedly lunge with a knife,[139] a hatchet,[140]or a ballpoint pen.[141] Cops have also been known to open fire on and kill persons who brandished or refused to drop virtually any hand-held object -- a Jack Daniel's whiskey bottle,[142] a metal rod,[143] a wooden stick,[144] a kitchen knife (even while eating dinner),[145] a screwdriver,[146] a rake[147] -- or even refused an order to raise their hands.[148]

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248 (David Kairys ed., 1982). The "good faith" defense for police is thus an artificial layer of tort immunity protection not normally available to other types of litigants. Under the standard rules of tort law, after all, a defendant's good faith, intent, or knowledge of the law are irrelevant. *See id*. at 248.

[129] *See* Smith, *supra* note 118, at 117.

[130] *See id*. at 106.

[131] Idaho v. Horiuchi, 215 F.3d 986 (9th Cir. 2000) (Kozinski, J., dissenting).

[132] OCTOBER 22 COALITION TO STOP POLICE BRUTALITY ET AL., STOLEN LIVES: KILLED BY LAW ENFORCEMENT 307 (2d. ed. 1999) (hereinafter "STOLEN LIVES") (saying officer shot and killed victim after victim 'made a move' following a foot chase).

[133] *See id*. at 207 (listing a 1993 Michigan case).

[134] *See id*. at 262 (reporting 1990 Brooklyn case in which cop had shot unarmed teenage suspect in back of head for allegedly reaching into jacket).

[135] *See id*. at 250 (reporting 1996 New York case in which man was shot 24 times by police while sitting in car with his hands in the air); *id*. at 252 (reporting shooting of alleged car thief after motion as if they were going for a gun').

[136] *See id*. at 262 (reporting 1990 Bronx shooting precipitated by the decedent turning toward an officer as officer opened door of decedent's cab).

[137] *See id*. at 263 (reporting 1988 New York case initiated when a driver made illegal turn and ending with police pumping 16 bullets into her).

[138] *See id*. at 262 (reporting 1990 Brooklyn case in which decedent was shot nine times while standing and twice in back while lying on ground).

[139] *See id*. at 240 (reporting a 1998 New York case).

[140] *See id*. at 232 (reporting 1991 New Mexico case).

[141] *See id*. at 220 (reporting 1998 Nevada case).

[142] *See id*. at 29.

[143] *Id*. at 44.

[144] *Id*. at 46. The possession of a wooden stick has cost more than one person his life at the hands of police. *See also id*. at 68.

[145] *Id*. at 53.

[146] *Id*. at 53.

[147] See Detroit Police Kill Mentally Ill Deaf Man, BOSTON GLOBE, Aug. 31, 2000 at A8.

[148] *See* STOLEN LIVES, *supra* note 123, at 57. [140] *See id*. at 60.

Cops who shoot an individual holding a shiny object that can be said to resemble a gun -- such as a cash box,[149] a shiny silver pen,[150] a TV remote control,[151] or even a can opener[152] -- are especially likely to avoid liability. In line with this defense, police officers nationwide have been caught planting weapons on their victims in order to make shootings look like self defense.[153] In one of the more egregious examples ever proven in court, Houston police were found during the 1980s to have utilized an unofficial *policy* of planting guns on victims of police violence.[154] Seventy-five to eighty percent of all Houston officers apparently carried "throw-down" weapons for such purposes.[155] Only the dogged persistence of aggrieved relatives and the firsthand testimony of intrepid witnesses unraveled the police cover-up of the policy.[156]

Resisting arrest, defending oneself, or fleeing may also place an American in danger of being killed by police.[157] Although the law clearly classifies such killings as unlawful, police are rarely made to account for such conduct in court.[158] Only where the claimed imminent threat seems too contrived -- such as where an officer opened fire to defend himself from a pair of fingernail clippers[159] -- or where abundant evidence of a police cover-up exists, will courts uphold damage awards against police officers who shoot civilians.[160]

As Professor Peter L. Davis points out, there is no good reason why police should not be liable *criminally* for their violations of the criminal code, just as other Americans would expect to be (and, indeed, as the constables of the Founding Era often were).[161] Yet in modern criminal courts, police tend

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[149] *See id*. at 62.
[150] *See id*. at 206 (listing a 1993 Michigan case). In another Michigan case, a cop shot someone who merely had a VCR remote control in his pocket, claiming he mistook it for a gun. *See id*. at 205.
[151] *See id*. at 206 (listing a 1993 Michigan case). In another Michigan case, a cop shot someone who merely had a VCR remote control in his pocket, claiming he mistook it for a gun. *See id*. at 205.
[152] *See id*. at 305 (saying Houston police surrounded truck and fired 59 times at victim as he sat in truck holding can opener). No civilian witnesses saw the "shiny object" (can opener) police claimed they saw. *See id*.
[153] Police use of throwdown guns has been alleged across the country. Guns which are introduced without a suspect's fingerprints when they should have fingerprints, and guns that are found by police officers after an initial, supposedly complete, search of a crime scene by other detectives, can be said to raise questions about police use of throw-down guns. *C.f*. Joe Cantlupe & David Hasemyer, *Pursuit of Justice: How San Diego Police Officers Handled the Killing of One of Their Own. It Is a Case Flawed by Erratic Testimony and Questionable Conduct*, SAN DIEGO UNION-TRIBUNE, Sept. 11, 1994, at A1 (raising the issue in a San Diego case).
[154] *See* Webster v. City of Houston, 689 F.2d 1220, 1227 (5th Cir. 1982).
[155] *Id*. at 1222.
[156] *See id*. at 1221-23 (describing "damning" evidence of official cover-up and police vindication as a matter of policy).
[157] *See* STOLEN LIVES, *supra* note 123, at 72. In one 1987 Los Angeles case, a man was shot four times and killed when he picked up a discarded pushbroom to deflect police baton blows. *See id*. 72.
[158] *See id*. at iv. In one particularly egregious case, a police killing was upheld as beyond liability where officers shot a speeding trucker who refused to stop. *See* Cole v. Bone, 993 F.2d 1328 (8th Cir. 1993). *But see, e.g*., Gutierrez-Rodriquez v. Cartagena, 882 F.2d 553 (1st Cir. 1989) (affirming verdict against plainclothes officers who shot driver who drove away); Sherrod v. Berry, 827 F.2d 195 (7th Cir. 1987) (affirming verdict against officers who shot driver as driver reached into jacket pocket during questioning); Moody v. Ferguson, 732 F. Supp. 176 (D.S.L. 1989) (rendering judgment against officers who shot driver fleeing in vehicle from traffic stop).
[159] *See* Zuchel v. City and County of Denver, Colorado, 997 F.2d 730 (10th Cir. 1993).
[160] *See* Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 Is Ineffective in Deterring Police Brutality*, 44 HASTINGS L. J. 753, 754 (1993) (saying plaintiffs rarely win absent independent witnesses or physical evidence).
[161] See Peter L. Davis, Rodney King and the Decriminalization of Police Brutality in America, 53 MD. L. REV. 271, 288 (1994). Prior to the 1900s, it was not uncommon for law enforcers who killed suspects during confrontations to be placed on

to be more bulletproof than the Kevlar vests they wear on the job. Remember that the district attorneys responsible for prosecuting police for their crimes are the same district attorneys who must defend those officers in civil cases involving the same facts.[162] Under the Framers' common law, this conflict of interest did not arise at all because a citizen grand jury -- independent from the state attorney general -- brought charges against a criminal officer, and the officer's victim prosecuted the matter before a petit jury.[163] But the modern model of law enforcement provides no real remedy, and no ready outlet for the law to work effectively against police criminals. Indeed, modern policing acts as an obstruction of justice with regard to police criminality.

The bloodstained record of shootings, beatings, tortures and mayhem by American police against the populace is too voluminous to be recounted in a single article.[164] At least 2,000 Americans have been killed at the hands of law enforcement since 1990.[165] Some one-fourth of these killings -- about fifty per year -- are alleged by some authorities to be in the nature of murders.[166] Yet only a handful have led to indictment, conviction and incarceration.[167] This is true even though most police killings involve victims who were unarmed or committed no crime.[168]

Killings by police seem as likely as killings by death-row murderers to demonstrate extreme brutality or depravity. Police often fire a dozen or more bullets at a victim where one or two would stop the individual.[169] Such indicia of viciousness and ferocity would qualify as aggravating factors justifying the death penalty for a civilian murderer under the criminal laws of most states.[170]

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trial for their lives even when they reacted to violent resisters. See United States v. Rice, 27 F. Cas. 795 (C.C.N.C. 1875) (No. 16,153) (involving deputy United States Marshall on trial for murder of tax evasion suspect); State v. Brown, 5 Del. (5 Harr.) 505 (Ct. Gen. Sess. 1853) (fining peace officers for assault and false imprisonment); Conner v. Commonwealth, 3 Bin. 38 (Pa. 1810) (involving a constable indicted for refusing to execute arrest warrant). Even justices of the peace could be criminally indicted for dereliction of duties. See Respublica v. Montgomery, Dall. 419 (1795) (upholding validity of a criminal charge against a justice of the peace who failed to suppress a riot).

[162] *See* Davis, *supra* note 152, at 290 (noting the hopeless conflict of interest in handling police violence complaints).

[163] For an overview of the powers of early grand juries to accuse government officials, see Roger Roots, *If It's Not a Runaway, It's Not a Real Grand Jury*, 33 CREIGHTON L. REV. 821 (2000).

[164] *See* Steiker, *supra* note 3, at 836 (saying police excesses such as beatings, torture, false arrests and the third degree arc well documented).

[165] *See* STOLEN LIVES, *supra* note 123, at vii.

[166] See International Secretariat of Amnesty International, News Release, From Alabama to Wyoming: 50 Counts of Double Standards -- The Missing Entries in the US Report on Human Rights, Feb. 25, 1999.

[167] *See* STOLEN LIVES, *supra* note 123, at iv.

[168] *See id*. at v.

[169] Certain examples demonstrate. FBI agents in Elizabeth, New Jersey shot 38 times inside an apartment to kill an unarmed man who they first tried to say had fired first. *See id*. at 226. In February 1999, Bronx police fired 41 bullets at an unarmed African immigrant in his apartment doorway. *See id*. at 234. After this unlawful killing, cops unlawfully searched the decedent's apartment to justify shooting, failing to find any evidence of drugs. *See id*. In August 1999, Manhattan cops fired a total of 35 shots at alleged robber (who probably did not fire), injuring bystander and sending crowds fleeing. *See id*.

[170] Most states that allow the death penalty require that aggravating factors exist before imposition of capital punishment. *See, e.g*., IDAHO CODE § 19-2515 (1997) (allowing death penalty for crimes involving "especially heinous, atrocious or cruel, [or] manifesting exceptional depravity" or showing "utter disregard for human life"); TEX. CRIM. P. ANN. § 37.071 (West 1981) (listing factors such as whether the crime was "unreasonable in response to the provocation"); WYO. STAT. ANN. § 6-2-102 (Michie 1999) (allowing death penalty only upon a finding of aggravating factors such as a creation of great risk of death to two or more persons or for "especially atrocious or cruel" conduct).

From the earliest arrival of professional policing upon America's shores, police severely taxed both the largess and the liberties of the citizenry.[171] In early municipal police departments, cops tortured, harassed and arrested thousands of Americans for vagrancy, loitering, and similar "crimes," or detained them on mere "suspicion."[172] Where evidence was insufficient to close a case, police tortured suspects into confessing to crimes they did not commit.[173] In the name of law enforcement, police became professional lawbreakers, "constantly breaking in upon common law and ... statute law."[174] In 1903 a former New York City police commissioner remarked that he had seen "a dreary procession of citizens with broken heads and bruised bodies against few of whom was violence needed to affect an arrest.... The police are practically above the law."[175]

THE SAFETY OF THE POLICE PROFESSION

Defenders of police violence often cite the dangerous nature of police work, claiming the police occupation is filled with risks to life and health. Police training itself -- especially elite SWAT-type or paramilitary training that many officers crave -- reinforces the "dangerousness" of police work in the officers' own minds.[176] There is some truth to this perception, in that around one hundred officers are feloniously killed in the line of duty each year in the United States.[177]

But police work's billing as a dangerous profession plummets in credibility when viewed from a broader perspective. Homicide, after all, is the second leading cause of death on the job for *all* American workers.[178] The taxicab industry suffers homicide rates almost *six times* higher than the police and detective industry.[179] A police officer's death on the job is almost as likely to be from an accident as from homicide.[180] When overall rates of injury and death on the job are examined, policing barely ranks at all. The highest rates of fatal workplace injuries occur in the mining and construction industries, with

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[171] The earliest attempts at professionalization of constables failed in the United States due to insufficiency of public funds. *See* Steiker, *supra* note 3, at 831. Some of the earliest U.S. Supreme Court decisions regarding police forces involve disputes over municipal police spending. *See, e.g.*, Louisiana ex rel. Hubert v. New Orleans, 215 U.S. 170 (1909) (resolving dispute over debts run up by municipal police district); New Orleans v. Benjamin, 153 U.S. 411 (1894) (involving dispute over unbudgeted debts run up by New Orleans police board); District of Columbia v. Hutton, 143 U.S. 18 (1891) (dealing with salary dispute involving District of Columbia police force).

[172] *See* FRIEDMAN, *supra* note 58, at 362 (1993). Dallas police, for example, arrested 8,526 people in 1929 "on suspicion" but charged less than five percent of them with a crime. *See id*.

[173] The infamous case of *Brown v. Mississippi*, 297 U.S. 278 (1936), provides a grim reminder of the torture techniques that have been employed upon suspects during the past century. In *Brown*, officers placed nooses around the necks of suspects, temporarily hanged them, and cut their backs to pieces with a leather strap to gain confessions. *Id*. at 281-82.

[174] FRIEDMAN, *supra* note 58, at 151 n.20 (quoting George S. McWatters, who studied New York detectives in the 1870s).

[175] *See* TITUS REID, supra note 57, at 122 (citations omitted).

[176] See Peter B. Kraska & Victor E. Kappeler, Militarizing American Police: The Rise and Normalization of Paramilitary Units, 44 SOC. PROBS. 1, 11 (1997).

[177] One-hundred-seventeen federal, state, and local officers were killed feloniously in 1996 -- the lowest number since 1960. *See* Sue TITUS REID, *supra* note 57, at 123.

[178] *See* National Institute for Occupational Safety and Health, *Violence in the Work Place*, June 1997.

[179] See id.

[180] Approximately 40 percent of police deaths are due to accidents. *See* TITUS REID, *supra* note 57, at 123.

transportation, manufacturing and agriculture following close behind.[181] Fully 98 percent of all fatal workplace injuries occur in the civilian labor force.[182]

Moreover, police work is generously rewarded in terms of financial, pension and other benefits, not to mention prestige. Police salaries may exceed $100,000 annually plus generous health insurance and pension plans -- placing police in the very highest percentiles of American workers in terms of compensation.[183] The founding generation would have been utterly astonished by such a transfer of wealth to professional law enforcers.[184] This reality of police safety, security and comfort is one of the best-kept secrets in American labor.

In all, it is questionable whether modern policing actually decreases the level of bloodshed on American streets. Police often bring mayhem, confusion and violence wherever they are called.[185] Approximately one-third of the people killed in high-speed police car chases (which are often unnecessarily escalated by police) are innocent bystanders.[186] Cops occasionally prevent rather than execute rescues.[187] "Police practices" ranked as the number one *cause* of violent urban riots of the 1960s.[188] Indeed, police actively participated in or even initiated some of the nation's worst riots.[189] During the infamous Chicago Police Riot during the Democratic National Convention in 1968, police physically attacked 63 newsmen and indiscriminately beat and clubbed numerous innocent bystanders.[190]

PROFESSIONALISM?

If the modern model of cop-driven criminal justice has any defense at all, it is its "professionalism." Private law enforcement of the type intended by the Framers was supposedly more inclined toward lax

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[181] See National Institute for Occupational Safety and Health, Fatal Injuries to Workers in the United States, 1980-1989: A Decade of Surveillance 14 (April 15, 1999); Robert Rockwell, Police Brutality: More than Just a Few Bad Apples, REFUSE & RESIST, Aug. 14, 1997 (describing the "cultivation of the myth of policing as the most dangerous occupation").
[182] *See id*. at 13.
[183] *See* SKOLNICK & FYFE, *supra* note 63, at 93.
[184] *See* Hall, *supra* note 71, at 582-83 (describing early constables as "[a]bominably paid").
[185] *C.f.* STOLEN LIVES, *supra* note 123, at v (saying when police arrive on the scene, they often escalate the situation rather than defuse it).
[186] *See* STOLEN LIVES, *supra* note 123, at vi.
[187] *See, e.g*., Brandon v. City of Providence, 708 A.2d 893 (R.I. 1998) (finding municipality immune from liability when cops prevented relatives of injured shooting victim from taking victim to the hospital before victim died). *See also* Stolen Lives, *supra* note 157, at 305 (saying Tennessee police prevented fire fighters from saving victim of fire in 1997 case). Other notorious examples can be cited, including the 1993 Waco fire (in which fire trucks were held back by federal agents) and the 1985 MOVE debacle in Philadelphia in which police dropped a bomb on a building occupied by women and children and then held back fire fighters from rescuing bum victims. *See* WILLIE L. WILLIAMS, TAKING BACK OUR STREETS: FIGHTING CRIME IN AMERICA 16 (1996) (saying investigative hearings revealed cops had held back rescuers as a 'tactical decision').
[188] *See* SKOLNICK & FYFE, *supra* note 63, at 75 (citing U.S. Civil Disorder Commission study).
[189] *See* SKOLNICK & FYFE, *supra* note 63, at 83 (describing police riots at Columbia University and Los Angeles).
[190] *See* RIGHTS IN CONFLICT: THE OFFICIAL REPORT TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE xxiii, xxvi (1968).

and arbitrary enforcement than professional officers who are sworn to uphold the law.[191] Upon scrutiny, however, the claim that professional police are more reliable, less arbitrary, and more capable of objective law enforcement than private law enforcers is drastically undermined.

The constitutional model of law enforcement (investigation by a citizen grand jury, arrest by private individuals, constables or citizens watch, and private prosecution) became seen as inefficient and ineffective as America entered its industrial age.[192] Yet the grand jury in its natural and unhobbled state is *more*, rather than less, able to pursue investigations when compared to professional police. Grand jurors are not constrained by the Fourth, Fifth or Sixth amendments -- or at least the "exclusionary rule" fashioned by the courts to enforce those amendments.[193]

In the absence of police troops to enforce the law, the early criminal justice system was hardly as hobbled and impotent as conventional wisdom suggests. Private watch groups and broad-based advocacy groups existed to enforce laws and track criminals among jurisdictions. Thousands of local anti horse thief associations and countless 'detecting societies' sprang up to answer the call of crime victims in the nineteenth century.[194] In Maine, the "Penobscot Temperance League" hired detectives to investigate and initiate criminal cases against illegal liquor traffickers.[195] In the 1870s a private group called the Society for the Suppression of Vice became so zealous in garnering prosecutions of the immoral that it was accused in 1878 of coercing a defendant into mailing birth control information in violation of federal statutes,[196] one of the earliest known instances of conduct that later became defined as entrapment.[197] Although some of these private crime-fighting groups were invested with limited state law enforcement powers,[198] they were not police officers in the modern sense and received no remuneration.

Such volunteer nonprofessionals continue to aid law enforcement as auxiliary officers in many American communities.[199] Additionally, private organizations affiliated with regional chambers of commerce, neighborhood watch and other citizens' groups continue to play a substantial -- though

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[191] *See* John D. Bessler, *The Public Interest and the Unconstitutionality of Private Prosecutors*, 47 ARK. L. REV. 511 (1994) (attacking private prosecution as unfair, arbitrary, and not in the public interest).

[192] *See* Hall, *supra* note 71, at 580-85 (detailing inadequacies of private law enforcement).

193 See United States v. Wong, 431 U.S. 174 (1977) (holding Miranda requirements do not apply to a witness testifying before a grand jury); United States v. Calandra, 414 U.S. 338 (1974) (holding grand jury witness may not refuse to answer questions on ground that they are based on evidence obtained from unlawful search); United States v. Dionisio, 410 U.S. 1 (1973) (holding seizure of a person by subpoena for grand jury appearance is generally not within Fourth Amendment's protection).

[194] *See* Richard M. Brown, *Historical Patterns of Violence in America, in* NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES 57 (Graham & Gurr, ed. 1969).

[195] *See* State v. Walker, 32 Me. 195 (1850) (upholding actions of the private group).

[196] See United States v. Whittier, 28 F. Cas. 591 (C.C.E.D. Mo. 1878).

[197] *See supra* notes 438-445 and accompanying text for a discussion of the evolution of entrapment as a law enforcement practice.

[198] *See* Richard Maxwell Brown, *The American Vigilante Tradition, in* NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES 57 (Graham & Gurr, dir. 1969).

[199] *See* JAMES S. CAMPBELL, ET AL., LAW AND ORDER RECONSIDERED: REPORT OF THE TASK FORCE ON LAW AND LAW ENFORCEMENT 441 (1970) (discussing successes of citizen auxiliary units in Queens, New York and other areas).

underappreciated -- role in fighting crime.[200] America also has a long history of outright vigilante justice, although such vigilantism has been exaggerated both in its sordidness[201] and in its scope.[202]

Moreover, government-operated policing is hardly a monopoly even today, neither in maintaining order nor over matters of expertise and intelligence-gathering.[203] There are three times more private security guards than public police officers and even activities such as guarding government buildings (including police stations) and forensic analysis are now done by private security personnel.[204]

The chief selling point for professional policing seems to be the idea that sworn government agents are more competent crime solvers than grand juries, private prosecutors, and unpaid volunteers. But this claim disintegrates when the realities of police personnel are considered. In 1998, for example, forty percent of graduating recruits of the Washington, D.C. police academy failed the comprehensive exam required for employment on the force and were described as "practically illiterate" and "borderline-retarded."[205] As a practical matter, police are more dependent upon the public than the public is dependent upon police.[206]

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[200] *See id*. 437-54 (1970) (discussing successes of citizen involvement in law enforcement).

[201] American frontier vigilantism generally targeted serious criminals such as murderers, coach robbers and rapists as well as horse thieves, counterfeiters, outlaws, and 'bad men.' *See* NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES 97 (Graham & Gurr, dir. 1969). Arguably, such offenders qualified as felons and would have faced the death penalty under the common law even if more conventional court processes were followed. That such vigilante movements often followed rudimentary due process of law is attested by historians such as Richard Maxwell Brown, who recounts that "vigilantes' attention to the spirit of law and order caused them to provide, by their lights, a fair but speedy trial." Richard Maxwell Brown, *supra* note 189, at 164. The northern Illinois Regulator movement of 1841, for example, provided accused horse thieves and murderers with a lawyer, an opportunity to challenge jurors, and an arraignment. *See id*. at 163. At least one accused murderer was *acquitted* by a vigilante court on the Wyoming frontier. *See* Joe B. Frantz, *The Frontier Tradition: An Invitation to Violence*, *in* NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES 129-30 (Graham & Gurr, dir. 1969). Many accused were let off with whipping and expulsion rather than execution in the early decades of vigilante justice. *See* Brown, *supra* note 189, at 164. Less than half of all vigilante groups ever killed anyone. *See id*. Ironically, the move by vigilante groups toward killing convicted suspects began in the 1850s, -- corresponding closely with the meteoric rise of professional policing. *See id*.
Vigilante movements occasionally developed to *rescue* the law from corrupt public officials who were violating the law. The case of the vigilantes who arrested and hanged Sheriff Henry Plummer of Virginia City, Montana in 1864 is such an example. *See* LEW L. CALLAWAY, MONTANA'S RIGHTEOUS HANGMEN (1997) (arguing the vigilantes had no choice but to take the law into their own hands).

[202] "[T]he Western frontier developed too swiftly for the courts of justice to keep up with the progression of the people." Joe B. Frantz, *supra* note 192, at 128. Vigilante movements did little more than play catch-up to what can only be described as rampant frontier lawlessness. Five-thousand wanted men roamed Texas in 1877. *See id*. at 128. Major crimes often went totally unprosecuted and countless offenders whose crimes were well known lived openly without fear of arrest on the western frontier. *See id*. Vigilantes filled in only the most gaping holes in court jurisdiction, generally (but not always) intervening to arrest only the perpetrators of serious crimes. *See id*. and at 130 (saying "improvised group action" was the only resort for many on the far frontier).

[203] David H. Bayley & Clifford D. Shearing, *The Future of Policing*, *in* THE CRIMINAL JUSTICE SYSTEM: POLITICS AND POLICIES 150, 150 (George F. Cole & Marc G. Gertz, eds., 7th ed. 1998).

[204] *See id*. at 151, 154.

[205] Tucker Carlson, *Washington's Inept Police Force*, WALL ST. J., Nov. 3, 1993, at A19

[206] *See* SILBERMAN, *supra* note 6, at 297. Silberman points out that New York City police solved only two percent of robbery cases in which a witness could not identify an offender or the offender was not captured at the scene. *See id*.

Cops rely on the public for a very high percentage of their investigation clearances. As the rate of crimes committed by strangers increases, the rate of clearance by the police invariably declines.[207] Roughly two-thirds of major robbery and burglary arrests occur solely because a witness can identify the offender, the offender is caught at or near the crime scene, or the offender leaves evidence at the scene.[208] In contrast, where a suspect cannot be identified in such ways, odds are high that the crime will go unsolved.[209]

Studies show that as government policing has taken over criminal investigations, the rates of clearance for murder investigations have actually gone down. For more than three decades -- while police units have expanded greatly in size, power and jurisdiction -- the gap between the number of homicides in the United States and the number of cases solved has widened by almost twenty percent.[210] Today, almost three in ten homicides go unsolved.[211]

DNA EVIDENCE ILLUSTRATES FALLIBILITY OF POLICE

Moreover, a surprisingly high number of police conclusions are simply wrong. Since 1963, at least 381 *murder* convictions have been reversed because of police or prosecutorial misconduct.[212] In the 25-year period following the Supreme Court's ruling in *Gregg v. Georgia*[213] reaffirming the use of capital punishment, one innocent person has been freed from death row for every seven who have been executed.[214] In Illinois, Thirteen men have been freed from death row since 1977 after proving their innocence -- more than the twelve who were actually put to death over the same period. Governor George Ryan finally ordered a moratorium on executions until the death penalty system could be revamped,[215] referring to the death penalty system as "fraught with error."[216]

Yet death penalty cases are afforded far more due process and scrutiny of evidence than noncapital cases. If anything, the error rate of police in noncapital cases is likely substantially higher. Governor Ryan's words would seem to apply doubly to the entire system of police-driven investigation.

The advent of DNA analysis in the courtrooms of the 1990s greatly accelerated the rate at which police errors have been proven in court, even while avenues for defendants' appeals have been systematically cut off by Congress and state legislatures.[217] DNA testing before trial has exonerated at least 5000 *prime*

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[207] *See id*. at 296 (saying clearance rate dropped precipitously between 1960 and 1976 as proportion of crimes committed by strangers increased).
[208] *See id*. (citing figures registered between 1960 and 1976).
[209] *See id*. at 296.
[210] See Laura Parker & Gary Fields, Unsolved Killings on Rise: Percent of Cases Closed Drops From 86% to 69%, USA TODAY, Feb. 22, 2000, at A1.
[211] See id.
[212] *See* BARRY SCHECK, ET AL., ACTUAL INNOCENCE 175 (2000).
[213] 428 U.S. 153 (1976) (finding death penalty constitutional so long as adequate procedures are provided to a defendant).
[214] *See* SCHECK, *supra* note 203, at 218.
[215] See Illinois Governor Orders Execution Moratorium, USA TODAY, Feb. 1, 2000, at 3A.
[216] See id.
[217] *See* SCHECK, *supra* note 203, at 218 (noting an average of 4.6 condemned people per year have been set free after 1996, while only 2.5 death row inmates per year were freed between 1973 and 1993).

suspects who would likely have otherwise been tried on other police evidence.[218] Often, exculpatory DNA revelations have come in cases where other police-generated evidence was irreconcilable, suggesting falsification of evidence or other police misconduct.[219] The sheer number of wrongly accused persons freed by DNA evidence makes it beyond dispute that police investigations are far less trustworthy than the public would like to believe.[220]

Even more unjustified is the notion that a justice system powered by professional police possesses higher levels of integrity, trustworthiness and credibility than the criminal justice model intended by the Framers. Within the criminal justice system, cops are regarded as little more than professional witnesses of convenience, if not professional perjurers, for the prosecution.[221] Almost no authority credits police with high levels of honesty. Indeed, the daily work of cops requires strategic lying as part of the job description.[222] Cops lie about the strength of their evidence in order to obtain confessions,[223] about giving *Miranda* warnings to arrestees when on the witness stand,[224] and even about substantive evidence when criminal cases need more support. Cops throughout the United States have been caught fabricating, planting and manipulating evidence to obtain convictions where cases would otherwise be very weak.[225] Some authorities regard police perjury as so rampant that it can be considered a "subcultural norm rather than an individual aberration" of police officers.[226] Large-scale investigations of police units in virtually every major American city have documented massive evidence tampering, abuse of the arresting power, and discriminatory enforcement of laws according to race, ethnicity, gender, and socioeconomic status. Recent allegations in Los Angeles charge that dozens of officers abused their authority by opening fire on unarmed suspects, planting evidence, dealing illegal drugs, or framing some 200 innocent people.[227] More than a hundred prosecutions had to be dismissed in Chicago in 1997 due to similar police misconduct.[228] During the infamous "French connection" case of the 1970s, New York City narcotics detectives were caught diverting 188 pounds of heroin and 31 pounds of cocaine for their own use, making the City's Special Investigating Unit the largest heroin and cocaine dealer in the city.[229]

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[218] *See id*. at xv (noting these 5,000 exonerations came from only the first 18 thousand results of DNA testing at crime laboratories -- a rate of almost 30% exonerated).
[219] *C.f. id*. at 180 (detailing indictment of four officers for perjury and obstruction of justice in the wake of one DNA exoneration).
[220] DNA testing has proven that at least 67 people were sent to prison or death row for crimes they did not commit. *See id*. at xiv. This number grows each month. *See id*.
[221] *C.f.* Morgan Cloud, *The Dirty Little Secret*, 43 EMORY L. J. 1311, 1311 (1994) (saying "[p]olice perjury is the dirty little secret of our criminal justice system").
[222] *See* BURTON S. KATZ, JUSTICE OVERRULED: UNMASKING THE CRIMINAL JUSTICE SYSTEM 77-86 (1999).
[223] *See* SILBERMAN, *supra* note 6, at 308 (describing interrogation techniques of police as "an art form in its own right."). Lying or bluffing can often persuade a suspect to admit crimes to the police which would not otherwise be proven. *See id.*
[224] *C.f. id*. (recounting that an officer under observation would simply lie on the stand if challenged in court about whether Miranda warnings were given before questioning a suspect).
[225] See Joe Cantlupe & David Hasemyer, Pursuit of Justice: How San Diego Police Officers Handled the Killing of One of Their Own. It Is a Case Flawed by Erratic Testimony and Questionable Conduct, SAN DIEGO UNION-TRIBUNE, Sept. 11, 1994, at A1 (exposing that some officers gave false testimony in case of suspected cop-killers).
[226] Andrew Horwitz, Taking the Cop Out of Copping a Plea: Eradicating Police Prosecution of Criminal Cases, 40 ARIZ. L. REV. 1305, 1321 (1998) (quoting Jerome H. Skolnick).
[227] *See* Daniel B. Wood, *One precinct stirs a criminal-justice crisis*, CHRISTIAN SCIENCE MONITOR, Feb. 18, 2000, at 1.
[228] *See* TITUS REID, *supra* note 57, at 120.
[229] *See* SILBERMAN, *supra* note 6, at 231.

Police criminality was so acute in New Orleans during the 1980s and 1990s that people were afraid to report crimes for fear that corrupt officers would retaliate or tip off organized crime figures. One New Orleans officer was convicted of ordering the execution of a witness who reported him to the internal affairs unit for allegedly pistol-whipping a teenager.[230] Thirty-six Washington, D.C. officers were indicted on charges such as drug dealing, sexual assault, murder, sodomy and kidnapping in 1992.[231]

In Detroit, repeated corruption allegations have seen a number of low- and high-ranking officers go to prison for drug trafficking, hiring hit men, providing drug protection, and looting informant funds.[232] Police burglary rings have been uncovered in several cities.[233]

Patterns of police abuse tend to repeat themselves in major American cities despite endless attempts at reform.[234] New York City police, for example, have been the subject of dozens of wide-ranging corruption probes over the past hundred years[235] yet continue to generate corruption allegations.[236] Police exhibit unique levels of occupational solidarity.[237] Review boards and internal affairs commissions inevitably fail to penetrate police loyalty and find resistance from every rank.[238] Cops inevitably form an isolated authoritarian subculture that is both cynical toward the rule of law and disrespectful of the rights of fellow citizens.[239] The code of internal favoritism that holds police together may more aptly be described as syndicalism rather than professionalism. Historically, urban police "collected" from local businesses.[240] Today, a more subtle brand of racketeering prevails, whereby police assist those businesses which provide support for police and undermine businesses which are perceived as antagonistic to police interests. This same shakedown also applies to newspaper editors and politicians.[241]

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[230] *See* Gary Fields, *New Orleans' Crime Fight Started With Police*, USA TODAY, Feb. 1, 2000, at 6A.
[231] *See* Tucker Carlson, *Washington's Inept Police Force*, WALL ST. J., Nov. 3, 1993, at A19.
[232] *See Abuse of Power*, DETROIT NEWS, May 3, 1996.
[233] *See* Lawrence W. Sherman, *Becoming Bent: Moral Careers of Corrupt Policemen, IN* "ORDER UNDER LAW": READINGS IN CRIMINAL JUSTICE 96, 104-06 (1981) (discussing police burglary scandals of the 1960s).
[234] *See* Wood, *supra* note 218, at 5 (citing critics).
[235] *See* FRIEDMAN, *supra* note 58, at 154. The Lexow Committee of 1894 was perhaps the first to probe police misconduct in New York City. The Committee found that the police had formed a "separate and highly privileged class, armed with the authority and the machinery of oppression." *See id.*. Witnesses before the Committee testified to brutal beatings, extortion and perjury by New York police. *See id*. at 154-55.
[236] In April 1994, for example, thirty-three New York officers were indicted and ultimately convicted of perjury, drug dealing and robbery. *See* James Lardner, *Better Cops. Fewer Robbers*, N.Y. TIMES MAG., Feb. 9, 1997, pp. 44-52. The following year, sixteen Bronx police officers were indicted for robbing drug dealers, beating people, and abusing the public. *See id*.
[237] *See* Jerome H. Skolnick, *A Sketch of the Policeman's "Working Personality," in* THE CRIMINAL JUSTICE SYSTEM: POLITICS AND POLICIES 116, 123 (George F. Cole & Marc G. Gertz 7th ed. 1998).
[238] *See* Wood, *supra* note 218, at 5 (quoting critics).
[239] *C.f.* TITUS REID, *supra* note 57, at 117-119 (describing police subculture).
[240] *See* FRIEDMAN, *supra* note 58, at 154 (saying New York police of the 1890s engaged in routine extortion of businesses, collecting kickbacks from push-cart vendors, corner groceries, and businessmen whose flag poles extended too far into the street). In Chicago, police historically sought "contributions" from saloonkeepers. *See id.* at 155.
[241] *See, e.g*., PATRICK J. BUCHANAN, RIGHT FROM THE BEGINNING 283-84 (1990) (detailing police favoritism toward one St. Louis newspaper and antagonism toward its competitor); Jonathan D. Rockoff, *Comment Costs Kennedy Police Backing*, PROVIDENCE J., April 21, 2000, at 1B (describing police unions' threats to drop their support for Rep. Kennedy due to Kennedy's public remarks).

Even at the federal level, where national investigators presume to police corruption and oversee local departments, favoritism toward the police role is rampant. In 1992, for example, the federal government filed criminal charges in only 27 cases of police criminality.[242] A federal statute criminalizing violations of the Fourth Amendment has never been enforced even a single time, although it has been a part of the U.S. Code since 1921.[243] Throughout the 1980s and '90s, the FBI Crime Laboratory actively abetted the misconduct of local police departments by misrepresenting forensic evidence to bolster police cases against defendants.[244]

COPS NOT COST-EFFECTIVE DETERRENT

In terms of pure economic returns, police are a surprisingly poor public investment. Typical urban police work is very expensive because police see a primary part of their role as intervention for its own sake -- poking, prodding and questioning the public in hope of turning up evidence of wrongdoing. Toward this end, police spin quick U-turns, drive slowly and menacingly down alleyways, reverse direction to track suspected scofflaws, and conduct sidewalk pat-down searches of potential criminals absent clear indicia of potential criminality.[245] Studies indicate, however, that such tactics are essentially worthless in the war on crime. One experiment found that when police do not 'cruise' but simply respond to dispatched calls, crime rates are completely unaffected.[246]

Thus the very aspect of modern policing that the public view as most effective -- the creation of a 'police presence' -- is in fact a monstrous waste of public resources.[247] Similarly, the history of America's expenditures in the war on drugs provides little support for the proposition that money spent on policing yields positive returns.[248] University of Chicago professor John Lott has found that while hiring police

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[242] *See* Davis, *supra* note 152, at 355.

[243] *See* Wasserstrom, *supra* note 70, at 293-94 n.188 (1984) (stating no one has ever been convicted under the statute, 18 U.S.C. § 2236).

[244] *See* U.S. Dep't of Justice, Office of Inspector General, *The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases* (April 1997) (detailing Justice Department's findings of impropriety at the FBI Crime Lab).

[245] *Cf.* SlLBERMAN, *supra* note 6, at 211-14 (observing the behavior of cops on patrol).

[246] *See id*. at 215-16 (citing study conducted in Kansas City in the 1970s).

[247] *C.f. id*. at 215 (pointing to mounting criticism of traditional approach). Studies of police pull-overs and sidewalk stops invariably demonstrate patterns of economic, racial, and social discrimination as well. *See, e.g.*, Bruce Landis, *State Police Records Support Charges of Bias in Traffic Stops*, PROVIDENCE J., Sept. 5, 1999 at 1A (reporting Rhode Island traffic stop statistics demonstrate racial bias by state police).

[248] The United States' 'war on drugs' is a perfect illustration of the difficulties of implementing broad-ranging social policy through police enforcement mechanisms. "Not since Vietnam ha[s] a national mission failed so miserably." JIM MCGEE & BRIAN DUFFY, MAIN JUSTICE: THE MEN AND WOMEN WHO ENFORCE THE NATION'S CRIMINAL LAWS AND GUARD ITS LIBERTIES 43 (1996). The federal drug control budget increased from $4.3 billion in 1988 to $11.9 billion in 1992, yet national drug supply increased greatly and prices dropped during the same period. *See id*. at 42. The costs of enforcement in 1994 ranged from $79,376 per arrestee by the DEA to $260,000 per arrestee by the FBI, with no progress made at all toward decreasing the drug trade. *See id*.

can reduce crime rates, the net benefit of hiring an additional officer is about a quarter of the benefit from arming the public with an equivalent dollar amount of concealed handguns.[249]

There is no doubt that modern police are a creation of lawful representative legislatures and are very popular with the general public.[250] But the rights of Americans depend upon freedom *from* government as much as freedom *of* government.[251] Constitutions must provide a countermajoritarian edifice to the threat posed by the will of the masses, and courts must at times pronounce even the most popular programs invalid when they contravene the fundamental liberties of a minority -- or even the whole people at times when they inappropriately devalue their liberties.[252]

PART II

POLICE AS A STANDING ARMY

It is largely forgotten that the war for American independence was initiated in large part by the British Crown's practice of using troops to police civilians in Boston and other cities.[253] Professional soldiers used in the same ways as modern police were among the primary grievances enunciated by Jefferson in the Declaration of Independence. ("[George III] has kept among us standing armies"; "He has affected to render the military independent of and superior to the civil power"; "protecting them, by a mock trial....").[254] The duties of such troops were in no way military but involved the keeping of order and the suppression of crime (especially customs and tax violations).

Constitutional arguments quite similar to the thesis of this article were made by America's Founders while fomenting the overthrow of their government. Thomas Jefferson proclaimed that although Parliament was supreme in its jurisdiction to make laws, "his majesty has no right to land a single armed

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[249] *See* JOHN R. LOTT, JR., MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS 213 n.3 (1998) (citing forthcoming paper).

[250] Some two-thirds of the public say they have a great deal of respect for the police. See SHMUEL LOCK, CRIME, PUBLIC OPINION, AND CIVIL LIBERTIES: THE TOLERANT PUBLIC 69 (1999). Interestingly, however, lawyers are more than 20 percentage points lower in their general assessment of police. *See id*.

[251] Public opinion polls repeatedly show that a majority of the public favor decreasing constitutional protections. *See, e.g., id*. at 6. It must be noted, however, that the general public is *more* inclined than lawyers and the Supreme Court to favor protecting some civil liberties. For example, 49 percent of the public disapproves of police searching private property by air without warrant, while only 37 percent of lawyers disapprove and the Supreme Court upheld the practice in *United States v. Dunn*, 480 U.S. 294 (1987). *See id*. at 39. A majority of the public (51%) would prohibit police from searching one's garbage without a warrant, while only 36 percent of lawyers disapprove and the Supreme Court upheld the practice in *California v. Greenwood*, 486 U.S. 35 (1988). *See id*. The public is also less inclined than lawyers to approve of using illegally obtained evidence to impeach a witness. *See id*. at 45.

[252] *C.f*. Illinois v. Krull, 480 U.S. 340, 365 (1987) (O'Connor, J., dissenting) (stating Fourth Amendment rights have at times proved unpopular and the Framers drafted the Fourth Amendment in fear that future majorities might compromise Fourth Amendment values).

[253] *See* JOHN PHILLIP REID, IN DEFIANCE OF THE LAW: THE STANDING-ARMY CONTROVERSY, THE Two CONSTITUTIONS, AND THE COMING OF THE AMERICAN REVOLUTION (1981) (recounting the history and constitutional background of the standing-army controversy that preceded the Revolution).

[254] THE DECLARATION OF INDEPENDENCE paras. 12, 13, 14 (U.S. 1776).

man on our shores" to enforce unpopular laws.[255] James Warren said that the troops in Boston were there on an unconstitutional mission because their role was not military but rather to enforce "obedience to Acts which, upon fair examination, appeared to be unjust and unconstitutional."[256] Colonial pamphleteer Nicholas Ray charged that Americans did not have "an Enemy worth Notice within 3000 Miles of them."[257] "[T]he troops of George the III have cross'd the wide atlantick, not to engage an enemy," charged John Hancock, but to assist constitutional traitors "in trampling on the rights and liberties of [the King's] most loyal subjects ..."[258]

The use of soldiers to enforce law had a long and sullied history in England and by the mid-1700s were considered a violation of the fundamental rights of Englishmen.[259] The Crown's response to London's Gordon Riots of 1780 -- roughly contemporary to the cultural backdrop of America's Revolution -- brought on an immense popular backlash at the use of guards to maintain public order.[260] "[D]eep, uncompromising opposition to the maintenance of a semimilitary professional force in civilian life" remained integral to Anglo-Saxon legal culture for another half century.[261]

Englishmen of the Founding era, both in England and its colonies, regarded professional police as an "alien, continental device for maintaining a tyrannical form of Government."[262] Professor John Phillip Reid has pointed out that few of the rights of Englishmen "were better known to the general public than the right to be free of standing armies."[263] "Standing armies," according to one New Hampshire correspondent, "have ever proved destructive to the Liberties of a People, and where they are suffered, neither Life nor Property are secure."[264]

If pressed, modern police defenders would have difficulty demonstrating a single material difference between the standing armies the Founders saw as so abhorrent and America's modern police forces. Indeed, even the distinctions between modern police and actual military troops have blurred in the wake of America's modern crime war.[265] Ninety percent of American cities now have active special weapons and tactics (SWAT) teams, using such commando-style forces to do "high risk warrant work" and even

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[255] *See* JOHN P. REID, *supra* note 244, at 79.
[256] *See id*. at 79.
[257] *See id*. at 50 (citation omitted).
[258] *See id*. at 29 (quoting the orations of Hancock).
[259] In Edinburgh in 1736, a unit of town guards maintaining order during the execution of a convicted smuggler was pelted with stones and mud until some soldiers began firing weapons at the populace. *See* JOHN P. REID, *supra* note 244, at 114-15 (recounting the history and constitutional background of the standing-army controversy which preceded the Revolution). After nine citizens were found dead, the captain of the guard was tried for murder, convicted, and himself condemned to be hanged. *See id*.
When officers of the crown indicated a willingness to pardon the captain, a mob of civilians "rescued" the captain from prison and hanged him. *See id*.
[260] *See* Hall, *supra* note 71, at 587-88.
[261] *Id*. at 587.
[262] Ben C. Roberts, *On the Origins and Resolution of English Working-Class Protest, in* NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES 238, 252 (Graham & Gurr, dir. 1969).
[263] JOHN P. REID, *supra* note 244, at 80.
[264] *See id*. at 95 (quoting from a 1770 issue of the *New Hampshire Gazette)*.
[265] *See* Kraska & Kappeler, *supra* note 167, at 2-3 (citing National Institute of Justice report detailing "partnership" between Defense and Justice Departments in equipping personnel to "engage the crime war").

routine police duties.[266] Such units are often instructed by active and retired United States military personnel.[267]

In Fresno, California, a SWAT unit equipped with battering rams, chemical agents, fully automatic submachine guns, and 'flashbang' grenades roams full-time on routine patrol.[268] According to criminologist Peter Kraska, such military policing has never been seen on such a scale in American history, "where SWAT teams routinely break through a door, subdue all the occupants, and search the premises for drugs, cash and weapons."[269] In high-crime or problem areas, police paramilitary units may militarily engage an entire neighborhood, stopping "anything that moves" or surrounding suspicious homes with machine guns openly displayed.[270]

Much of the importance of the standing-army debates at the ratification conventions has been overlooked or misinterpreted by modern scholars. Opponents of the right to bear arms, for example, have occasionally cited the standing-army debates to support the proposition that the Framers intended the Second Amendment to protect the power of states to form militias.[271] Although this argument has been greatly discredited,[272] it has helped illuminate the intense distrust that the Framers manifested toward occupational standing armies. The standing army the Framers most feared was a soldiery conducting law enforcement operations in the manner of King George's occupation troops -- like the armies of police officers that now patrol the American landscape.

THE SECOND AMENDMENT

The actual intent of the Second Amendment -- that it protect a right of people to maintain the means of violently checking the power of government -- has been all but lost in modern American society.[273] Modern policing's increasing monopoly on firepower tends to undermine the Framers' intent that the whole people be armed, equipped, and empowered to resist the state. Many police organizations lobby incessantly for gun control, even though the criminological literature yields scant empirical support for general gun control as a crime-prevention measure.[274]

Nor is there much legitimacy to the claim that professional police are more accurate or responsible with firearms than the armed citizenry intended by the Framers. To this day, civilians shoot and kill at least

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[266] *See* William Booth, *The Militarization of 'Mayberry,'* WASH. POST, June 17, 1997, at A1.
[267] See id.
[268] See id.
[269] *See id*. (quoting Kraska).
[270] *See* Kraska & Kappeler, *supra* note 167, at 10.
[271] See Roger Roots, The Approaching Death of the Collective Right Theory of the Second Amendment, 39 DUQUESNE L. REV. 71 (2000).
[272] See id.
[273] C.f. id.
[274] *See* JOHN R. LOTT, JR., MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS (1998) (supporting a proposition consistent with the title); GARY KLECK, POINT BLANK: GUNS AND VIOLENCE IN AMERICA (1991).

twice as many criminals as police do every year,[275] and their 'error rate' is several times lower.[276] In a government study of handgun battles that lead to officer injuries, it was found that police who fired upon their killers were less than half as accurate as their civilian, nonprofessional, assailants.[277]

Moreover, police seem hardly less likely to misuse firearms than the general public.[278] In New York City, where private possession of handguns has been virtually eliminated for most civilians, problems with off-duty police misusing firearms have repeatedly surfaced.[279] Los Angeles police have been found to fire their weapons inappropriately in seventy-five percent of cases.[280] Between early 1989 and late 1992, more than one out of every seven shots fired by Washington, D.C. police officers was fired accidentally.[281]

THE THIRD AMENDMENT

Although standing armies were not specifically barred by the final version of the Constitution's text, some authorities have pointed to the Third Amendment[282] as a likely fount for such a conceptual proposition.[283] Additionally, the Amendment's proscription of quartering troops in homes might well have been interpreted as a general anti-search and seizure principle if the Fourth Amendment had never been enacted.[284] The Third Amendment was inspired by sentiments quite similar to those that led to passage of the Second and Fourth Amendments, rather than fear of military operations. Writing in the 1830s, Justice Story regarded the Third Amendment as a security that "a man's house shall be his own castle, privileged against all *civil* and military intrusion."[285]

The criminal procedure concerns that dominated the minds of the Framers of the Bill of Rights were created not only before the Revolution but also after it. In the five years following British surrender, the independent states vied against each other for commercial advantage, debt relief, and land claims.

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[275] KLECK, *supra* note 265, at 111-116, 148.
[276] *See* George F. Will, *Are We a Nation of Cowards?*, NEWSWEEK, Nov. 15, 1993, at 93. The error rate is defined as the rate of shootings involving an innocent person mistakenly identified as a criminal. See id.
[277] *See* ANTHONY J. PINIZZOTTO, ET AL., U.S. DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE, IN THE LINE OF FIRE: A STUDY OF SELECTED FELONIOUS ASSAULTS ON LAW ENFORCEMENT OFFICERS 8 (1997) (table showing 41 percent accuracy by police as opposed to 91 percent accuracy by their assailants with handguns).
[278] *See, e.g*., Morgan v. California, 743 F.2d 728 (9th Cir. 1984) (involving drunk officers who backed their car into innocent civilian couple and then brandished guns to threaten them).
[279] *See* Shapiro v. New York City Police Dept., 595 N.Y.S.2d 864 (N.Y. Sup. Ct. 1993) (upholding revocation of pistol license of cop who threatened drivers with gun during two traffic disputes); Matter of Beninson v. Police Dept., 574 N.Y.S.2d 307 (N.Y. Sup. Ct. 1991) (involving revocation of pistol permit of cop based on two displays of firearms in traffic situations).
[280] *See* JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 255 n. 34 (2d ed. 1995) (citing review of nearly 700 shootings).
[281] *See* Tucker Carlson, *Washington's Inept Police Force*, WALL ST. J., Nov. 3, 1993, at A19.
[282] U.S. CONST. amend. III ("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").
[283] *See* Morton J. Horwitz, *Is the Third Amendment Obsolete?*, 26 VALPARAISO U. L. REV. 209, 214 (1991) (stating the Third Amendment might have produced a constitutional bar to standing armies in peacetime if public antipathy toward standing armies had remained intense over time).
[284] See id.
[285] 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 747-48 (1833) (emphasis added).

Conflict was especially fierce between the rival settlers of Pennsylvania and Connecticut on lands in the west claimed simultaneously by both states.[286] Both states sent partisan magistrates and troops into the region, and each faction claimed authority to remove claimants of the rival state.[287] Magistrates occasionally ordered arrest without warrant, turned people out of their homes, and even ordered submission to the quartering of troops in homes.[288] In 1784, a Pennsylvania grand jury indicted one such magistrate and forty others for abuse of their authority.[289] Many agents had to be arrested before the troubles finally ended in 1788 -- the very moment when the Constitution was undergoing its ratification debates.[290] These troubles, and not memories of life under the Crown, were fresh in the minds of the Framers who proposed and ratified the Bill of Rights.

The Third Amendment's proscription of soldiers quartered in private homes addressed a very real *domestic* concern about the abuse of state authority in 1791. This same fear of an omnipresent and all-controlling government is hardly unfounded in modern America. Indeed, the very evils the Framers sought to remedy with the entire Bill of Rights -- the lack of security from governmental growth, control and power -- have come back to haunt modem Americans like never before.[291]

THE RIGHT TO BE LEFT ALONE

The 'police state' known by modern Americans would be seen as quite tyrannical to the Framers who ratified the Constitution. If, as Justice Brandeis suggested, the right to be left alone is the most important underlying principle of the Constitution,[292] the cop-driven model of criminal justice is anathemic to American constitutional principles. Today a vast and omnipotent army of insurgents patrols the American landscape in place of grand juries, private prosecutors, and the occasional constable. This immense soldiery is forever at the beck and call of whatever social forces rule the day, or even the afternoon.[293]

THE FOURTH AMENDMENT

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[286] For a well-written local history of this conflict, see HENRY BLACKMAN PLUMB, HISTORY OF HANOVER TOWNSHIP 121-140 (1885).
[287] See id.
[288] *See id*. at 125-26.
[289] *See id*. at 130.
[290] *See id*. at 138 (adding that those convicted "were allowed easily to escape, and no fines were ever attempted to be collected").
[291] *See, e.g*., JAMES BOVARD, FREEDOM IN CHAINS: THE RISE OF THE STATE AND THE DEMISE OF THE CITIZEN (1999) (presenting a thesis in line with the title); JAMES BOVARD, LOST RIGHTS: THE DESTRUCTION OF AMERICAN LIBERTY (1994) (detailing America's loss of freedom).
[292] *See* Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (saying the right to be let alone is "the most comprehensive of rights and the right most valued by civilized man.").
[293] *C.f.* Stephen D. Mastrofski, et al., *The Helping Hand of the Law: Police Control of Citizens on Request*, 38 CRIMINOLOGY 307 (2000) (detailing study finding officers are likely to use their power to control citizens at mere request of other citizens).

Now to the Fourth Amendment. The Amendment reads: "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."[294] This protection was clearly regarded as one of the more important provisions of the Bill of Rights during debates in and out of Congress prior to ratification.[295] To this day, the Amendment is probably the most cited constitutional provision in challenges to police action.

The cold, hard reality, however, is that the interest protected by the amendment -- security from certain types of searches and seizures -- has been drastically scaled back since 1791. In saying this, I am mindful that there are those among the highest echelons of the bench and academy who claim that current Fourth Amendment law is *more protective* than the Framers intended.[296] Indeed, there are those claiming the mantles of textualism and originalism who would decrease Fourth Amendment rights even further.[297] The ever-influential Akhil Amar, for example, has argued that the Fourth Amendment's text does not really *require* warrants but merely lays out the evidentiary foundation required to *obtain* warrants.[298] Amar joins other "originalist" scholars who emphasize that the only requirement of the Fourth Amendment's first clause ("The right of the people to be secure in their persons, papers, and effects from unreasonable searches and seizures shall not be violated") is that all searches and seizures be "reasonable."[299] The warrant requirement pronounced in many Supreme Court opinions, according to Amar, places an unnecessary burden upon law enforcement and should be abandoned for a rule Amar considers more workable -- namely civil damages for unreasonable searches after the fact as determined by juries.

This type of "originalism" has appealed to more than one U.S. Supreme Court justice,[300] at least one state high court,[301] and various legal commentators.[302] Indeed, it has brought a perceivable shift to the Supreme Court's Fourth Amendment jurisprudence.[303] Even the U.S. Justice Department has adopted

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[294] U.S. CONST. amend. IV.

[295] *See, e.g*., Maryland Minority, *Address to the People of Maryland*, Maryland Gazette, May 6, 1788, *reprinted in* THE ORIGIN OF THE SECOND AMENDMENT, *supra* note 89, at 356, 358 (stating that an amendment protecting people from unreasonable search and seizure was considered indispensable by many who opposed the Constitution).

296 See, e.g., AKHIL R. AMAR, THE CONSTITUTION AND CRIMINAL PROCEDURE: FIRST PRINCIPLES 1-45 (1997). Amar argues that the Amendment lays down only a few "first principles" -- namely "that all searches and seizures must be reasonable, that warrants (and only warrants) always require probable cause, and that the officialdom should be held liable for unreasonable searches and seizures." *Id*. at 1

[297] *See, e.g*., Richard A. Posner, *Rethinking the Fourth Amendment*, 1981 SUP. CT. REV. 49 (arguing that the Fourth Amendment should not provide a guilty criminal with any right to avoid punishment).

[298] *See* AMAR, *supra* note 287, at 3-17 (arguing the Framers intended no warrant requirement).

[299] See id.

[300] *See* California v. Acevedo, 500 U.S. 565, 581 (1991) (Scalia, J., concurring) (referencing Amar's claims for support). Ten years earlier, in *Robbins v. California*, 453 U.S. 420 (1981), Justice Rehnquist cited a 1969 book by Professor Telfred Taylor -- Amar's predecessor in the argument that the Fourth Amendment's text requires only an ad hoc test of reasonableness -- for the same proposition. *Id*. at 437 (Rehnquist, J., dissenting).

[301] *See, e.g*., Hulit v. State, 982 S.W.2d 431, 436 (Tex. Crim. App. 1998) (citing Amar for proposition that Fourth Amendment requires no warrants).

[302] *See, e.g*., Max Boot, Out of Order: Arrogance, Corruption, and Incompetence on the Bench 66 (1998) (reciting the Amar/Taylor thesis without reservation).

[303] Since the addition of Justice Rehnquist to the Supreme Court, the Court has traveled far down the road toward ejecting the warrant requirement. *See generally* Wasserstrom, *supra* note 70. The Court has increasingly tended to adopt a mere balancing

this argument as its own in briefs filed in the U.S. Supreme Court arguing for elimination of the warrant requirement.[304]

The problem with this line of interpretation is that it does not square with the original view of the Framers. Even the most cursory examination of history reveals that law enforcers of the Founding Era, whether private persons, sheriffs or constables, were obligated to procure warrants in many circumstances that modern courts do not require warrants.[305] The general rule that warrants were required for all searches and seizures except those involving circumstances of the utmost urgency seems so well settled at the time of ratification that it is difficult to imagine a scholar arguing otherwise.[306] But Professor Amar does. "Supporters of the warrant requirement," the professor writes, "have yet to find any cases" enunciating the warrant requirement before the Civil War.[307]

Perhaps Amar has overlooked the 1814 case of *Grumon v. Raymond*, in which the Connecticut Supreme Court held both a constable, who executed an improper search warrant, and a justice of the peace who issued the warrant, civilly liable for trespass.[308] The court in *Grumon* clearly stated that the invalidity of the search warrant left the search's legality "on no better ground than it would be if [the search had been pursuant to] no process."[309] Or maybe Amar is unfamiliar with the 1807 case of *Stoyel v. Lawrence*, holding a sheriff liable for executing a civil arrest warrant after the warrant's due date and declaring that the warrant "gave the officer no authority whatever, and, consequently, formed no defence";[310] or the 1763 Massachusetts case of *Rex v. Gay*, acquitting an arrestee for assaulting and beating a sheriff who arrested him pursuant to a facially invalid warrant;[311] or *Batchelder v. Whitcher*, holding an officer liable for ordering the seizure of hay by an unsealed warrant in 1838;[312] or *Conner v. Commonwealth*, in which the Pennsylvania Supreme Court concluded in 1810 that if the requirement of warrants based on

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test, pitting the citizen's "Fourth Amendment interests" (rather than his "rights") against "legitimate governmental interests." *See, e.g.*, Delaware v. Prouse, 440 U.S. 648, 654 (1979).

[304] In United States v. Chadwick, 433 U.S. 1, 6 (1977), the United States Justice Department mounted a "frontal attack" on the warrant requirement and argued that the warrant clause of the Fourth Amendment protected only "interests traditionally identified with the home." Accordingly, the Justice Department would have eliminated warrants in every other setting.

[305] *Compare* Howard v. Lyon, 1 Root 107 (Conn. 1787) (involving constable who obtained "escape warrant" to recapture an escaped prisoner and even had the warrant "renewed" in Rhode Island where prisoner fled), *and* Bromley v. Hutchins, 8 Vt. 68 (1836) (upholding damages against a deputy sheriff who arrested an escapee without warrant outside the deputy's jurisdiction), *with* United States v. Watson, 423 U.S. 411 (1976) (allowing warrantless arrest of most suspects in public so long as probable cause exists).

[306] *See* Morgan Cloud, *Searching through History; Searching for History*, 63 U. CHI. L. REV. 1707, 1713 (1996) (citing the exhaustive research of William Cuddihy for the proposition that specific warrants were required at Founding).

[307] AMAR, *supra* note 287, at 5.

[308] 1 Conn. 40 (1814).

[309] *See id*. at 44.

[310] 3 Day 1, 3 (Conn. 1807).

[311] 1761-1772 Quincy Mass. Reports (1763). Perhaps Amar's statement can be read as a commentary on the dearth of originalist scholarship among those who support strong protections for criminal suspects and defendants. "Originalism" as a means of constitutional interpretation is not always definable in a single way, and "originalists" may often contradict each other as to their interpretation of given cases. *See* Richard S. Kay, *"Originalist" Values and Constitutional Interpretation*, 19 HARV. J.L. & PUB. POL'Y 335 (1995). Professor Kay has identified four distinct interpretive methods as being "originalist" -- any two of which might produce differing conclusions: 1) original text, 2) original intentions, 3) original understanding, and 4) original values. *See id*. at 336. This being conceded, originalism has generally been the domain of "conservative" jurists for the past generation, fueled by reactions to the methods of adjudication employed by the Warren Court. *See id*. at 335.

[312] 9 N.H. 239 (1838).

probable cause could be waived merely to allow constables to more easily arrest criminals, "the constitution is a dead letter."[313]

Even the cases Amar cites for the proposition that search warrants were not required under antebellum Fourth Amendment jurisprudence do not squarely support such a proposition.[314] Most of them merely repeat the "warrant requirement" of the common law and find that their given facts fit within a common law exception.[315] Similarly, the cases Amar cites that interpret various Fourth-Amendment equivalents

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[313] 3 Bin. 38, 43 (Pa. 1810).

[314] Admittedly, two of Amar's cited cases present troubling statements of the law. The rule of Amar's first case, *Jones v. Root*, 72 Mass. 435 (1856), is somewhat difficult to discern. Although the case may be read as a total rejection of required warrants (as Amar contends, *supra* note 287, at 4-5 n.10), it may also be read as an adoption of the "in the presence" exception to the warrant requirement known to the common law. The court's opinion is no more than a paragraph long and merely upholds the instruction of a lower court that a statute allowing warrantless seizure of liquors was constitutional. *Jones*, 72 Mass. at 439. The opinion also upheld the use of an illustration by the trial judge that suggested the seizure was similar to a seizure of stolen goods observed *in the presence* of an officer. *See id*. at 437.

A second case may also be read to mean that the government may search and seize without warrant, but might also be read as enunciating the "breach of peace" exception to the warrant requirement. *Mayo v. Wilson*, 1 N.H. 53 (1817) involved a town tythingman who seized a wagon and horses of an apparent teamster engaged in commercial delivery on the Sabbath, in violation of a New Hampshire statute. Amar quotes *Mayo's* pronouncement that the New Hampshire Fourth-Amendment equivalent "does not seem intended to restrain the legislature ..." But elsewhere in the opinion, the New Hampshire Supreme Court stated that an arrest *required* a "warrant in law" -- either a magistrate's warrant, or excusal by the commission of a felony or breach of peace. *Mayo*, 1 N.H. at 56. "[B]ut if the affray be over, there *must be an express warrant." Id*. (emphasis added). Not much support for Amar's thesis there.

Mayo was decided only fourteen years after the dawn of judicial review in *Marbury v. Madison, 5* U.S. 137 (1803), during an era when the constitutional interpretations of legislatures were thought to have equal weight to the interpretations of the judiciary. *Cf*. HENRY J. ABRAHAM, THE JUDICIAL PROCESS 335-40 (7th ed. 1998) (describing the slow advent of the concept of judicial review). Indeed, the first act of a state legislature to be declared unconstitutional came only seven years earlier, *see* Fletcher v. Peck, 10 U.S. 87 (1810), and the first state court decision invalidated by the Supreme Court had come only one year earlier. *See* Martin v. Hunter's Lessee, 14 U.S. 304 (1816). The very heart of the *Mayo* decision that Amar relies on (the proposition that state legislatures have concurrent power of constitutional review with the judiciary) was so thoroughly discredited soon afterward that Amar's extrapolation that Founding era courts did not require warrants seems exceedingly far-fetched.

As judicial review gathered sanction, the doctrine apparently enunciated in *Mayo* became increasingly discredited. *See* Ex Parte Rhodes, 79 So. 462 (Ala. 1918) (saying "[t]here is not to be found a single authority, decision, or textbook, in the library of this court, that sanctions the doctrine that the legislature, a municipality, or Congress can determine what is a 'reasonable' arrest").

[315] Amar cites six cases (all referred to in *United States v. Watson*, 423 U.S. 411 (1976)), as standing for the proposition that state Fourth Amendment equivalents did not presume a warrant requirement. AMAR, *supra* note 287, at 5 n. l1. The first case, *State v. Brown*, 5 Del. (5 Harr.) 505 (Ct. Gen. Sess. 1853), is difficult to reconcile with Amar's thesis that antebellum courts recognized no warrant requirement. *Brown* upheld a *criminal* verdict against a night watchman who entered a residence in pursuit of a fleeing chicken thief and instead falsely arrested -- without warrant -- the proprietor. The second case cited by Amar, Johnson v. State, 30 Ga. 426 (1860), simply upheld a guilty verdict against a man who shot a policeman during a warrantless arrest for being an accomplice to a felony. The Georgia Supreme Court repeated the common law exception allowing that an officer may arrest felons without warrant. The third case, Baltimore & O. R.R. Co. v. Cain, 81 Md. 87, 31 A. 801 (1895), merely reversed a civil jury verdict for an arrestee on grounds that the appellant railroad company was entitled to a jury instruction allowing for a breach-of-peace exception to the warrant requirement. The fourth case, *Reuck v. McGregor*, 32 N.J.L. 70 (Sup. Ct. 1866), reversed a civil verdict on grounds of excessive damages -- while *upholding civil liability* for causing warrantless arrest of an apparently wrongly-accused thief. *Holley v. Mix*, 3 Wend. 350 (N.Y. Sup. Ct. 1829), Amar's fifth case, offers little support for Amar's thesis. *Holley* upheld a civil judgment against a private person and an officer who arrested a suspect pursuant to an invalid warrant. Finally, *Wade v. Chaffee*, 8 R.I. 224 (1865), simply held that a constable was not bound to procure a warrant where he had probable cause to believe an arrestee was guilty of a felony, even though no fear of escape was present.

of state constitutions by no means indicate that Founding-era law enforcers could freely search and seize without warrant wherever it was "reasonable" to do so. [316]

WARRANTS A FLOOR, NOT A CEILING

Under Founding-era common law, warrants were often considered as much a constitutional floor as a ceiling. Warrants did provide a defense for constables in most trespass suits, but were *not good enough* to immunize officials from liability for *some* unreasonable searches or seizures.[317] The most often-cited English case known to the Framers who drafted the Fourth Amendment involved English constabulary who had acted pursuant to a search warrant but were nonetheless found civilly liable for stiff (punitive, actually) damages.[318]

For more than 150 years, it was considered *per se* unconstitutional for law enforcers to search and seize certain categories of objects, such as personal diaries or private papers, *even with perfectly valid warrants*.[319] Additionally, Fourth Amendment jurisprudence prohibited the government from seizing as evidence any personal property which was not directly involved in crime, *even with a valid warrant*.[320] The rationale for this "mere evidence" rule was that the interests of property owners were superior to those of the state and could not be overridden by mere indirect evidentiary justifications.[321] This rule, like many other obstacles to police search and seizure power, was discarded in the second half of the twentieth century by a Supreme Court much less respectful of property rights than its predecessors.[322]

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[316] Amar cites four cases as standing for the proposition that state courts interpreted their state constitutional predecessors of the Fourth Amendment's text as requiring no warrants for searches or seizures. AMAR, supra note 287, at 5 n.10. *Jones v. Root*, 72 Mass. (6 Gray) 435 (1856), upheld a Massachusetts "no-warrant" statute in a one-paragraph opinion explained *supra* note 306. In *Rohan v. Sawin*, 59 Mass. (5 Cush.) 281 (1850), Massachusetts' highest court found that a warrantless arrest qualified under the "felon" exception to the warrant requirement. *Mayo v. Wilson*, 1 N.H. 53 (1817), is described *supra* note 306.

Finally, the 1814 Pennsylvania case of *Wakely v. Hart, 6* Binn. 316 (Pa. 1814), resolved a civil suit brought by an accused thief (Wakely) against his arresters upon grounds that the arrest had been warrantless and Wakely had been guilty only of a misdemeanor. The Pennsylvania Supreme Court upheld a jury's verdict for the arresters, upon the rather-fudged finding that Wakely had fled from the charges against him and had been guilty of at least "an offence which approaches very near to a felony," if not an actual felony. *Wakely*, 6 Binn. at 319-20.

[317] *See* Eric Schnapper, *Unreasonable Searches and Seizures of Papers*, 71 VA. L. REV. 869, 874 (1985) (saying the search and seizure clause of the Fourth Amendment "embodies requirements independent of the warrant clause" but which were more strict at Founding than warrant requirement).

[318] *See* Wilkes v. Wood, 19 Howell's State Trials 1153, 1167 (c.p. 1763) (stating "a jury have it in their power to give damages for more than the injury received").

[319] *See* Schnapper, *supra* note 308, at 917 (referring to *Boyd v. United States*, 116 U.S. 616 (1886)). *Boyd's* proposition was slowly watered down and distinguished until the case of *Andresen v. Maryland* finished it off. Andresen v. Maryland, 427 U.S. 463 (1976) (holding that business documents evidencing fraudulent real estate dealings could be constitutionally seized by warrant).

[320] *See* Gouled v. United States, 255 U.S. 298 (1921) (pronouncing "mere evidence" rule, which stood for more than 45 years).

[321] *See* Schnapper, *supra* note 308, at 923-29.

[322] *See* Warden v. Hayden, 387 U.S. 294 (1967) (holding that police can obtain even indirect evidence by use of search warrants). *Hayden* overturned at least five previous Supreme Court decisions by declaring that "privacy" rather than property was the "principle object of the Fourth Amendment." *Id.* at 296 n.l, 304

PRIVATE PERSONS AND THE FOURTH AMENDMENT

Under the Founders' Model, a private person like Josiah Butler, who lost twenty pounds of good pork under suspicious circumstances in 1787, could approach a justice of the peace and obtain a warrant to search the property of the suspected thief for the lost meat.[323] Private individuals applied for many or most of the warrants in the Founders' era and even conducted many of the arrests.[324] Even where sworn constables executed warrants, private persons often assisted them.[325] To avoid liability, however, searchers needed to secure a warrant before acting.[326] False arrest was subject to strict liability.[327]

The Founders contemplated the enforcement of the common law to be a duty of private law enforcement, and assumed that private law enforcers would represent their interests with private means. However, the Founders viewed private individuals executing law enforcement duties as "public authority" and thus intended for the Fourth and Fifth Amendments to apply to such individuals when acting in their law enforcement capacities.[328] Consequently, the Supreme Court's 1921 decision in *Burdeau v. McDowell*[329] -- often cited for the proposition that the Fourth Amendment applies only to government agents -- was almost certainly either wrongly decided or wrongly interpreted by later courts.[330]

Some of the earliest English interpretations of the freedom from search and seizure held the protection applicable to private citizens as much as or more so than government agents.[331] Massachusetts and Vermont were apparently the first states to require that search and arrest warrants be executed by sworn

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[323] *See* Frisbie v. Butler, 1 Kirby 213 (Conn. 1787).

[324] *See, e.g*., Stevens v. Fassett, 27 Me. 266 (1847) (involving defendant who had obtained two arrest warrants against plaintiff without officer assistance); State v. McAllister, 25 Me. 490 (1845) (involving crime victim who swore out warrant affidavit against alleged assailant); State v. J.H., 1 Tyl. 444 (Vt. 1802) (quashing criminal charge gained by unsworn complaint of private individual).

[325] *See* Humes v. Taber, 1 RI. 464 (1850) (involving search by sheriff accompanied by private persons).

[326] *See* Kimball v. Munson, 2 Kirby (Conn.) 3 (1786) (upholding civil damages against two men who arrested suspect without warrant to obtain reward).

[327] *See* Wasserstrom, *supra* note 70, at 289.

[328] The Framers regarded private persons acting under color of "public authority" to be subject to constitutional constraints like the proscription against double jeopardy..*See* Stevens v. Fassett, 27 Me. 266 (1847) (holding private prosecutors were prohibited from twice putting a defendant in jeopardy for the same offense).

[329] 256 U.S. 465 (1921).

[330] *Burdeau v. McDowell* involved a corporate official (McDowell) who was fired by his employer for financial malfeasance at work. After McDowell's termination, company representatives raided his office, opened his safe, and rifled through his papers. *See id*. at 473. Upon finding incriminating evidence against McDowell, company representatives alerted the United States Justice Department and turned over certain papers to the government. A district judge ordered the stolen papers returned to McDowell before they could be seen by a grand jury. The Supreme Court reversed, stating the Fourth Amendment "was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies." *Id*. at 475.

[331] *See* Cloud, *supra* note 297, at 1716 (discussing transition during early 1700s from concept that 'a man's house is his castle (except against the government)' to the legal adage that 'a man's house is his castle (especially against the government)').

officers.[332] New Hampshire adopted the same rule in 1826, more than a generation after the Bill of Rights was ratified.[333] It is likely that some states allowed private persons to execute search warrants well into the nineteenth century.

Because many Founding-era arrests and searches were executed by private persons, and early constables *needed* the assistance of private persons to do their jobs, the Fourth Amendment was almost certainly intended for application to private individuals. *Burdeau* cited no previous authority for its proposition in 1921, and early American cases demonstrate an original intent that the Fourth Amendment apply to every searcher acting under color of law.[334] On the open seas, most enforcement of prize and piracy laws was done by "privateers" acting for their own gain but who were held accountable in court for their misconduct.[335]

Later courts have taken this holding to mean that "a wrongful search or seizure conducted by a private party does not violate the Fourth Amendment." Walter v. U.S. 447 U.S. 649, 656 (1979). *See also* United States v. Jacobsen, 466 U.S. 109, 113 (1984) (saying "This Court has also consistently construed this protection as proscribing only governmental action; it is wholly inapplicable to a private individual not acting as an agent of the Government or with the participation or knowledge of any government official.").

As explained in Part I, early constables had powers no greater than those of other individuals, so they needed warrants before engaging in law enforcement activities beyond any citizen's authority. Like you or I, a constable would be thought outside the bounds of good etiquette (and well outside the law) were he to conduct an unconsented search of another's person, property or effects, and should -- very reasonably -- expect to be jailed, physically repulsed, or sued for such conduct.

A private person's only defense was the absolute correctness of his allegations. A person was liable if, for example, his complaint was too vague as to the address to be searched,[336] he misspelled the name of the accused in his complaint,[337] or he sought the execution of a warrant naming a "John Doe" as a target.[338]

This was the constitutional model secured to America by the Framers. The idea of police having special powers was only a seedling, alien to the scheme of ordered liberty and limited government created by

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[332] Massachusetts and Vermont apparently required that only public officers execute search warrants in the early nineteenth century. *See* Commonwealth v. Foster, 1 Mass. 488 (1805) (holding justice of peace had no authority to issue a warrant to a private person to arrest a criminal suspect); State v. J.H., 1 Tyl. 444 (Vt. 1802).

[333] *See* Bissell v. Bissell, 3 N.H. 520 (1826).

334 See Kimball v. Munson, which upheld civil damages against two men who arrested an alleged horse thief without warrant in response to a constable's reward offer. 2 Kirby 3 (Conn. 1786). Kimball suggested the two private persons would have been protected from liability had they secured a warrant soon after their arrest of the suspect. *See also* Frisbie v. Butler, 1 Kirby 213 (Conn. 1787) (applying specificity requirement to search warrant issued to private person).

[335] *See* Del Col v. Arnold, 3 U.S. (3 Dall.) 333 (1796) (holding that "privateers" on the open seas who capture illegal vessels under the auspices of government authority act at their own peril and may be held liable for all damages to the captured vessels -- even where the captured vessels are engaged in crimes on the high seas).

[336] *See* Humes v. Taber, 1 R.I. 464 (1850)

[337] *See* Melvin v. Fisher, 8 N.H. 406, 407 (1836) (saying "he who causes another to be arrested by a wrong name is a trespasser, even if the process was intended to be against the person actually arrested).

[338] *See* Holley v. Mix, 3 Wend. 350 (N.Y. 1829).

the Constitution. Eventually, police interceded between private individuals and magistrates altogether, and today it is virtually unheard of for a private person to seek a search warrant from a magistrate.

Freedom from search and seizure has been retracting in favor of police ever since the ink was dry on the Bill of Rights. The Framers lived under a common law rule that required warrantless arrests be made only for felonies where no warrant could be immediately obtained.[339] By the early to mid-1800s, the rule had changed to allow warrantless arrests for all felonies regardless of whether a warrant could be obtained.[340] Early American courts also apparently allowed warrantless arrests for misdemeanor breaches of peace committed in the arrestor's presence. Toward the end of the nineteenth century, most state courts had changed to allow warrantless arrest for *all crimes* of any kind committed in an officer's presence, as well as for all felonies committed either within or without an officer's presence regardless of whether a warrant can be obtained.[341]

By the mid-1900s, arrest had become the almost-exclusive province of paid police, and their power to arrest opened even wider. A trend toward allowing police to arrest without warrant for all crimes committed even *outside* their presence has recently developed,[342] with little foreseeable court-imposed impediment.[343] Almost every American jurisdiction has legislated for the erosion of common law limitations with regard to domestic violence arrests and arrests for other high profile misdemeanors.[344]

Despite the Fourth Amendment, the Supreme Court has imposed almost no limits on warrantless arrest at all. Only forcibly entering a residence without warrant to arrest someone inside has been found to violate the Fourth Amendment.[345] Outside the home, modern police have been essentially licensed by the Court to arrest almost anyone at any time so long as probable cause exists.[346] The Supreme Court

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[339] *See* Kimball v. Munson, 2 Kirby 3 (Conn. 1786) (faulting two arrestors for failing to obtain a proper warrant immediately after their warrantless arrest of a suspected felon); Knot v. Gay, 1 Root 66, 67 (Conn. 1774) (stating warrantless arrest is permitted "where an highhanded offense had been committed, and an immediate arrest became necessary, to prevent an escape").

[340] *See* Wade v. Chaffee, 8 R.I. 224 (R.I. 1865) (holding a constable is not bound to procure a warrant before arresting a felon even though there may be no reason to fear the escape of the felon).

[341] *See, e.g*., Oleson v. Pincock, 251 P. 23, 25 (Utah 1926); Burroughs v. Eastman, 59 N.W. 817 (Mich. 1894); Minnesota v. Cantieny, 24 N.W. 458 (Minn. 1885); William A. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 Mo. L. REV. 790-91 (1993).

[342] *See* Schroeder, *supra* note 101, at 784 n.14-16 (listing eight jurisdictions allowing such arrests).

[343] *But see id*. at 791 n.39 (listing four cases that have held warrantless arrests for crimes committed outside an officer's presence unconstitutional).

[344] *See id*. at 779-81 n.13 (providing two pages of statutory provisions allowing warrantless arrest for domestic violence and other specific misdemeanors).

[345] *See* Welsh v. Wisconsin, 466 U.S. 740 (1984) (requiring warrant to forcibly enter a home to arrest someone inside for a misdemeanor traffic offense); Payton v. New York, 445 U.S. 573, 589 (1980) (requiring warrant to forcibly enter a home to arrest a suspected felon unless exigent circumstances prevail).

[346] *See* United States v. Watson, 423 U.S. 411, 412 (1976). *Watson* represents one of the starkest redrawings of search and seizure law ever pronounced by the Supreme Court. Essentially, the Court declared that officers may arrest without warrant wherever they have probable cause. Justice Thurgood Marshall released a blistering dissent accusing the majority of betraying the "the only clear lesson of history" that the common law "considered the arrest warrant far more important than today's decision leaves it." *Id*. at 442 (Marshall, J., dissenting).

effectively buried the original purpose of warrantless arrest entirely in 1985, declaring that "[r]estraining police action until after probable cause is obtained... might... enable the suspect to flee in the interim."[347]

Long forgotten is the fact that common law allowance for warrantless arrest was precipitated solely on an *emergency* rationale and allowed only to protect the public from immediate danger.[348]

The rationale for the felon exception to the warrant requirement in 1791, for example, was that a felony was any crime punishable by death, generally thought to be limited to only a handful of serious crimes.[349] Felons were considered "outlaws at war with society,"[350] and their apprehension without warrant qualified as one of the "exceptions justified by absolute necessity."[351] By the late twentieth century, however, many crimes the Framers would have considered misdemeanors or no crime at all had been declared felonies and the rationale for immediate community action to apprehend "felons" had changed greatly.[352] The courts, however, have been slow to react to this far-reaching change.[353] In any case, the vast majority of arrests (seventy to eighty percent) are for misdemeanors,[354] which would have been proscribed without warrant under the Framers' law.

ORIGINALISTS CALL FOR CIVIL DAMAGES

The writings of most modern "originalist" scholars promote civil suits against police departments, instead of exclusion of evidence, as a remedy for police misconduct. Professor Amar, for example, champions a return to civil litigation, but with, somehow, a better return than such actions currently bring.[355] He invents a fantastically implausible cause of action where "government should generally not

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[347] United States v. Hensley, 469 U.S. 221, 229 (1985).
[348] *See* Conner v. Commonwealth, 3 Bin. 38, 42-43 (Pa. 1810) (insisting that public safety alone justifies exceptions to the warrant requirement).
[349] *See* Tennessee v. Garner, 471 U.S. 1, 14 (1985). The number of crimes considered felonies varied greatly according to location and period. Plymouth Colony knew only seven in 1636: treason, willful murder, willful arson, conversing with the devil, rape, adultery, and sodomy. *See* Julius Goebel, Jr., *King's Law and Local Custom in Seventeenth Century New England*, 31 COLUM. L. REV. 416, n.43 (1931). In general, the American colonists considered far fewer crimes to be felonies than did the people of England. *C.f.* Thorp L. Wolford, *The Laws and Liberties of 1648, reprinted in* ESSAYS IN THE HISTORY OF EARLY AMERICAN LAW 147, 182 (David H. Flaherty, ed. 1969) (saying there were far more felonies in English than in Massachusetts law).
[350] JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 253 (2d ed. 1995).
[351] United States v. Rabinowitz, 339 U.S. 56, 70 (1950) (Frankfurter, J. dissenting).
[352] *See* United States v. Watson, 423 U.S. 411, 439-440 (1976).
[353] *But see id.* at 438 (Marshall, J., dissenting) ("[T]he fact is that a felony at common law and a felony today bear only slight resemblance, with the result that the relevance of the common-law rule of arrest to the modern interpretation of our Constitution is minimal").
[354] *See* WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE 20 (2d ed. 1992).
[355] *See* AMAR, *supra* note 287, at 44. The remedial suggestions proposed by Amar (strict liability tort remedies, class actions, attorneys' fees, statutorily-generated punitive damages, and injunctive relief) are, if anything, less loyal to originalist ideals than the warrant requirement he criticizes. *See* Carol S. Steiker, *Second Thoughts About First Principles*, 107 HARV. L. REV. 820, 828 (1994) (suggesting Amar's departures from the Framer's intent regarding remedies belie his proclaimed adherence to the Framers' "vision" regarding warrants, probable cause and the exclusionary rule).

prevail."[356] He bases this idea on actual cases from the nineteenth century where people prevailed against constables and sheriffs in relatively routine circumstances, often with heavy damage awards.[357]

These cases actually occurred -- but in an age before police took over American law enforcement. Civil damages really were a better remedy when many or most searches were sought -- and sometimes conducted -- by private persons who stood strictly liable in court if their allegations proved false or their conduct proved overzealous.[358] American law provided recovery for every false arrest. If it was not the constable who executed the warrant, the private person, who lodged the original insufficient complaint, was liable.[359]

Under Founding-era common law, liability for officers was in many respects *higher* than for private persons. Sheriffs and deputies could be held liable for failing to arrest debtors for collection of debts[360] or to serve other process,[361] for allowing an imprisoned debtor to escape,[362] for failing to keep entrusted goods secure[363] or to deliver goods in custody at a proper time,[364] or for failing to keep faithful accounting and custody of property.[365] Sheriffs were also obligated to return writs within a specific time period, at pain of civil damages.[366] They were liable to debtors whose property was sold at sheriffs sales if proper advertisement procedures were not followed[367] and for negligently allowing other creditors to obtain priority interests on attached property.[368]

Law enforcers were liable for false imprisonment, even where they acted with court permission, if procedures were improper.[369] A deputy was liable for damages to an arrestee whom he arrested outside his jurisdiction.[370] Sheriffs were even liable if their deputies executed civil process in a rude and insolent manner.[371] When executing writs, sheriffs were liable for any unnecessary violence against innocent third persons who obstructed them.[372]

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[356] *See* AMAR, *supra* note 287, at 44 n. 226 (saying the "government should generally not prevail" in Amar's type of ideal tort actions).
[357] *See* AMAR *supra* note 287, at 12.
[358] *See* Wasserstrom, *supra* note 70, at 289 (saying false arrest was subject to strict liability in colonial times).
[359] *See* Holley v. Mix, 3 Wend. 350, 354 (N.Y. 1829) (stating if any person charge another with felony, the charge will justify an officer taking the suspect in custody, but the person making the charge will be liable for false arrest if no felony was committed).
[360] *See* Clarke v. Little, 1 Smith 100, 101 (N.H. 1805) (addressing liabilities of deputy to debtor's creditors).
[361] Hall v. Brooks 8 Vt. 485 (1836) (holding constable liable for refusing to serve court process).
[362] *See* Shewel v. Fell, 3 Yeates 17, 22 (Pa. 1800) (holding sheriff liable to prisoner's creditor for entire debt of prison escapee).
[363] *See* Chapman v. Bellows, 1 Smith 127 (N.H. 1805).
[364] *See* Morse v. Betton, 2 N.H. 184, 185 (1820).
[365] *See* Lamb v. Day, 8 Vt. 407 (1836) (holding constable liable for allowing mare in his custody to be used); Bissell v. Huntington, 2 N.H. 142. 146-47 (1819).
[366] *See* Webster v. Quimby, 8 N.H. 382, 386 (1836).
[367] *See* Administrator of Janes v. Martin, 7 Vt. 92 (Vt. 1835).
[368] *See* Kittredge v. Bellows, 7 N.H. 399 (1835).
[369] *See* Herrick v. Manly, 1 Cai. R. 253 (N.Y. Sup. Ct. 1803).
[370] *See* Bromley v. Hutchins, 8 Vt. 194, 196 (Vt. 1836).
[371] *See* Hazard v. Israel, 1 Binn. 240 (Pa. 1808).
[372] *See* Fullerton v. Mack, 2 Aik. 415 (1828).

The Founders' law knew no "good faith" defense for law enforcers. Sheriffs and justices who executed arrests pursuant to invalid warrants were considered trespassers (as were any judges who granted invalid warrants). Any person was justified in resisting, or even battering, such officers.[373] Justices of the peace could be held liable for ordering imprisonment without taking proper steps.[374]

Any party who sued out or issued process did so at his peril and was civilly responsible for unlawful writs (even if the executing officer acted in good faith).[375]

Nor did state authority provide the umbrella of indemnification that now protects public officers. Sheriffs of the nineteenth century often sought protection from liability by obtaining bonds from private sureties.[376] Their bonds were used to satisfy civil judgments against them while in office.[377] If the amount of their bonds was insufficient to satisfy judgments, sheriffs were liable personally.[378] It was not uncommon for a sheriff to find himself in jail as a debtor for failing to satisfy judgments against him.[379] Even punitive damages against officers -- long disfavored by modern courts with regard to municipal liability -- were deemed proper and normal under the law of the Framers.[380]

Unlike the early constables, uniformed police officers were generally introduced upon the American landscape by their oaths alone and without bonds. Their municipal employers (hence, the taxpayers) were on the hook for their civil liabilities. Although courts tended to treat police identically to bonded officials,[381] their susceptibility to civil redress was much lower. This change in the law of policing had the effect of depriving Americans of remedies for Fourth Amendment (and other) violations.[382] The evil

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[373] *See* Rex v. Gay, Quincy, Mass. Rep. 1761-1772 (1763) (acquitting defendant who battered sheriff when sheriff attempted arrest with warrant irregular on its face).
[374] *See* Percival v. Jones, 2 Johns. Cas. 49, 51 (N.Y. 1800) (holding justice of peace liable for issuing arrest execution against person privileged from imprisonment).
[375] See id.
[376] *See* Preston v. Yates, 24 N.Y. 534 (1881) (involving sheriff who obtained indemnity bond from private party).
[377] *See* Grinnell v. Phillips, 1 Mass. 530, 537 (1805) (involving Massachusetts statute requiring officers to be bonded).
[378] *See* Tilley v. Cottrell, 43 A. 369 (R.I. 1899) (holding constable liable for damages against him for which his indemnity bond did not cover).
[379] *C.f.* White v. French, 81 Mass. 339 (1860) (involving officer arrested when his obligor failed to pay for officer's liability); Treasurer of the State v. Holmes, 2 Aik. 48 (Vt. 1826) (involving sheriff jailed for debt in Franklin County, Vermont).
[380] At the time of Founding, juries remedied improper searches and seizures by levying heavy damages from officers who conducted them. *See* AMAR, *supra* note 287, at 12. The ratification debates made it clear that no method of curbing "the insolence of office" worked as well as juries giving "ruinous damages whenever an officer has deviated from the rigid letter of the law, or been guilty of any unnecessary act of insolence or oppression." Maryland Farmer, *Essays by a Farmer* (1), *reprinted in* THE COMPLETE ANTI-FEDERALIST 5, 14 (Herbert J. Storing ed., 1981). Punitive damages were apparently common in search and seizure trespass cases, and provided "an invaluable maxim" for securing proper and reasonable conduct by public officers. Today, however, municipalities never have to pay out punitive damages. *See* Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981).
[381] *See* Johnson v. Georgia, 30 Ga. 426 (1860) (holding that a policeman is as much under protection of the law as any public officer).
[382] Many Founding-Era constitutions contained statements declaring a right of remedy for every person. *See, e.g.*, DEL. CONST. of 1776, § 12 (providing that "every freeman for every injury done him in his goods, lands or person, by any other person, ought to have remedy by the course of the law of the land"); MASS. CONST. of 1780, art. I, § XI (providing "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs"); N.H. CONST. of 1784, part I, § XIV (stating "Every subject of this state is entitled to a certain remedy"). Some early proposals for the national Bill of Rights also included such remedy provisions. *See, e.g.*, Proposed Amended Federal Constitution, April 30, 1788, *reprinted in* THE ORIGIN OF THE SECOND AMENDMENT: A DOCUMENTARY

that now pervades criminal justice -- swarms of officers unaccountable in court either criminally or civilly -- was the very evil that the Founders sought to remedy in the late eighteenth century.[383]

DEVELOPMENT OF IMMUNITIES

But immunities follow duties, and duties placed upon police by lawmakers have exploded since 1791.[384] Immunities grew slowly, beginning with a slight deference to officer conduct so long as there was no bad faith, corruption, malice or "misbehavior,"[385] and ending with broad qualified immunity.[386] When the practice of professional policing arrived from England upon American shores (for the second time, actually, if we consider modern police to be akin to the "standing armies" of the Founders' generation), cases began to enunciate a general deference to police conduct, permitting that the actions of officers in carrying out their duties "not to be harshly judged."[387] Appellate courts began to reverse jury verdicts against officers upon new rules of law granting privileges unknown to private individuals.[388]

THE LOSS OF PROBABLE CAUSE, AND THE ONSET OF PROBABLE SUSPICION

Probable cause for the issuance of warrants has also become less strict.[389] The Supreme Court regarded hearsay evidence as insufficient to constitute probable cause for seventeen years in the first half of the twentieth century,[390] but has since given police free reign to construct probable cause in whatever way they deem proper. Instead of *probability* that a crime has been committed, the courts now require only

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HISTORY OF THE BILL OF RIGHTS 1787-1792 790, 791 (David E. Young, ed.) (2d ed. 1995) (providing that "every individual... ought to find a certain remedy against all injuries, or wrongs").

[383] *C.f.* THE DECLARATION OF INDEPENDENCE para. 11 (U.S. 1776) ("He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance").

[384] A small history lesson regarding the early development of officer immunity is provided in *Seaman v. Patten*, 2 Cai. R. 312 (N.Y. Sup. Ct. 1805). Early tax and custom enforcement agents were unsworn volunteers, having "generally received a portion of the spoil." *Id*. at 315. Corresponding to this system, such agents acted at their own peril and were civilly liable for their every impropriety. This "hard rule" of high officer liability was still in force a generation after the Constitution was ratified, although courts began to hold officers less accountable for their mistakes when officers became sworn to perform certain ever-more-difficult duties. *See id*.

[385] *See Seaman*, 2 Cai. R. at 317; Bissell v. Huntington, 2 N.H. 142, 147 (1819) (declaring that sheriffs good faith acts should receive "most favourable construction."). "[N]either the court, the bar, nor the public should favor prosecutions against them for petty mistakes." *Id*. at 147.

[386] *See* Diana Hassel, *Living a Lie; The Cost of Qualified Immunity*, 64 Mo. L. REV. 123, 151 n. 122.

[387] State v. Dunning, 98 S.E. 530, 531 (N.C. 1919).

[388] *See, e.g*., Stinnett v. Commonwealth, 55 F.2d 644, 647 (4th Cir. 1932) (reversing jury verdict against officer on grounds that "courts should not lay down rules which will make it so dangerous for officers to perform their duties that they will shrink and hesitate from action"); State v. Dunning, 98 S.E. 530 (N.C. 1919) (reversing criminal verdict against officer who shot approaching man on grounds that the officer enjoyed a privilege to use deadly force instead of retreating).

[389] The Supreme Court's recent jurisprudence has offered a more relaxed definition of "probable cause" as a "fluid concept" of "suspicion" rather than a fixed standard of probability. *See* Wasserstrom, *supra* note 70, at 337 (analyzing Justice Rehnquist's opinion in *Illinois v. Gates)*.

[390] *See* Grau v. United States, 287 U.S. 124, 128 (1932), *overturned by* Brinegar v. United States, 338 U.S. 160 (1949).

some possibility, a relaxed standard that "robs [probable cause] of virtually all operative significance."[391] This watered-down "probable cause" for the issuance of ex parte warrants would have shocked the Founders.[392]

At common law, one could sue and recover damages from a private person who swore out a false or misleading search warrant affidavit.[393] In contrast, few modern officers will ever have to account for lies on warrant applications so long as they couch their "probable cause" in unprovables. "Anonymous citizen informants,"[394] material omissions and misrepresentations,[395] irrelevant or prejudicial information,[396] and even outright falsities are now common fixtures of police-written search warrant applications.[397] For years, Boston police simply made up imaginary informants to justify searches and seizures.[398] Police themselves refer to the phenomenon as "testilying" -- an aspect of normal police work regarded as "an open secret" among principle players of the criminal justice systern.[399]

POLICE AND THE "AUTOMOBILE EXCEPTION"

The courts have been particularly unkind to Fourth Amendment protections in the context of motor vehicle travel. Since the 1920s, Fourth Amendment jurisprudence has allowed for a gaping and ever-widening exception to the warrant requirement with regard to the nation's roadways.[400] Today, police

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[391] Wasserstrom, *supra* note 70, at 274.

[392] *See* AMAR, *supra* note 287, at 20. Judges of the Founding era appear to have been somewhat more reluctant than modern judges to issue search and seizure warrants. For an early example of judicial scrutiny of warrant applications, see *United States v. Lawrence*, 3 U.S. 42 (1795) (upholding refusal of district judge to issue warrant for arrest of French deserter in the face of what government claimed was probable cause). Today, search warrant applications are rarely denied. The "secret wiretap court" established by Congress to process wiretap applications in 1978, has rejected only one wiretap request in its 22-year life. *See* Richard Willing, *Wiretaps sought in record numbers*, USA TODAY, June 5, 2000, at A1 (saying the court approved 13,600 wiretap requests in the same period).

[393] Private persons were liable if, for example, their complaint was too vague as to the address to be searched, *see* Humes v. Taber, 1 R.I. 464 (1850); misspelled the name of the accused, *see* Melvin v. Fisher, 8 N.H. 406, 407 (1836) (saying "he who causes another to be arrested by a wrong name is a trespasser, even if the process was intended to be against the person actually arrested); or called for the execution of a warrant naming a "John Doe" as a target, *see* Holley v. Mix, 3 Wend. 350 (N.Y. 1829).

[394] *See* Hervey v. Estes, 65 F.3d 784 (9th Cir. 1995) (involving challenge to search warrant wrongfully obtained through false references to anonymous sources).

[395] *See* Hummel-Jones v. Strope, 25 F.3d 647 (8th Cir. 1994) (involving police officer's failure to disclose to judge that an undercover deputy sheriff was the "confidential informant" referred to in a search warrant application).

[396] *See* David B. Kopel & Paul H. Blackman, *The Unwarranted Warrant: The Waco Search Warrant and the Decline of the Fourth Amendment*, 18 HAMLINE J. PUB. L & POL'Y 1, 13 (saying Waco warrant was filled with statements irrelevant to Koresh's alleged firearm violations).

[397] *See id*. at 21 (noting ATF agent's false claims that various spare parts were machine gun conversion kits).

[398] *See* ALAN M. DERSHOWITZ, THE ABUSE EXCUSE AND OTHER COP-OUTS, SOB STORIES, AND EVASIONS OF RESPONSIBILITY 235 (1994).

[399] *Id*. at 233.

[400] The 1920's saw an explosion of police privilege to oversee two separate -- but often interrelated -- elements of American life: Prohibition and the automobile. *See* FRIEDMAN, *supra* note58, at 300 (saying search and seizure became a particularly salient issue during Prohibition). In 1925, the Supreme Court, by split decision, released an opinion that would grow within the next 75 years into an immense expansion of police prerogatives while at the same time representing an enormous loss of personal security for American automobile travelers. *Carroll v. United States* upheld a warrantless search of an automobile

force untold millions of motorists off the roads each year to be searched or scrutinized without judicial warrant of any kind.[401] Any police officer can generally find some pretext to justify a stop of any automobile.[402] In effect, road travel itself is subject to a near total level of police control,[403] a phenomenon that would have confounded the Framers, who treated seizures of wagons, horses and buggies as subject to the same constraints as seizures of other property.[404]

The courts have laid down such a malleable latticework of exceptions in favor of modern police that virtually any cop worth his mettle can adjust his explanations for a search to qualify under one exception or another. When no exception applies, police simply lie about the facts.[405] "Judges regularly choose to accept even blatantly unbelievable police testimony."[406] The practice on the streets has long been for police to follow their hunches, seek entrance at every door, and then attempt to justify searches after the fact.[407] Justice Robert Jackson observed in 1949 that many unlawful searches of homes and automobiles are never revealed to the courts or the public because the searches turn up nothing.[408]

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for liquor as valid under the infamous Volstad Act, enacted to breathe life into the Eighteenth Amendment. 267 U.S. 137 (1925). The Carroll opinion led lower courts to more than one interpretation, *see* Francis H. Bohlen & Harry Shulman, *Arrest With and Without a Warrant*, 75 U. Pa. L. Rev. 485, 488-89 (1927) , but slowly became recognized as a pronouncement of an "automobile exception" to the warrant requirement. *See* United States v. Ross, 456 U.S. 798, 822 (1982).
Two decades after *Carroll*, Justice Robert H. Jackson tried in earnest to force the genie back into the bottle by narrowing the automobile exception to cases of serious crimes, but a 7-2 majority outnumbered him. *See* Brinegar v. United States, 338 U.S. 160, 180-81 (1949) (Jackson, J., dissenting). Since *Brinegar*, the "automobile exception" has been a fixture of Fourth Amendment jurisprudence, and has greatly expanded. The automobile exception now accounts for the broadest umbrella of warrant exceptions. *See, e.g*., California v. Acevedo, 500 U.S. 565 (1991) (allowing warrantless search of containers in automobiles even without probable cause to search the vehicle as a whole). Indeed, the automobile exception has expanded so far that it has made a mockery of Fourth Amendment doctrine. As Justice Scalia pointed out in his *Acevedo* concurrence, an anomaly now exists protecting a briefcase carried on the sidewalk from warrantless search but allowing the same briefcase to be searched without warrant if taken into a car. *Acevedo* at 581 (Scalia, J., concurring).

[401] Police surveillance of American roadways has brought the bar of justice far closer to most Americans than ever before. Few accounts of the sheer scale of traffic stops are available, but anecdotal evidence suggests traffic encounters with police number in the hundreds of millions annually. In North Carolina alone, more than 1.2 million traffic infractions were recorded in a single year. *See* FRIEDMAN, *supra* note 58, at 279. Of actual traffic stops, no reliable estimate can be made.

[402] *See* SKOLNICK & FYFE, *supra* note 63, at 99.

[403] In *Delaware v. Prouse*, 440 U.S. 648 (1979), the Supreme Court actually considered, but stopped short of, allowing cops to randomly stop any traveler without any particularized reason -- with one justice (Rehnquist) arguing that cops may do so. *Prouse*, 440 U.S. at 664 (Rehnquist, J., dissenting).

[404] *See* Flanders v. Herbert, 1 Smith (N.H.) 205 (1808) (finding constable who stopped a driver and horse team pursuant to an invalid writ of attachment liable for trespass). Private tort principles rather than state licensing programs governed highway travel at the time of the Framers. *See* Kennard v. Burton, 25 Me. 39 (1845).

[405] *See* David Rudovsky, *The Criminal Justice System and the Role of the Police, in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE, 242, 247 (David Kairys, ed. 1982).

[406] *Id*.

[407] Prior to the imposition of the exclusionary rule in *Mapp v. Ohio*, 367 U.S. 643 (1961), the Cincinnati police force rarely applied for search warrants. In 1958, the police obtained three warrants. In 1959 the police obtained none. *See* Bradley C. Canon, *Is the Exclusionary Rule in Failing Health?: Some New Data and a Plea Against a Precipitous Conclusion, 62* KENTUCKY L. J. 681, 709 (1974). Similarly, the use of search warrants by the New York City Police Department prior to *Mapp* was negligible, but afterward, over 5000 warrants were issued. *See* Wasserstrom, *supra* note 70, at 297 n. 203.

[408] Brinegar v. United States, 338 U.S. 160, 181 (1949) (Jackson, J., dissenting) (expressing belief that many unlawful searches are never revealed because no evidence is recovered).

ONE EXCEPTION: THE EXCLUSIONARY RULE?

Conventional wisdom suggests there is one important exception to the long decline of Fourth Amendment protections: the exclusionary rule. Since 1914, the Supreme Court has required the exclusion of evidence seized in violation of the Fourth Amendment from being used against a defendant in federal court.[409] In 1961, this rule was applied to the states in *Mapp v. Ohio*.[410] Shortly thereafter, the Supreme Court expanded the exclusionary rule to other protections such as the Fifth and Sixth Amendments in cases such as *Miranda v. Arizona*.[411]

Textualists and originalists have lobbed a steady stream of vitriol against the exclusionary rule for decades. No enunciation of such a rule, say these critics, can be found in the writings or statements of the Framers.[412] Moreover, say such critics, the rule places a heavy burden on the efficiency of police (but simultaneously, somehow, fails to deter them in any way), and unfairly frees a small but not insignificant percentage of "guilty" offenders.[413] So-called "conservative" legal scholars remember the Warren Court's imposition of the exclusionary rule upon the states in the 1960s as a bare-knuckled act of judicial activism[414] and argue that the Court "[took] it upon itself, *without constitutional authorization*, to police the police."[415]

The *Miranda* and *Mapp* decisions provoked an onslaught of hostility by police organizations and their sympathizers that has not subsided decades later. High-ranking authorities (not the least of which were Justices Harlan and White, who dissented in *Miranda)* wrote that such decisions put society at risk from criminals.[416] The *Miranda* rule, according to Justice White, would force "those who rely on the public authority for protection" to "engage in violent self-help with guns, knives and the help of their neighbors similarly inclined."[417] Even more outraged was the chief of police of Garland, Texas, who responded, "We might as well close up shop."[418]

Yet the dire predictions that followed the *Miranda* and *Mapp* decisions were ultimately proved false.[419] Rather than returning to what Justice White decried as "violent self-help" (as the Constitution's framers

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[409] *See* Weeks v. United States, 232 U.S. 383 (1914).
[410] 367 U.S. 643 (1961).
[411] 384 U.S. 436 (1966).
[412] *See* AMAR, *supra* note 287, at 21 (claiming "[s]upporters of the exclusionary rule cannot point to a single major statement from the Founding -- or even the antebellum or Reconstruction eras -- supporting Fourth Amendment exclusion of evidence in a criminal trial").
[413] *See* BURTON S. KATZ, JUSTICE OVERRULED: UNMASKING THE CRIMINAL JUSTICE SYSTEM 43 (1997) (saying in two consecutive sentences that "[t]he exclusionary rule has failed in its only goal" but that "[t]he cost... is almost unbelievably high").
[414] *See, e.g., id*. at 43 (saying *Mapp* was the "culmination of an activist judicial trend").
[415] Fred E. Inbau, *Public Safety v. Individual Civil Liberties: The Prosecutor's Stand*, 53 J. CRIM. L., CRIMINOLOGY & P. S. 85 (1962), *reprinted in* 89 J. CRIM. L. & CRIMINOLOGY 1413, 1413 (1999) (emphasis added).
[416] Miranda v. State of Arizona, 384 U.S. 436, 516 (1966) (Harlan, J., dissenting) (saying "the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation.").
[417] *Id*. at 542 (White, J., dissenting).
[418] *See* J. Richard Johnston, *Plea Bargaining in Exchange for Testimony: Has* Singleton *Really Resolved the Issues?*, CRIMINAL JUSTICE, Fall 1999, at 32 (quoting from Ed Cray's biography of Earl Warren, *Chief Justice*).
[419] See id.

truly intended), America continued its slide into increased dependence upon police for the most mundane aspects of law enforcement. If anything, reliance upon police for personal protection has increased since the 1960s.

I propose an altogether different interpretation of *Mapp*, *Miranda*, and some of the Warren Court's other criminal procedure decisions. While I concede that this jurisprudence grossly violated certain constitutional principles (most importantly, principles of federalism), I submit that such rulings were attempts to bring constitutional law into accord with the alien threat posed by modern policing. Professional policing's arrival upon the American scene required that the Court's Bill of Rights jurisprudence splinter a dozen ways to accommodate it. Thus, *Mapp* and *Miranda* were an application of brakes to a foreign element (modern policing) that is itself *without constitutional authorization*.

In many ways, the Warren Court was the first U.S. Supreme Court to face criminal procedural questions squarely in light of the advent of professional policing. The *Miranda* and *Mapp* decisions, according to noted criminal law expert David Rudovsky, "at least implicitly acknowledged widespread police and prosecutorial abuse,"[420] a phenomenon that would have bedeviled the Framers. *Mapp's* holding was brought on more by the need to make the criminal justice system work fairly than by any other consideration.[421] The same realities gave way to the rule of *Bivens v. Six Narcotics Agents*, in 1971, in which the Court conceded that an agent acting illegally in the name of the government possesses a far greater capacity for harm than any individual trespasser exercising his own authority (as prevailed as the common form of law enforcement in 1791).[422]

Furthermore, the notion that exclusion cannot be justified under an originalist approach is not nearly as well-founded as its harshest critics suggest.[423] Critics of the rule point to the 1914 case of *Weeks v. United States*[424] as the rule's debut in Supreme Court jurisprudence.[425] However, the rule actually debuted in dicta in the 1886 case of *Boyd v. United States*.[426] Even this seemingly late date of the rule's debut can be attributed to the Court's lack of criminal appellate jurisdiction until the end of the nineteenth century.[427] The reality is that *Boyd*, the Court's first suggestion of the rule, represents, for practical purposes, the *very first Fourth Amendment case* decided by the Supreme Court. The exclusionary rule thus has a better pedigree than it is credited with.[428]

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[420] David Rudovsky, *The Criminal Justice System and the Role of the Police, in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 246 (David Kairys, ed. 1982).

[421] Six years prior to the *Mapp* decision, the influential California Supreme Court justice Roger Traynor concluded that exclusion was necessary to level the playing field between state and citizen. "It is morally incongruous," wrote Traynor, "for the state to flout constitutional rights and at the same time demand that its citizens observe the law." People v. Cahan, 282 P.2d 905, 911 (Cal. 1955).

[422] *See* Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 392 (1971).

[423] *See* Illinois v. Krull, 480 U.S. 340, 362 (1987) (O'Connor, J., dissenting) (saying the exclusionary rule is much more soundly based in history than is popularly thought).

[424] 232 U.S. 383 (1914).

[425] *See, e.g*., Katz, *supra* note 214, at 43 (saying there was no exclusionary rule for 123 years and "[t]here is a good reason for that.").

[426] 116 U.S. 616 (1886).

[427] *See* AMAR, *supra* note 287, at 146 (explaining that the Supreme Court reported very few criminal cases of any kind until the end of the 1800's).

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THE FIFTH AMENDMENT

In a previous article, I described the limitation of common law grand jury powers by Rule 6 of the Federal Rules of Criminal Procedure as an unconstitutional infringement of the Fifth Amendment Grand Jury Clause.[429] The fact that most criminal charges are now initiated not by crime victims but by armed state agents who serve the state's interests represents a drastic alteration of Founding-era criminal procedure.[430] The suppression of grand jurors' lawful powers belies the intent of the Constitution that law enforcement officials be subject to stringent oversight by the citizenry through grand juries. Modern policing, in effect, acts as a middleman between the people and the judicial branch of government that was never contemplated by the Framers.

The Fifth Amendment also prohibits the compulsion of self-incriminating testimony.[431] Various competing interpretations ebbed and flowed from this provision until 1966, when the Supreme Court held that police are required to actually tell suspects about the Fifth and Sixth Amendments' protections before interrogating them.[432] The sheer volume of criticism by police organizations of the *Miranda* ruling over the next three decades indicates the strong state interest in keeping the Constitution's protections concealed from the American public.

Modem police interrogation could scarcely have been imagined by the Framers who met in Philadelphia in the late eighteenth century. Police tactics such as falsifying physical evidence, faking identification lineups, administering fake lie detector tests and falsifying laboratory reports to obtain confessions are methods developed by the *professionals* of the twentieth century.[433] Against such methods a modern suspect stands little chance of keeping his tongue. Like the exclusionary rule and the entrapment defense, the *Miranda* rule operates as an awkward leveling device between the rights of American citizens and their now-leviathanic government.

In 2000, the Supreme Court upheld (indeed, "constitutionalized") the *Miranda* rule in the face of widespread predictions that the police-favoring Rehnquist majority would abandon the rule.[434] The Court delivered an opinion recognizing that "the routine practices of [police] interrogation [is] itself a relatively new development."[435] The *Miranda* requirement, according to Justice Rehnquist, was therefore justified as an extension of *due process* -- a far more sustainable course than one extending from the wording of the Fifth and Sixth Amendments.[436]

The *Dickerson* decision illustrates the increasingly awkward peace between the Bill of Rights and the phenomenon of modern policing. Because the Framers did not contemplate wide-scale execution of

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[429] See Roger Roots, If It's Not a Runaway, It's Not a Real Grand Jury, 33 CREIGHTON L. REV. 821 (2000).
[430] See id.
[431] *See* U.S. CONST. amend. V (providing no person "shall be compelled in any criminal case to be a witness against himself).
[432] *See* Miranda v. Arizona, 384 U.S. 436 (1966).
[433] *See* SKOLNICK & FYFE, *supra* note 63, at 61.
[434] *See* Dickerson v. United States, 530 U.S. 428 (2000).
[435] *Id*. at 435 n. l.
[436] *See id*. at 435.

government power through paid, full-time agents, modern jurisprudence reconciling the Bill of Rights with today's police practices seems increasingly farfetched. Justices Scalia and Thomas dissented from the *Dickerson* majority with well-founded textualist objections, arguing that the majority was writing a "prophylactic, extraconstitutional Constitution" to protect the public from police.[437] Yet in light of the extraconstitutional nature of modern police, the *Dickerson* majority opinion is no less consistent with the Framers' constitutional intent.

DUE PROCESS

Due process of law depends upon assurances that a level playing field exists between rival adversaries pitted against each other.[438] The constitutional design pitted a citizen defendant against his citizen accuser before a jury of his (the defendant's) peers. The state provided only the venue, the process, and assurances that the rule of law would govern the outcome. By comparison, a modern defendant is hardly pitted in a fair fight, facing the vast treasury and human resources of the state. While the criminal justice system of the Founding era was victim-driven, and thus self-limiting, today's system is fueled by a professional army of police who measure their success in numbers of arrests and convictions.[439]

Police themselves often ignore standard concepts of fairness, official regulations, and statutes in their war on crime.[440] Police agencies have even been known to develop institutional means to circumvent court attempts to equalize the playing field.[441] In the face of unwanted publicity or controversy surrounding police brutality cases, police departments have been known to release arrest records to the media to vilify victims of police misconduct.[442]

The police model of law enforcement tilts the entire system of criminal justice in favor of the state. The police, though supposedly neutral investigators, are in reality an arm of the prosecutor's office.[443] Where police secure a crime scene for investigation, they in fact secure it *for the prosecution* alone and deny access to anyone other than the prosecution. A suspect or his defense attorneys often must obtain court

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[437] *Id*. at 434 (Scalia, J., dissenting).
[438] *C.f*. Hayes v. Missouri, 120 U.S. 68, 70 (1887) (recognizing that impartiality in criminal cases requires that "[b]etween [the accused] and the state the scales are to be evenly held"); Unites States v. Singleton, 165 F.3d 1297, 1314 (10th Cir. 1999) (Kelly, J., dissenting) (speaking of "the policy of ensuring a level playing field between the government and defendant in a criminal case").
[439] *See* BOOZHIE, *supra* note 10, at 238.
[440] See id.
[441] G. Gordon Liddy points out in his 1980 autobiography *Will* that when the courts began requiring that the FBI provide defense attorneys with FBI reports on defendants, the FBI circumvented such orders by recording investigation notes on unofficial attachments which were never provided to the defense. *See* G. GORDON LIDDY, WILL 354 (1980).
[442] *See, e.g., id*. at 216 (reporting 1996 St. Louis case in which police released arrest record of dead person whom police had killed to damage his reputation); *id*. at 238 (reporting 1998 New York case in which police released rap sheet of their victim but withheld identity of involved officers); *id*. at 240 (reporting case in which police revealed dead suspect was on parole and used his case to call for abolishing parole).
[443] Perhaps the most extreme example of lopsided investigative resources occurred in the Oklahoma City bombing case in 1995. Defense attorneys complained that "the resources of every federal, state, and local agency in the United States" were at the government's disposal -- including a 24-hour FBI command center with 400 telephones to coordinate evidence-gathering for the prosecution. *See* Petition For Writ of Mandamus of Petitioner-Defendant, Timothy James McVeigh at 13, McVeigh v. Matsch (No. 96-CR-68-M) (10th Cir. Mar. 25, 1997). In contrast, the defense complained that "without subpoena power, without the right to take depositions, and without access to national intelligence information, the McVeigh defense can go no further." *Id*. at 4.

permission to view the scene or search for evidence. Only such exculpatory evidence as by accident falls into the hands of the prosecution need be revealed to the suspect or defendant.[444] In cases where police misconduct is an issue, police use their monopoly over the crime scene to prepare the evidence to suit their version of events.[445]

Mapp, *Miranda* and *Dickerson* notwithstanding, the tendency of modern courts to work around police practices, rather than nullify or restrain them, poses the very threat to due process of law the Framers saw as most dangerous to liberty. Instead of viewing the system as a true adversarial contest with neutral rules, judges and lawmakers have decided that catching (nonpolice) lawbreakers is more important than maintaining a code of integrity.[446] The "sporting theory of criminal justice," wrote Justice Warren Burger, "has been experiencing a decline in our jurisprudence."[447] In its place is a system where the government views the nonpolice lawbreaker as a threat to its authority and places top priority on defeating him in court.[448]

ENTRAPMENT

Abandonment of victim-driven, mostly private prosecution has led to consequences the Framers could never have predicted and would likely never have sanctioned. Even in the most horrific examples of colonial criminal justice (and there were many), defendants were rarely if ever entrapped into criminal activity. The development of modern policing as an omnipotent power of the state, however, has necessitated the simultaneous development of complicated doctrines such as entrapment and "outrageous government conduct" as counterweights.

It was not until the late nineteenth century that any English or American case dealt with entrapment as a true defense to a criminal charge.[449] (The case law until then had been virtually devoid of police conduct issues altogether).[450] Beginning in 1880, English case law slowly became involved with phenomena such as state agents inducing suspects to sell without proper certificates,[451] persuading defendants to supply drugs to terminate pregnancy,[452] and enticing people to commit other victimless crimes. Dicta in

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[444] *See* Brady v. Maryland, 373 U.S. 83 (1963) (finding that suppression of evidence favorable to defense violates due process). Prosecutors are required by the *Brady* doctrine to reveal exculpatory evidence in their possession or in the possession of the investigating agency. *See* United States v. Zuno-Arce, 44 F3d 1420 (9th Cir. 1995). Only one federal court of appeals has held that prosecutors are imputed to hold knowledge of information "readily available" to them and require such knowledge to be transferred to the defense. *See* Williams v. Whitley, 940 F2d 132 (5th Cir. 1991). However, nothing in the law mandates that police look for exculpatory evidence.

[445] *See, e.g*., STOLEN LIVES, *supra* note 123, at 248 (reporting 1997 New York City case in which officers closed off scene of shooting by police for a half an hour after the shooting). Upon being allowed to enter the shooting scene, observers noticed that police had moved large kitchen table to the side of room to make police claim that victim (who had apparently been on other side of the table from officers) had lunged at them more plausible. *See id*.

[446] *See* BOOZHIE, *supra* note 10, at 238.

[447] Brewer v. Williams, 430 U.S. 387, 417 (1977) (Burger, J., dissenting).

[448] BOOZHIE, *supra* note 10, at 238.

[449] *See* PAUL MARCUS, THE ENTRAPMENT DEFENSE 3 (2d ed. 1995).

[450] *See id*. at 3-4.

[451] *See* Blaikie v. Linton, 18 Scot. Law Rep. 583 (1880).

[452] *See* Regina v. Bickley, 2 Crim. App. R. 53, 73 J.P.R. 239 (C.A. 1909).

some English cases expressed outrage that police might someday "be told to commit an offense themselves for the purpose of getting evidence against someone."[453] Police who commit such offenses, said one English court, "ought also to be convicted and punished, for the order of their superior would afford no defense."[454]

Entrapment did not arise as a defense in the United States until 1915, when the conduct of government officers for the first time brought the issue before the federal courts. In *Woo Wai v. United States*, the Ninth Circuit overturned a conviction of a defendant for illegally bringing Chinese persons into the United States upon evidence that government officers had induced the crime.[455] Growth in police numbers and "anti-crime" warfare was so rapid that in 1993, the Wyoming Supreme Court wrote that entrapment had "probably replaced ineffectiveness of defense counsel and challenged conduct of prosecutors as the most prevalent issues in current appeals."[456]

The growth of the use of entrapment by the state raises troubling questions about the nature and purposes of American government. Rather than "serving and protecting" the public, modern police often serve and protect the interests of the state against the liberties and interests of the people. A significant amount of police brutality, for example, seems aimed at mere philosophical, rather than physical, opposition. Police dominance over the civilian (rather than service to or protection of him) is the "only truly iron and inflexible rule" followed by police officers.[457] Thus, any person who defies police faces virtually certain negative repercussions, whether a ticket, a legal summons, an arrest, or a bullet.[458] One study found nearly half of all illegal force by police occurred in response to mere defiance of an officer rather than a physical threat.[459]

In the political sphere, police serve the interests of those in power *against* the rights of the public. New York police of the late nineteenth century were found by the New York legislature to have committed "almost every conceivable crime against the elective franchise," including arresting and brutalizing opposition-party voters, stuffing ballot boxes, and using "oppression, fraud, trickery [and] crime" to ensure the dominant party held the city.[460] In the twentieth century, J. Edgar Hoover's FBI agents burglarized hundreds of offices of law-abiding, left-wing political parties and organizations, "often with the active cooperation or tacit consent of local police."[461] The FBI has also spent thousands of man-

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[453] Brannan v. Peek, 2 All E.R. 572, 574 (Q.B. 1947).
[454] *Id*.
[455] 223 F. 412 (9th Cir. 1915).
[456] Rivera v. State, 846 P.2d 1, 11 (Wyo. 1993).
[457] SKOLNICK & FYFE, *supra* note 63, at 102 (quoting Paul Chevigny).
[458] *See id. See also* STOLEN LIVES, *supra* note 123, at 302. Kevin McCoullough, who was suing the City of Chattanooga for unjust imprisonment, was shot dead by police at his workplace after he allegedly threw or ran at police with a metal object. McCoullough had predicted his own murder by police in statements to co-workers. *See id*.
[459] *See id*. (citing President's Commission on Law Enforcement and Administration of Justice study).
[460] *See* FRIEDMAN, *supra* note 58, at 154 (citations omitted).
[461] JEFFREY REIMAN, THE RICH GET RICHER AND THE POOR GET PRISON: IDEOLOGY, CLASS, AND CRIMINAL JUSTICE 166 (5th ed. 1997).

hours surveiling and investigating writers, playwrights, directors and artists whose political views were deemed a threat to the interests of the ruling political establishment.[462]

Police today are a constant agent on behalf of governmental power. Both in the halls of legislatures and before the courts, police act as lobbyists against individual liberties.[463] Police organizations, funded by monies funneled directly from police wages, lobby incessantly against legislative constraints on police conduct.[464] Police organizations also file *amicus curie* briefs in virtually every police procedure case that goes before the Supreme Court, often predicting dire consequences if the Court rules against them. In 2000, for example, the police lobby filed *amicus* briefs in favor of allowing police to stop and frisk persons upon anonymous tips, warning that if the Court ruled against them, "the consequence for law enforcement and the public could be increased assaults and perhaps even murders."[465]

CONCLUSION

The United States of America was founded without professional police. Its earliest traditions and founding documents evidenced no contemplation that the power of the state would be implemented by omnipresent police forces. On the contrary, America's constitutional Framers expressed hostility and contempt for the standing armies of the late eighteenth century, which functioned as law enforcement units in American cities. The advent of modern policing has greatly altered the balance of power between the citizen and the state in a way that would have been seen as constitutionally invalid by the Framers. The implications of this altered balance of power are far-reaching, and should invite consideration by judges and legislators who concern themselves with constitutional questions.

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[462] *See* HERBERT MITGANG, DANGEROUS DOSSIERS (1988). The FBI kept a 207-page file on cartoonist Bill Mauldin, a 153-page file on book publisher Alfred A. Knopf, and a 23-page file on Lincoln biographer Carl Sandburg, for example. *See id*. at 249, 195, and 81.

[463] The Fraternal Order of Police (FOP), the largest police organization in the United States, has over 270,000 members and has been named one of the most powerful lobbying groups in Washington. *See* National Fraternal Order of Police, *Press Release*, Sept. 17, 1997.

[464] An example of the police lobby's power is its ability to scuttle asset forfeiture reform. The International Association of Chiefs of Police (IACP) managed to keep congressional leaders from attaching forfeiture reform to budget legislation in 1999. *See* IACP, *End of Session Report for the 1st Session of 106th Congress: FY 2000 Funding Issues*, Jan. 17, 2000. *See also* Peter L. Davis, *Rodney King and the Decriminalization of Police Brutality in America*, 53 MD. L. REV. 271, 281 n.40 (1994). Police unions in many jurisdictions successfully thwart efforts to establish civilian review boards. *See id*. at 282.

[465] *See* Richard Willing, *High Court Restricts Police Power to Frisk*, USA TODAY, Mar. 29, 2000, 4A.

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The End of the Revolution and the Beginning of Independence

Social Upheaval in Colonial America - 1774-1775 from Farmers to Patriots

Gary Hunt
Outpost of Freedom
February 2, 2010

John Adams to Jefferson

August 24, 1815.

"...As to the history of the revolution, my ideas may be peculiar, perhaps singular. What do we mean by revolution? The war? That was no part of the revolution' it was only an effect and consequence of it. The revolution was in the minds of the people, and this was effected from 1760 to 1775, in the course of fifteen years, before a drop of blood was drawn at Lexington. The records of the thirteen legislatures, the pamphlets, newspapers in all the colonies ought to be consulted during that period, to ascertain the steps by which the public opinion was enlightened and informed concerning the authority of parliament over the colonies".

* * * * * * * * * * * * *

We most often define the Revolution as the War of Independence from rule by Great Britain. We also suppose that the Revolution began with the British efforts to seize gunpowder and cannon from the stores at Concord, Massachusetts. We also define the beginning of the Revolution as a battle that ensued when the British were resisted in their attempt to secure those guns and powder.

From a political standpoint, we look at the Stamp Act, Tea Tax, and the Massachusetts Port Act as the elements that provoked the actions at Lexington and Concord, on April 19, 1775.

There were, however, a number of events, both political and rebellious, that predate the battle on Lexington Green. These events fall well within the period that John Adams defines as the Revolution -- that period in which the public was "enlightened and informed concerning the authority of parliament over the colonies".

The Political Environment

Let us look at some of the forgotten events that were, for all intents and purposes, the end of the Revolution, and, the precursor to the War of Independence.

Though it took many weeks to arrive in the Colonies, the **Massachusetts Port Act** was approved by the parliament on March 31, 1774. "*[A]n act to discontinue, in such manner, and for such time as are therein mentioned, the landing and discharging, loading or shipping, of goods, wares, and merchandise, at the town, and within the harbor, of Boston, in the province of*

Massachusetts Bay, in North America." The act, essentially, embargoed Boston and restricted that necessary flow of goods to that city. It also included housing and feeding 3000 British soldiers, which increased the demand on available goods.

Seldom mentioned, however, was the **Massachusetts Governments Act** (see Appendix), approved by parliament nearly two months later, on May 20, 1774.

This legislation was described as, "*an act for the better regulating the governments of the province of the Massachusetts Bay, in New England*". This act had a devastating effect on the existing governments in the Massachusetts colony. It removed the selection of the governor from the general courts or assemblies of the colony and vested that authority in the Crown. It further provided that all counselors, judges, commissioners, the attorney general, provosts, marshals, and justices of the peace, would be appointed by the Governor and approved by his Majesty. The final indignation came when the act required that all agenda items from town meetings had to have approval of the royal Governor, and that only the annual town meetings, in March and May, may be held, without permission of the Governor. Business as usual was no longer an option.

The impact of this second act, the Massachusetts Government Act, was felt more severely in the rural communities outside of Boston. The people of Boston were preoccupied with the occupation by the British troops, and though their governments had been suspended, their concerns were other than those of the farmers.

Suddenly, these small communities were unable to conduct the business of keeping their government functioning.

Within the small communities, there were those with wealth and family. These "crafty" men managed to hold the more powerful positions in the communities. Whether merchants or lenders, there were many who owed them for goods, services, or money.

Increases in taxes, because of the French - Indian wars, had reduced the available amounts of money to almost nonexistent -- making it impossible to repay their obligations.

Those who had wealth and power tended to be "Tories" and loyal to the crown. They were also influential in the judicial system, which often seized property, livestock, or land, in repayment of debts.

Therefore, in 1773, committees were forming throughout the countryside. By December 1773, when news of the Boston tea party had reached the country, committees began communicating in earnest.

The town of Worcester, in Worcester County, issued a resolve, stating, in part:

> to have these who are to judge, and Determin, on our lives, property, paid by a foreign State, immediately Destroy the national dependence which ought to Subsist between a people, and their officers, and of consequence, destructive of liberty; For which reason, we are of the opinion, that we are not in the least bound in duty to Submit, to the ordering in Determining of Such officers as not dependent on the Grants of this people for their pay.

This resolution outraged local Tories.

A local blacksmith, Timothy Bigelow, was elected leader of the Town Council, for the first time displacing the wealth and power that had ruled before.

The superior court was scheduled to open on April 19, 1774. Four of the five superior court judges had already refused "the bribe offered them by the crown", leaving only one judge to serve on the court.

Just a month before, the Massachusetts house of representatives had impeached Chief Justice Peter Oliver. Before the council could try Oliver, Governor Thomas Hutchinson dissolved the general court. The impeachment was not completed.

Oliver was scheduled at the April 19 Worcester County superior court, however, the Whigs refused to serve as grand jurors -- effectively nullifying the court. Oliver, wisely, refused to appear at Worcester County - for fear of his life.

The Tory faction recorded the "Redmond Dissent" of the recent Whig activities. Only 52 of the nearly 250 eligible voters in Worcester County signed this dissent. Clearly, the Whigs were gaining control.

In May 1774, word of the Boston Port Act arrived in the Colonies. Along with the act came a newly appointed a Royal Governor, General Thomas Gage. Essentially, this was the end of civil government in Massachusetts. During the next 11 months, many changes were going to occur in Massachusetts.

John Adams, reflecting the mood of the countryside, while staying at a Shrewsbury inn, recorded an indication of things to come:

> [A]s I was cold and wet, I sat down to the good fire in the bar room to dry great coat and saddlebags tell a fire could be made in my chamber. Their presently came in, one after another, half a dozen, or half the score, substantial yeoman of the neighborhood, who, sitting down to the fire after lighting their pipes, began a lively conversation upon politics. As I believed I was unknown to all of them, I sat in total silence to hear them.
>
> One said, "The people of Boston are distracted!"
>
> Another answered, "No wonder the people of Boston are distracted. Oppression will make wise men mad."
>
> A third said, "what would you say, if a fellow should come to your house and tell you he has come to take a list of your cattle, that parliament might tax you for them at so much ahead? And how should you feel, if he was to go and break open your barn, to take down your oxen, cows, horses, and sheep?"
>
> "What I should say," replied the first;" I would knock him in the head."
>
> " Well," said a fourth, "if parliament can take away Mr. Hancock's wharf and Mr. Rowe's wharf, they can take away your barn and my house".
>
> After much more reasoning in this style, a fifth, who had as yet been silent, broke out, "Well, it is high time for us to rebel; we must rebel some time or other, and we had better rebel now than at any time to come. If we put off for 10 or 20 years, and let them go on as they have begun, they will get a strong party among us, and plague us a great deal more than they can now."

On June 6, 1774, the Massachusetts Government Act was published in the Boston Gazette. From this point on, nearly every position of competence, within any level of government, would be subject to appointment by the royal governor. Even agenda items for town meetings were subject to his approval. Except in Boston, only town council members would be elected by the people.

On August 6, 1774, the Massachusetts Government Act went into effect. The king had selected 36 men to sit on the council --"mandamus counselors" --of which only three had been elected to the council by the people. The crown was repudiating the electoral process established by the 1691 charter.

On Sunday, August 7, General Gage, ignoring the Sabbath, sent messages to the newly appointed counselors and summoned them to Salem the following morning. Only 11 of the 36 showed up to take their oaths on Monday. Of the remainder, three accepted their appointments but were not sworn in, two declined their appointments, and the remaining four chose to "take time to consider of it". The remainder, living at a distance from Salem, could not be notified in time.

On August 9, 1774, 52 men from 22 towns in the county met at Mary Stearns' tavern in Worcester to establish a committee.

Among the resolutions written and adopted that day, we find the following:

> Resolved, That we bear all true allegiance to his majesty King George the third, and that we will, to the utmost of our power, defend his person, crown, and dignity, but at the same time, we disclaim any jurisdiction in the commons of Great Britain over his majesty's subjects in America.
>
> Resolved, that an attempt to vacate said charter [1691 Massachusetts Charter], by either party, without the consent of the other, has a tendency to dissolve the union between Great Britain and this province, to destroy the allegiance we owed to the king, and to set aside the sacred obligations he is under to his subjects here.
>
> Resolved, that it is the indisputable duty of every American, and more especially in this province, to unite in every virtuous opposition that can be devised, in order to save ourselves and posterity from inevitable ruin.
>
> Voted, that we most earnestly recommend it to the several towns in this county, (and if it should not be thought to arrogant,) to every town in the province, to meet and adopt some wise, prudent, and spirited measures, in order to prevent the execution of those most alarming acts of parliament, respecting our constitution.

The Social Upheaval

Berkshire County, Massachusetts - August 16, 1774

The Inferior Court of Common Pleas for a Berkshire County was scheduled to meet on August 16, 1774, in Great Barrington. Great Barrington was a three-day ride from Boston, and the suits are the first to be heard by officials appointed under the Massachusetts Government Act.

In opposition to the Whigs, local Tories, including several justices of the peace and the county sheriff, had tried to prevent a meeting of the Whigs. In that meeting, the local Whigs had developed a "Solemn League and Covenant". The Covenant provided that any trader or shop-keeper in the county would have only 48 hours to sign the agreement, if he wanted to avoid a boycott of his store.

On July 16, David Ingersoll, the most outspoken of the Tories, and leader of an effort to stop the solicitation of signatures for the Covenant, was kidnapped, along with his servants, and taken across the Connecticut border to Canaan, Connecticut. There, he was accused of crimes, including his support for the Massachusetts Government Act and opposition to the Berkshire Covenant. Though he refused to sign an oath that the Whigs had prepared, he did prepare and sign a statement, in good faith. Though no bodily damage was inflicted, Ingersoll was covered with grease ("for want of tar") and feathers, put down an empty well, and kept there overnight.

Meanwhile, the Whigs sent a letter, dated July 25, from their Committee to the Boston Committee, explaining that, "[W]e are persuaded that no business can be transacted at said court [meaning the August 16 opening]. We expect to get it adjourned unless we should hear from you. We thought it highly expedient to know your Thoughts on so interesting an Occasion."

On July 31, the Boston committee responded: "We acknowledge ourselves deeply indebted to your wisdom… Nothing in our opinion could be better concerted then the measures come by your County to prevent the Courts sitting."

On August 15, the Berkshire committee prepared a petition, to wit:

> To the Honorable His Majesty's Justices of the Inferior Court of Common Pleas for the County of Berkshire:

… We view it of the greatest importance to the well-being of this Province, that the people of it utterly refuse the least submission to the said acts, and on no consideration to yield obedience to them; or directly or indirectly to countenance the taking place of those acts amongst us, but resist them to the last extremity.

In order in the safest manner to avoid this threatening calamity, it is, in our opinion, highly necessary that no business be transacted in the law, but that the courts of justice immediately cease, and the people of this Province fall into a state of nature until our grievances are fully redressed by a final repeal of those injurious, oppressive, and unconstitutional acts… We do therefore remonstrate against the holding any courts in this county until those acts shall be repealed; and we hope your honors will not be of a different opinion from the good people in this county.

Early on the morning of August 16, 1774, as the judges were powdering their wigs and preparing to open the courts, they found that 1500 unarmed men had "filled the Court-House and Avenues to the Seat of Justice, so full, that no Passage could be found for the Justices to take their places. The Sheriff commanded them to make way for the courts; but they gave him to understand that they knew no court on any other establishment than the ancient laws and usages of their country, & to none other would they submit or give way on any terms."

The Court did not open, and would never open, again, under British rule.

David Ingersoll "repaired to the Wilderness" to spend the night. Meanwhile, his house and office were broken into and "his Yard fences, his Garden ... House, papers, &c." were badly damaged."

Berkshire was the first county to close its courts.

Meanwhile, on August 16, Thomas Gage had boasted that he had gotten twenty-four of the thirty-six "mandamus counselors" signed on. This was, however, soon to change.

Taunton, Massachusetts - August 22, 1774

Daniel Leonard, one of the "mandamus counselors", returned to Taunton on August 20. "[U]pwards of 2000 men met on the green in that town, and but for the expostulations of Leonard's father (who disapproved of his son's being a counselor, and promised to use his influence with them that he should resign) would have pulled his house down."

In a letter to Governor Gage, Leonard explained what had occurred:

On Sunday noon I received intelligence that the People were much exasperated at me, and the Town of Taunton, with the neighboring towns, were to assemble the next day to *deal with me* (that was the expression) for accepting a Seat at the Board, that it was expected that they would begin with remonstrances and entreaty, and if that proved sufficient to obtain an engagement on my part to resign my Seat, all would be well, if not, that a number had determined to precede to violence. Such was the intelligence I received and could depend on. Many things rendered impractical for me to make any resistance in my own house, one of which I beg leave to mention, the situation of my wife, who was pregnant.

I accordingly came as far as Stoughton that date, and the next to Boston, supposing that the People would disperse without giving my family any trouble, when it should be known that I was absent. But I was mistaken: on the next day which was the 22d Instant, about five hundred persons assembled, many of them Freeholders and some of them Officers in the Militia, and formed themselves into a battalion before my house; they had then no Fire-arms, but generally had clubs. Some of the principal persons came to my house with a message that the people were much incensed at my accepting the Seat at the Board, and begged I would resign it. Upon being informed I was not at home, they returned to the main Body, who dispersed before night, after having been treated with rum by their Principals.

My family supposing all would remain quiet, went to bed at their usual hour; at 11:00 o'Clock in the evening a Party fired upon the house with small arms and run off; how many they consisted of is uncertain, I suppose not many; four bullets and some Swan-shot entered the house at the windows, part in a lower room and part in the chamber above, where one Capt. Job Williams lodged…

> Capt. Williams at whom the firing seems to have directed, was the person that furnished me with the intelligence that the people were to assemble, and to pull down and tore in pieces a written notification that was fixed on the Meeting House for the People to assemble; wherefore I conclude it probable that the attack upon the house was principally designed for him. However that may be, my family were exposed by it, and I have received repeated advices from my friends at Taunton, since I arrived at Boston, that my life will be in danger if I return.

Leonard remained on the Council, and in Boston.

Hardwick, Massachusetts - August 26, 1774

Timothy Ruggles, another "mandamus counselor", was accepted into the court on August 16. On his way to Boston, he had to bypass Worcester, where "a Number of People collected... to stop him."

On August 19, Daniel Oliver, the justice of the peace in Hardwick, wrote to Ruggles, "There are those here, who I am satisfied thirst for your blood, and they have influence enough over the others to put them up to spilling it". Ruggles, instead of going directly home, went to Dartmouth.

On August 25, the Boston evening post published the following letter:

> We hear that a Brigadier Ruggles, one of the new made Counselors, being at Col. Toby's at Dartmouth, the People assembled there one Day this Week, and ordered him to depart forthwith; upon which the Colonel promised them he would go the next Morning by Sun an Hour high; but before that time the Brigadier's Horse had his mane and tail cut off, and his body painted all over.

There were also reports from Hardwick that a crowd of 2000 to 3000 was expected to assemble to force the resignation of the local sheriff, and, "such is the Spirit of this County - -they seem to be quite awake, and to have awoke in a passion. It is more dangerous being a Tory here than in Boston, even if no troops were there."

Lancaster, Massachusetts - August 25, 1774

Abijah Willard, an accepted counselor from Lancaster, instead of going home from Boston, went to Union, Connecticut. The patriots in Union captured Willard, made him spend a night in jail, and then returned him to Brimfield, Massachusetts, where he was placed in the hands of 400 patriots. According to accounts, the local patriots " called a council of themselves, and Condemned Colonel Willard to Newgate Prison, in Symsbury; and a number set off and carried him six miles on the way thither. Colonel Willard then submitted to take the oath…, on which they dismissed him. One Captain Davis of Brimfield was present, who showing resentment, and treating the people with bad language, was stripped, and honored with the new fashion dress of tar and feathers; a proof this, that the act for tarring and feathering is not repealed."

Willard's resignation was published in the Boston papers:

> Whereas I, Abijah Willard of Lancaster, have been appointed by a Mandamus a Counsellor for this Province, and having without due Consideration taken the Oath, I do now freely and solemnly declare that I am sorry that I have taken the said oath, and do hereby solemnly and in good faith, promise and engage them I will not sit or act in said Council,… And do hereby ask forgiveness of all honest, and worthy gentlemen that I have offended.

Worcester, Massachusetts - August 27, 1774

The 52 dissenters from Worcester (see The Political Environment), as a result of a town meeting with Whigs in charge, were instructed to recant their "Redmond Dissent". Most of the 52 gathered at Mary Stearns' tavern on August 22, and professed their willingness to recant. They were told that they must prepare a formal declaration that would be printed in the Boston papers. The instructions for the declaration included a provision that the signers would declare that the people of Worcester

were not acting as a mob. Forty-seven of those signed the declaration, which sought forgiveness from the people of Worcester.

The town meeting then directed the clerk to obliterate the recorded "Redmond Dissent". The clerk complied and drew lines and squiggles through the recorded dissent, completely obliterating it from the record.

The patriots of Worcester still had to deal with three "mandamus counselors", Timothy Ruggles, Timothy Paine, and John Murray.

On Friday, August 26, riders fanned out from Worcester to alert the surrounding towns of the impending action. In Leicester, Spencer, Brookfield, Rutland, Westborough, Shrewsbury, Grafton, Sutton, Oxford, and other areas, farmers mustered quickly and prepared to travel to Worcester. Although Worcester town contained less than 350 adult Males, a crowd estimated at between fifteen hundred to three thousand gathered on the Worcester common, on the morning of August 27.

The crowd selected a committee of five to meet with Timothy Paine. Paine's resignation read as follows:

> GENTLEMEN, As you have waited upon me as a Committee chosen by a large body of People now assembled on the Common at Worcester, desiring that I now resign my Seat at the Council Board; my Appointment was without sollicitation, and am very sorry I accepted, and thereby given any uneasiness to the People of the County, from whom I have received many favors, and take this opportunity to thank them: and I do hereby assure you that I will not take a Seat at the Board unless it is agreeable to the Charter of this Province.

The gathered crowd, not fully satisfied with the resignation, required that Paine remove his hat and walk amongst the crowd, formed in two lines, reading the resignation, over and over, so that all had the opportunity to hear it from his own mouth.

Paine, apparently impressed by the showing, wrote to General Gage. He concluded his letter with the following:

> Thus Sir you see an open opposition has taken place to the Acts of the British Parliament. I dread the consequence of enforcing them by military Power; people's spirits are so raised they seemed determined to risque their lives and everything dear to them in the opposition, and prevent any person from executing any commission he may receive under the present administration. They give out that Brigadier Ruggles shall not sit as a Judge in our County Court, and that the Court shall not be held here.

Rumor had it that General Gage had contemplated sending troops to assure that the courts opened on September 6. If true, it is possible that Paine's letter discouraged this action, fearing that shots would be fired.

Next, about 500 men who had visited Paine went to the home of Thomas Murray, in Rutland, 15 miles away. About 1000 more joined them as they traveled. Finding that Murray was not home, the pierced his portrait with a bayonet, and left. They then prepared a letter, which was published in the Boston papers on September 5:

> To John Murray, Esq.
>
> Sir,
>
> As you have proved yourself to be an open Enemy to this Province, by your Conduct in general, and in particular in accepting of the late Appointment as an unconstitutional Counsellor, In Consequence whereof, a large Number of Men from several Towns are assembled, who are fully determined to prevent your holding said Office as Counsellor, at the Risque of our Lives and Fortunes; and not finding you at Home, think proper to propose to your serious consideration: the following viz:
>
> That you make an immediate Resignation of your Office, as a Counsellor

Your compliance as above, published in each of the Boston News Prints by the Tenth Day of September next, will save the People of this County the Trouble of waiting on you immediately afterwards.

In the Name and Behalf of the whole Assembly now present,

Willard Moore

Murray refused to sign, however, he never did return to Redmond. Brigadier Timothy Ruggles, likewise, never returned home.

Faneuil Hall, Boston - August 26 & 27, 1774

Worcester County has asked that all of the countryside committees meet with the Boston committee to discuss what action should be taken, if General Gage sent troops to open the courts on September 6. Realization that one county could not stand against the British troops required that the counties, and Boston, should all work together to stand against the Massachusetts Government Act. On the 26th, a committee was appointed to discuss "what Measures are necessary to be taken respecting our novel and unconstitutional Courts of Justice".

The final report of that committee was the beginning of a cooperative agreement to organize against the royal impositions. It read, in part, "No power on earth, hath a right without the consent of this Province to alter the minutest title of its Charter." It asserted that the citizens of Massachusetts were "intitled to life, liberty, and the means of sustenance by the grace of Heaven and without the King's leave". It asked to all of the counties to oppose the openings of the courts. It called for the convening of the Provincial Congress. Finally, it called for the people to learn "the Military Art according to the Norfolk Plan… as necessary means to secure their Liberties against the design of the Enemies whether Foreign or Domestick."

A confederation of counties had agreed to support each other, and, to resist, by whatever means necessary, the imposition of the Massachusetts Government Act.

Roxbury, Massachusetts - August 29, 1774

In the words of Joshua Loring, in a letter to General Gage, dated August 30, 1774:

At 12 o'Clock in the night of the 29th instant I was awaked by a very hard knocking at my door; immediately I jumped out of bed and threw up the window, when I saw five men disguised, their faces black'd, hatts flap'd, with cutlasses in their hands. I ask them who they were, they answered they came from a Mob. I then asked them what they wanted; they told me they came to know if I would resign my Seat at the Board. I answer'd I would not, and went into some discourse with them, asking what right they had to make such a demand on me or any other man. The told me they did not come to talk, they came to act, and that they wanted my answer: I replied that they had got it already. They then told me they would give me till tomorrow night to consider of it, and then the speaker gave orders to a large party who were in the road, to discharge their pieces, which the accordingly did, and which I took to be pistols. They then told me my house should be safe till tomorrow night, and went off in number about 60.

The next night being the 30th I thought it was prudent to leave my house, and my son went out to it to receive the Mob. He informs me as follows: -- that in the evening about ½ past 8 o'Clock his mother came home much affrighted, and told him that at or near Liberty Tree in Roxbury, she saw about fifty men assembled, who immediately on knowing the carriage began to huzza scream and whistle, and called out to the Coachman to stop, but he continued on, and they followed the carriage in this manner for near a mile, and were then close at hand.

About 9 o'Clock he heard their noise, and in a few minutes they were up to the house, and immediately knocked at the door; he went to it and found five men disguised, their faces black'd and cutlasses in their hands: they order'd the candle to be put out, and then ask for the Commodore [Joshua Loring], they said they came for his answer. He told them he was gone to Boston, and then endeavored to reason with them against their demand, but to no purpose; they said this was the second time they had come, and to beware of the third, that if he would publish in the Thursdays News Paper a

> Recantation, it would be well, if not, he must abide by the consequences, which would be very severe, that his house would be leveled to the ground, and many other of the like threats; and then these five who seem to have the direction, I can't say command, of the Mob who were at the gate, retired to them, and during all this time they kept laying on the board fence with clubs, and crying out Don't fire, for God's sake don't fire, keep back, keep back: but the People did not seem to mind them, and continued their hallowing and knocking on the fence with their clubs: all of which was designed to intimidate.
>
> They soon went off, and, as he was informed, to the house of Mr. Pepperell, who not being home, they returned again within the space of half an hour, and in the same tumultuous manner halted in the road opposite the house, and all at once were very silent, occasioned, as he was informed, by some friends speaking to them; a few minutes after they set up their hallowing &c again, and went off. And as it was a very dark night he could not judge of their numbers, but was told there were about two hundred.

Plymouth, Massachusetts - August 30, 1774

On August 28, 1774, George Watson, mandamus counselor from Plymouth, Massachusetts, went to church as usual. The Boston evening post reported what happened:

> When he came into the house of publick Worship, a great number of the principal Inhabitants of that town left the meeting house, immediately upon his entering it; "being determined not to worship and fellowship with one, who was sworn to support that change of our constitution, which professedly establishes despotism among us".

On August 30, George Watson sent his resignation to General Gage, to wit:

> By my accepting all of this Appointment, I find that I have rendered myself very obnoxious, not only to the inhabitants of this place, but also to those of the neighboring towns. On my business as a Merchant I depend, for the support of myself and Family, and of this I must be entirely deprived, in short, I am reduced to the alternative of resigning my Seat at the Council Board, or quitting this, the place of my Nativity, which will be attended with the most fatal Consequences to myself, and my family. Necessity therefore obliges me to ask Permission of your Excellency to resign my Seat at the Board, and I Trust, that when your Excellency considers my Situation, I shall not be censured.

Massachusetts - August 30, 1774

Thomas Hutchinson, Jr., son of the late governor of Massachusetts, also resigned, to wit:

> It would be exceedingly inconvenient for me to change the place of my residence, or submit to any kind of restraint upon my person, being the only one of Governor Hutchinson's family now in the country, and having the care of his affairs here, as well of those of the late Lieut. Governor Oliver, both of which I apprehend will suffer greatly by my being under any personal restraint. I am sensible these reasons are of a private nature, but as they relate to the concerns of others more than my own, I hope your Excellency will find them sufficient to induce you to accept the Resignation of my trust as one of his Majesty's Council for this Province.

By the end of August, the mandamus counselors commanded no authority outside of Boston.

Next would come the opening of the courts. The Governor and Commander-in-Chief, General Thomas Gage, had promised to send troops to protect the courts in Worcester. The patriots had vowed that the courts would never sit under the authority of the Massachusetts Governments Act. Who would give?

The Courts

Salem, Massachusetts - August 20, 1774

On Saturday, August 20, the Salem (the Provincial Capitol) Committee, not the town's selectmen, as was normally the case, posted notices calling for a meeting of the townspeople:

> The committee of correspondence desire the merchants, freeholders and other inhabitants of this town to meet at the town house chamber next Wednesday, at nine o'Clock in the morning to appoint five or more deputies, to meet at Ipswich, on the sixth of September next, with the deputies which shall be appointed by the other towns in this county, to consider of and determine on such measures as the late acts of parliament and our other grievances render necessary and expedient.

On Tuesday, the day before the meeting, Governor Gage issued a proclamation:

> Whereas by a late Act of Parliament, all Town-Meetings called without the consent of the Governor (except the annual meetings, in the Months of March and May) are illegal, I do hereby strictly prohibit all Persons from attending ... any Meeting not warranted by law, as they will be chargeable with all the all consequences that may follow thereon, and answer the same At their utmost Peril.

General Gage, anticipating disobedience to his proclamation, went to Salem with two companies of the 59th regiment, who stopped at the entrance to town and loaded their guns. The soldiers then continued court the courthouse, "equipped as if for battle"

Cage then summoned the leaders of the Salem Committee to meet with them, at 9:00, the same time as the committee meeting. They thought that, absent leadership, the committee meeting would be to no avail.

The patriots out smarted General Gage, and, though the leaders attended the meeting with Gage, the Committee went about its business and selected six representatives to the county convention.

General Gage retaliated by ordering Judge Peter Frye to issue warrants for the Committee members who had called the meeting, charging them with "seditiously and unlawfully causing the town to be assembled by those notifications, without leave from the governor, in open contempt of the laws, against the peace, and the late statute."

The first to patriots brought into custody posted bail, but the next five refused, defiantly telling General Gage "if the ninetieth part of a farthing would be taken as bail, they would not give it." They then responded to the Governor's threat: "if he committed them, *then he must abide by the consequences*."

As reported by John Andrews, "there was upwards of three thousand men assembled there from the adjacent towns, with full determination to rescue the Committee if they should be sent to prison, even if they were obliged to repel force with force, being sufficiently provided for such a purpose; as indeed they are all through the county -- every male above the age of 16 possessing a firelock with double the quantity of powder and ball injoin'd by law."

So, here, nearly eight months before the bloody showdown at Lexington Green, patriots stood, armed, against British soldiers, testing the resolve of each side.

Springfield, Massachusetts - August 30, 1774

On Friday, August 26, delegates from the 25 towns in Hampshire County assembled in Hadley, home of a 130-foot Liberty Pole. Their options included petitioning the judges to adjourn; disrupting the court physically; or, trying to convince the judges to meet under the authority of the old Charter instead of the Massachusetts Government Act. They decided to ask the judges themselves under what authority did they hold their offices.

By Monday, August 29, the judges, justices of the peace, of lawyers, and various officials with business before the court had arrived in Springfield.

Early Tuesday morning, they heard the tolling of the West Springfield bell -- the signal for patriots to gather. Between two and four thousand men, many carrying staves, mustered about the courthouse, where they hoisted a black flag to threaten the judges away.

The judges and justices bypassed the courthouse and convened at a public house nearby, where they received a committee of delegates from the demonstrators. The delegates ask them, how did they hold their authority, by the Charter or by the Act? The judges responded, "We consider and judge ourselves to hold our offices ... by virtue and force of the Charter". They then claimed that the late Act of Parliament had not made a significant alteration in their authority.

The delegates took the justices reply outside where it was read three times to the people assembled. The people talked, discussed, debated, and finally concluded, by a vote, that the answer was not satisfactory. They then decided that the court would not sit. The delegates returned to the justices and told them that they would not set contrary to the minds of the people.

The justices signed a petition, to wit:

> "We, the subscribers, do severally promise and solemnly engage to all people now assembled, in the county of Hampshire, on the 30th Day of August 1774, that we will never take, hold, execute, or exercise any Commission, Office, or Employment whatsoever, under, or in Virtue of or in any Manner derived from any Authority, or pretended or attempted to be given by a late Act of Parliament, entitled 'An Act for better regulating the Government of the Province of Massachusetts-Bay, in New England'.

The petition was signed by eighteen judges and justices.

Concord, Massachusetts - August 30, 1774

On August 30, over 150 delegates from every town and district of Middlesex County gathered at Concord to consult on measures to be taken. First, the Massachusetts Government Act was read in its entirety. The convention then chose nine members to draft an appropriate response. It reads, in part:

> It is evident to every attentive mind, that this province is in a very dangerous and alarming situation. We are obliged to say, however painful it may be to us, that the question now is, whether, by a submission to some late acts of the parliament of Great Britain, we are contented to be the most abject slaves, and entail that slavery on posterity after us, or by a manly, joint, and virtuous opposition, and support our freedom. There is a mode of conduct, which in our very critical circumstances, we would wish to adopt; a conduct, on the one hand, never to tamely submissive to tyranny and oppression, on the other, never degenerating into rage, passion, and confusion. This is a spirit which we revere, as we find it exhibited in former ages, and will command applause to the latest posterity.

The report continued, providing instructions not to recognize any aspect of the Massachusetts Government Act, to continue to conduct local business as has always been done, and, all acts by the people must be justified by God and the world.

The stage was set for the September 13 court opening.

Worcester, Massachusetts - August 30, 1774

In preparation for dealing with the court closures, 130 men attended the Worcester convention. The next morning, in what can be described as a democratically spirited proceeding, the following was approved:

> Voted, that every person who speaks in this meeting shall rise up, and, after he is done speaking, shall sit down, and not speak more than twice on the same subject, without obtaining leave, and shall not speak irreverently.

Their first resolution stated their purpose, "that it is the indispensible duty of the inhabitants of this county, by the best ways and means, to prevent the sitting of the respective courts." They then "recommended to the inhabitants of this county, to attend, in person," the court sessions, and to maintain order, and then "recommended to the several towns, that they choose proper and suitable officers, and a sufficient number, to regulate the movements of each town, and prevent any disorder which might otherwise happen". They were determined not to be perceived as a "Mob".

Since "the ordinary course of justice may be stayed", they encouraged that each individual should "pay his just debts as soon as may be possible, without any disputes or litigation."

The final point addressed was in anticipation of what had been threatened, previously, by General Gage:

> That whereas, it is generally expected, that the governor will send one or more regiments to enforce the execution of the acts of parliament, on the 6th of September, that it is recommended to the inhabitants of this county, if there is intelligence, that troops are on the march to Worcester, to attend, properly armed, in order to repel any hostile force which may be employed for that purpose.

Concerned that only Worcester was to be protected, the delegates' final resolution, to wit:

> That if there is an invasion, or danger of invasion, in any town in this county, then such town as is invaded, or being in danger thereof, shall, by their committee of correspondence, or some other proper person, send letters, by express post, immediately, to the committees of the adjoining towns, who shall send to other committees in the towns adjoining them, that they all come properly armed and accoutred to protect and defend the place invaded.

Finally, they resolved:

> Voted, That it be recommended to each town of the county, to retain in their own hands, what moneys may be due from them severally to the province treasury...
>
> Voted, That each member will purchase at least two pounds of powder in addition to any he may have on hand, and will use all his exertions to supply his neighbor fully.
>
> Voted, That the members and delegates endeavor to ascertain what number of guns are deficient to arm the people in case of invasion.

There is no doubt that the citizens of Worcester were prepared to defend their constitutional rights and their Charter. There is also no doubt that General Gage was aware of what was happening in the countryside. On August 27, he had written to Lord Dartmouth:

> In Worcester, they keep no Terms, openly threaten Resistance by Arms, have been purchasing Arms, preparing them, casting Ball, and providing Powder, and threaten to attack any Troops who dare to oppose them. Mr. Ruggles of the new Council is afraid to take his Seat as Judge of the inferior Court, which sits at Worcester on the 7th [actually, the 6th] of next Month, and I apprehend that I shall soon be obliged to march a Body of Troops into that Township, and perhaps into others, as occasion happens, to preserve the Peace.

Boston, Massachusetts - August 30, 1774

General Gage attended the Superior Court of the Judicature in Boston, Suffolk County -- the only place that the Court could be safely opened. As the Boston Gazette reported, on September 5:

> Last Tuesday being the day the Superior Court was to be holden here, the Chief Justice, Peter Oliver, Esq., and the other Justices of said Court, together with a number of gentlemen of the bar, attended by the High and Deputy Sheriffs, walked in procession from the state-house to the court-house, in Queen-street. When the Court were seated and the usual

> proclamations made, a list of names of the gentleman returned to serve as Grand Jurors, was presented to them, and the court appointed Mr. Ebenezer Hancock, Foreman.

However, when Ebenezer Hancock rose to be sworn in, he declined. The remaining 22 grand jurors also refused to take the oath. When ask why they refuse to take the oath, they referred to previously prepared document, which made the case that Peter Oliver, sitting as Chief Justice, was against the Charter.

The superior court continued to meet through Friday, conducting "such business as is usually transacted, without the juries". General Gage, at least, could show that some functions of government were still proceeding.

On Wednesday, August 31, General Gage tried to convene his council. Three days later, Gage wrote to Dartmouth, "I ordered a council to assemble, but upon their representation, that they should be watched, stopped, and insulted on the road to Salem, they desire to be assembled here in Boston". Only 15 of the original 36 attended.

General Gage presented to them, for their vote, the pressing decision he had to make within a week:

> … Whether they would advise to the sending of any troops into the County of Worcester, or any other County in the Province, for the protection of the Judges and other Officers of the Courts of Justice. Whereupon several Gentlemen of the Council expressed their Opinions, that insomuch as the opposition to the execution of any part of the late Acts of Parliament relating to this Province, was so general, they apprehended it would not be for His Majesty's service to send any Troops into the interior parts of the Province, but that the main body continue in the Town of Boston, which might be strengthened by the addition of all other Troops, to be improved as circumstances may occur, and be a place of safe retreat for all those who may find it necessary to remove thither.

On September 2, General Gage, again, wrote to Dartmouth:

> I came here [to Boston] to attend the superior Court, and in the Intention to send a Body of Troops to Worcester, to protect the Courts there, and if wanted to send Parties to the Houses of some of the Counsellors who dwell in that County, but [I heard] from undoubted Authorities, that the Flames of Sedition had spread universally throughout the Country beyond Conception, the Counsellors already drove away, and that no Courts could proceed on Business…
>
> The Council was of Opinion that it was very improper to weaken the Troops here by any Detachments whatever, as they could not be of any Use to the Courts, as no Jurors wou'd appear, and by that Means defeat their Proceedings, and that Disturbance among so general, and not confined to any particular spot, there was no knowing where to send them to be of Use.

Cambridge, Massachusetts - September 2, 1774

On the evening of August 31, Boston patriots noticed significant troop movement, in and around Boston. Concerned that they might be going to Salem to arrest the Committee members, word was sent to Salem.

The Salem Committee responded that they were ready "to receive any attack they might be exposed to for acting in pursuance to the laws and interest of their country, as became men and christians".

The Boston Evening-Post (September 5) tells us the purpose of the troop movements :

> On Thursday Morning, half after four, about 260 Troops embarked on 13 boats at the Long Wharf, and proceeded up Mystic River to Temple's Farm, where they landed, and went to the Powder-House on Quarry Hill, in Charleston Bounds, where they took 212 Half Barrels of Powder, the whole store there, and conveyed it to Castle Williams. A detachment from this corps went to Cambridge and brought off two field pieces.

General Gage had been notified that the patriots had begun seizing powder from various stores, and sought to head them off, at least, where it could be safely accomplished.

These events, however, had an impact on the patriot side. On Friday morning (September 2), by 8 O'clock, over 3,000 farmers had arrived at Cambridge Common, and, "more were on the way." They had left their firearms, but most were equipped with "large sticks"(Later reports indicate that between 1/4 and 1/2 of the patriots were armed). They wanted to show their strength, but they did not want to confront the British.

In Boston, word spread that tens of thousands of country people were on their way to Boston. John Andrew wrote:

> Four or five expresses have come down to Charlestown and here [Boston], to acquaint us, that between Sudbury and this, above ten thousand men are in arms and are continually coming down from the country back: that their determination is to collect about forty or fifty thousand by night (which they are sure of accomplishing) when they intend to bring in about fifteen thousand by way of the Neck, and as many more over the ferry: when once got possession, to come in like locusts and rid the town of every soldier.

In an effort to ward of an open confrontation, the Cambridge Committee contacted Lieutenant Governor Thomas Oliver, as described by Oliver:

> Early in the morning a number of the inhabitants of Charlestown called at my house to acquaint me that a large body of people from several towns in the county were on their way coming down to Cambridge; that they were afraid some bad consequences might ensue, and begged I would go out to meet them, and endeavor to prevail on them to return. In a very short time, before I could prepare myself to go, they appeared in sight. I went out to them, and asked the reason of their appearance in that manner; they respectfully answered, they "came peaceably to inquire into their grievances, not with design to hurt any man." I perceived they were landholders of the neighboring towns, and was thoroughly persuaded they would do no harm. I was desired to speak to them; I accordingly did, in such a manner as I thought best calculated to their minds. They thanked me for my advice, said they were no mob, but sober, orderly people, who would commit no disorder; and then proceeded on their way. I returned to my house
>
> Soon after they had arrived on the Common at Cambridge, a report arose that the troops were on their march from Boston; I was desired to go and intercede with his Excellency to prevent their coming. From principles of humanity to the country, from a general love of mankind, and from persuasions that they were orderly people, I readily undertook it; and is there a man on earth, who, placed in my circumstances, could have refused it?… As I passed the people I told them, of my own accord, I would return and let them know the event of my application.

Still concerned, the Cambridge Committee sent dispatches to Charlestown and Boston. Joseph Warren, of the Boston Committee, wrote:

> A billet was brought, requesting me to take some steps in order to prevent the people from coming to immediate acts of violence, as incredible numbers were in arms, and lined the roads from Sudbury to Cambridge. I summoned the committee of correspondence; but, as care had been taken to caution every man who passed the ferry from alarming Boston, I judged it best not to inform the person who warned the committee of the business they were to meet upon. They, therefore, made no great haste to get together. After waiting some time, I took as many of the members as came in my way to Charlestown, fearing that something amiss might take place. I saw the gentleman at Charlestown, who begged us to move forward to Cambridge. On our way, we met the Lieutenant-governor Oliver. He said he was going to the general, to desire him not to march his troops out of Boston. We thought this precaution good, and proceeded to Cambridge.

Later, while awaiting word of General Gage's intentions, the Boston Committee met with delegates from the country towns. The meeting was held at Captain Steadman's inn. The Boston committee members were surprised that the delegates had been selected, that day, for that purpose. Boston had leaders who would drink ale and decide what the crowds would do. The country people, however, were participatory, and the leaders were selected, for each circumstance, and only for that particular event. Unlike what had been occurring in Boston, these events were truly of the people.

General Gage, at Oliver's request, decided not to march the troops. Gage, after having obtained as much information as possible, determined that the crowd was "not a Boston rabble but the freeholders and farmers of the country".

Even though Oliver had aided the patriots in avoiding a confrontation, he was, later that afternoon, forced to resign his appointment as Lieutenant Governor. His resignation effectively destroyed the government implemented by the Massachusetts Government Act.

The people, as a whole -- not through the leaders in Boston -- had gained the initiative and control in the revolution, which would, in eight more months, result in a War of Independence.

The Powder Alarm, New England - September 2, 1774

As word spread, throughout the northern colonies, of the the events in Cambridge, Charlestown and Boston, farmers and merchants dropped their work and picked up their arms. They began a massive march toward the Massachusetts Bay. Their alarm was supported by rumors, gaining momentum as the stories of what was transpiring traveled out and away from the more organized negotiations in Boston and Cambridge.

Though estimates vary on the number of those who went to Cambridge, as well as those on the march toward what rumor had provided for, they range from a minimum of twenty thousand to a maximum of "near one hundred thousand".

As far as the distance to which the rumors carried, and caused alarm, an account by Mr. McNeil, from Litchefield, Connecticut, as given to the Reverend Ezra Stiles, is as follows:

> [McNeil] went to bed without hearing any Thing. But about midnight or perhaps one o'Clock he was suddenly waked up, somebody violently rapping up the Landlord, telling the doleful Story that the Powder was taken, six men killed, & all the people between there & Boston arming & marching down to the Relief of their Brethren at Boston; and within a qr. or half an hour he judges fifty men were collected at the Tavern tho' now deep in Night, equipping themselves & sending off Posts every Way to the neighboring Towns. They called up McNeil to tell the Story of the Springfield Affair which was News - he said he had to repeat and tell the story over & over again to New Comers till day; so he had no more Rest that night. The Men set off as fast as they were equipt.
>
> In the Morning, being fryday Sept. 2, Mr. McNeil rode forward & passed thro' the whole at the very Time of the Convulsion. He said he never saw such a Scene before - all along were armed Men rushing forward some on foot some on horseback, at every house Women & Children making Cartridges, running Bullets, making Wallets, baking Biscuit, crying & bemoaning &at the same time animating their Husbands & Sons to fight for their Liberties, tho' not knowing whether they should ever see them again. I asked whether the Men were Cowards or disheartened or appeared to want Courage? No. Whether the tender Distresses of weeping Wives & Children softened effeminated & overcome the Men and set them Weeping to? No - nothing of this - but a firm and intrepid Ardor, hardy eager & couragious Spirit of Enterprize, a Spirit for revenging the Blood of their Brethren & rescue our Liberties, all this & an Activity corresponding with such Emotions appeared all along the whole Tract of above fourty Miles from Shrewsbury to Boston.
>
> The Women kept on making Cartridges, & after equipping their Husbands, bro't them out to the Soldiers which in Crowds passed along & gave them out in handfuls to one and another as they were deficient, mixing Exhortation & Tears & Prayers & spiriting the Men in such an uneffeminate Manner as even would make Cowards fight. He tho't if anything the Women surpassed the Men for Eagerness & Spirit in the Defence of Liberty by Arms. For they had no Tho'ts of the Men returning but from Battle, for they all believed the Action commenced between the Kings Troops & the Provincials. The Women under this Assurance gave up their Husbands Sons &c to Battle & bid them fight courageously & manfully & behave themselves bravely for Liberty - commanding them to behave like Men & not like Cowards to be of good Courage & play the men for our people & for the Cities of our God - & the Lord do as seemeth him good. They expected a bloody Scene, but they doubted not Success & Victory.
>
> McNeil never saw any Thing like this in his Life: - he said, they scarcely left half a dozen Men in a Town, unless old and decrepid, and in one town the Landlord told him that himself was the only Man left."

Worcester, Massachusetts - September 6, 1774

If General Gage were to keep his word and use troops to assure that the courts would open, in Worcester County, on September 6, the patriots, especially after the excitement and commitment during the Powder Alarm, were ready to assure that the courts would not open. The lines were drawn, and the stakes were high.

Many of the people who were to be in Worcester must have left their homes on the 4th, to assure that they would be present on the 6th. They came from as far away as 35 miles (Royalston), and they came on foot.

By Tuesday morning (September 6), 4, 622 men had arrived in Worcester. Ebenezer Parkman's diary provides the following accounting:

Worcester 260	Uxbridge 156
Westborough 200	Rutland 150
Athol 51	Royalston 39
New Braintry 140	Brookfield 216
Duglass 130	Grafton 210
Holden 100	Hardwick 220
Princeton 60	Harvard 103
Hubbardston 55	Lunenbourg 40
Western 100	Winchendon 45
Southboro 35	Chauxitt 200
Leicester 180	Spencer 164
Sturbridge 150	Bolton 100
Palmer 38	Sutton 500
Westminster 120	Oxford Troop 40
N. Shrewsbury 100	S. Shrewsbury 135
Northboro 85	Oxford 80
Oakham 50	Petersham 70
Paxton 80	Upton 100
Templeton 120	

Though most of the participants had left home with their firearms, when word came that General Gage was not sending his troops (Gage only had 3,000 troops in garrison), most of the rifles were stored at homes outside of Worcester, or with homes or businesses in town. Staves became the weapon of choice, and music was played by fife and drum. Only a few men still had arms.

Most of the men from Worcester and Spencer had barricaded themselves inside of the courthouse, by 10 O'clock, to prevent the judges and other officials from entering.

Representatives from each of the various town Committees met at the home of Timothy Bigelow, to coordinate the activities of the day. Their first decision, however, was "to attend the body of the people" outside, leaving the decisions not to the leaders, but to the people, themselves.

Meanwhile, a local merchant did a phenomenal business -- "more than ever before". On Sunday, he took in £173, for "Powder &c.", Monday was £97, and, on Tuesday, £300, as thousands of militiamen prepared for what might come.

The officers of the court (3 judges of the Inferior Court; 18 justices of the peace, 2 attorneys; and, the Sheriffs), having been locked out of the courthouse, had taken up at Daniel Heywood's tavern, to await communication from the committee. Their first effort at a statement used the term, "would endeavor &c.", was too weak for those who had travelled so far. The second document, signed by all twenty-five officers, follows:

> GENTLEMEN: -- You having desired, and even insisted upon it, that all judicial proceedings be stayed by the justices of the court appointed this day, by law, to be held at Worcester, on account of the unconstitutional act of the British parliament, respecting the administration of justice in this province, which, if effected, will reduce the inhabitants thereof to mere arbitrary power; we do assure you, that we will stay all such judicial proceedings of said courts, and will not endeavor to put said act into execution.

Sufficient to satisfy those who had attend to see the courts remain closed, the next act was to require all of the justices to walk the line, between all of those gathered, with hats in hand, reading, over and over (some estimates were that the statement was read, by each, thirty times), their statement -- so that all could hear. And, as a final affront to the Tories, all known Tories in town were required to march with the justices.

The British troops had stayed away, no blood had been shed, and, all of the goals of the patriots had been achieved. There was no doubt as to who was in control of Worcester County.

Worcester, Massachusetts - September 7, 1774

Having dealt with the problem of the judges and the court, the people of Worcester were left without a formal government, nor with a way to deal with problems that might arise.

A Provincial convention had been called for on the second Tuesday of October, less than two months away. In the meantime, an interim government was needed.

The County Convention that had convened to deal with not allowing the seating of the courts, took matters into their own hand (defiant of any British objections to the contrary). They recalled the justices of the peace who were in office under the original Charter, with the exception of those who had proven inimical to their cause. They allowed them to sit as single judges, though not sit as a court, and, they were only to deal with criminal, not civil cases. The coroners, sheriffs, and probate judges would also continue in office.

The most significant authority presumed by the Convention was to require resignations from all of the militia officers. Often, however, if the old officer was a patriot, he would be returned to duty. They procured at least one field piece, with mount and fitted for use and sufficient ammunition for same.

They were preparing to defend what they had gained.

Boston, Massachusetts - September 6-12, 1774

General Gage, having seen the strength of the patriots by the closure of courts; the resignations; the failure to stop the town meeting in Salem; and, the resignation of his Lieutenant Government, Thomas Oliver, was determined to regain control in the colony.

His first step was to fortify the Boston Neck (a narrow piece of land connecting Boston to the mainland). He had only 3,000 soldiers, and the patriots' forces outnumbered them, substantially. He had to protect his garrison.

According to John Andrew:

> The alarm caus'd by the movement of the country has induc'd the Governor to order a number of field pieces up to the neck guard, and this morning has got a number of workmen there, to build blockhouses and otherways repair the fortification. It was reported that he was going to cut a canal across and break off the communication with the country other than by bridge; in consequence of which the Select men waited upon him. He assur'd them he had no intention to break ground, but was only about securing the entrance into the Town, that the inhabitants as well as the soldiers may not be expos'd to inroads from the country.

The patriots in Boston were worried that General Gage was going to make a garrison of the whole town. They were also concerned that the guarding of the neck, and passively detaining the few who went from country to town, might discourage the flow of goods necessary, from the country, to sustain life in Boston (under embargo because of the Port Bill).

Andrews also provided some insight into the additional precautions that General Gage was making to avoid being attacked by the patriots who outnumbered his forces.

Andrews gave a running account of General Gage's efforts at fortification and the response of local patriots:

> September 6th... The townspeople are in general very uneasy and dissatisfied with the Governor's fortifying the entrance; so much so, they cant get any one workman to assist 'em. They've got an engineer from New York, who is trying what he can do with a number of carpenters and masons out of the army. They talk of sending to New York for a number of mechanics to affect it: It is my opinion, if they are wise, they wont come....
>
> September 8th.... Yesterday, between one and two o'clock P.M., the General, with a large parade of attendants, took a survey of the skirts of the town; more particularly that part opposite the country shore. 'Tis suppos'd they intend to erect Batteries there to prevent any incursions of the country people from that quarter, having effectually secur'd the Neck by the disposition of the field pieces; and their caution extends so far as to have a guard patrole Roxbury streets at all hours of the night, as well as another posted at Charlestown ferry every night, after the evening gun fires ....
>
> September 9th .... [N]otwistanding the six field pieces planted at ye Neck, they have brought twelve cannon from the Castle, some nine and some four pounders, which they have dispos'd about the entrance of the town. And this is not the only proof of their fear; for I am well inform'd that they keep so many and such strict guards of nights, that the soldiers don't get but one undisturb'd night's sleep out of four.
>
> September 10th. They have drawn off the whole of the troops from Salem, and the Board of Commissioners, with the Governor's family and furniture, are all arriv'd here, not thinking themselves secure in a town surrounded by the country as that is....
>
> September 12th.... The General has set about two hundred soldiers to work upon the fortifications this morning.... Many of the inhabitants are serious about leaving the town, as they are in general apprehensive that when the Governor has sufficiently fortified it, *military Law* will be declar'd, and no one suffer'd to go out but by his permission, notwithstanding what he may have said to the contrary. There is no knowing, Bill, what may take place with us. For my own part, I endeavor to make myself as easy as I can; but if they should come to disarming the inhabitants, the matter is settled with the town at once; for *blood* and *carnage* must inevitably ensue - which God forbid! should ever take place.'

Charlestown, Massachusetts - September 15, 1774

Again, John Andrews provides some insight into the patriots' efforts to assure that they were well armed:

> Ever since ye cannon were taken away from Charlestown, the General has order'd a double guard to ye new and old gun houses, where ye brass field pieces belonging to our militia are lodg'd: notwithstanding which, the vigilance and temerity of our people has entirely disconcerted him, for We'n'sday evening, or rather night, they took these from the Old house (by opening the side of the house) and carried away through Frank Johnnot's Garden. Upon which he gave it in orders the next day to the officer on guard to remove those from the New house (which stands directly opposite the encampment of the 4th Regiment and in the middle of the street near the large Elm tree), sometime the next night into the camp; and to place a guard at each end, or rather at both doors, till then. At the fixed hour the Officer went with a number of Mattrosses to execute his orders, but behold, the guns were gone! He swore the *Devil* must have help'd them to get away. However, they went to work, and brought off the carriages, harness, utensils, &ca., which they reposited in the Camps. Its amazing to me how our people manag'd to carry off the guns, as they weigh near seven hundred weight apiece; more especially that they should do it, and not alarm the guards.

There is little doubt that the patriots were preparing for war. Their deeds were not light. Their preparations -- were for War.

General Gage was becoming very concerned over these events. In a letter to Lord Dartmouth:

> Nothing less than Conquest of almost all the New England Provinces will procure Obedience to the late Acts of Parliament for regulating the Government of the Massachusetts Bay... The Country People are exercising in Arms in this Province, Connecticut, and Rhode Island, and getting Magazines of Arms and Ammunition in the Country, and such Artillery, as they can procure good and bad. They threaten to attack the Troops in Boston, and are very angry at the Work throwing up at the entrance of the Town...
>
> Had the Measures for regulating this Government been adopted seven Years ago, they would have been easier executed, but the executive Parts of Government have gradually been growing weaker from about that period, and the People more lawless and seditious... My first Object was to give it Force, in which I hoped to have made some Progress, when the Arrival of the late Acts overset the whole, and the Flame blazed out in all Parts at once beyond the conception of every Body.

The well-laid plans of the British Empire had been put aside by the patriots that believed that government has an obligation to abide by its contract with the people.

And, for those who continued to support the Crown, Andrews explains:

> The present temper of the People throughout the Province is such, that they wont suffer a *tory* to remain any where among 'em without making an ample recantation of his principles; and those who presume to be so obstinate as not to comply, are oblig'd to take up their residence in this city [Boston] of refuge.

Braintree, Massachusetts - September 14, 1774

Abigail Adams (wife of John Adams) reports, "The church parson thought they were coming after him, and run up garret they say, an other jumped out of his window and hid among the corn whilst a third crept under his bord fence, and told his beads."

Weston, Massachusetts - September 14, 1774

Colonel Elisha Jones, 65-year-old father of 14 sons, was humiliated by 300 men who "made his Mightiness walk through their Ranks with his Hat off and express his Sorrow for past Offenses, and promise not to be Guilty of the like for the future."

Concord, Massachusetts - September 19, 1774

Joseph Lee, a Concord physician, had sought to carry warning to the government, on September 1, as the locals prepared to march to Cambridge. Though the force used to elicit the following letter is unknown, on September 19, he signed (though probably did not write) the following:

> Whereas I, Joseph Lee, of Concord, Physician, on the Evening of the 1st ult, did rashly and without Consideration, make a private and precipitate journey from Concord to Cambridge, to inform judge Lee, that the Country was assembling to come down... that he & others concern'd might prepare themselves for the Event, and with an avowed Intention to deceive the People; by which the Parties assembling might have been exposed to the brutal Rage of the Soldiery, who had timely Notice to have waylaid the Roads and fired on them while unarmed and Defenceless in the dark.
>
> By which imprudent Conduct, I might have prevented the salutary Designs of my Countrymen, whose innocent intentions were only to request certain Gentlemen, sworn into Office on the new system of Government, to resign their Offices, in order to prevent the Operation of that (so much detested) Act of the British Parliament for regulating the Civil Government of the Massachusetts Bay: By all of which I have justly drawn upon me the displeasure of my Country.
>
> When I cooly reflect on my own imprudence, it fills my Mind with the deepest Anxiety.

> I deprecate the resentment of my injured Country, humbly confess my Errors, and implore the Forgiveness of a generous and free People. Solemnly declaring that the future, never to convey any intelligence to any of the Court Party, whether directly or indirectly, by which the design of the People may be frustrated in opposing the barbarous Policy, of an arbitrary, wicked and corrupt Administration.
>
> Joseph Lee

Essex County, Massachusetts - September 6 - 7, 1774

The Essex County Convention resolved:

> [T]hat the judges, justices, and other civil officers in this county [which included the colonial capitol of Salem], appointed agreeably to the charter and the laws of the province, are the only civil officers in the county whom we may lawfully obey; that no authority whatever, can remove these officers, except that which is constituted pursuant to the charter and those laws; that it is the duty of these officers to continue in the execution of their respective trusts, as if the aforementioned act [Massachusetts Government Act] of parliament had never been made; and, that while they thus continue untainted by any official conduct in conformity to that act, we will vigorously support them therein, to the utmost of our power, indemnify them in their persons and property, and to their lawful doings a ready obedience.

Essex had determined to allow officers to sit, but only in accordance with the Charter. The convention, however, made clear their position by further resolving, "that all civil officers in the province, as well as private persons, who shall dare to conduct in conformity to the aforementioned act... are unfit for civil society; their lands ought not be tilled by the labor of any American, nor their family supplied with clothing or food".

They concluded their convention with this statement of the determination of their convictions:

> [T]hough we are deeply anxious to restore and preserve harmony with our brethren in Great Britain; yet, if the despotism and violence of our enemies should finally reduce us to the sad necessity, we, undaunted, are ready to appeal to the last resort of states; and will, in support of our rights, encounter even death. Sensible that he can never die too soon, who lays down his life in support of the laws and liberties of his country.

Essex County was endeavoring to continue the Charter government and denounced and refused to serve those who were not. They did, however, allow that, should the progression of events require, they would lay down their lives to retain that which was theirs.

Suffolk County, Massachusetts - September 6 – 9, 1774

Suffolk County (which included Boston) was not controlled by the patriots, unlike most of the other counties in Massachusetts. Nevertheless, in Dedham and Milton, the two towns where the convention was to be held, they had quite a bit of influence.

Though that influence was not sufficient to close the courts, it was sufficient to approve what became known as the Suffolk Resolves:

> Whereas, the power, but not the justice; the vengeance, but not the wisdom of Great Britain, which of old persecuted, scourged, and exiled our fugitive parents from their native shores, now pursues us, their guiltless children, with unrelenting severity: and whereas this, then savage and uncultivated desert, was purchased by the toil and treasure, or acquired by the valor and blood of those, our venerable progenitors, who bequeathed to us the dear bought inheritance, who consigned it to our care and protection; the most sacred obligations are upon us to transmit the glorious purchase, unfettered by power, unclogged with shackles, to our innocent and beloved offspring.

Ultimately, the Resolves contained provisions that:

- They opposed both the Massachusetts Government Act and the Boston Port Bill, stating that "no obedience is due from this province, to either or any part of the acts above mentioned; but that they should be rejected as the attempts of a wicked administration to enslave America."
- Although they did not have the power to close the courts, they recommended that "no regard ought to be paid to them by the people of this county," and that officers of the court or jurors who refused to serve would receive their support.
- They recommended that taxes not be paid to the officers of the established government "until the civil government of the province is placed upon a constitutional basis."
- They demanded resignations from all "mandamus counsellors"; those who failed to comply by September 20 would "be considered by this county as obstinate and incorrigible enemies to this colony."
- They opposed the fortification of the Boston Neck and appointed a committee to carry their protest to Governor Gage.
- They objected to the Quebec Act, claiming that the legalization of the Catholic Church in Canada was "dangerous in an extreme degree, to the protestant religion, and to the civil liberties of all America."
- They recommended "to take away all commissions from the officers of the militia, and that new officers be elected by the people.
- The Resolves were sent to the Continental Congress, where they arrived on September 16, and were approved and encouraged by a unanimous vote of the Congress
- They advocated yet another nonconsumption agreement against "British merchandize and manufactures."
- Like the other conventions, they endorsed a convening of a Provincial Congress in October.
- They promised to "pay all due respect" to the Continental Congress sitting in Philadelphia, and to submit to their decisions.

Finally, as was characteristic of all the county conventions, they opposed "all routs, riots, or licentious attacks upon the property of any persons whatsoever." They held that "in a contest so important, in a cause so solemn, our conduct shall be such as to merit the approbation of the wise, and the admiration of the brave and free of every age and of every country."

Plymouth, Massachusetts - September 26 - 27, 1774

The Plymouth County Committee met in the Plymouth courthouse, the week before the courts were scheduled to open. Though their resolutions were similar to those of other counties, they also planned the mobilization for October 4, when the courts were supposed to open.

On that day (October 4), between two and four thousand men “stiling themselves the body of the people, took possession of the court-house and the avenues leading up to it, and presented the courts of General Sessions of the peace and court of common pleas from sitting or proceeding to business.” Accordingly, the presented the justices with the resolution from the convention, to which the justices replied:

> That we do not now, nor will, at any time hereafter, hold or exercise our Commission in any other Way than what is prescribed by our Charter and well-known Constitution; and that we will not in any Way countenance, aid or support the Execution of the late Acts of Parliament for altering the Charter and Government of the Province.

To the patriots, this pledge was insufficient. They told the justices that it was “inexpedient” for the courts to open. The justices responded, “We will not open, set, act or do, or adjourn either of said Courts, ‘till the Determination of the Continental Congress is known.

The justices had acquiesced to the decision to be forthcoming from an illegal body, which was acting without any recognized authority except that of the people.

The patriots, still not fully satisfied, required that known Tories, or, any who has signed addresses to Hutchinson and General Gage, would also recant, resign, and give up any military commission they might hold – which they did, for fear of their lives.

Worcester, Massachusetts - September 20 - 21, 1774

The Worcester County Convention met to discuss filling the void created by the absence of the royal government. Nobody was surprised that General Gage had not ordered the courts to open. After all, Worcester was the hotbed of the resistance to the Acts of Parliament.

The Convention ordered the Sheriff, though unnecessarily, to "adjourn the superior court appointed by law to be held this day, and then got on to their appointed business.

First, they had to deal with debt. They called upon the farmers (struggling under heavy debt burdens), for:

> Every inhabitant of this county to pay his just debts, as soon as possible, without any dispute or litigation, and if any disputes concerning debts or trespass should arise, which cannot be settled by the parties, we recommend it to them to submit all such cases to arbitration; and if the parties, or either of them, shall refuse to do so, they ought to be considered as co-operating with the enemies of the country.

They then proceeded, since they were able to influence the justices of the peace to do so, to "liberate any persons confined in jail for debts, who are entitled to such liberation by the laws of the province".

They then began preparations for the inevitable; they reorganized the militia into seven new regiments. There was no legal authority for them to do so, but they did it, anyway -- necessity and anticipation of the coming conflict overriding the law, even under the Charter.

They called for each of the towns in the county to arm itself "with one or more field pieces. Mounted and fitted for use."

They proceeded to arrange for all of the towns in the county to call for conventions, as necessary, "to prepare matters to lay before this body at their several meetings". They had, essentially, created the first, independent of British control, county government in the United States.

Worcester County, Massachusetts - October 4, 1774

Timothy Bigelow was appointed as a delegate for Worcester County, at the soon to be held Provincial Congress. He was provided instructions, by the Convention, to carry to that Congress:

> If all infractions of our rights, by acts of the British Parliament, be not redressed, and we restored to the full enjoyment of all our privileges, contained in the charter of this province, issued by their late majesties, King William and Queen Mary, *to a punctillo*; before the day of your meeting [October 5, the next day], then, and in that case, you are to consider the people of this province absolved, on their part, from the obligation therein contained, and to all intents and purposes reduced to a state of nature; and you are to exert yourself in devising ways and means to raise from the dissolution of the old constitution, as from the ashes of the Phenix, a new form, wherein all officers shall be dependent on the suffrage of the people for their existence as such, whatever unfavorable constructions our enemies may put upon such procedure. The exigency of out public affairs leaves us no alternative from a state of anarchy or slavery.

Though far from the poetic words penned by Thomas Jefferson, twenty months later, none the less, a declaration of independence.

The Provincial Congress

Salem, Massachusetts - October 5, 1774

Ninety men, who had been elected by their towns, met in the Salem courthouse -- as the General Court. They were waiting for General Gage to appear, though most knew, already, that he would not show up. He had already dissolved his court. The ninety, however, wished to demonstrate their willingness to work with the Crown, though, as far as they were concerned, they were there under the Charter. Most had felt that this act was necessary to demonstrate their willingness to act under the

Charter, as well as, to justify resorting to an alternate, illegal, government -- understanding that civil government was both desirable, and, necessary for the function of their communities.

The next day, all of the delegates resolved themselves into a Provincial Congress. No governor had sworn them in; no official body had sanctioned their authority. Their authority had, for the first time, been sanctioned solely by the people who had sent them there.

Their first business was to elect officers. John Hancock and Benjamin Lincoln were elected president and clerk, respectively. They then adjourned to the second Tuesday in October -- the date previously designated for that purpose.

Concord, Massachusetts - October 11 - 29, 1774

On 10:00 O'clock, Tuesday morning, October 11, the ninety delegates from the General court, along with 200 other delegates, selected by the various towns and counties, met at the Concord courthouse and reconvened the Provincial Congress. Of the 260 towns then in Massachusetts, 209 had sent delegates. This was a far greater participation than the General Court, even under the Charter, had ever inspired in Massachusetts. The following week, the Congress moved to Cambridge, where the infrastructure was more able to accommodate this extremely large gathering.

The first orders of business included: procuring arms; raising money to pay for them; establishing civil government; and, establishing a military structure to support their resistance to the imposition of Parliament on their rights under the Charter.

On October 20, a committee "to consider what is necessary to be now done for the defence and safety of the province" was appointed, and met behind closed doors -- to preserve military secrecy.

On October 24, another committee was appointed to determine "the most proper time for this province to provide a stock of powder, ordinance, and ordinance stores" for the Province. Later, that day, their report was returned to the Congress -- "Now was the proper time".

On October 26, the military committee came back with their report. The Congress, then, approved the following:

16 field pieces, 3 pounders, with carriages, irons, &c.; wheels for ditto, irons, sponges, ladles, &c.,	@ £ 30	£480 0 0
4 ditto, 6 pounders, with ditto,	@ £ 38	£152 0 0
Carriages, irons, &c., for 12 battering cannon,	@ £ 30	£360 0 0
4 mortars, and appurtenances, viz: 2 8-inch and		
2 13-inch,	@ £ 20	£80 0 0
20 tons grape and round shot, from 3 to 24 lb.,	@ £15	£300 0 0
10 tons bomb-shells,	@ £ 20	£200 0 0
5 tons lead balls,	@ £ 33	£ 165 0 0
1,000 barrels of powder,	@ £8	£8,000 0 0

5,000 arms and bayonets,	@ £2	£10,000 0 0
And 75,000 flints		£ 100 0 0
Contingent charges		£ 1,000 0 0
In the whole		£20,837 0 0

The Congress had already suggested to the towns that any money due the government should be held. On October 28, they appointed Henry Gardiner as Receiver-General, and directed the towns to remit any collected money to him. It also encouraged all of the inhabitants to pay any taxes due, and all future taxes to be paid to Gardiner.

The Provincial Congress established a Committee of Safety with the power to "alarm, muster, and cause to be assembled" the militia, when necessary. This Committee was also empowered to appoint new militia commandeers, while the men of each militia company were encouraged to elect new officers, if they had not already done so.

Finally, they directed all of the militia to "hold themselves in readiness, on the shortest notice from the said committee of safety, to march to the place of rendezvous".

The Congress adjourned on October 29. The Committee of Safety was instructed to sit in Cambridge, where it could keep an eye on the movement of the British troops.

Boston, Massachusetts - November 14, 1774

On October 3, General Gage wrote, "I don't find that the Spirit abates any where, for it is kept up with great Industry... I don't suppose People were ever more possessed with Zeal and Enthusiasm."

General Gage had been trying to have quarters built for his troops, and found that, "This refusal of all Assistance has thrown us into Difficulties, but I hope to get through them, and to be able to put the Troops under Cover, tho' not so comfortably as I cou'd wish". Neither Boston carpenters, nor those from New York, would hire out to the British. Boston, out of self-preservation, those from New York out of fear, if they should oppose the desires of the patriots who had taken over nearly the entire Province.

On October 17, General Gage was concerned over some rumors that had reached Boston:

> There are various Reports spread abroad of the Motions made at the Provincial Congress, whilst at Concord, some, it's said, moved to attack the Troops in Boston immediately, other to value the Estates in the Town, in order to pay the Proprietors the Loss they might sustain, and to set the Town on Fire.

By October 30, General Gage was extremely alarmed. In his State of the Province report, he said:

> Nobody here or at home could have conceived, that the Acts made for the Massachusett's Bay, could have created such a Ferment throughout the Continent, and united the whole in one common Cause, or that the Country People could have been raised to such a pitch of Phrenzy... If Force is to be used at length, it must be a considerable one, and Foreign Troops must be hired, for to begin with Small Numbers will encourage Resistance and not terrify; and will in the End cost more Blood and Treasure. An Army of Such a Service should be large enough to make considerable Detachments to disarm and take in the Counties...
>
> Many of their Leaders I apprehend mean to bully and terrify, and others to push Matters to extremity, puffed up by Hopes of Assistance from the whole Continent, and Certainty of the immediate Aid of the four New-England Provinces, which they flatter themselves are alone sufficient to withstand all the Force of Great Britain. The People are told that the present Acts only lead to others which are to divide their Lands into Lordships, and tax them at so much Pr Acre...

I am concerned that Affairs are gone to so great a Length that Great Britain cannot yield without giving up all her Authority over this Country, unless some Submission is Shewn on the part of the Colonies which I have tried at here tho' hetherto without Effect. And Affaires are at such a Pitch thro' a general union of the whole. That I am obliged to use more caution than could otherwise be necessary, least all the Continent should unite in hostile Proceedings against us.

On November 2, he wrote, "I shall not be surprized, as the Provincial Congress seems to proceed higher and higher in their Determinations, if Persons should be Authorized by them to grant Commissions and Assume every Power of a legal Government, for their Edicts are implicitly obeyed throughout the Country."

On November 14, General Gage was so frustrated at the inability to raise revenues (the counties and towns had deferred payment, and transferred the money to the Provincial Congress). That he published this broadside, and had it published in the Boston newspapers:

PROVINCE of MASSACHUSETTS BAY

By the GOVERNOR

A PROCLAMATION

WHEREAS a Number of Persons unlawfully assembled at Cambridge, in the month of October last, calling themselves a Provincial Congress, did in the most open and daring Terms, assume to themselves the Powers and Authority of Government, independent of, and repugnant to his Majesty's Government legally and constitutionally established within this Province, and tending utterly to subvert the same; and did amongst other unlawful Proceedings, take upon themselves to Resolve and direct, a new and unconstitutional Regulation of the Militia, in high Derogation of his Majesty's royal Prerogative; and also to elect and appoint Henry Gardner Esq. of Stow, to be Receiver General, in the room of HARRISON GRAY Esq., then and still legally holding and executing that office; and also to order and direct the Monies granted to his Majesty to be paid into the Hands of the said Henry Gardner, and not to the said Harrison Gray Esqr., and further, earnestly to recommend to the Inhabitants of the province to oblige and compel the several Constables and collectors to comply with and execute the said Directions of the Law: all which Proceedings have a most dangerous Tendency to ensnare his Majesty's Subjects, the inhabitants of this Province, and draw them into Perjuries, Riots, Sedition, Treason, and Rebellion.

For the Prevention of which Evils, and the calamitous Consequences thereof;

I have thought it my Duty to issue this Proclamation, hereby earnestly exhorting, and, in His Majesty's Name strictly prohibiting all his liege Subjects within this Province, from complying, in any Degree, with the said Requisitions, Recommendations, Directions or resolves of the aforesaid unlawful assembly, as they regard his Majesty's highest Displeasure, and wou'd avoid the Pains and Penalties of the Law. And I do hereby charge and command all justices of the Peace, Sheriffs, Constables, Collectors and other officers, in their several Departments, to be vigilant and faithful in the Execution and Discharge of their Duty in their respective offices, agreeable to the well known established Laws of the Land; and, to the utmost of their Power, by all lawful Ways and Means, to discountenance, discourage and prevent a Compliance with such dangerous Resolves of the above-mentioned, or any other unlawful Assembly whatever.

GIVEN at Boston this 10th Day of November in the Fifteenth year of the Reign of his Majesty, George the Third, by the Grace of God of Great Britain, France and Ireland, King Defender of the Faith, &c. Annoque Domini 1774.

THOs. GAGE By His Excellency's Command,
Tho. FLUCKER, Secretary
GOD Save The KING

Brooklyne, Massachusetts - December 13, 1774

General Gage, becoming desperate to find a solution, made is next move on December 13. John Andrews described the activity:

> This morning the Welch fusiliers, together with a detachment from another regiment, form'd a body of 400 men, and equip'd with knapsacks &ca., march out of town as far as the punch bowl in Brooklyne, when they return'd again. What this manoeuvre can be for, I cant imagine, other than to give the men an airing, or with a view to make frequent feints of the kind in order to familiarize the people to it, whereby in [the] future they may make an interruption into the country without creating any suspicion of their design, or possibly to make the Soldiers acquainted with the different roads near town.

On December 21, Andrews again reports, "two or three regiments continue to go out of town every day, sometimes to Cambridge, and other times to Dedham."

Though General Gage's intentions are unknown, if his desire was to pose a threat to the colonists, it had the reverse effect. Resentment was building because of these unwarranted trespasses into the countryside.

Fort William and Mary, New Hampshire - December 14 - 15, 1774

On December 13, the Boston Committee of Safety directed Paul Revere to ride to Portsmouth, New Hampshire to advise the local patriots that the British were sending ships to Fort William and Mary to take arms, ammunition, and powder that was stored there. At that time, there were only six soldiers at the fort.

On December 14, four hundred patriots overwhelmed the guard and made off with one hundred barrels of gunpowder. The next day, an even larger crowd seized all of the muskets and sixteen cannon. By the time the British ships arrived, all of the guns and powder had been taken and secreted in the countryside.

Boston, Massachusetts - February 24, 1775

On February 24, General Gage received an intelligence report. That report provides insight into what Gage had to contend with, with regard to the activity in opposition to the royal government.

> Committee of safety appointed by the Congress consisting of Hancock, Warren, Church, Heath and Gearey, these are to observe the motions of the Army, and if they attempt to penetrate into the Country, imedietly to communicate the intelligence to Colo. Ward, Colo. Bigelow, and Colo. Henshaw, who live in or near the Towns of Worcester, and Leicester. Colo. Warren of Plymough and Colo. Lee of Marblehead, they are to send express's round the Country to collect the Minute Men who are to oppose the troops. These Minute Men amount to about 15,000 and are the picked Men of the whole body of Militia, and all properly armed.
>
> There are in the Country thirty-eight Field pieces and Nineteen Companies of Artillery most of which are at Worcester, a few at Concord, and a few at Watertown.
>
> There whole Magazine of Powder consisting of between Ninety and an Hundred Barrells is at Concord.
>
> There are eight Field pieces in an old Store or Barn, near the landing place at Salem, they are to be removed in a few days, the Seizure of them would greatly disconcert their schemes.
>
> Colo. Lee, Colo. Brine, Mr. Devons, Mr. Chever, Mr. Watson, and Moses Gill, are appointed a Committee of supply, who are to purchase all military stores, to be deposited at Concord and Worcester.

This intelligence made General Gage realize that he had better begin acting, before the situation got completely out of hand. He had to begin asserting himself.

Salem, Massachusetts - February 26, 1775

Determined to forestall an appearance of submission to the activities of the patriots, General Gage opted to take a positive action. He sent troops, by ship, to Marblehead, where they disembarked and began an overland march to Salem. Their purpose was to seize the stores that the February 24 report indicated to be in Salem.

William Gavett, a Salem resident, provides a description of what transpired:

> Colonel David Mason had received tidings of the approach of the British troops and ran into the North Church ... during service in the afternoon, and cried out, at the top of his voice, "The British reg'lars are coming after the guns and are now near Malloon's Mills." One David Boyce, a Quaker who lived near the church, was instantly out with his team to assist in carrying the guns out of the reach of the troops....
>
> The northern leaf of the draw was hoisted when the troops approached the bridge, which prevented them from going any further. Their commander, Col. Leslie.... then remarked to Capt. Felt, or in his hearing, that he should be obliged to fire upon the people on the northern side of the bridge if they did not lower the leaf. Captain Felt told him if the troops did fire they would all be dead men, or words to that effect. It was understood afterwards that if the troops fired upon the people, Felt intended to grapple with Col. Leslie and jump into the river, for, he said, "I would willingly be drowned myself to be the death of one Englishman ...
>
> The people soon began scuttling two gondolas which lay on the western side of the bridge, and the troops also got into them to prevent it. One Joseph Whicher, the foreman in Col. Sprague's distillery, was at work scuttling the colonel's gondola, and the soldiers ordered him to desist, and threatened to stab him with their bayonets if he did not -- whereupon he opened his breast and dared them to strike. They pricked his breast so as to draw blood....
>
> It was a very cold day, and the soldiers were without overcoats, and shivered excessively and shewed signs of being cold. Many of the inhabitants climbed upon the leaf of the draw and blackguarded the troops. Among them was a man who cried out as loud as possible, "Soldiers, red-jackets, lobster-coats, cowards, damnation to your government!" ...
>
> Colonel Leslie ... said, "I will get over this bridge before I return to Boston, if I stay here till next autumn.... By God! I will not be defeated"; to which Captain Felt replied, "You must acknowledge you have already been baffled."
>
> in the course of the debate between Colonel Leslie and the inhabitants, the colonel remarked that he was upon the King's Highway and would not be prevented passing over the bridge.
>
> Old Mr. James Barr, an Englishman and a man of much nerve, then replied to him: "It is not the King's Highway; it is a road built by the owners of the lots on the other side, and no king, country or town has anything to do with it." ...
>
> Then the colonel asked Captain Felt if he had any authority to order the leaf of the draw to be lowered, and Captain Felt replied there was no authority in the case, but there might be some influence. Colonel Leslie then promised, if they would allow him to pass over the bridge, he would march but fifty rods and return immediately, without troubling or disturbing anything. Captain Felt was at first unwilling to allow the troops to pass over on any terms, but at length consented, and requested to have the leaf lowered down. The troops then passed over and marched the distance agreed upon without violating their pledge, then wheeled and marched back again, and continued their march through North Street, in the direction of Marblehead.
>
> A nurse named Sarah Tarrant, in one of the houses near the termination of their route, in Northfields, placed herself at the open window and called out to them: "Go home and tell your master he has sent you on a fool's errand and broken the peace of our Sabbath. What," said she, "do you think we were born in the woods, to be frightened by owls?" One of the soldiers pointed his musket at her, and she exclaimed, "Fire if you have the courage, but I doubt it.

Failing in their effort to seize the stores in Salem, the troops returned to Boston.

Boston, Massachusetts - April 12, 1775

General Gage had continued seeking intelligence on the activity of the patriots. John Howe, a 22-year-old spy, provides us:

> On April 5, 1775, General Gage called on me to go as a spy to Worcester to examine the roads, bridges and fording places, and to see which was the best route to Worcester to take an army to destroy the military stores deposited there. Accordingly Col. Smith and myself dressed ourselves as countrymen with gray coats, leather breeches, and blue mixed stockings, with silk flagg handkerchiefs round our necks, with a small bundle tied up in a homespun checked handkerchief in one hand, and a walking stick in the other. Thus equiped we set out like countrymen to find work,

At one point, he noticed what he described as "the largest tree I ever saw. He asked a local what kind of tree it was. The response:

> He said buttonwood, and further said that the people were going to cut it down to stop the regulars from crossing with their cannon. I asked him how they would know when the regulars were coming in time enough to cut the tree down. He said they had men all the time at Cambridge and Charlestown looking out. This tree would completely blockade the road should they do it.

He continues:

> The general said, "John, we have examined your journal; you are well deserving the name of a good soldier and a lucky and expert spy. How large an army will it take to go to Worcester and destroy the stores and return safe?" By answering that question I must stand or fall, but I was determined to give my opinion in full, turn as it would. I said, if they should march 10,000 regulars and a train of artillery to Worcester, which is forty-eight miles from this place, the roads very crooked, stony and hilly, the inhabitants generally determined to be free or die, that not one of them would get back alive... The general asked me what I thought of destroying the stores at Concord, only eighteen miles. I stated that I thought 500 mounted men might go to Concord in the night and destroy the stores and return safe; but to go with 1000 foot to destroy the stores the country would be alarmed; that the greater part of them would get killed or taken.

If Howe's recollection of his advice to General Gage is accurate, we probably have Gage to thank for not heeding it. Had he gone with the "500 mounted men", only God knows how history would have been recorded.

Boston, Massachusetts - April 14, 1775

General Gage received correspondence from Lord Dartmouth, which informed him that 700 marines, three infantry regiments, one regiment of light dragoons, and, financial support for the existing force in Boston, were on the way. He went on, "It is hoped... that this large Reinforcement to your Army will enable you to take a more active & determined part.... The King's Dignity, & the Honor and Safety of the Empire, require, that... Force should be repelled by Force."

This letter, in no uncertain terms, required that General Gage begin acting in an aggressive capacity to quash the growing movement. With the additional forces, he should be able to overcome the previous limitations -- for want of troops.

With this encouragement, and veiled threat, General Gage would have to act. He opted to send one thousand men, on foot, to destroy, or capture, the stores at Concord. Thus, the course of history was set.

Concord, Massachusetts - April 19, 1775

Just eight months after the farmers in Worcester began thwarting the imposition of the Massachusetts Government Act, events, that evolved far more from the activities of the countrymen, outside of Boston, than from the words of those within that besieged city, culminated in the end of the Revolution and the beginning of the War of Independence.

The End of the Revolution

When the infamous "Stamp Act" was imposed upon the colonists, in 1775, there began an era of oppression and retaliation. The oppression came in various forms, primarily, through Acts of the Parliament.

The retaliation came in a constantly escalating endeavor by the colonists to impede the effect of the Acts of Parliament.

Initially, the retaliation took the form of "non-consumption". Items that were taxed, to repay the debt incurred by the French-Indian War, were not purchased. Occasionally, more aggressive retaliation came in the form of tarring and feathering tax collectors. This activity did result in the death of an occasional tax collector, and, often tax collectors homes and offices would be torn down., though this 'violence' was nothing, compared to what was to come.

It wasn't until the Boston Tea Party that overt acts of violence, though the violence was strictly limited to only the tea and the chests that it was stored in, were committed.

Our textbook history pretty much limits explanations of overt acts to the Tea Party, until April 19, 1775.

As you have seen, however, that threats of violence, or even death, and frequent destruction of private property, was rampant, in those months leading up to the end of the Revolution.

History, after all, does have very much to teach us.

[Note: Much of the information in the foregoing article is contained in "The First American Revolution", by Ray Raphael (ISBN 1-56584-730-X). Documentation for quoted portions may be found in that book.]

*** * * * * * * * * * * ***

Massachusetts Government Act

[pertinent parts]

May 20, 1774

AN ACT for the better regulating the government of the province of the Massachusetts Bay, *in* New England.

WHEREAS the method of electing such counsellors or assistants, to be vested with the several powers, authorities, and privileges, therein mentioned, ... in which the appointment of the respective governors had been vested in the general courts or assemblies of the said colonies, hash, by repeated experience, been found to be extremely ill adapted to the plan of government established in the province of the Massachusetts Bay ... *, and hath ... for or some time past, been such as had the most manifest tendency to obstruct, and, in great measure, defeat, the execution of the laws; to weaken the attachment of his Majesty's well disposed subjects in the said province to his Majesty's government, and to encourage the ill disposed among them to proceed even to acts of direct resistance to, and defiance of, his Majesty's authority: And it hath accordingly happened, that an open resistance to the execution of the laws hath actually taken place in the town of* Boston, *and the neighbourhood thereof, within the said Province: And whereas it is, under these circumstances, become absolutely necessary, ... that the said method of annually electing the counsellors or assistants of the said Province should no longer be suffered to continue, but that the appointment of the said counsellors or assistants should henceforth be put upon the like footing as is established in such other of his Majesty's colonies or plantations in* America, *the governors whereof are appointed by his Majesty's commission, under the great seal of* Great Britain: Be it therefore enacted ..., that from and after August 1, 1774, so much of the charter ... [of 1691] ... which relates to the time and manner of

electing the assistants or counsellors for the said province, be revoked, ... and that the offices of all counsellors and assistants, elected and appointed in pursuance thereof, shall from thenceforth cease and determine: And that, from and after the said August 1, 17 74, the council, or court of assistants of the said province for the time being, shall be composed of such of the inhabitants or proprietors of lands within the same as shall be thereunto nominated and appointed by his Majesty . . , provided, that the number of the said assistants or counsellors shall not, at any one time, exceed thirty six, nor be less than twelve.

II

And it is hereby further enacted, That the said assistants or counsellors, so to be appointed as aforesaid, shall hold their offices respectively, for and during the pleasure of his Majesty....

III

And be it further enacted ..., That from and after July 1, 1774, it shall and may be lawful for his Majesty's governor for the time being of the said province, or, in his absence, for the lieutenant governor, to nominate and appoint, under the seal of the province, from time to time, and also to remove, without the consent of the council, all judges of the inferior courts of common pleas, commissioners of Oyer and Terminer, the attorney general, provosts, marshals, justices of the peace, and other officers to the council or courts of justice belong....

VI

And be it further enacted ..., That, upon every vacancy of the offices of chief justice and judges of the superior court of the said province, from and after July 1, 1774, the governor for the time being, or, in his absence, the lieutenant governor, without the consent of the council, shall have full power and authority to nominate and appoint the persons to suceed to the said offices, who shall hold their commissions during the pleasure of his Majesty ...;

VII

And whereas, by several acts of the general court, ... the freeholders and inhabitants of the several townships, districts, and precincts, qualified, as is therein expressed, are authorized to assemble together, annually, or occasionally, upon notice given, in such manner as the said acts direct, for the choice of selectmen, constables, and other officers, and for or the making and agreeing upon such necessary rules, orders, and byelaws, for the directing, managing, and ordering, the prudential affairs of such townships, districts, and precincts, and for other purposes: and whereas a great abuse has been made of the power of calling such meetings, and the inhabitants have, contrary to the design of their institution, been misled to treat upon matters of the most general concern, and to pass many dangerous and unwarrantable resolves: for remedy whereof, be it enacted, that from and after August 1, 1774, no meeting shall be called by the select men, or at the request of any number of freeholders of any township, district, or precinct, without the leave of the governor, or, in his absence, of the lieutenant governor, in writing, expressing the special business of the said meeting, except the annual meeting in the months of March or May, for the choice of select men, constables, and other officers, or except for the choice of persons to fill up the offices aforesaid, on the death or removal of any of the persons first elected to such offices, and also, except any meeting for the election of a representative or representatives in the general court; and that no other matter shall be treated of at such meetings...

* * * * * * * * * * * * *

Tactics of Infiltration

Informants Amongst Us?

Gary Hunt
Outpost of Freedom
May 8, 1995

The testimony in the Randy Weaver/Kevin Harris trial made clear that Randy had been induced into a crime with the intention of getting Randy to become an informant for the government. While I was up in Idaho, I spoke with some people that suggested that nearly half of Richard Butler's Aryan Nation Church were informants. Others have suggested that when the old Posse Comitatus broke up, that most of their members had become informants. Accusations have abounded these past few years as to who is a government agent or informant. It was painfully clear that the government has means, other than agents, to accomplish infiltration, entrapment, and promulgation of misinformation throughout the Patriot community. The question is, how can they achieve this goal? I've been looking for an answer to that question for years, now. Finally, thanks to the government's efforts to accomplish that very goal with a true patriot, and friend, I've found the answer.

I have, in front of me, a Plea Agreement for that friend. The deadline has passed, and he is scheduled before a federal Grand Jury later this month. The Agreement is about as contemptuous a document as I have ever read. I will get into the details, but, first, some background. Although the friend was arrested, and held for a few days, until released on his own recognizance, there have yet to be any charges filed against him. There were charges in the arrest affidavit, however they had not been filed with the court, and we can find no record that there EVER were any charges filed. After a while, the United States Attorney submitted the Plea Agreement, and followed with a letter threatening to withdraw the Agreement if it was not accepted by a certain date. That date has come and gone, and I am free to release the information, except the name of the patriot involved. This particular Agreement refers to an IRS code violation, but, keep in mind, agreements could be submitted for nearly any charge.

The Agreement, first, sets out the charge that will be sought. In this case, a violation of 26 USC 1212(a). The maximum penalties (3 years in prison and $250,000 fine) are set out. Then, a waiver of indictment gave up that Constitutionally protected right. Then comes the USG's agreement to not go after the Defendants wife or company, but only if the Agreement is accepted. If no adverse information is received, the USG will not oppose the Defendant's request for *a "two level downward*" adjustment from maximum sentencing guidelines. Whether the Court accepts the Agreement, or not, the Defendant, once he signs the Agreement, is bound to its conditions. If accepted, the Defendant agrees to cooperate and testify against "*other persons*". The USG will decide if the cooperation and/or testimony qualifies as "substantial assistance". If that "*substantial assistance*" is deemed worthy by the USG, prior to sentencing, the USG will, recommend the two level downward adjustment. "***[T]he determination as to whether 'substantial assistance' has been provided rests solely with the government, and the defendant agrees that defendant cannot and will not challenge that decision whether by appeal, collateral attack or otherwise***."

As the Agreement continues, speedy trial is waived, as are any other rights allegedly protected by the government/Constitution. The bottom line -- anybody who accepts such a plea agreement has become an informant, perhaps for the rest of his life. Leaving the determination *of "substantial assistance*" on the USG leaves a means for the government to induce unethical, immoral, and illegal behavior of the defendant. In order to satisfy the requirements, it would be easy for the government to suggest that more information (falsified, or not) needed to be provided to satisfy the provision. Perhaps disseminating information that was meant to discredit someone, mislead people or just generally create confusion and disorder would satisfy the government's requirement for "substantial assistance". It might even be possible for someone to entrap his friends, once the leverage was created by the Agreement.

Why would anyone agree to such an Agreement? Let's think about it. First, to protect your spouse and family, there is a certain amount of pressure to agree. If you own a business, or any property (asset forfeiture), fear of its loss may be added to the influence. Finally, any bar attorney would probably seek a minimum retainer of $25,000 to defend a case such as this.

Just try to imagine yourself in such a situation. Idealistically, we can all say, "No, I wouldn't sign it." Nevertheless, realistically, the stakes are very, very high, and it probably would not be difficult to succumb. How many people that we know may have succumbed, already?

When you think of the power the government exerts over an individual with an Agreement of this nature, visions come to mind of "involuntary servitude". As harmless, as first glance (and your attorney's encouragement) might make it appear to be, it is a concept that is so evil on its face that it deserves to be equated with Hitler, Mussolini, Stalin, and Mao Tse Tung -- not with America.

Is there anything that we can do to help someone caught in this evil web? Only if they are willing to come clean, and seek help from their fellow patriots. If we are to shake off this "secret police" tactic, we must be willing to stand by any who come out and admit to falling into a Plea Agreement trap. Whatever assistance (substantial???) they may need to avoid prosecution is warranted. When we consider the severity of events currently engulfing us, it might be worth considering ANY support necessary to remove the chains from those who have submitted. There are two reasons for this necessity. First, we need every good man that is available, and cannot hold such acts against him, if he is willing to come clean. Second, and more important by far, is the fact that we need to rid ourselves of the stigma that is associated with the control asserted by government through these contemptible means.

A final thought, is much of the information that seems to permeate our communications, and subsequently proven inaccurate, an indication of the existence of these problems? Look at information sources, and their past records of reliability with open and thorough consideration. The reliability of information is more important now than ever before. If someone's record is blemished with information that has proven to be inaccurate, or predictions that have been proven untrue, perhaps a very cautious regard should be applied to information from those same sources in the future.

* * * * * * * * * * * * *

C3CM

Gary Hunt
Outpost of Freedom
May 1, 1995

I have been seeking information on a government program for over two years. As I traveled around the country, and met various people, I would ask those that might have knowledge if they had heard of the program. More recently, I have published the "Outpost of Freedom-Sentinel", and in the "Journals of the Outpost of Freedom". In the second edition, I ran what is contained below as a part of that story. I have not been able to confirm the validity of what is presented, however, like Operation Cablesplice, it is worthy to note that what is being presented here may be a part of the plan.

I will get into more detail about what appears to be happening around the country right now, in the days to come. For those who have not heard, Norman Olson and Ray Southwell have stepped down, or so news reports suggest, as a result of their being set up to run a story blaming the bombing on Japan. Others are now reporting what appears to be a set up occurring, and those that saw NBC news Friday evening, know that there is an effort to associate me to militia. I will make clear here that I believe 110% in the concept of militia, but have chosen not to join because I want the mobility to travel to cover stories, and the autonomy not to be associated, for the sake of any organization, and for my own, with any groups, militia, or otherwise.

From Outpost of Freedom - :Sentinel, Vol. II, No. 2, March 8, 1995:

There were a few people that I knew of in the Orlando area that had, like myself, become "untaxed", or whatever term you may prefer. At any rate, we were no longer filing income tax returns. Some had gone through seizure of property and/or bank accounts. I had my share of run ins with the IRS, but felt more comfortable with my position as it had developed over the past few years. As a result I came into contact with some people who were going through a program from the Southwest. Unfortunately, it eventually cost them their home, but, as is usually true, the seizure was based upon taxes previously acknowledged as owed.

I bring these people up because they introduced me, via telephone, to someone they had met, on the phone, as a result of the "program" they were in. The person they introduced me to was someone (let's call this person Carl Morgan) that lived in the Northeast. Carl had decided to come to Florida and meet some of the Citizen's. I had agreed to put Carl up, since my office had plenty of room. Carl arrived around the 20th of February, and stayed over for about a week.

Carl seemed to me to be very sincere. We spoke of many things that were of issue to the Patriot community. Realizing that there may be a need for an "underground railroad" for patriots, the discussion came, eventually, to aiding people in need of help. Carl's sincerity had been demonstrated, at least in conversation, so decided to let him in on our secret. I have often wondered whether this was a wise decision. Being "in charge" of hiding Peter, Linda and Alex, I had demanded of all others involved, an absolute silence. I think that this was a key to our success, yet I had violated that "order" in bringing Carl in.

As it was, however, benefits were derived from this inclusion. Carl, after returning home, had begun to make arrangements for "securing" people should the need arise.

Another benefit derived was that of trust. Carl recognized our sincerity in the cause, and, apparently, recognized that we were who we had said we were. The evening that Carl met Peter, Alex, Linda and Sam we had all had a few glasses of wine. Carl seemed somewhat awed by this group we had formed. As a result, Carl had become a bit intoxicated, either by wine or awareness, or both. When Carl and I returned to the office Carl began telling me more of the work that was Carl's tie to government.

Carl worked for a defense intelligence agency sub-contractor. Carl's job was to study reports by various government people and utilize them in the development of a program named "C3CM". Carl may have overstepped what was intended in talking to me about the project that evening. The project has been a dominant thought in my mind since that evening back in 1993. Since, if it is true, it answers many questions and ties together much of what has been left hidden to the Patriot Community. Following is an overview of what I learned that evening, with some speculative comments of my own.

"C3CM" is a national defense project designed to assist in securing the "favor" of people in any country in the world. The idea, quite simply, is to identify those that would oppose the government of choice of the United States Government (USG).

The identification process actually applies to virtually everyone within the country, and they are identified in three main categories. I have been unable to make contact with Carl since the end of the Waco siege when Carl paid the remainder of my motel bill and we last spoke. Carl told me the names of the three categories, and I have kicked myself many times for not having made better notes at the time.

The categories, however, can be defined as: Those who would speak out against the objectives of the USG, let us call these group "A"; Those who would listen to the A's, let us call these group "B"; and those who would do their best to avoid involvement in the matter (some might call them sheeple), or serve the other side, which we will call group "C". Within each of these categories there are sub-categories, most significant in A and B. The sub-categories are a prioritization of the need for neutralization. The more outspoken were, of course, more of a threat to the goals of the USG. By the same token, the B's are identified as those more likely to act, or possibly, move into group A. Group C was not discussed in this context, but I'm sure there are those who would be favored by their identification within this category.

The first part of the program (C3), then, is the identification and categorization of all within a country. This does not preclude the United States. In fact, I am inclined to believe that the program is being applied here, and has been for quite some time. (I will discuss more on this, later).

The second part of the program (CM) is the application thereof. Let's suppose that the USG wants to take over country X and install their lackeys in positions of power. Given a longer period of time, (say a couple of years), the objective of the application would be to undermine or discredit the efforts of the A's identified as a threat to the goal. At the same time, selected members of the C group might be "presented" to the B group and represented as A type people. This would be accomplished by apparent "attacks" on the plants, or "promotion" by identifying them as leadership in articles being critical of the objectives of the A's and B's.

The conviction and incarceration of A's, where practical, would also be applied. Any charge, and excuse, any method that would discredit or remove from "power" any A would be within the guidelines of the long term approach.

Given less time to "apply" the program, (the extreme in terms of time), every effort would be made to "take out", or at least jail, those A's that posed an immediate threat. The other A's would also be targeted, based upon their priority. Any excuse would be sufficient. But, promotion of a "crime" as a perceived threat (especially one where "set ups" are easily achieved) to the society (say drugs) must be in place. By coloring the subject as a criminal,

questions may not be asked at all, or, if they are asked, sufficient time will go by to accomplish the objective before answers are demanded.

Variations of both the C3 and CM portions allow a very broad scope of application suitable to nearly any objective. And there is no reason to believe that this program is not being applied to those in the Patriot community today.

Speculating - that this program is being applied to the Patriot community, let's look at a tool that might be available to those in government who would be applying the program. Danny Casselara died while investigating the theft, by the Department of Justice, of the INSLAW software. INSLAW was developed, under contract to DJ and Interpol, to "track" "criminals" by Modus Operandi, habits, and other characteristics. DJ failed to make payments under the contract which forced Prometheus (the software company developing the program) into bankruptcy. DJ was then able to buy the proprietary rights to the software from the bankruptcy court, thereby cutting Prometheus completely out of the picture. Could the INSLAW software be the primary tracking and identification element in the C3 portion of the program?

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Oath of Association and the Oath of Secrecy

GENERAL ASSOCIATION

A General Association agreed to and subscribed by the Members of the Several Committees of the City and County of Albany.

PERSUADED that the salvation of the Rights and Liberties of America depends under God on the firm Union of its Inhabitants, in a Vigorous prosecution of the Measures necessary for its Safety; and convinced of the necessity of preventing the Anarchy and Confusion, which attend a Dissolution of the Powers of Government.

WE the Freemen, Freeholders and Inhabitants of the City and County of Albany being greatly Alarmed at the avowed Design of the Ministry, to raise a Revenue in America; and shocked by the bloody Scene now acting in the Massachusetts Bay Do in the most Solemn Manner resolve never to become Slaves; and do associate under all the Ties of Religion, Honour, and Love to our Country, to adopt and endeavour to carry into Execution whatever Measures may be recommended by the Continental Congress, or resolved upon by our Provincial Convention for the purpose of preserving our Constitution, and opposing the Execution of the several Arbitrary and oppressive Acts of the British Parliament until a Reconciliation between Great Britain and America on Constitutional Principles (which we most ardently desire) can be obtained; And that we will in all things follow the Advice of our General Committee respecting the purpose aforesaid, the preservation of Peace and good Order and the safety of Individuals and private Property.

(signatures}

An Association agreed to and subscribed by the Members of the several Committees of the City and County of Albany.

We the Subscribers Inhabitants of the County of Albany and Colony of New York do voluntarily and solemnly engage under all the Ties held sacred amongst mankind at the risk of our Lives and Fortunes to defend by Arms the united Colonies against the Hostile attempts of the British Fleets and Armies untill such the present unhappy Controversy between the two Countries shall be settled.

[68 signatures, February 17, 1776]

Oath of Secrecy

Wee the Subscribers do swear on the Holy Evangelists of Almighty God that we will not devulge or make known to any Person or Persons whomsoever (except to a Member or Members of this Board) the Name of any Member of this Committee giving his Vote upon any Controverted matter which may be debated or determined in Committee, or the arguments used by such Person or Persons upon such Controverted Subject, and all other such matters as shall be given hereafter in Charge by the Chairman of this Committee to Members to be kept secret under the sanction of this Oath, untill discharged therefrom by this Committee or a Majority of the subscribers or the Survivors of them, or unless when called upon as a Witness in a Court of Justice

[116 signatures, January 27, 1777]

[from: Minutes of the Albany Committee of Correspondence, Volume I, 1775-1778]

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Enemy

P.C. (Popping Cops)

An interview with John
Gary Hunt
Outpost of Freedom
July 5, 1999

John is an old friend. He is a combat veteran and well versed on our country's heritage. He was last interviewed by the Outpost of Freedom (OPF) in September 1995 (Sons of Liberty #18). Our discussion, then, was about the Murrah Building bombing and McVeigh's choice of targets.

I was talking with John just a few days ago and we were discussing the events in Kosovo. I asked John if he would do another interview, which we completed this evening.

OPF: Well, John, Welcome! And, it's good to talk with you again.

JOHN: Thanks, Gary. Good to be able to discuss things, again.

OPF: John, the other day, when we were talking about doing this interview, you mentioned that there might be some things that we could learn from the KLA. Why don't we start there?

JOHN: Okay! Well, a couple of years ago we talked about McVeigh targeting the federal building. As I said, then, we should target the sources of the problem. Although the government is the problem, the Federal Reserve System is the source of the power and influence that directs the government.

We should also look at the front line soldier in the war. You realize, I know from your writings, that you believe that we are at war. I think that McVeigh made that same sentiment very clear. Gary, you are a veteran. When you were in combat, was your target the government buildings of North Vietnam?

OPF: No! In my role, the target was the person trying to shoot me. I wasn't really a combat soldier. I was an airplane crew chief. We conducted no offensive actions, except by aerial/radio support or targeting. Risk generally came from when the aircraft or the airfield was attacked. Maybe even in convoy. So, any target I had presented himself.

JOHN: Well, I think you have the idea. Whether you were an offensive or defensive soldier, your primary target is the front line enemy soldier. Now, I mentioned the KLA on Kosovo. As you have pointed out in some of your articles, the KLA was assassinating policemen in Kosovo for nearly two years. The Serbs attempted to retaliate, but were looked on as the bad guy – at least by people like Clinton. But, face it, for nearly three years the KLA continued to kill police at every opportunity. The also killed the paramilitaries and Serbian Army, whenever the opportunity presented itself. The had the government frustrated to the point that the government had to start attacking people even remotely suspected of being KLA or harboring them.

OPF: John, I think that if that happened here, many would claim that it was the government doing it just to encourage public support to pass more laws against guns.

JOHN: Yes, I've read a lot of that recently. The High School shootings seems to have really fueled that fire. But, think about it. Is there any patriot that couldn't be charged with a crime? Is there any person that couldn't be charged with a crime? Passing those laws is just feel good sort of thing. You've written about how you still have all of your rights. As you said in your articles, you pity the cop that thinks you don't still have the right to bear arms. Those friends of yours, George and Lynda, they weren't willing to give their rights up. They knew they still had them, but the government, with the power they have behind them, will deny those rights whenever they want. So, what good does another law do? I've often wondered if the naysayers that constantly espouse not acting to restore our lawful government are working for the unlawful one. Do you think that the Founders would have submitted to such illogical arguments? Where do you think that we would be, today, if they had?

OPF: You're right. The hard core of the Founders were Sam Adams, John Hancock and James Otis. The rest, even Washington, had constantly plead for negotiated solutions. There was, always, opposition to any form of force. But, if I remember correctly, the Sons of Liberty and other small gangs, even in the Southern colonies, would take more aggressive action – especially against tax collectors.

JOHN: That's right. The tax collectors could call the King's soldiers to seize property, if taxes weren't paid. The soldiers, however, worked only under the direction of the civil authority. They didn't make decisions, use their rifles, or any force, unless directed to by the Governor or an agent of the King. It was those agents who directly affected their lives that were the front line troops – the enemy which was first sought out and slain.

OPF: But, wait a minute. There weren't that many killings. Most of the activity was against property, houses, offices, etc., wasn't it?

JOHN: Yes, it was, but there was little regard for life. If they were going to burn someone's house down, they usually vandalized it and then set it afire. They didn't make anyone leave, or physically remove them. If they stayed in the house, it was at their own risk. And, many died in those fires. Also, many died of the tar and feathering they received. But, times have changed. Very few colonists were killed by the King's forces. Quite a bit different, today, wouldn't you say?

OPF: Yes. But, well, do you really think that there will be support for killing cops?

JOHN: There was in Kosovo. The Albanians were willing to put up with quite a bit, and seldom, if ever, turned in a KLA member. That's why so many civilians were killed by the Serbs. If they had a group of people and knew that at least one was KLA, if the others didn't talk, they killed them all. It didn't seem to break down the fortitude of the Albanians. It seemed to strength their resolve.

OPF: So, do you think that it would have the same effect in this country?

JOHN: Gary, you know that there are still some who want to blame everything on the government. You know that there are a lot of people who think that things will change through the voting process. I've seen many articles on the Internet where people still believe that if they can circumnavigate the judicial maze, they can get justice. Are you asking me if those people will support the kind of action that is necessary to get our country back? To them, the answer is, No!

But, remember that two hundred years ago only a small handful believed that force would remove the burden the King had put on the people. Once the reality struck home that force would be method of change, they reconsidered their old ideas – and supported the cause. But, remember, too, that it was a very slow process. It never was a majority then, and it will never be a majority to effect this sort of change.

OPF: What sort of people would look favorably on this sort of action?

JOHN: The people that I know look favorably on action. You don't read about all of the bombings and events that are going on, every day. It is only when the press can play something up that they do. You've read about the hundreds of bombings that occur in this country, each year. Do you read about them on the Internet? There is probably at least one bombing every day in this country, but nobody finds out about them, except maybe those that live in the same town. They know that these bombings and attacks against police are going on. Nobody seems to get caught, unless they make a stupid mistake. But, that's not the real point of this type of action.

OPF: Yes, I've read the annual reports that point out how many bombings there are every year. I've wonder, but, I guess I realize that the press doesn't cover it unless it serves a purpose – and, the police and FBI don't want to know how many unsolved bombings there are. It seems like when they can ID [identify] someone, then it hits the press. But, you say that this is not the point. What is the point of this?

JOHN: Well, from a tactical standpoint, let's suppose that you are a policeman. What happens when policemen start getting shot in random attacks?

OPF: I would guess that they would probably start putting two officers in a car to protect against it.

JOHN: Right! And, many places have put two men in every patrol car. But, what happens as it continues, and becomes even more common?

OPF: I think that I'm beginning to get the picture. If I took the job cause it paid well and gave me power, I would have second thoughts if the risk became too great.

JOHN: You got the idea. If people were to start Popping Cops, then cops would start to think twice before they continue don the force. Of course, there would probably be an over-reaction to this, at first. They might be more aggressive thinking that would protect them. But, then, maybe that is what s happening now. I think, though, that they are just under-qualified for their jobs. The government has put so many cops on the street that they have got to be running out of qualified people. Just like any profession – You're a Surveyor. Could anybody be a surveyor with proper training?

OPF: Well, they could probably pass the exams, but there are a lot of people who have passed the exams, gotten registered and still aren't very good surveyors,

JOHN: Do you think that the same is true with cops?

OPF: Well, some of the cops I know seem to have a good attitude for their work, but, they are arrogant and stick together. They will stick up for a friend, whether he is a cop, or not. I guess, though, that there has got to be a limit, like you said, as to how many people are qualified to be good cops. But, then, you know that I don't believe that there is any such thing as a good cop.

JOHN: How many of those you know are really willing to risk their lives to help people?

OPF: Heh! I don't think that I know any that would match the mold that existed years ago.

JOHN: So, do you think that they might find other work if the risk became too great?

OPF: I would think that that would be very likely. You said "Popping Cops". That comes out to "PC". I just realized the irony of it.

JOHN: Can't think of a better way to describe it! But, back to where we were. What would happen, then, if cops were getting taken out, one at a time, here, there, all over the country? One in Detroit, a few days later, one in Chicago, a few days later, one in Miami and one in Dallas, each time, different bullets, different MO [Modus Operandi], nothing similar except the result – another dead cop? Any cell could do one job every six months. The likelihood of getting caught would be almost non-existent.

OPF: You heard about this guy, Benjamin Smith, in Indiana, didn't you?

JOHN: Yes. He was a [loose] cannon. There have always been people like that. It seems like they have a death wish, and no sense.

OPF: Wouldn't Popping Cops have the same consequence?

JOHN: No! The difference is targeting. That's what we were talking about. Everybody would know, whether they admitted it, or not, why it was happening. It wouldn't be murder, it would be killing. Killing the enemy, just like in war. That is the objective, isn't it?

OPF: Yes. But, if the enemy is the government.

JOHN: Did you read Jack McLamb's Vampire Killer 2000?

OPF: Yes, a number of times.

JOHN: Who is always there if there is an IRS seizure, a federal service of process, and even around the perimeter at Waco? Cops are the tools, the front line, the cannon fodder for the government. If they seize the rifles in California, who will seize them? Should we concern ourselves with them just because they haven't participated in a direct action? Should we not shoot enemy soldiers who haven't, yet, shot at us? Are troop trains of raw recruits military targets?

OPF: I see what you mean.

JOHN: Gary, remember, a long time ago, you told me that you used to look at cops and wonder if there family would miss them? Then, after Waco, you told me that you didn't care, anymore. What their families would feel?

OPF: Yes, and I think that I still feel the same. But, then, I'm supposed to be asking the questions!

JOHN: Okay. Ask away!

OPF: Well, I guess I'm sort of at a loss, right now. This is a lot to digest. I guess that most of it has been there, all along, but I've never really thought it out like this.

JOHN: I think that most of us who really want the country back have all of those pieces inside. Our conversation the other day got me going on it, again. I think that time, you know, in history, in life, has a part of what makes sense, or not. Our conversation brought up the same thoughts I'd had before, but hey came together in a different way. Kept trying to resolve it, but it kept coming out the same way. I think that is how man and history is supposed to work.

OPF: John, I'm going to have some more questions, I'm sure, as time goes on. Are you gonna be willing to answer more about this, later on?

JOHN: Sure. I don't know if I'll have answers to all of your questions, but I'll try. Same rules.

OPF: Okay. John, Thanks, very much. Again, you've provoked a lot of thought. Thanks! Stay safe!

JOHN: You, too!

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Some Thoughts on Public Education

Some Thoughts on Public Education

Gary Hunt
Outpost of Freedom
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Introduction

Public Education in America has a long history. In the Cape Code area, a public school was established in the early seventeen hundreds. The pay for the schoolmaster was in the form of part of the catch of fish. Public Education was not established by government, rather, by the parents and members of the community.

Today, we have a "public education system" that has deviated from that original intent to such a point that, except for the name, they bear little resemblance to each other.

The current form has become an administrative nightmare; a means of social reform (indoctrination); and, fails, miserably, to achieve its intended purpose as a mechanism for the diffusion of knowledge, focusing instead, on an institutional evaluation of the failure of that system.

So, let's look at what public education was, from Jefferson through the end of the 19th century.

Historical perspective

Thomas Jefferson, the principle advocate of public education, is probably the finest source of the intent of that system. Below are a number of historical quotes by Jefferson regarding the subject:

> "I have indeed two great measures at heart, without which no republic can maintain itself in strength: 1. That of general education, to enable every man to judge for himself what will secure or endanger his freedom. 2. To divide every county into hundreds, of such size that all the children of each will be within reach of a central school in it." --Thomas Jefferson to John Tyler, 1810.
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> "Education not being a branch of municipal government, but, like the other arts and sciences, an accident [i.e., attribute] only, I did not place it with election as a fundamental member in the structure of government." --Thomas Jefferson to John Taylor, 1816.
>
> "The present consideration of a national establishment for education, particularly, is rendered proper by this circumstance also, that if Congress, approving the proposition, shall yet think it

more eligible to found it on a donation of lands [this applied beginning with the lands acquired under the Treaty of Paris -- Ohio Territory], they have it now in their power to endow it with those which will be among the earliest to produce the necessary income. The foundation would have the advantage of being independent on war, which may suspend other improvements by requiring for its own purposes the resources destined for them." --Thomas Jefferson: 6th Annual Message, 1806.

"A bill for the more general diffusion of learning... proposed to divide every county into wards of five or six miles square;... to establish in each ward a free school for reading, writing and common arithmetic; to provide for the annual selection of the best subjects from these schools, who might receive at the public expense a higher degree of education at a district school; and from these district schools to select a certain number of the most promising subjects, to be completed at an University where all the useful sciences should be taught. Worth and genius would thus have been sought out from every condition of life, and completely prepared by education for defeating the competition of wealth and birth for public trusts." --Thomas Jefferson to John Adams, 1813.

"The less wealthy people... by the bill for a general education, would be qualified to understand their rights, to maintain them, and to exercise with intelligence their parts in self-government; and all this would be effected without the violation of a single natural right of any one individual citizen." --Thomas Jefferson: Autobiography, 1821.

"The most effectual means of preventing [the perversion of power into tyranny are] to illuminate, as far as practicable, the minds of the people at large, and more especially to give them knowledge of those facts which history exhibits, that possessed thereby of the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes." --Thomas Jefferson: Diffusion of Knowledge Bill, 1779.

"It is an axiom in my mind that our liberty can never be safe but in the hands of the people themselves, and that, too, of the people with a certain degree of instruction. This is the business of the state to effect, and on a general plan." --Thomas Jefferson to George Washington, 1786.

Nearly a century later, we can observe the view and understanding of the public school system from, "Elements of Civil Government, A text-book for use in public schools High schools and normal schools and a manual of reference for teachers, by Alex. L. Peterman, 1891". From that book:

CHAPTER II. -- THE SCHOOL.

Introductory. -- When children reach the age of six or seven years, they enter the public school and become subject to its rules. We are born under government, and we are educated under it. We are under it at home, in school, and in after life. Law and order are everywhere necessary to the peace, safety, liberty, and happiness of the people. True liberty and true enlightenment can not exist unless regulated by law.

Definition and Purposes. -- A school district or sub-district is a certain portion of the town or county laid off and set apart for the purpose of establishing and maintaining a public school. It exists for educational reasons only, and is the unit of educational work. The public schools are supported by funds raised partly by the State, and partly by the county or the township. They are frequently called common schools or free schools. It is the duty of the State to provide all children with the means of acquiring a plain English education, and the State discharges this duty by dividing the county into districts of such size that a school-house and a public school are within reach of every child.

Formation. -- The limits of the school district are usually fixed by the chief school officer of the county, by the town, by the school board, or by the people living in the neighborhood...

Functions. -- The functions, or work, of the school are solely educational. The State supports a system of public schools in order that the masses of the people may be educated. The country needs good citizens: to be good citizens the people must be intelligent, and to be intelligent they must attend school.

MEMBERS.

The members of the school district are the people living in it. All are interested, one way or another, in the success of the school. In most States the legal voters elect the school board, or trustees, and in some States levy the district school taxes. Those who are neither voters nor within the school age are interested in the intelligence and good name of the community, and are therefore interested in the public school.

Children. -- The children within the school age are the members of the school, and they are the most important members of the school district. It is for their good that the school exists. The State has provided schools in order that its children may be educated, and thus become useful men and women and good citizens.

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Parents, their Rights and Duties. -- All parents have the right to send their children to the public school, and it is also their duty to patronize the public school, or some other equally as good. Fathers and mothers who deprive their children of the opportunities of acquiring an education do them lasting injury. Parents should use every effort to give their children at least the best education that can be obtained in the public schools.

GOVERNMENT.

The school has rules to govern it, that the pupil may be guided, directed, and protected in the pursuit of knowledge. Schools can not work without order, and there can be no order without government. The members of the school desire that good order be maintained, for they know their success depends upon it; so that school government, like all other good government, exists by the consent and for the good of the governed.

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Duties. -- In most States it is the duty of the district officers to raise money by levying taxes for the erection of school-buildings, and to superintend their construction; to purchase furniture and apparatus us; to care for the school property; to employ teachers and fix their salaries; to visit the school and direct its work; to take the school census; and to make reports to the higher school officers.

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Powers. -- The teacher has the same power and right to govern the school that the parent has to govern the family. The law puts the teacher in the parent's place and expects him to perform the parent's office, subject to the action of the directors or trustees. It clothes him with all power necessary to govern the school, and then holds him responsible for its conduct, the directors having the right to dismiss him at any time for a failure to perform his duty.

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CHAPTER III. -- THE CIVIL DISTRICT.

Introductory --In our study, thus far, we have had to do with special forms of government as exercised in the family and in the school. These are, in a sense, peculiar to themselves. The rights of government as administered in the family, and the rights of the members of a family, as well as their duties to each other, are natural rights and duties; they do not depend upon society for their force. In fact, they are stronger and more binding in proportion as the bands of society are relaxed.

In the primitive state, before there was organized civil society, family government was supreme; and, likewise, if a family should remove from within the limits of civil society and be entirely isolated, family government would again resume its power and binding force.

School government, while partaking of the nature of civil government, is still more closely allied to family government. In the natural state, and in the isolated household, the education of the child devolves upon the parents, and the parent delegates a part of his natural rights and duties to the teacher when he commits the education of his child to the common school. The teacher is said to stand *in loco parentis* (in the place of the parent), and from this direction, mainly, are his rights of government derived.

The school, therefore, stands in an intermediate position between family government and civil government proper, partaking of some features of each, and forming a sort of stepping-stone for the child from the natural restraints of home to the more complex demands of civil society. The school district, also, while partaking of the nature of a civil institution, is in many respects to be regarded as a co-operative organization of the families of the neighborhood for the education of their children, and its government as a co-operative family government.

From Webster's 1828 Dictionary:

Public, a. [L.publicus, from the root of populus, people; that is, people-like.]

1. Pertaining to a nation, state or community; extending to a whole people; as a public law, which binds the people of a nation or state, as opposed to a private statute or resolve, which respects an individual or a corporation only. Thus we say, public welfare, public good, public calamity, public service, public property.

Education, n.

The bringing up, as of a child, instruction; formation of manners. Education comprehends all that series of instruction and discipline which is intended to enlighten the understanding, correct the temper, and form the manners and habits of youth, and fit them for usefulness in their future stations. To give children a good education in manners, arts and science, is important; and an immense responsibility rests on parents and guardians who neglect these duties.

Knowledge, n.

1. A clear and certain perception of that which exists, or of truth and fact; the perception of the connection and agreement, or disagreement and repugnancy of our ideas. Human knowledge is very limited, and is mostly gained by observation and experience.
2. Learning; illumination of mind.

Public Schools

Jefferson realized that knowledge was essential, in the people, if the government was to be of service to those people, when he said, "*The most effectual means of preventing [the perversion of power into tyranny are] to illuminate, as far as practicable, the minds of the people at large, and more especially to give them knowledge of those facts which history exhibits, that possessed thereby of the experience of other ages and countries, they may be enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes*." He also provided that such knowledge would "*enable every man to judge for himself what will secure or endanger his freedom*."

It is clear that education was not a service to or by the government, only to be encouraged and provided for by the government, when he suggested that parents could utilize the public or private schools, though the minimum education would be that afforded by the public school.

He further suggests the limitation of federal government involvement in education by allowing that they only provide "*donations of land*" which would "endow" the schools to "*produce the necessary income".* Though he suggested the division of land into districts, he never suggested that the government was a player in that education, rather, that it would educate all, thereby "*defeating the competition of wealth and birth for public trusts*". How could you entrust those of birth and wealth with controlling education if the purpose was to defeat their control of that education?

The ultimate purpose of the public education was to assure that the less wealthy people "*would be qualified to understand their rights, to maintain them, and to exercise with intelligence their parts in self-government*," warning, also, that " *our present state of liberty [is] a short-lived possession unless the mass of the people could be informed to a certain degree*."

In establishing that the responsibility for providing the public education is not a function of government, he says, "*Education not being a branch of municipal government, but, like the other arts and sciences, an accident [i.e., attribute] only, I did not place it with election as a fundamental member in the structure of government*."

Now, it is possible that what Jefferson has told us could be considered as conjecture, not of practice. This would suggest that he was in error and the government must take a greater role in the education of our children. If that were the case, surely, practice would have changed shortly after Jefferson left the scene and would have removed itself from that "public" sphere and into the realm of government control by the end of that century. So, let us look at public education as it was described and practiced in 1891:

From "Elements of Civil Government", we find government is a rather broad term. It applies "*in home, in school, and in after [later] life*." *That "[i]t is the duty of the State to provide all children the <u>means</u> of acquiring" an education*". So, here we come to a crux in the difference between public education and what we have, today. The means of an education versus the education, itself. Providing you the means of fishing does not provide you the fish -- only the means to acquire the fish. Education is, likewise, from the standpoint of government, only the means, not the education.

"*The members of the school district are the people living in it. All are interested, one way or another, in the success of the school*." This would exclude people not living in the district, say, in the State capital, or, Washington, D.C. What conceivable interest could politicians totally unrelated, and, probably, unaware of the nature of the district, should be interested in the outcome of the education? Surely, if they were other than simply pretending to be interested, we could expect that any true interest would be divisive, and, perhaps as was suggested by Jefferson, a result of their "ambition under all of its shapes, and prompt to exert their natural powers and defeat its purpose". After all, if the truth is what is legislated, there is no role for the people to judge what the government is doing. It is, for all intents and purposes, a "*perversion of power into tyranny*".

Looking at the relationship of the teacher to the student, we find that "*The teacher has the same power and right to govern the school that the parent has to govern the family. The law puts the teacher in the parent's place and expects him to perform the parent's office*." This is further supported by the fact that when we look at the Civil District (city or county), we find that there are "*special forms of government as exercised by the family and the school*" that are *"peculiar to themselves*".

> To assure a proper understanding of the relationships stated above, let me repeat from that source that:
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> > "School government, <u>while partaking of the nature of civil government, is still more closely allied to family government</u>. In the natural state, and in the isolated household, <u>the education of the child devolves upon the parents, and the parent delegates a part of his natural rights and duties to the teacher when he commits the education of his child to the common school</u>. <u>The teacher is said to stand ***in loco parentis*** (in the place of the parent)</u>, and from this direction, mainly, are his rights of government derived.
> >
> > "The school, therefore, stands in an intermediate position between family government and civil government proper, partaking of some features of each, and forming a sort of

> stepping-stone for the child from the natural restraints of home to the more complex demands of civil society. The school district, also, while partaking of the nature of a civil institution, is in many respects to be regarded as a co-operative organization of the families of the neighborhood for the education of their children, and its government as a co-operative family government.

So, when you send your child to school, you have made the teacher *in loco parentis*. If you have not assigned that right to the federal government, the state government, or even the school district, then, should that authority apply only to those to whom you have granted, should it extended to people unknown, in places unknown, for purposes unknown?

Government Schools

The United States Department of Health, Education and Welfare (Welfare has since been changed to "human services") was formed in 1953. Given that the Founders and Framers only saw fit to provide grants of land, at the federal level, for the support of the public education system, we must wonder why this expansive move into the rights previously held by the parents. However, these intervening 57 years have clearly established the consequences of the establishment of that Department. It has resulted in a near complete takeover of the education process and moved it into absolute (despotic?) control of the federal government, including denial of the parent's right to involve themselves in the education process.

Along with the expansion of federal authority in the realm that was previously reserved to the community, the State governments have also encroached well beyond their original enrolment in education. BY submitting to federal dictates, mandates and funds allocation, they have become co-conspirators with the federal government to undermine the purpose of public education, as envisioned by the Founders and practiced, for over a century, as a right of the local community and the parents, resulting in the subjugation of our children to an indoctrination program the prescribes social relationship, undermines religious and moral values, and, subjects the children to a belief in the absolutism of government's authority.

Conclusion

The Constitution stands mute on the subject of education and schools. The only authority that the federal government had was with regard to the "public lands". That authority underlay Jefferson's desire to found the federal support only to the "donation of lands". Clearly, no authority was granted by the Constitution to subvert the rights of the parents and the school district in matters of education. Even an expansive misrepresentation of "the General Welfare" could not subordinate the authority of the parents and the school district, even if they were failing, miserable, in the pursuit of a proper education. After all, who but the parents could determine whether there was a failure in the process?

That ascension of authority to the federal government made way for the ascension of State authority, well beyond that which was intended. Initially, states could set certain guidelines, and, historically, these were quite limited and included the matter of taxation for funding, usually granted to the county or district, and protections to be afforded the district and schools for protection from abuse.

Taxes for the support of public schools were, for many decades, raised through *ad valorem* (on property) taxes. This did provide for inequality in education, however, this inequality was no different from the inequality in housing and diet. Those who worked harder received greater benefit.

This did not demean education. The basics of reading, writing, mathematics, and science were necessary as a foundation for subsequent learning, whether through the educational system or the ability to acquire additional knowledge by reading books, periodicals, and newspapers. It was the foundation that was the necessity of public education. Those who proved themselves worthy were able to take advantage of scholarships to increase their education, though that route was, and should only be, available to those competent, desirous of, and willing to pursue such higher education. It was, and should be, the foundational education that came within the purview of "public" education.

The consequence of attempting to assure that all people had such higher education available was that the higher education has been lowered in quality to accommodate those who were not mentally capable of such aspirations, though they had been convinced that it was their "right" to achieve what would otherwise be beyond their abilities. This has resulted in college graduates with 6th grade reading skills, and, and overall reduction of the equality of education of the higher levels, except where wealth has afforded certain individuals with access to expensive private colleges. The entire country has suffered as a result of this malaise in education by allowing those to have degrees that are not indicative of their scholarly achievements, rather, the fact that they have completed a course of education without regard to the quality thereof.

Public education, to serve the intentions and practices under which it was first instituted, must return to that which serves the people rather than the government. To allow the government to impose any more than the "means" to educate; to allow the government to subvert the needs of the people, as defined by the people through their school boards of local, interested parties; is to allow the government the means of indoctrination of the people, especially the young, into acceptance of despotism and subjugation.

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Some Thoughts on the Election Process

Some Thoughts on the Election Process

Gary Hunt
Outpost of Freedom
November 22, 2010

Introduction

Whether we want to refer to the United States as a Democracy, a Republic or a Constitutional Republic is inconsequential. It is how the government operates that really matters.

In all three decryptions, it is assumed that there will be elections, and that we will have our choice of candidates -- to represent us in local, state, and federal offices.

We must wonder, considering the results of elections, especially in our recent past, whether we have been exercising that franchise in a proper manner -- as was intended by the Framers.

Understand that what we are talking about is "electors". This is not to be misunderstood as to be referring to the electors in the "electoral college" any more than students of a grade school would be misunderstood to include students of a college.

Though the minimum qualifications may be the same, the various levels of electors are based upon their function. The function described herein is of those at the lowly level of electors within a Republican (Article IV, Section 4) State.

Constitution

Article I, Section 2, clause 1:

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

Article I, Section 4, clause 1:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Article II, Section 1, clause 2:

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Article IV, Section 4:

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Amendment XIV [1868]

Section 1--All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2--Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 5--The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV [1870]

Section 1--The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2--The Congress shall have power to enforce this article by appropriate legislation.

Amendment [XIX] [1920]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment [XXIV] [1964]

Section 1--The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2--The Congress shall have power to enforce this article by appropriate legislation.

Amendment [XXVI] [1971]

Section 1--The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2--The Congress shall have power to enforce this article by appropriate legislation.

Federalist Papers

In Federalist Papers #52, James Madison says, *"Those of the former [House of Representatives] are to be the same with those of the electors of the most numerous branch of the State legislature. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper..."*

Later, in that same Paper, he says, *"Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State."*

Other Historical Sources

Delaware Charter of 1701:

> FOR the well governing of this Province and Territories, there shall be an assembly a yearly chosen, by the Freemen thereof...

Address of General Assembly of New York to Lieutenant Governor George Clarke, September 7, 1737.

> Persons that are fairly and freely chosen, have only right to represent the People, and are most likely to do the most effectual, as well as the most acceptable Service to the Public: Whereas those who have recourse to Frauds and unbecoming Arts, to procure themselves to be raised to those Stations, must be under the Government of narrow and selfish Views, unworthy any Representation of a free People, and will no doubt basely submit to those same detestable Measures, to continue themselves (by any Means) in the Exercise of a Trust unjustly acquired. It is by such as these, that the Liberties of the most free People have been in various Ages of the World, undermined and subverted: And it is to prevent this, as much as we may, that we gave Leave to bring in the Bill, for regulating of the Elections.

William Blackstone, Commentaries 1:165, [1765]

> 1. As to the qualifications of the electors. The true reason for requiring any qualification, with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections than is consistent with the general liberty. If it were probable that every man would give his vote freely, and without influence of any kind, and, upon the true theory and genuine principles of liberty, every member of the community, however poor, should have a vote in electing those delegates, to whose charge is committed the disposal of his property, his liberty, and his life. But, since that can hardly be expected in persons of indigent fortunes, or such as are under the immediate dominion of others, all popular states have been obliged to establish certain qualifications; whereby some, who are suspected to have no will of

their own, are excluded from voting, in order to set other individuals, whose wills may be supposed independent, more thoroughly upon a level with each other.

John Adams, On the Importance of Property for the Suffrage [1776]

James Sullivan, a member of the provincial congress of Massachusetts, corresponded with John Adams in May 1776 when the latter was a member of the Second Continental Congress. On May 6, Sullivan wrote a letter to Adams in which he discussed the principles of representation and legislation and called for some alterations in the qualifications for voters. Adams replied in the following letter of May 26, 1776.

IT IS CERTAIN, in theory, that the only moral foundation of government is the consent of the people. But to what an extent shall we carry this principle? Shall we say that every individual of the community, old and young, male and female, as well as rich and poor, must consent, expressly, to every act of legislation? No, you will say, this is impossible. How, then, does the right arise in the majority to govern the minority against their will? Whence arises the right of the men to govern the women without their consent? Whence the right of the old to bind the young without theirs?

But let us first suppose that the whole community, of every age, rank, sex, and condition, has a right to vote. This community is assembled. A motion is made, and carried by a majority of one voice. The minority will not agree to this. Whence arises the right of the majority to govern, and the obligation of the minority to obey?

From necessity, you will say, because there can be no other rule.

But why exclude women?

You will say, because their delicacy renders them unfit for practice and experience in the great businesses of life, and the hardy enterprises of war, as well as the arduous cares of state. Besides, their attention is So much engaged with the necessary nurture of their children that nature has made them fittest for domestic cares. And children have not judgment or will of their own. True. But will not these reasons apply to other? Is it not equally true that men in general, in every society, who are wholly destitute of property are also too little acquainted with public affairs to form a right judgment, and too dependent upon other men to have a will of their own? If this is a fact, if you give to every man who has no property a vote, will you not make a fine encouraging provision for corruption by your fundamental law? Such is the frailty of the human heart that very few men who have no property have any judgment of their own... talk and vote as they are directed by man of property who has attached their minds to his interest.

Upon my word, Sir, I have long thought an army a piece of clockwork, and to be governed only by principles and maxims, fixed as any in mechanics; and, by all that I have read in the history of mankind and authors who have speculated upon society and government, I am much inclined to think a government must manage a society in the same manner; and that this is machinery too.

Harrington has shown that power always follows property. This I believe to be as infallible a maxim in politics, as that action and reaction are equal is in mechanics. Nay, I believe we may advance one step farther, and affirm that the balance of power in a society accompanies the balance of property in land. The only possible way, then, of reserving the balance of power on the side of equal liberty and public virtue is to make the acquisition of land easy to every member of society; to make a division of the land Into small quantities, so that the multitude may be possessed of landed estates. If the multitude is possessed of the balance of real estate, the multitude will have the balance of power, and in that case the multitude will take care of the liberty, virtue, and interest of the multitude in all acts of government. I believe these principles have been felt, if not understood, in the Massachusetts Bay from the beginning; and therefore I should think that wisdom and policy would dictate in these times to be very cautious of making alterations. Our people have never been very rigid in scrutinizing into the qualifications of voters, and I presume they will not now begin to be so. But I would not advise them to make any alteration in the laws, at present, respecting the qualifications of voters.

Your idea that those laws which affect the lives and personal liberty of all, or which inflict corporal punishment, affect those who are not qualified to vote, as well as those who are, is just. But so they do women as well as men; children as well as adults. What reason should there be for excluding a man of twenty years eleven months and twenty-seven days old from a vote, when you admit one who is twenty-one? The reason is you must fix upon some period in life when the understanding and will of men in general is fit to be trusted by the public. Will not the same reason justify the state in fixing upon some certain quantity of property as a qualification?

The same reasoning which will Induce you to admit all men who have no property to vote with those who have, for those laws which affect the person, will prove that you ought to admit women and children; for, generally speaking, women and children have as good judgments, and as independent minds, as those men who are wholly destitute of property; these last being to all intents and purposes as much dependent upon others who will please to feed, clothe, and employ them, as women are upon their husbands, or children on their parents.

As to your idea of proportioning the votes of men, in money matters, to the property they hold, it is utterly impracticable. There is no possible way of ascertaining, at any one time, how much every man in a community is worth; and if there was, so fluctuating is trade and property that this state of it would change in half an hour. The property of the whole community is shifting every hour, and no record can be kept of the changes.

Society can be governed only by general rules. Government cannot accommodate itself to every particular case as it happens, nor to the circumstances of particular persons. It must establish general comprehensive regulations for cases and persons. The only question is, which general rule will accommodate most cases and most persons.

Depend upon it, sir, it is dangerous to open so fruitful a source of controversy and altercation as would be opened by attempting to alter the qualifications of voters; there will be no end of it. New claims will arise; women will demand a vote; lads from twelve to twenty-one will think their rights not enough attended to; and every man who has not a farthing will demand an equal

> voice with any other, in all acts of state. It tends to confound and destroy all distinctions and prostrate all ranks to one common level.

North Carolina Constitution of 1776, Arts. 7 - 8

> VII. That all freemen, of the age of twenty-one years, who have been inhabitants of any one county within the state 12 months immediately preceding the day of any election, and possessed of a freehold within the same county of 50 acres of land, for six months next before, and at the date of the election, shall be entitled to vote for a member of the Senate.
> VIII. That all freemen of the age of twenty-one years, who have been inhabitants of any one county within the state 12 months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the House of Commons for the county in which you resides.

Georgia Constitution of 1777, Art. 9

> ART. IX. All male white inhabitants, of the age of twenty-one years, and possessed in his own right of ten pounds value, and liable to pay taxes in this state...

Usurpation

We can see that the Constitution recognized that every state was guaranteed "a Republican Form of Government". That being the case, the Constitution clearly made the determination of who shall be "electors" a prerogative of each state. The only federal intervention was to set qualifications as to who may hold office in the legislative and executive branches of government.

The states, in their "republican" capacity could determine who was qualified as an elector for the most numerous branch (House of Representatives or equivalent), and that those so qualified could also participate as an elector in all federal elections.

The "Time, Places and Manner of holding Elections" could be regulated by the Congress, though nothing is said of the qualifications of the electors. Clearly, then, the qualifications of electors was not within the purview of the Congress and the federal government.

Even the selection of the electoral college was not restricted, rather was simply defined as to the number of such electors and a prohibition against anyone serving in such capacity if they were a "*Senator or Representative, or Person holding an Office of Trust or Profit under the United States".*

This absence of authority was further recognized in the Federalist Papers, by James Madison, when he explained that "*the right of suffrage is very justly regarded as a fundamental article of republican government"*, and, that "*[t]o have left it open for the occasional regulation of the Congress, would have been improper."*

So, it would be improper, and, a denial of that Republican Form of Government to allow the federal government to intrude upon the right of any state to determine just who could be an elector, and, who could not.

Even after the Civil War, the Congress realized that it could not go where the Constitution provided prohibition against its intrusion. With the ratification (this raises a whole new question, which will not be addressed in this paper) of the 14th Amendment [1868], Congress realized that they could not determine who could be an elector, and, who could not.

Following the only recourse that the Constitution allowed, they modified the representation, for the number of Representatives to be adjusted based upon denial of allowing some males over twenty-one the franchise of voting, the representation would be reduced by the same proportion as those not allowed to vote to the whole number of such class of males. Congress realized that they had no authority to remove the right of the state, in its "Republican Form of Government", to determine who the electors could be.

It is also interesting to note that the anti-slavery amendment was the first, though not the last, to incorporate the wording that "Congress shall have power to enforce this article by appropriate legislation", as if to provide them authority which was not granted by the Constitution -- to legislate outside of their originally granted powers.

It would appear, however, that having been able to pass two Amendments to the Constitution ("anti-slavery and 14th), that they felt that they could go beyond the authority granted by the Constitution (usurpation -- the unlawful encroachment or assumption of the use of property, power or authority which belongs to another.), so, two years later [1870], they passed to the states and obtained ratification of the 15th Amendment.

The Fifteenth Amendment, taking advantage of the newly created class of "citizen" (see Two Classes of Citizen), provided that "race, color or previous condition of servitude" could not be cause for denying a member of this new class of citizen to vote -- including both federal and state elections.

Though many states had already allowed women to vote, apparently, given the success of previous usurpations, determined that they wanted the states to extent equal suffrage (contrary to what the Constitution and Madison had declared as the right of the states) to women with the 19th Amendment [1920].

By 1964, the 24th Amendment removed the obstacle that required a demonstration of commitment (see "Qualification", below) to allow one to vote. Though many states had already dropped the provision for a "poll tax", the Congress was looking for total equality in the election process.

In a final blow to the authority reserved to the States, in the Constitution, and in the pursuit of equality (submission of the "Republican Form of Government" within the respective states), they removed the centuries old provision for age twenty-one and incorporated a whole new class of voters -- those who had yet to have experienced life and its responsibilities, with the ratification of the 26th Amendment [1971]. The argument was that if they could go to war, they should be able to vote, notwithstanding the fact that the Revolutionary War, the Civil War, and, World Wars I and II were fought by young men who had no right to participate.

It becomes difficult to imagine that a franchise that should be so sacred can be extended even further. In all of the above, the rights extended to the voting franchise only apply to "citizens of the United States".

Though without an amendment on the subject, it does seem that Congress has removed the State's right to determine if a potential elector has that qualification.

The extension of the voting franchise had been subordinated to federal authority, and the pool of participants was increased to allow all to vote. This, along with current prohibition regarding determination of citizenship, have made American elections open to just about anybody who is present at the time of elections and willing to take the time to vote.

Qualifications

Beginning with the 15th Amendment (above), we see that there has been a change in the method of addressing the franchise. This, and the subsequent amendments on the subject, do not address qualifications of electors; rather, they talk about the right to vote.

From Webster's 1828 Dictionary:

elector, n.

> One who elects, or one who has the right of choice; a person who has, by law or constitution, the right of voting for an officer. In free governments, the people or such of them as possess certain qualifications of age, character and property, are the electors of their representatives, &c., in parliament, assembly, or other legislative body. In the United States, [also] certain persons are appointed or chosen to be electors of the president or chief magistrate.

freeholder, n.

> *One who owns an estate* in fee-simple, fee-tail or for life; the possessor of a freehold [basically, a land owner], Every juryman must be a freeholder.

freehold, n.

> That land or tenement which is held in fee-simple, fee-tail, or for term of life. It is of two kinds; in *deed*, and in *law*. The first is the real possessor of such land are tenement; the last is the right of a man as to such land are tenement, before is entry or seizure.
> In the United States, a freehold is an estate which a man holds in his own right, subject to no superior nor to conditions.

Freeman, n.

> 1. One who enjoys liberty, or who is not subject to the will of another; one not a slave or vassal.
> 2. One who enjoys or is entitled to a franchise or peculiar privilege, as the freemen of a city or state.

From Black's Law Dictionary, Fifth Edition:

Elector.

A duly qualified voter; one who has a vote in the choice of any officer; a constituent. One who elects or has the right of choice, or who has the right to vote for any functionary, or for the adoption of any measure. And in a narrower sense, one who has the general right to vote, and the right to vote for a public officers. One authorized to exercise the elective franchise. [also] One of the persons chosen to comprise the electoral college.

Freeholder.

One having title to realty; either of inheritance or for life; either legal or equitable title. A person who possesses a freeholder estate.

Freeman.

A person in the possession and enjoyment of all the civil and political rights accorded to the people under a free government.

From colonial times through the 14th Amendment, the colonies/states have always had the right to determine just who should be an elector, and who should not. In early colonial times, a freeman had to have an estate of 14 schillings. This means that he had to have 14 schilling above and beyond any debt obligation that he might have.

The Delaware Constitution of 1701 simply requires that one be a "Freeman". A Freeman, as defined above, is someone who is not a slave or vassal. A vassal is one who owed servitude. And, since credit, as we know it today, was unheard of in colonial times, and if an obligation was owed, it was owed to the point that it would require no less than servitude until the obligation was satisfied, it would seem that a Freeman is one without obligation.

When Lt. Governor Clarke addressed the New York General Assembly, he justified the enactment of a "Bill, for regulating of the Elections". In so doing, he made clear that "those who have recourse to Frauds and unbecoming Arts" to secure elections, and, when elected, must be " of narrow and selfish Views, unworthy any Representation of a free People, and will no doubt basely submit to those same detestable Measures, to continue themselves (by any Means) in the Exercise of a Trust unjustly acquired." This was the justification to pass laws necessary to assure that those elected were "fairly and freely chosen".

If we consider some of the problems we face, today, we can see that they are not new to this country, nor the history of man. Divisive people pursuing public office will use divisive means to gain and retain that office.

William Blackstone provides us some insight into why ownership of property (freeholder) should be a requisite to becoming an elector. He explains that those without property have proven to be in "so mean (vulgar, lacking dignity) a situation that they are esteemed to have no will of their own". Suggesting that they would subject their vote to influences that should not be considered in choosing proper officers or representatives.

In 1776, North Carolina adopted one of the first Constitutions subsequent to the Declaration of Independence. In that document, the need to qualify electors for both houses of the legislature, each qualification being different, is clearly understood. For the higher house, the Senate, ownership (freehold) of fifty acres was required. For the House of Commons, one need only be a taxpayer. In both instances, he must be twenty-one years of age.

Georgia, just one year later, required that one have ten pounds of his own money and pay taxes.

There can be little doubt that the understanding that the electors must be both mature (aged twenty-one) and responsible was a condition of becoming an elector. The idea that someone who was unable to make well for himself was, in any way, competent to make decisions so important to the community, state or federal government, was not worthy of consideration.

One might wonder what good is served by extending the franchise to everybody, without consideration of maturity or ability. Well, from history, the 14th and 15th Amendments, we know that the federal government wanted to punish the Confederate States for the insurrection by both denying the vote to those who fought for the South and to give the vote to those who had never demonstrated their ability to be responsible for their own lives, which leads to a nearly untenable situation for many decades, putting the ex-slaves as masters over the white man, at least politically.

In a rather curious turn of events, we can see that by 1920, nine states had granted women suffrage. Obviously, as per the Constitution, the prerogative was left with the states.

Since just a few years before, in 1913, the Seventeenth Amendment, requiring popular vote for Senators, taking the state legislature's assertion of state input into Congressional decisions away, we see that though only the nine states had enacted suffrage, three quarters of the states ratified the Nineteenth Amendment, granting women suffrage. One must wonder why only nine states had granted suffrage and then 36 states (of the then 48) ratified the universal suffrage amendment. Both a usurpation and a statistical quandary.

One of the early measures of participation in the election process was that of status. If one was a freeholder or freeman, he could participate. Some had to pay public taxes. A poll tax was a measure of that capability and some states retained that qualifier in the form of a poll tax.

In 1964, the Twenty-fourth Amendment was ratified, which outlawed this measure of participation and commitment on the part of the elector, "*the right of the elector... shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.*" This provision made room for participation by those who could not even take responsibility for their own lives, though they were now qualified to help determine the course and future of the state and country.

Considerations

Both William Blackstone and John Adams provide us some insight into the reasons behind the existence of the qualification for electors. Clearly, the more one participated in his community, by ownership of land (which is, nowadays, rather easily achieved by those who wish to and are willing to work for it), or, at least, by independency and his ability to care for his family, without reliance upon others.

Age, another consideration of whether one has the maturity and ability to judge and reason, is probably more significant today than in 1776. Ages fourteen to 17 allowed entry into the military service. Many college students entered their institution of learning at age 12. By 21 years of age, most males had already established their own home, and, were far more worldly than those of the same age, today.

Should these requisites be considered in the determination of who is qualified as an elector?

Should electors and candidates have clearly established investment in their community?

Should registration of electors be as carefully scrutinized as many other aspects in our society?

Conclusion

In the early years of this country, nobody ran for office, as they do, today, though their friends and associates would encourage voting for them. Today, massive campaigns are conducted, many costing in the tens to hundreds of millions of dollars for a job that pays less than two million for a full term. Therefore, we must carefully consider what effect the qualifications of electors would have on the election process.

Let's start with the candidates, themselves. Residence requirements were six months or a year, required citizenship, and, in many instances, required a freehold (land ownership). Back then, six months in a community would familiarize you with the community and the people who resided in it. Commuting dozens of miles was impractical, and simply renting space to establish 'residency' was unheard of. Where your family was and lived, was where you had your roots set.

Nowadays, you can buy an expensive house in New York (having moved from Arkansas to Washington, and then deciding that Arkansas was too backward and lacked influence), stop there from time to time to furnish the house, and then, having establish national name recognition, running for Senator from that state in complete violation of the intent, as described above.

This modern age has made transient living quite easy. That being the case, perhaps, to achieve the intent of investment in the community, the time for residency of a candidate should be longer than it was in our past.

Now, for the electors. Were Adams, Blackstone and the various constitutions correct in judging that certain requirements imposed upon qualifying as an elector provide a more reasoned and qualified elector? Surely those who have earned their way in life, and, in so doing, have provided more to the upkeep of the nation (via various forms of taxation); have a vested interest in the course and cost of government by virtue of land ownership; and, are inclined to keep the expense of government down, since they are, ultimately, the ones who most pay the cost of maintaining government, are more qualified to make rational decisions with regard to those who take the reins of government and make decisions that will affect all.

It is unlikely that a corporation would allow employees to vote in the election of officers, though shareholders, by all means, should be allowed to participate. After all, they are vested in the corporation

and have far more at stake than the employees have. Their concern for the productive direction of the corporation is far greater than that of the employees.

Should a country be any different? Should those vested, or, at least, productive in support of the country be considered more competent to make rational decisions with regard to the course of the country than those who would be more inclined to vote because of influence, threats, coercion, or, to achieve gain for themselves?

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Lieber Code

[Note: This is the Lieber Code adopted by the Union Army during the Civil War. It might be appropriate to consider this Code, as modified by necessity, as a foundation for assuring compliance with good conduct in both secured and unsecured areas.]

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The Lieber Code of 1863

CORRESPONDENCE, ORDERS, REPORTS, AND RETURNS OF THE UNION AUTHORITIES FROM JANUARY 1 TO DECEMBER 31, 1863.--#7
O.R.--SERIES III--VOLUME III [S# 124]

GENERAL ORDERS No. 100.

WAR DEPT., *ADJT. GENERAL'S OFFICE,*
Washington, April 24, 1863.

Preface

The following "Instructions for the Government of Armies of the United States in the Field," prepared by Francis Lieber, LL.D., and revised by a board of officers, of which Maj. Gen. E. A. Hitchcock is president, having been approved by the President of the United States, he commands that they be published for the information of all concerned.

By order of the Secretary of War:
E. D. TOWNSEND,
Assistant Adjutant-General.

SECTION I

Martial Law - Military jurisdiction - Military necessity - Retaliation

Article 1.

A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its Martial Law.

Art. 2.

Martial Law does not cease during the hostile occupation, except by special proclamation, ordered by the commander in chief; or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.

Art. 3.

Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.

Art. 4.

Martial Law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not Martial Law: it is the abuse of the power which that law confers. As Martial Law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity - virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

Art. 5.

Martial Law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed - even in the commander's own country - when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations.

Art. 6.

All civil and penal law shall continue to take its usual course in the enemy's places and territories under Martial Law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government - legislative executive, or administrative - whether of a general, provincial, or local character, cease under Martial Law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

Art. 7.

Martial Law extends to property, and to persons, whether they are subjects of the enemy or aliens to that government.

Art. 8.

Consuls, among American and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to Martial Law in cases of urgent necessity only: their property and business are not exempted. Any delinquency they commit against the established military rule may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

Art. 9.

The functions of Ambassadors, Ministers, or other diplomatic agents accredited by neutral powers to the hostile government, cease, so far as regards the displaced government; but the conquering or occupying power usually recognizes them as temporarily accredited to itself.

Art. 10.

Martial Law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations.

Art. 11.

The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war, but also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in case of war between the contracting powers.

It disclaims all extortions and other transactions for individual gain; all acts of private revenge, or connivance at such acts.

Offenses to the contrary shall be severely punished, and especially so if committed by officers.

Art. 12.

Whenever feasible, Martial Law is carried out in cases of individual offenders by Military Courts; but sentences of death shall be executed only with the approval of the chief executive, provided the urgency of the case does not require a speedier execution, and then only with the approval of the chief commander.

Art. 13.

Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offenses under the statute law must be tried in the manner therein directed; but military offenses which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country.

In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the "Rules and Articles of War," or the jurisdiction conferred by statute on courts-martial, are tried by military commissions.

Art. 14.

Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

Art. 15.

Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

Art. 16.

Military necessity does not admit of cruelty - that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

Art. 17.

War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.

Art. 18.

When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender.

Art. 19.

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

Art. 20.

Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units, called states or nations, whose constituents bear, enjoy, suffer, advance and retrograde together, in peace and in war.

Art. 21.

The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war.

Art. 22.

Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.

Art. 23.

Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

Art. 24.

The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection, and every disruption of family ties. Protection was, and still is with uncivilized people, the exception.

Art. 25.

In modern regular wars of the Europeans, and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions.

Art. 26.

Commanding generals may cause the magistrates and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel everyone who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.

Art. 27.

The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage

Art. 28.

Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution.

Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.

Art. 29.

Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

Art. 30.

Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

SECTION II

Public and private property of the enemy - Protection of persons, and especially of women, of religion, the arts and sciences - Punishment of crimes against the inhabitants of hostile countries.

Art. 31.

A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or of that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property remains in abeyance during military occupation, and until the conquest is made complete.

Art. 32.

A victorious army, by the martial power inherent in the same, may suspend, change, or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

Art. 33.

It is no longer considered lawful - on the contrary, it is held to be a serious breach of the law of war - to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own and make it a portion of its own country.

Art. 34.

As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it.

Art. 35.

Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

Art. 36.

If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.

In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.

Art. 37.

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women: and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, lands, boats or ships, and churches, for temporary and military uses

Art. 38.

Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States.

If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity.

Art. 39.

The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to the circumstances arising out of the war - such as judges, administrative or police officers, officers

of city or communal governments - are paid from the public revenue of the invaded territory, until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped.

Art. 40.

There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land.

Art. 41.

All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.

Art. 42.

Slavery, complicating and confounding the ideas of property, (that is of a thing,) and of personality, (that is of humanity,) exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of the pagan jurist, that "so far as the law of nature is concerned, all men are equal." Fugitives escaping from a country in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

Art. 43.

Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service.

Art. 44.

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.

A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

Art. 45.

All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money, whether on sea or land, can now only be claimed under local law.

Art. 46.

Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offenses to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offense may require; if by soldiers, they shall be punished according to the nature of the offense.

Art. 47.

Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.

SECTION III

Deserters - Prisoners of war - Hostages - Booty on the battle-field.

Art. 48.

Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture, or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war, requiring redress or retaliation.

Art. 49.

A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers, of whatever species of arms; all men who belong to the rising en masse of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

Art. 50.

Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army

or its government, are, if captured on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.

Art. 51.

If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise, under a duly authorized levy en masse to resist the invader, they are now treated as public enemies, and, if captured, are prisoners of war.

Art. 52.

No belligerent has the right to declare that he will treat every captured man in arms of a levy en masse as a brigand or bandit. If, however, the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.

Art. 53.

The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses and servants, if they fall into the hands of the American Army, are not prisoners of war, unless the commander has reasons to retain them. In this latter case; or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

Art. 54

A hostage is a person accepted as a pledge for the fulfillment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.

Art. 55.

If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

Art. 56.

A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

Art. 57.

So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.

Art. 58.

The law of nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States cannot retaliate by enslavement; therefore death must be the retaliation for this crime against the law of nations.

Art. 59.

A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

Art. 60.

It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it impossible to cumber himself with prisoners.

Art. 61.

Troops that give no quarter have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.

Art. 62.

All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

Art. 63.

Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.

Art. 64.

If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy.

Art. 65.

The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they lose all claim to the protection of the laws of war.

Art. 66.

Quarter having been given to an enemy by American troops, under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if, within three days after the battle, it be discovered that he belongs to a corps which gives no quarter.

Art. 67.

The law of nations allows every sovereign government to make war upon another sovereign state, and, therefore, admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant.

Art. 68.

Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

Art. 69.

Outposts, sentinels, or pickets are not to be fired upon, except to drive them in, or when a positive order, special or general, has been issued to that effect.

Art. 70.

The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

Art.71.

Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.

Art. 72.

Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited. Nevertheless, if large sums are found upon the persons of prisoners, or in their possession, they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the army, under the direction of the commander, unless otherwise ordered by the government. Nor can prisoners claim, as private property, large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

Art. 73.

All officers, when captured, must surrender their side arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery or approbation of his humane

treatment of prisoners before his capture. The captured officer to whom they may be restored can not wear them during captivity.

Art. 74.

A prisoner of war, being a public enemy, is the prisoner of the government, and not of the captor. No ransom can be paid by a prisoner of war to his individual captor or to any officer in command. The government alone releases captives, according to rules prescribed by itself.

Art. 75.

Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

Art. 76.

Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

Art. 77.

A prisoner of war who escapes may be shot or otherwise killed in his flight; but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow prisoners or other persons.

Art. 78.

If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle after having rejoined their own army, they shall not be punished for their escape, but shall be treated as simple prisoners of war, although they will be subjected to stricter confinement.

Art. 79.

Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

Art. 80.

Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information.

SECTION IV

Partisans - Armed enemies not belonging to the hostile army - Scouts - Armed prowlers - War-rebels

Art. 81.

Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all the privileges of the prisoner of war.

Art. 82.

Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers - such men, or squads of men, are not public enemies, and, therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

Art. 83.

Scouts, or single soldiers, if disguised in the dress of the country or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

Art. 84.

Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

Art. 85.

War-rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they if discovered and secured before their conspiracy has matured to an actual rising or armed violence.

SECTION V

Safe-conduct - Spies - War-traitors - Captured messengers - Abuse of the flag of truce

Art. 86.

All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.

Exceptions to this rule, whether by safe-conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government, or by the highest military authority.

Contraventions of this rule are highly punishable.

Art. 87.

Ambassadors, and all other diplomatic agents of neutral powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international affront if the safe-conduct is declined. Such passes are usually given by the supreme authority of the State, and not by subordinate officers.

Art. 88.

A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy.

The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

Art. 89.

If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer, or a private citizen, he shall suffer death.

Art. 90.

A traitor under the law of war, or a war-traitor, is a person in a place or district under Martial Law who, unauthorized by the military commander, gives information of any kind to the enemy, or holds intercourse with him.

Art.91.

The war-traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death.

Art. 92.

If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war-traitor, and death is the penalty of his offense.

Art. 93.

All armies in the field stand in need of guides, and impress them if they cannot obtain them otherwise.

Art. 94.

No person having been forced by the enemy to serve as guide is punishable for having done so.

Art. 95.

If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war-traitor, and shall suffer death.

Art. 96.

A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country.

Art. 97.

Guides, when it is clearly proved that they have misled intentionally, may be put to death.

Art. 98.

An unauthorized or secret communication with the enemy is considered treasonable by the law of war.

Foreign residents in an invaded or occupied territory, or foreign visitors in the same, can claim no immunity from this law. They may communicate with foreign parts, or with the inhabitants of the hostile country, so far as the military authority permits, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule.

Art. 99.

A messenger carrying written dispatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army, or its government, if armed, and in the uniform of his army, and if captured, while doing so, in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances connected with his capture must determine the disposition that shall be made of him.

Art. 100.

A messenger or agent who attempts to steal through the territory occupied by the enemy, to further, in any manner, the interests of the enemy, if captured, is not entitled to the privileges of the prisoner of war, and may be dealt with according to the circumstances of the case.

Art. 101.

While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous, and it is difficult to guard against them.

Art. 102.

The law of war, like the criminal law regarding other offenses, makes no difference on account of the difference of sexes, concerning the spy, the war-traitor, or the war-rebel.

Art. 103.

Spies, war-traitors, and war-rebels are not exchanged according to the common law of war. The exchange of such persons would require a special cartel, authorized by the government, or, at a great distance from it, by the chief commander of the army in the field.

Art. 104.

A successful spy or war-traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war-traitor, but he may be held in closer custody as a person individually dangerous.

SECTION VI

Exchange of prisoners - Flags of truce - Flags of protection

Art. 105.

Exchanges of prisoners take place - number for number - rank for rank wounded for wounded - with added condition for added condition - such, for instance, as not to serve for a certain period.

Art. 106.

In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the government, or of the commander of the army in the field.

Art. 107.

A prisoner of war is in honor bound truly to state to the captor his rank; and he is not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

Art. 108.

The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessaries.

Such arrangement, however, requires the sanction of the highest authority.

Art. 109.

The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded, it cannot be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

A cartel is voidable as soon as either party has violated it.

Art. 110.

No exchange of prisoners shall be made except after complete capture, and after an accurate account of them, and a list of the captured officers, has been taken.

Art. 111.

The bearer of a flag of truce cannot insist upon being admitted. He must always be admitted with great caution. Unnecessary frequency is carefully to be avoided.

Art. 112.

If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle.

Art. 113.

If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

Art. 114.

If it be discovered, and fairly proved, that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy.

So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offense, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.

Art. 115.

It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles, when hospitals are situated within the field of the engagement.

Art. 116.

Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared. An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

Art. 117.

It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags.

Art. 118.

The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible.

SECTION VII

Parole

Art. 119.

Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole.

Art. 120.

The term Parole designates the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor.

Art. 121.

The pledge of the parole is always an individual, but not a private act.

Art. 122.

The parole applies chiefly to prisoners of war whom the captor allows to return to their country, or to live in greater freedom within the captor's country or territory, on conditions stated in the parole.

Art. 123.

Release of prisoners of war by exchange is the general rule; release by parole is the exception.

Art. 124.

Breaking the parole is punished with death when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons must be kept by the belligerents.

Art. 125.

When paroles are given and received there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated.

Art. 126.

Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach.

Art. 127.

No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer.

Art. 128.

No paroling on the battlefield; no paroling of entire bodies of troops after a battle; and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value. Art. 129. In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war, unless exchanged.

Art. 130.

The usual pledge given in the parole is not to serve during the existing war, unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

Art. 131.

If the government does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

Art. 132.

A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

Art. 133.

No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war, or to parole all captured officers, if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

Art. 134.

The commander of an occupying army may require of the civil officers of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army, and upon their failure to give it he may arrest, confine, or detain them.

SECTION VIII

Armistice - Capitulation

Art. 135.

An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

Art. 136.

If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

Art. 137.

An armistice may be general, and valid for all points and lines of the belligerents, or special, that is, referring to certain troops or certain localities only.

An armistice may be concluded for a definite time; or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

Art. 138.

The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

Art. 139.

An armistice is binding upon the belligerents from the day of the agreed commencement; but the officers of the armies are responsible from the day only when they receive official information of its existence.

Art. 140.

Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

Art. 141.

It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any.

If nothing is stipulated the intercourse remains suspended, as during actual hostilities.

Art. 142.

An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

Art. 143.

When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists, whether the besieged have the right to repair breaches or to erect new works of defense within the place during an armistice, this point should be determined by express agreement between the parties.

Art. 144.

So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition, in his possession, during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

Art. 145.

When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

Art. 146.

Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

Art. 147.

Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice; in the latter case, the war is carried on without any abatement.

SECTION IX

Assassination

Art. 148.

The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw, who may be slain without trial by any captor, any more than the modern law of peace allows such intentional outlawry; on the contrary, it abhors such outrage. The sternest retaliation should follow

the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.

SECTION X

Insurrection - Civil War - Rebellion

Art. 149.

Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.

Art. 150.

Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government.

Art. 151.

The term rebellion is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own.

Art. 152.

When humanity induces the adoption of the rules of regular war to ward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgement of their government, if they have set up one, or of them, as an independent and sovereign power. Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power.

Art. 153.

Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them; addressing officers of a rebel army by the rank they may have in the same; accepting flags of truce; or, on the other hand, proclaiming Martial Law in their territory, or levying war-taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules of war toward rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife and settles the future relations between the contending parties.

Art. 154.

Treating, in the field, the rebellious enemy according to the law and usages of war has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

Art. 155.

All enemies in regular war are divided into two general classes - that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government.

The military commander of the legitimate government, in a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizens may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto.

Art. 156.

Common justice and plain expediency require that the military commander protect the manifestly loyal citizens, in revolted territories, against the hardships of the war as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens, of the revolted portion or province, subjecting them to a stricter police than the noncombatant enemies have to suffer in regular war; and if he deems it appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance, or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government have the right to decide.

Art. 157.

Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States, and is therefore treason.

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Some Thoughts on the Judicial Process

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Introduction

If you watch a child grow, you see every stage of that child's life and cannot really discern the transition from infant to adult, except upon reflection.

If, however, you are introduced to an adult, you have no means by which to recognize the infancy and growth to the point where you have met.

Of course, if you look at a scrapbook, carefully prepared by a doting mother, though you will not have an entire picture of those many transitions of life, you will be able to begin to understand the foundation that brought that person from infancy to adulthood.

Our legal system is introduced to us in much the same way. When we first become aware of what the entire judicial system is, we acquire most of our understanding from both the television and schooling. We tend not to look for that scrapbook; rather, we accept what we are taught, at face value.

If we are among the older observers, we might recognize that there has been a lot of 'growing' in that judicial system since we were first introduced to it, though we tend to accept those changes as necessary, since we still rely upon television or other media, even the courts, to determine what course this system should take.

We understand those changes to be a result of *progress*. Progress, however, is a rather interesting word, though we seldom give much thought to what it really means.

We can progress in our studies, with the objective of an education and a degree to be the goal of that *progress*. If we make progress in a trip, we know that we are getting closer to a destination, with the goal being a location which course was set out at the beginning of our journey. As we *progress* through life, our destination is what we perceive to be the end result of that journey, most often defined as passing out of this life -- a goal which might not be sought though it is inevitable. We can clearly see, then, that *progress* has in mind a goal -- a purpose for the pursuit of that progression.

So, let's return to the progress we see in the judicial system. What, exactly, or even remotely, is the goal that we are pursuing? Is it a higher degree of justice? Perhaps a more equitable administration of justice. Not much difference between the two, however, it is hard to conceive of a positive goal that would not pursue one or the other.

On the other hand, and, once again referring to the older amongst us, if we stop and look back at what has occurred in our lifetime, we can see that the changes that have occurred, though couched in the term of law and order, generate little semblance to a progression in that direction.

So, let's see if we can find the scrapbooks that will give us a better picture of the transition, from the beginning to the present, of our American judicial system.

So as to develop a foundation upon which the judicial system was created, we will look, first, at the Constitution.

Constitution

In the Preamble, the Constitution sets forth the authority and responsibility of the government:

> *"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."*

Establishing Justice is one of the principle objectives in the creation of both the government and the Union known as the United States of America. Note that it does not say that it is to establish "Law", rather, to establish "Justice". This is an important consideration in the transition from what was to what is.

Next, we can look at what created the federal judiciary, in Article III of the Constitution:

> Section 1-- *"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.... "*
>
> Section 2-- *"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority..."*

So, we have a supreme Court established as well as inferior courts that the Congress might "*ordain and establish*". We also see that the power of these courts "*extends to all Cases, in Law and Equity, arising under*" the Constitution and the Laws of the United States. This, of course, would include all laws made pursuant to the Constitution, so, obviously, they cannot conflict with the Constitution.

Next, we find in Article III:

> Section 2, clause 3-- *"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."*

So, all crimes shall be tried by a jury (more later on the proper role of the jury) and we have the introduction of jurisdiction, whereby such trial "*shall be held in the State where the said Crimes shall have been committed*".

To understand what is meant by this limitation on jurisdiction, we need to look back at Article I

> Section 8-- *"The Congress shall have Power ..."*
> Clause 17 *"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;..."*

Note that the Congress has the power for "exclusive Legislation" only in the venue (geographic area where the injury or crime occurred) defined as Washington, D.C. (District - not exceeding ten Miles square), all Places purchased by the Consent of the Legislature of the State (which, too, have to have cession of jurisdiction to be included in the exclusive legislative jurisdiction) for purposes related to government functions. Land simply purchased by the government, without the State having granted jurisdiction, does not fall in this category.

It might be worthwhile to point out that the Supreme Court has recognized that there are three United States', from a legal standpoint, when they ruled in Hooven & Allison Co. v. Evatt, [324 U.S. 652], when they declared that, *"The term {United States} has several meanings. It may be merely the name of the sovereign occupying the position analogous to that of other sovereigns in the family of nations, it may designate territory over which sovereignty of the United States extends, or it may be collective name of the states which are united by and under the Constitution. "The* lands described in Section 8, above, fall within the second definition, "*territory over which sovereignty of the United States extends".* It might also be worth noting that subsequent decisions extended that sovereignty over territories that have not become states. The States which were members of the Union (the United States of America) fall, clearly, within the third definition.

The, in Article IV, we find a reference which suggests that the Common Law (more on that, later) is the means by which justice will be established.

> Section 1-- *"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."*

"Full Faith and Credit", this provides a means of establishing justice on an equitable, or, at least, relatively equal basis throughout the States. This is a concept of common law, not of civil law.

The Bill of Rights was ratified on December 15, 1791. It was prefaced with an oft-overlooked Preamble that included the following, to set forth its purpose:

> *"The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, <u>in order to prevent misconstruction or abuse of its powers</u>, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution."*

First, we find in Amendment IV:

> *"The <u>right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures</u>, shall not be violated, and <u>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</u>."*

This protection evolves from what was practiced in England, and was ignored here, here, in colonial times. William Pitt, a Member of Parliament said, in the House of Commons, *"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may*

blow through it; the storm may enter, the rain may enter -- but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement!" This might begin to explain that old adage; "a man's home is his castle".

Early on, well before the War of Independence, James Otis spoke out against Writs of Assistance. A Writ of Assistance was, quite simply, a blanket search warrant. It did not say exactly what was being looked for, nor, did it say exactly where it was to be looked for. It might best be described as a "fishing expedition", and was, without question, intolerable, in the eyes of the Framers.

The Oath or affirmation is a sworn statement of personal knowledge. It is not third party, or hearsay, it is absolute knowledge. That "John Doe told me that you robbed a bank" is only personal knowledge that "John Doe" told you something. Only John Doe can swear to what you told him.

We are then provided the protections contained in Amendment V"

> *"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."*

So, we can see that the Framers were concerned over the power of the government to make arrests (held to answer), even in capital offenses (death penalty) or infamous crimes (felonies, which would be any crime that would include at least 1 year of imprisonment), unless on a presentment or indictment of a Grand Jury. The significance of the Grand Jury will become more apparent as we go on.

Next, we will visit Amendment VI:

> *"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."*

So, here we have a guarantee of a speedy and public trial by an impartial jury (more on the petit jury, later), again, held where the crime was committed. He is assured that he has a right o know the "nature and cause" of the accusation. We also see that the right to confront **all** witnesses against the accused is assured and that he has a right to counsel (it does not say lawyer) for his defense.

Finally, within the Bill of Rights, we have Amendment VII:

"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 reexamined in any Court of the United States, than according to the rules of the common law."

This speaks for itself, except that it does say that the decision of thee jury may not be reexamined in any court.

There were subsequent amendments that had minor effect on the judiciary, though they are not worth mentioning.

What might be worthy of your consideration is that within the Federalist Papers, the arguments published in support of ratification of the Constitution, and, recognized as the best representation of the intent of that Constitution, mentions "courts of justice" eight times, though never once mentions a "courts of law."

Common Law

To understand the Common Law is a rather complex study. There have been numerous older books written on the subject. Many recent claims that its foundation is on Christian or, Judeo-Christian principles is unfounded, though there is no doubt that these principles have influenced the course of Common Law.

In the earliest accounts, ordeal by fire was a means of judging, and, a person could not be compelled to enter the court (or, whatever forum was in use at the time). That evolution had proceeded over 11 centuries when that Common Law, as it had evolved, was adopted by the new States who had come together under the banner of the United States of America.

Many old state statute books (perhaps some still do) included something similar to, "and adopt the common law of England as it existed on July 4, 1776". It was qualified that the common law so adopted could not be in conflict with the constitution or statutes.

So, in body, where not in conflict, and, in principle, the common law was adopted by all of the states except Louisiana (which had its Napoleonic Code). Many state's statutes have been revised to remove this reference, though we must wonder why.

To have a general understanding of the Common Law, sufficient to the purpose of this paper, we can look to Black's Law Dictionary, Fifth Edition:

From Black's Law Dictionary, Fifth Edition:

> **Common law**. *As a distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the governments and security of persons and property, which derive their authority solely from usages and customs of a immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly*

the ancient unwritten law of England. The "common law" is all the statutory and case law background of England and the American colonies before the American revolution.

Common-law consists of those principles, usages and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature.

As distinguished from ecclesiastical law, it is the system of jurisprudence administered by the purely secular tribunals.

California civil code, section 22.2, provides that the "common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decisions in all the courts of this State."

In a broad sense, "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

Judge. *An officer so named in his commission, who presides in some court; a public officer, appointed to preside and to administer the law in a court of justice; the chief member of a court, and charged with the control of proceedings and the decisions of questions of law or discretion.*

"Judge", "justice", and "court" are often used synonymously or interchangeably.

Preside. *To occupy the place of authority as of president, chairman, moderator, etc. To direct, control or regulate proceedings as chief officer, moderator, etc. To posses or exercise authority. To preside over a court is to "hold" it. -- to direct, control and govern it as the chief officer. A judge may "preside" whether sitting as sole judge or as one of several judges.*

Magistrate. *The term in its generic sense refers to a person clothed with power as a public civil officer, or the public civil officer invested with executive or judicial power.*

U. S. magistrates. *A judicial officer, appointed by judges of federal DISTRICT courts, having some but not all of the powers of a judge. In the federal district courts magistrates may conduct many of the preliminary or pre-trial proceedings in both civil and criminal cases.*

Perhaps, from the above, you can begin to see what is relevant to the Common Law and what is not a part of the Common Law.

Properly, a Common Law Court (not those that you hear about on the news, rather, those which were acknowledged as our right), could only be deemed courts of justice. A court of law is the administration of rules in an arbitrary manner and is based upon Roman Civil Law.

Common Law, then, is made more by the people and less by the government. "How so?" you ask. Well, to understand this we must look at who decides innocence or guilt, for that interpretation would tell us what crime really is. The juries, both Grand and Petit, achieve this, in Common Law.

Grand Jury

Early reference to the Grand Jury process can be found in the Magna Carta (1215 AD), in Article 36, *"In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused."*

Grand juries have been described in numerous ways, over the centuries. In 1694, Lord Somers described them as, "security of Englishmen's lives". They have also been described as the "conserver of liberties" and "the noblest check upon the malice and oppression of individuals and states".

From Webster's 1828 Dictionary:

> **Jury**, n.
> A number of freeholders, selected in the manner prescribed by law, empanneled [sic] and sworn to inquire into and try any matter of fact, and to declare the truth on the evidence given them in the case.
>
> Grand juries consist usually of twenty-four freeholders at least, and are summoned to try matters alleged in indictments.

The purpose they serve is to consider complaints (not limited to those submitted by the state, rather, the including of any complaint against state officials), and determine whether a petit jury trial is warranted to determine innocence or guilt.

Through their history, Kings have enacted statutes that wrested control of the Grand Jury from the people and provided the King more leeway in prosecuting people, though these changes were apt to be turned over by outrage, violence, or even revolution.

They were not, as they are construed, now, especially on the federal level, simply an arm of government for the prosecution of people who violate laws. They were instituted to determine if any crime, including a denial of rights, was committed, based upon investigation by the Grand Jury, itself, and having available to them the right to call any witness, including the accused, to determine if an indictment or true bill was warranted.

Once issued, the indictment or true bill could not be quashed and the matter had to go to trial. Nowadays, many states and the federal government allow a prosecutor to refuse a true bill, denying a trial where the Grand Jury had called for it. The best-known instance of this had to do with an FBI sniper named Ron Horiuchi, who was indicted by an Idaho Grand Jury under the charge of murder, based upon his killing of Vicki Weaver. Probable cause was established by the Grand Jury, though the federal court usurped the authority of the State to try the case and moved it into federal jurisdiction. The federal court then determined, contrary to the Idaho Grand Jury, that no crime had been committed and the accused never stood trial.

Each state has its own laws regarding grand juries, and they vary, often significantly. The primary elements, however, used to include little or no control by government officers and gave broad inquisitorial powers to the jury. Without these, they would not be safeguard to our liberties.

To fully understand the history and authority of grand juries in the United States, see an article by G. B. Edwards on "Essay on the Grand Jury in America" (1904), at the Outpost of Freedom Library.

Petit Jury

More often simply called "petty juries", trial juries", "common juries", or, just plain "juries". These are the mainstay of a system of justice, and, can be a tool of oppression in a system of laws.

Here is how Webster's 1828 Dictionary explains them:

> *Petty juries*, consisting usually of twelve men, attend courts to try matters of fact in civil causes, and to decide both the law and the fact in criminal prosecutions. The decision of a petty jury is called a *verdict*.

Notice that he said that this jury would decide "both the law and the fact", not just the fact, as we are told, today. And, understand that Webster's definition is the same definition understood by the Framers when they mentioned juries in the Constitution.

Through our history, from John Peter Zenger, in 1735, where the jury rejected the law, to trials regarding slaves, where juries refused to convict those who violated the laws regarding the return of slaves to their master, to during the Prohibition Era, where juries refused to convict many of those accused of "moon shining", we have seen the jury reject law (which is often followed by the legislature overturning the law) when the facts presented clearly suggested a violation of that "law".

The power to judge the law was an inherent right in the days of the Framers. Since we are a self-governed people, the ultimate responsibility to judge what we must abide by MUST be in our hands, not the hands of those in government.

Here is how Lysander Spooner sets out the purpose of petit juries:

> *"FOR more than six hundred years that is, since Magna Carta, in 1215 there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws."*

To understand more about petit juries and jury trials, see the entire Lysander Spooner "Essay on Trial by Jury" (1852) at the Outpost of Freedom Library.

Courts

First, let' look at what a court is, as perceived by the Framers, according to Webster's 1828 Dictionary (irrelevant definitions excluded):

> Court. n.

3. A palace; the residence of a king or sovereign prince.

4. The hall, chamber or place where justice is administered.

5. Person who compose the retinue or council of a king or emperor.

6. The persons or judges assembled for hearing and deciding causes, civil, criminal, military, naval, or ecclesiastical: as a court of law; a court of chancery; a court martial; a court of admiralty; an ecclesiastical court' court baron; &c.

***

7. Any jurisdiction, civil, military or ecclesiastical.

When we look at these definitions, we might wonder whether the meaning of the word (definition #4) as intended by the Framers is the one that the government has continued to operate on our behalf.

Courts, as they are perceived today, are tribunals intent on imposition of laws, fines and penalties, whose primary beneficiary is the State. Restitution, "making whole" of a victim of a crime, is left to the victim. If he has insurance, he has paid for the privilege of restitution; if he has none, then he must bear his loss.

This raises the question as to whether the courts that we have become familiar with are those same courts that the Framers intended for their Posterity.

As mentioned earlier, the Federalist Papers recognized "courts of justice", though they made no mention of "courts of law".

Courts of Justice are "*The hall, chamber or place where justice is administered*". They would include the grand and petit juries, as intended, and would have consideration of any injury, whether imposed by a private individual or a government official.

Courts of law, on the other hand, are courts of punishment. They are intended to force the will of the government on the people and endeavor to impress upon all the consequences of violation of the government's rules.

It is true that there are beneficial results couched in these forums of obedience, where truly bad people are sent to prison, though, often, those truly bad people are back on the streets in a short period of time, to redo their misdeeds.

It is also true that those in government who do misdeeds under *color of law* ["The appearance or semblance, without the substance, of legal right" - Black's Law Dictionary] are, for the most part, exempt from any criminal prosecution, regardless of whether their crime is simple, as a misdemeanor, or capital, as murder.

We need to return to courts of justice, and remove the taint of obedience to the King through courts of law from our landscape. Without such change, we will remain vassals in the country of our birthright, which our forefathers were willing to give their lives to assure to us.

Crimes

Crime is a word that can be defined in many ways, today. However, when crime is coupled with justice, the definition narrows considerably. From Webster's 1828 Dictionary:

> **Crime.** n,
>
> 1. An act which violates a law, divine or human; an act which violates a rule of moral duty; an offense against the laws of right, prescribed by God or man, or against any rule of duty plainly implied in those laws. A crime may consist in omission or neglect, as well as in commission, or positive transgression. The commander of a fortress who suffers the enemy to take possession by neglect, is as really criminal, as one who voluntarily opens the gate without resistance.
>
> But in a more common and restricted sense, a crime denotes an offence, or a violation of public law, of a deeper and more atrocious nature; a public a wrong; or a violation of the commands of God, and the offenses against the laws made to preserve the public rights; as treason, murder, robbery, theft, arson, &c. The minor wrongs committed against individuals or private rights, are denominated trespasses, and the minor wrongs against public rights are called *misdemeanors*. Crimes and misdemeanors are punishable by indictment, information or public prosecution; trespasses or private injuries, at the suit of the individuals injured. But in many cases an act is considered both as a public offense and a trespass, and is punishable both by the public and the individual injured.
>
> 2. Any great wickedness; iniquity; wrong.
>
> Capital crime, a crime punishable with death.

The Framers, when they devised the Constitution, the document that defined just what powers the new government was to have, were very cautious in what was perceived as crime. Of what they did perceive, there were two types of crime envisioned. First would be those that were to secure rights and protect individuals from transgressions by others. These provide the authority to pass laws that would give a source of recourse to those offended by another. An example would be Article I, Section 8, clause 8, the power "*[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries*, which provided legal recourse if others violated that right.

The other is those activities that threaten the government directly. Of this second class, in their wisdom, they were only able to define three crimes of this nature:

> Article I, Section 8, clause 6, "*To provide for the Punishment of counterfeiting the Securities and current Coin of the United States.*"

> Article I, Section 8, clause 10, "*To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations".*
>
> Article III, Section III, clause 2, "*The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.*"

Though they were given powers to enact other laws, it is apparent that they had determined that crimes against the state were the only crimes that could be defined by the federal government, except while in military service, or in service to the government -- those being employees or officers of the government).

Crime is, by its nature, an offense, whether that offense be against another individual or against the public [understand that public is not the government, it is the people -- see Charity and General Welfare]. When against an individual, a damage or injury would be the result. When done against the public, it can only be appropriate to a crime that affects those within a limited community, for, how can it be an offense against someone in another state, or even another county, if committed in this county? If it is too broad in its coverage, it is an attempt by a few (those who legislate) to dictate how others may live their lives. This, in concept, is contrary to the ideals of self-government, and is indicative of an attempt at social engineering.

When the ability of any legislature to impose upon larger bodies of people their will, whatever the incentive, that power will grow in its effect and administration until the large body of people come under abject subjugation. When carried to the next logical step in the subjugation and oppression of the people, even the remotest possibility of someone committing a crime becomes a crime, in itself. (See Thought Crimes)

When determining what crime really is, when the activity causes a damage or injury, laws instituted to punish that crime make sense, so long as they leave the discretion of punishment to the jury.

However, when laws, by their very nature, create crime, which does not result in loss or injury, the laws, themselves, have become the crime. The laws result in injury or loss where none existed, absent the law, when the accused has, then, become the victim.

Arrest

Arrest is nothing less than denial of liberty. Liberty was one of the major maxims for the War of Independence. It, unlike freedom, is best defined as being free, where freedom, generally, has to do with not being obligated or enslaved.

Let's look at how these two words would be perceived by the Framers, from Webster's 1828 Dictionary:

> **Arrest** v.t.
>
> 1. To obstruct; to stop; to check or hinder motion; as, to arrest the current of a river; to arrest the senses.

2. To take, seize or apprehend by virtue of a warrant from authority; as, to arrest one for debt or for a crime.

Arrest, n.

1. The taking or apprehending of a person by virtue of a warrant from authority. An arrest is made by seizing or touching the body.

2. Any seizure, or taking by power, physical or moral.

3. A stop, hindrance or restraint.

4. In law, an arrest of judgment is the staying or stopping of a judgment after verdict, for causes assigned. Courts have power to arrest judgment for intrinsic causes appearing upon the face of the record; as when the declaration varies from the original writ; when the verdict differs materially from the pleadings; or when the case laid in the declaration is not sufficient in point of law, to found an action upon. The motion for this purpose is called a motion in arrest of judgment.

Freedom, *n*. A state of exemption from the power or control of another; liberty; exemption from slavery, servitude or confinement.

Liberty, *n*.

1. Freedom from restraint, in a general sense, and applicable to the body, or to the will or mind. The body is at *liberty*, when not confined; the will or mind is at *liberty*, when not checked or controlled. A man enjoys *liberty*, when no physical force a operates to restrain his actions or are volitions.

2. *Natural liberty*, consists in the power of acting as one thinks fit, without any restraint or control, except from the laws of nature. It is a state of exemption from the control of others, and from positive laws and the institutions of social life. This liberty is abridged by the establishment of governments.

3. *Civil liberty*, is the liberty of men in a state of society are, or natural liberty, so far only abridged and restrained, as is necessary and expedient for the safety and interest of the society, state or nation. A restraint of natural liberty, not necessary or expedient for the public, is tyranny or oppression. Civil liberty is an exemption from the arbitrary will of others, which exemption is secured by established laws, which restrain every man from injuring or controlling another. Hence the restraints of law are essential to civil liberty.

> *The liberty of one depends not so much on the removal of all restraint from him, as on the due restraint upon the liberty of others.*
>
> Ames

In this sentence, the letter word liberty denotes natural liberty.

4. *Political liberty*, is sometimes used as synonymous with *civil liberty*. But it more properly designates the *liberty of a nation*, the freedom of a nation or state from all unjust abridgment of its rights and independence by another nation. Hence, we often speak of the political *liberties* of Europe, or in the nations of Europe.

5. *Religious liberty*, is the free right of adopting and enjoying opinions on religious subjects, and of worshipping the Supreme Being according to the dictates of conscience, without external control.

Clearly, then, when someone is arrested, he is restrained of his liberty, as well as having his freedom removed. It is liberty, then, that is offended when one is arrested. This, according to the Constitution, can only occur when warranted (warrant), which can only be issued by a jury, grand or petit, or by "Probable cause supported by Oath or affirmation" [Article IV, Bill of Rights]. There have been some exceptions, under the Constitution, such as allowing a person to be arrested to stop the completion of a felony [John Bad Elk v. US, 177 U.S. 529 (1900)].

Now, if the arrest was made and no indictment by a Grand Jury, the person who sought the warrant was liable for false arrest. After al, he denied the accused his liberty and could not prove his claim.

To begin to see the child that we have not been able to see grow, and must piece together the transition to what we accept as lawful, today, we can review what arrest was treated like by the United States Supreme Court in 1900.

John Bad Elk was told that he was under arrest by deputies, though they had no warrant for his arrest. One of the deputies had a gun, but did not raise it to threaten John Bad Elk, though the means of threat of force to retrain liberty were present. John Bad Elk shot and killed the deputy and was convicted of murder. The case then went to the Supreme Court where the Court ruled that, absent a lawful warrant, John Bad Elk had every right to shoot and kill the officer who was trying to restrain his liberty -- that it would be a misdemeanor, or not crime, at all. (See The Right to Self Defense).

As astounding as they may appear to us, today, if we understand just what was intended, perhaps we can return to true freedom and liberty.

Can you imagine a world where the government hardly ever made an arrest? Where if an arrest had to be made, the person filing the complaint was responsible for making the arrest? Where the person making the complaint need simply go to a Justice of the Peace, a magistrate, or the Sheriff, swear out an affidavit, and get the arrest warrant? Where he gathered a posse of citizens, and even the Sheriff, if he chose to, to make the arrest? Where justice was administered not by the government, but, by the people, themselves?

Considering the apparent gross disparity between what we have today versus that which was, and that which we should still have, proof of that stated in the above paragraph, is even more lost in childhood.

More information can be found at Are Cops Constitutional?

The ability to arrest, as you will learn from the above references, was reserved to the people, not to the government. Government was not allowed to restrain our liberty without the consent of at least a small body of people who were not a part of that government, or an individual who had been wronged and was willing to "swear out an arrest warrant"..

Indictment

To understand what an indictment is, we will refer to Webster's 1828 Dictionary:

> **Indictment**, n.
>
> The written accusation or formal charge of a crime or misdemeanor, preferred by a grand jury under oath to a court.
>
> 2. The paper or parchment containing the accusation of a grand jury.

Once the Grand Jury issues an indictment, it is indicative of the determination of "probable cause" for the accused to stand trial. At trial, the accused will have the rights, protected by the Constitution, for a speedy and public trial with the right to meet the accuser and call the witnesses.

By the Constitution, there is no other means by which one can be held to answer to a criminal charge. What is generally known as an "information" does not satisfy those judicial protections provided for in the Constitution.

Trial

Amendment VII (bill of Rights provides, as explained earlier, that, *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial",*

This does not preclude the accused agreeing to be tried at the "bench", where the judge sits as the jury, though it does guarantee his right to insist on the jury trial. In either case, the other rights, as to witnesses, etc., is not diminished. This, however, is the only instance where the judge becomes the trier of facts and law.

So, we have both civil and criminal trials before juries. Interestingly, we have been raised to believe that the judge is senior to the jury and can overrule them; can instruct them, with an extensive checklist, what they must do to determine innocence or guilt; and, can actually tell them what the laws means/says, as if the jurors are incompetents, unable to even read our language. Is this the sort of person that we should trust with the administration of justice?

That is not the way that it was intended, though we have, through a progression through over a century, allowed the exodus justice to be replaced by what is no less than Roman Civil Law, with all decisions made by the judge, or, at least, so strongly influenced as to effect, negatively, the ability of the people to judge both law and fact.

Another term that we have heard often associated with juries, though not written into the Constitution, is "a jury of our peers". Peerage is a separation of classes. In olden times, it separated lords from serfs. So, if my peer is one of equal rank, can I be judged by a jury that is composed of foreigners, or others, that, by the way that they accept the condition impose by government, believe that we must submit to such abuse of the judiciary process?

If one were to understand that he was a citizen of a state, while some of those sitting on a jury believed that they were citizens of a country, would they be peerage? Can they judge lawfully if they believe that the government is all-powerful and always right (i.e. The King can do no wrong)?

For a better understanding of the two classes of citizen, you would recommend reading Two Classes of Citizen.

Punishment

Punishment applies to both criminal and civil trials. We'll begin with the criminal variety.

Punishment can take two forms. It can be intended to discourage future behavior, or, it can be intended to be retribution or revenge. In the sense of justice that we have been taught, it is intended to be the former. However, quite often in the press, it takes on the meaning of the latter. In true justice, the former can be quite more severe than the latter, or, it can be much more lenient.

We can look at what has happened to the jury's right to judge fact, law and determine punishment as a means where each case is judged, by supposedly intelligent people (or, why would we have the alternatives that follow?) who can review the evidence, are intimately familiar with the case, and, can look in to the eyes of the accused and judge his actions and reactions, if determined to be guilty, to determine if there is guilt, if it was an unintentional crime, if he shows malice or regret, and, from this information judge which punishment best suits all of the circumstances surrounding the crime.

Instead, we have had imposed upon us two rather cold and rigid 'systems' under the headings of "Sentencing Guidelines" and "The Three Strikes Rule".

Sentencing guidelines require that if the accused stole bread to feed his starving children, he is subject to the same sentence as one who stole bread to sell for money to buy drugs. Can that possibly be defined as justice?

The Three Strike Rule is based upon three convictions. In some states, the mandate is life in prison for the third violation, regardless of the type of crime. So, if you stole bread three times, or robbed a bank three times, you are destined to spend the remainder of your life in prison. Of course, the judge administering such "justice" will apologize and say that the law made him do it. Can that possibly be defined as justice?

We will not enter a realm that makes exceptions for certain behavior by certain classes of people, except to say that if you kill a cop, you will probably be sentenced, under statutory law, to execution, while, if a cop kills you, he will get time off, with pay, and more than likely not even go to trial.

Let's go to the last step in punishment -- Capital Crimes. These would be any that may result in a punishment of execution.

We have all lived through the period of public proclamation that the death penalty is unconstitutional, or, is cruel and unusual punishment.

Of the latter, how can that be cruel and unusual when execution (recognition that there are capital crimes, see Amendment V, above) is in the Constitution? Considering that cruel and unusual did not include a firing squad or hanging, we have opted for some very unpleasant "cruel and unusual punishments. Gas chamber and the electric chair were fallible. Reports of witnesses indicate grotesque contortions in the gas chamber and failures of the electric chair resulting in fried people waiting to die.

In an endeavor to be less cruel, we now watch people see a series of injections, each one depriving him of pain, awareness, and, finally, life. Wouldn't car exhaust into a closed area be less painful and less expensive? However, we seem to have a passion for creativity in killing people. Why? They deserve the sentence that the jury finds, if justice is to be served.

Along that line, at what point do we consider, as a collective society, that some criminals serve no useful purpose to that society? I believe that this was the purpose of the death sentence, in the first place. What else would motivate a society to get rid of a human life?

Given that the purpose is to dispose of those who have nothing to offer to society, why have we set so many steps, expensive in lawyer's fees, time and providing for the accused,

Now, in civil matters, the punishment comes in the form of restitution and rewards to the injured party. The court will recognize these real damages and punitive damages.

Real damages can be easily calculated. They are based upon loss, including, but not limited to, lost wages, medical expenses, replacement of damaged property, etc.

Punitive Damages used to be awarded, or not, based upon a rather simple formula. If there was no negligence, then only real damages would be awarded.

For the other two, we can look to Black's Law Dictionary, 5th Edition:

> **Negligence** (simple). The omission to do something that a reasonable man, guided by those ordinary considerations that ordinarily regulate human affairs, would do, or of the doing of something that a reasonable and prudent man would not do.
>
> **Gross negligence**. The intentional failure to perform a manifest duty and reckless disregard of the consequences as affecting the life or property of another.

Awards of up to three times the real damages could be awarded for simple negligence. This was expected to encourage more caution in the future.

In the determination of gross negligence, the award could be up to 10 times the real damages. This, obviously, was more punitive in nature, encouraging a greater concern for the life or property of others, in the future.

Understand that awards of millions of dollars, such as overly hot coffee causing serious burns, serve only to punish the society, as a whole. When awarded by a jury, the millions of dollars must be paid. The accuser's attorney will probably receive 40% and the injured party will receive the remaining 60%. However, the entire 100% will be paid by those who drink coffee and are intelligent enough to not to burn themselves. Is this justice?

We have allowed attorneys to manipulate juries into thinking that unreasonable awards serve a valid purpose, that on top of the fact that we have a proliferation of rules requiring labeling (i.e. "coffee is very hot"), and those who don't heed the warning are, as a result, worthy of receiving compensation from everybody for their idiocy.

We need to return to reasonable punishment for both criminal and civil crimes, for, without such reasonableness, we have a lottery and the luck of the draw.

The Ultimate Court

Going just a bit further, we can look at what has transpired in the judicial community of the United States. When a trial is held, there is an appellate process that can lead all of the way to the United States Supreme Court. If either party is dissatisfied with the verdict, the trial can be appealed. It must stand "on the record", meaning that the case will not be retried, only that based upon the record of the original trial, a higher court can rule on what has already been presented.

So, for instance, if you believe that your Constitutional rights were violated, or that the government was operating outside of its authority under the law, their methods, or any other aspect of what had occurred, you can seek redress in that Supreme Court. Interestingly, that Court, in its early years, actually rode circuit to hear cases appealed from the lower courts. Over time, however, they attained a more noble stature by holding all of their sessions in single building in Washington, D.C.

Within two decades of its creation, this Supreme Court established its authority to rule on the Constitutionality of any case brought before it. Judicial review, then, became what we have, in our lifetimes, always respected as the ultimate decision on the Constitutionality of a matter that could be brought to that level of review.

We expect that any law passed by the Congress (or even under its authority) can be tested as to its Constitutionality by this ultimate review. After all, if we have a Constitution that limits the power of government and affords them only certain privileges, this ultimate court must be our protection from the governments violation of that very Constitution that created it.

Occasionally, we read of a Supreme Court decision that makes us want to scratch our head in wonderment. How could they possibly rule that a certain decision was decided in a manner that does not seem to fit what we perceive the Constitution to say? We tend to assume that they, by their

articulate arguments, must understand something that we are not able to comprehend -- about the Constitution.

Well, quite often, we may be more correct in our interpretation than the ruling of that august body. In 1937, that court, by its own admission, declared that ruling on the Constitutionality of a matter before them, well, let me use their words to say this, "*The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it… 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.*"

To understand more why the Court will, only in a last resort, rule on the Constitutionality, I would suggest that you read About Ashwander v. TVA

Conclusion

Since that infant (the judicial system) was conceived in 1776 and came into life in 1789, it had grown through its infancy by 1860. As it reached adulthood, it was well matured, though, perhaps, gone astray.

We have learned to look at it only in its very senior years, and have no idea what it was as in its youth. Unfortunately, that wonderful child has gone through some changes during its lifetime that have obscured what it was when it was brought into life, with loving care.

As if relegated to a senior citizen's home, cared for by abusive and self-serving attendants, the judicial process has been abused, manipulated, and, lost all semblance of that great and wonderful object of adoration that it was to the Framers. It is only by virtue of a scrapbook that we can see that transition, and, perhaps, restore that child to the dignity and respect that it truly deserves.

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sabotage

SIMPLE SABOTAGE FIELD MANUAL

Strategic Services
(Provisional)
Prepared under direction of The Director of Strategic Services
OSS REPRODUCTION BRANCH
SIMPLE SABOTAGE FIELD MANUAL
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This Simple Sabotage Field Manual Strategic Services (Provisional) is published for the information and guidance of all concerned and will be used as the basic doctrine for Strategic Services training for this subject.

The contents of this Manual should be carefully controlled and should not be allowed to come into unauthorized hands.

The instructions may be placed in separate pamphlets or leaflets according to categories of operations but should be distributed with care and not broadly. They should be used as a basis of radio broadcasts only for local and special cases and as directed by the theater commander.

AR 380-5, pertaining to handling of secret documents, will be complied with in the handling of this Manual.

William J. Donovan

1. INTRODUCTION

The purpose of this paper is to characterize simple sabotage, to outline its possible effects, and to present suggestions for inciting and executing it.

Sabotage varies from highly technical coup de main acts that require detailed planning and the use of specially-trained operatives, to innumerable simple acts which the ordinary individual citizen-saboteur can perform. This paper is primarily concerned with the latter type. Simple sabotage does not require specially prepared tools or equipment; it is executed by an ordinary citizen who may or may not act individually and without the necessity for active connection with an organized group; and it is carried out in such a way as to involve a minimum danger of injury, detection, and reprisal.

Where destruction is involved, the weapons of the citizen-saboteur are salt, nails, candles, pebbles, thread, or any other materials he might normally be expected to possess as a householder or as a worker in his particular occupation. His arsenal is the kitchen shelf, the trash pile, his own usual kit of tools and supplies. The targets of his sabotage are usually objects to which he has normal and inconspicuous access in everyday life.

A second type of simple sabotage requires no destructive tools whatsoever and produces physical damage, if any, by highly indirect means. It is based on universal opportunities to make faulty decisions, to adopt a noncooperative attitude, and to induce others to follow suit. Making a faulty decision may be simply a matter of placing tools in one spot instead of another. A non-cooperative attitude may involve

nothing more than creating an unpleasant situation among one's fellow workers, engaging in bickerings, or displaying surliness and stupidity.

This type of activity, sometimes referred to as the "human element," is frequently responsible for accidents, delays, and general obstruction even under normal conditions. The potential saboteur should discover what types of faulty decisions and the operations are normally found in this kind of work and should then devise his sabotage so as to enlarge that "margin for error."

2. POSSIBLE EFFECTS

Acts of simple sabotage are occurring throughout Europe. An effort should be made to add to their efficiency, lessen their detectability, and increase their number. Acts of simple sabotage, multiplied by thousands of citizen-saboteurs, can be an effective weapon against the enemy. Slashing tires, draining fuel tanks, starting fires, starting arguments, acting stupidly, short-circuiting electric systems, abrading machine parts will waste materials, manpower, and time. Occurring on a wide scale, simple sabotage will be a constant and tangible drag on the war effort of the enemy.

Simple sabotage may also have secondary results of more or less value. Widespread practice of simple sabotage will harass and demoralize enemy administrators and police. Further, success may embolden the citizen-saboteur eventually to find colleagues who can assist him in sabotage of greater dimensions. Finally, the very practice of simple sabotage by natives in enemy or occupied territory may make these individuals identify themselves actively with the United Nations war effort, and encourage them to assist openly in periods of Allied invasion and occupation.

3. MOTIVATING THE SABOTEUR

To incite the citizen to the active practice of simple sabotage and to keep him practicing that sabotage over sustained periods is a special problem.

Simple sabotage is often an act which the citizen performs according to his own initiative and inclination. Acts of destruction do not bring him any personal gain and may be completely foreign to his habitually conservationist attitude toward materials and tools. Purposeful stupidity is contrary to human nature. He frequently needs pressure, stimulation or assurance, and information and suggestions regarding feasible methods of simple sabotage.

(1) Personal Motives

(a) The ordinary citizen very probably has no immediate personal motive for committing simple sabotage. Instead, he must be made to anticipate indirect personal gain, such as might come with enemy evacuation or destruction of the ruling government group. Gains should be stated as specifically as possible for the area addressed: simple sabotage will hasten the day when Commissioner X and his deputies Y and Z will be thrown out, when particularly obnoxious decrees and restrictions will be abolished, when food will arrive, and so on. Abstract verbalizations about personal liberty, freedom of the press, and so on, will not be convincing in most parts of the world. In many areas they will not even be comprehensible.

(b) Since the effect of his own acts is limited, the saboteur may become discouraged unless he feels that he is a member of a large, though unseen, group of saboteurs operating against the enemy or the government of his own country and elsewhere. This can be conveyed indirectly: suggestions which he reads and hears can include observations that a particular technique has been successful in this or that district. Even if the technique is not applicable to his surroundings, another's success will encourage him to attempt similar acts. It also can be conveyed directly: statements praising the effectiveness of simple sabotage can be contrived which will be published by white radio, freedom stations, and the subversive press. Estimates of the proportion of the population engaged in sabotage can be disseminated. Instances of successful sabotage already are being broadcast by white radio and freedom stations, and this should be continued and expanded where compatible with security.

(c) More important than (a) or (b) would be to create a situation in which the citizen-saboteur acquires a sense of responsibility and begins to educate others in simple sabotage.

(2) Encouraging Destructiveness

It should be pointed out to the saboteur where the circumstances are suitable, that he is acting in self-defense against the enemy, or retaliating against the enemy for other acts of destruction. A reasonable amount of humor in the presentation of suggestions for simple sabotage will relax tensions of fear.

(a) The saboteur may have to reverse his thinking, and he should be told this in so many words. Where he formerly thought of keeping his tools sharp, he should now let them grow dull; surfaces that formerly were lubricated now should be sanded; normally diligent, he should now be lazy and careless; and so on. Once he is encouraged to think backwards about himself and the objects of his everyday life, the saboteur will see many opportunities in his immediate environment which cannot possibly be seen from a distance. A state of mind should be encouraged that anything can be sabotaged.

(b) Among the potential citizen-saboteurs who are to engage in physical destruction, two extreme types may be distinguished. On the one hand, there is the man who is not technically trained and employed. This man needs specific suggestions as to what he can and should destroy as well as details regarding the tools by means of which destruction is accomplished.

(c) At the other extreme is the man who is a technician, such as a lathe operator or an automobile mechanic. Presumably this man would be able to devise methods of simple sabotage which would be appropriate to his own facilities. However, this man needs to be stimulated to re-orient his thinking in the direction of destruction. Specific examples, which need not be from his own field, should accomplish this.

(d) Various media may be used to disseminate suggestions and information regarding simple sabotage. Among the media which may be used, as the immediate situation dictates, are: freedom stations or radio false (unreadable) broadcasts or leaflets may be directed toward specific geographic or occupational areas, or they may be general in scope. Finally, agents may be trained in the art of simple sabotage, in anticipation of a time when they may be able to communicate this information directly.

(3) Safety Measures

(a) The amount of activity carried on by the saboteur will be governed not only by the number of opportunities he sees, but also by the amount of danger he feels. Bad news travels fast, and simple sabotage will be discouraged if too many simple saboteurs are arrested.

(b) It should not be difficult to prepare leaflets and other media for the saboteur about the choice of weapons, time, and targets which will insure the saboteur against detection and retaliation. Among such suggestions might be the following:

(1) Use materials which appear to be innocent. A knife or a nail file can be carried normally on your person; either is a multi-purpose instrument for creating damage. Matches, pebbles, hair, salt, nails, and dozens of other destructive agents can be carried or kept in your living quarters without exciting any suspicion whatever. If you are a worker in a particular trade or industry you can easily carry and keep such things as wrenches, hammers, emery paper, and the like.

(2) Try to commit acts for which large numbers of people could be responsible. For instance, if you blow out the wiring in a factory at a central fire box, almost anyone could have done it. On-the-street sabotage after dark, such as you might be able to carry out against a military car or truck, is another example of an act for which it would be impossible to blame you.

(3) Do not be afraid to commit acts for which you might be blamed directly, so long as you do so rarely, and as long as you have a plausible excuse: you dropped your wrench across an electric circuit because an air raid had kept you up the night before and you were half-dozing at work. Always be profuse in your apologies. Frequently you can "get away" with such acts under the cover of pretending stupidity, ignorance, over-caution, fear of being suspected of sabotage, or weakness and dullness due to undernourishment.

(4) After you have committed an act of easy sabotage, resist any temptation to wait around and see what happens. Loiterers arouse suspicion. Of course, there are circumstances when it would be suspicious for you to leave. If you commit sabotage on your job, you should naturally stay at your work.

4. TOOLS, TARGETS, AND TIMING

The citizen-saboteur cannot be closely controlled. Nor is it reasonable to expect that simple sabotage can be precisely concentrated on specific types of target according to the requirements of a concrete military situation. Attempts to control simple sabotage according to developing military factors, moreover, might provide the enemy with intelligence of more or less value in anticipating the date and area of notably intensified or notably slackened military activity.

Sabotage suggestions, of course, should be adapted to fit the area where they are to be practiced. Target priorities for general types of situations likewise can be specified, for emphasis at the proper time by the underground press, freedom stations, and cooperating propaganda.

(1) Under General Conditions

(a) Simple sabotage is more than malicious mischief, and it should always consist of acts whose results will be detrimental to the materials and manpower of the enemy.

(b) The saboteur should be ingenious in using his every-day equipment. All sorts of weapons will present themselves if he looks at his surroundings in a different light. For example, emery dust — a at first may seen unobtainable but if the saboteur were to pulverize an emery knife sharpener or emery wheel with a hammer, he would find himself with a plentiful supply.

(c) The saboteur should never attack targets beyond his capacity or the capacity of his instruments. An inexperienced person should not, for example, attempt to use explosives, but should confine himself to the use of matches or other familiar weapons.

(d) The saboteur should try to damage only objects and materials known to be in use by the enemy or to be destined for early use by the enemy. It will be safe for him to assume that almost any product of heavy industry is destined for enemy use, and that the most efficient fuels and lubricants also are destined for enemy use. Without special knowledge, however, it would be undesirable for him to attempt destruction of food crops or food products.

(e) Although the citizen-saboteur may rarely have access to military objects, he should give these preference above all others.

(2) Prior to a Military Offensive During periods which are quiescent in a military sense, such emphasis as can be given to simple sabotage might well center on industrial production, to lessen the flow of materials and equipment to the enemy. Slashing a rubber tire on an Army truck may be an act of value; spoiling a batch of rubber in the production plant is an act of still more value.

(3) During a Military Offensive

(a) Most significant sabotage for an area which is, or is soon destined to be, a theater of combat operations is that whose effects will be direct and immediate. Even if the effects are relatively minor and localized, this type of sabotage is to be preferred to activities whose effects, while widespread, are indirect and delayed.

(1) The saboteur should be encouraged to attack__transportation facilities of all kinds.

Among such facilities are roads, railroads, auto mobiles, trucks, motor-cycles, bicycles, trains, and trams.

(2) Any communications facilities which can be used by the authorities to transmit instructions or morale material should be the objects of simple sabotage. These include telephone, telegraph and power systems, radio, newspapers, placards, and public notices.

(3) Critical materials, valuable in themselves or necessary to the efficient functioning of transportation and communication, also should become targets for the citizen-saboteur. These may include oil, gasoline, tires, food, and water.

5. SPECIFIC SUGGESTIONS FOR SIMPLE SABOTAGE

It will not be possible to evaluate the desirability of simple sabotage in an area without having in mind rather specifically what individual acts and results are embraced by the definition of simple sabotage.

A listing of specific acts follows, classified according to types of target. This list is presented as a growing rather than a complete outline of the methods of simple sabotage. As new techniques are developed, or new fields explored, it will be elaborated and expanded.

(1) Buildings

Warehouses, barracks, offices, hotels, and factory buildings are outstanding targets for simple sabotage. They are extremely susceptible to damage, especially by fire; they offer opportunities to such untrained people as janitors, charwomen, and casual visitors; and, when damaged, they present a relatively large handicap to the enemy.

(a) Fires can be started wherever there is an accumulation of inflammable material. Warehouses are obviously the most promising targets but incendiary sabotage need not be confined to them alone.

(1) Whenever possible, arrange to have the fire start after you have gone away. Use a candle and paper, combination, setting it as close as possible to the inflammable material you want to burn: From a sheet of paper, tear a strip three or four centimeters wide and wrap it around the base of the candle two or three times. Twist more sheets of paper into loose ropes and place them around the base of the candle. When the candle flame reaches the encircling strip, it will be ignited and in turn will ignite the surrounding paper. The size, heat, and duration of the resulting flame will depend on how much paper you use and how much of it you can cramp in a small space.

(2) With a flame of this kind, do not attempt to ignite any but rather inflammable materials, such as cotton sacking. To light more resistant materials, use a candle plus tightly rolled or twisted paper which has been soaked in gasoline. To create a briefer but even hotter flame, put celluloid such as you might find in an old comb, into a nest of plain or saturated paper which is to be fired by a candle.

(3) To make another type of simple fuse, soak one end of a piece of string in grease. Rub a generous pinch of gunpowder over the inch of string where greasy string meets clean string. Then ignite the clean end of the string. It will burn slowly without a flame (in much the same way that a cigarette burns) until it reaches the grease and gunpowder; it will then flare up suddenly. The grease-treated string will then burn with a flame. The same effect may be achieved by using matches instead of the grease and gunpowder. Run the string over the match heads, taking care that the string is not pressed or knotted. They too will produce a sudden flame. The advantage of this type of fuse is that string burns at a set speed. You can time your fire by the length and thickness of the string you chose.

(4) Use a fuse such as; the ones suggested above to start a fire in an office after hours. The destruction of records and other types of documents would be a serious handicap to the enemy.

(5) In basements where waste is kept, janitors should accumulate oily and greasy waste. Such waste sometimes ignites spontaneously, but it can easily be lit with a cigarette or match. If you are a janitor on night duty, you can be the first to report the fire, but don't report it too soon.

(6) A clean factory is not susceptible to fire, but a dirty one is. Workers Should be careless with refuse and janitors should be inefficient in cleaning. If enough dirt and trash can be accumulated an otherwise fireproof building will become inflammable.

(7) Where illuminating gas is used in a room which is vacant at night, shut the windows tightly, turn on the gas, and leave a candle burning in the room, closing the door tightly behind you. After a time, the gas will explode, and a fire may or may not follow.

(b) Water and miscellaneous

(1) Ruin warehouse stock by setting the automatic sprinkler system to work. You can do this by tapping the sprinkler heads sharply with a hammer or by holding a match under them.

(2) Forget to provide paper in toilets; put tightly rolled paper, hair, and other obstructions in the W. C. Saturate a sponge with a thick starch or sugar solution. Squeeze it tightly into a ball, wrap it with string, and dry. Remove the string when fully dried. The sponge will be in the form of a tight hard ball. Flush down a

W. C. or otherwise introduce into a sewer line. The sponge will gradually expand to its normal size and plug the sewage system.

(3) Put a coin beneath a bulb in a public building during the daytime, so that fuses will blow out when lights are turned on at night. The fuses themselves may be rendered ineffective by putting a coin behind them or loading them with heavy wire. Then a short-circuit may either start a fire, damage transformers, or blow out a central fuse which will interrupt distribution of electricity to a large area.

(4) Jam paper, bits of wood, hairpins, and anything else that will fit, into the locks of all unguarded entrances to public buildings.

(2) Industrial Production: Manufacturing

(a) Tools

(1) Let cutting tools grow dull. They will be inefficient, will slow down production, and may damage the materials and parts you use them on.

(2) Leave saws slightly twisted when you are not using them. After a while, they will break when used.

(3) Using a very rapid stroke will wear out a file before its time. So will dragging a file in slow strokes under heavy pressure. Exert pressure on the backward stroke as well as the forward stroke.

(4) Clean files by knocking them against the vise or the workpiece; they are easily broken this way.

(5) Bits and drills will snap under heavy pressure.

(6) You can put a press punch out of order by putting in it more material than it is adjusted for two blanks instead of one, for example.

(7) Power-driven tools like pneumatic drills, riveters, and so on, are never efficient when dirty. Lubrication points and electric contacts can easily be fouled by normal accumulations of dirt or the insertion of foreign matter.

(b) Oil and lubrication systems are not only vulnerable to easy sabotage, but are critical in every machine with moving parts. Sabotage of oil and lubrication will slow production or stop work entirely at strategic points in industrial processes.

(1) Put metal dust or filings, fine sand, ground glass, emery dust (get it by pounding up an emery knife sharpener) and similar hard, gritty substances directly into lubrication systems. They will scour smooth surfaces, ruining pistons, cylinder walls, shafts, and bearings. They will overheat and stop motors which will need overhauling, new parts, and extensive repairs. Such materials, if they are used, should be introduced into lubrication systems past any filters which otherwise would strain them out.

(2) You can cause wear on any machine by uncovering a filter system, poking a pencil or any other sharp object through the filter mesh, then covering it up again. Or, if you can dispose of it quickly, simply remove the filter.

(3) If you cannot get at the lubrication system or filter directly, you may be able to lessen the effectiveness of oil by diluting it in storage. In this case, almost any liquid will do which will thin the oil. A small amount of sulphuric acid, varnish, water-glass, or linseed oil will be especially effective.

(4) Using a thin oil where a heavy oil is prescribed will break down a machine or heat up a moving shaft so that it will "freeze" and stop.

(5) Put any clogging substance into lubrication systems or, if it will float, into stored oil. Twisted combings of human hair, pieces of string, dead insects, and many other common objects will be effective in stopping or hindering the flow of oil through feed lines and filters.

(6) Under some circumstances, you may be able to destroy oil outright rather than interfere with its effectiveness, by removing stop-plugs from lubricating systems or by puncturing the drums and cans in which it is stored.

(c) Cooling Systems (1.) A water cooling system can be put out of commission in a fairly short time, with considerable damage to an engine or motor, if you put into it several pinches of hard grain, such as rice or wheat. They will swell up and choke the circulation of water, and the cooling system will have to be torn down to remove the obstruction. Sawdust or hair may also be used to clog a water cooling system.

(2) If very cold water is quickly introduced into the cooling system of an overheated motor, contraction and considerable strain on the engine housing will result. If you can repeat the treatment a few times, cracking and serious damage will result.

(3) You can ruin the effectiveness of an air cooling system by plugging dirt and waste into intake or exhaust valves. If a belt-run fan is used in the system, make a jagged cut at least half way through the belt; it will slip and finally part under strain and the motor will overheat.

(d) Gasoline and Oil Fuel Tanks and fueling engines usually are accessible and easy to open. They afford a very vulnerable target for simple sabotage activities. (1.) Put several pinches of sawdust or hard grain, such as rice or wheat, into the fuel tank of a gasoline engine. The particles will choke a feed line so that the engine will stop. Some time will be required to discover the source of the trouble. Although they will be hard to get, crumbs of natural rubber, such as you might find in old rubber bands and pencil erasers, are also effective.

(2) If you can accumulate sugar, put it in the fuel tank of a gasoline engine. As it burns together with the gasoline, it will turn into a sticky mess which will completely mire the engine and necessitate extensive cleaning and repair. Honey and molasses are as good as sugar. Try to use about 75-100 grams for each 10 gallons of gasoline.

(3) Other impurities which you can introduce into gasoline will cause rapid engine wear and eventual breakdown. Fine particles of pumice, sand, ground glass, and metal dust can easily be introduced into a gasoline tank. Be sure that the particles are very fine, so that they will be able to pass through the carburetor jet.

(4) Water, urine, wine, or any other simple liquid you can get in reasonably large quantities Will dilute gasoline fuel to a point where no combustion will occur in the cylinder and the engine will not move. One pint to 20 gallons of gasoline is sufficient. If salt water is used, it will cause corrosion and permanent motor damage.

(5) In the case of Diesel engines, put low flashpoint oil into the fuel tank; the engine will not move. If there already is proper oil in the tank when the wrong kind is added, the engine will only limp and sputter along.

(6) Fuel lines to gasoline and oil engines frequently pass over the exhaust pipe. When the machine is at rest, you can stab a small hole in the fuel line and plug the hole with wax. As the engine runs and the exhaust tube becomes hot, the wax will be melted; fuel will drip onto the exhaust and a blaze will start.

(7) If you have access to a room where gasoline is stored, remember that gas vapor accumulating in a closed room will explode after a time if you leave a candle burning in the room. A good deal of evaporation, however, must occur from the gasoline tins into the air of the room. If removal of the tops of the tins does not expose enough gasoline to the air to ensure copious evaporation, you can open lightly constructed tins further with a knife, ice pick or sharpened nail file. Or puncture a tiny hole in the tank which will permit gasoline to leak out on the floor. This will greatly increase the rate of evaporation. Before you light your candle, be sure that windows are closed and the room is as air-tight as you can make it. If you can see that windows in a neighboring room are opened wide, you have a chance of setting a large fire which will not only destroy the gasoline but anything else nearby; when the gasoline explodes, the doors of the storage room will be blown open, a draft to the neighboring windows will be created which will whip up a fine conflagration,

(e) Electric Motors Electric motors (including dynamos) are more restricted than the targets so far discussed. They cannot be sabotaged easily or without risk of injury by unskilled persons who may otherwise have good opportunities for destruction.

(1) Set the rheostat to a high point of resistance in all types of electric motors. They will overheat and catch fire.

(2) Adjust the overload relay to a very high value beyond the capacity of the motor. Then overload the motor to a point where it will overheat and break down.

(3) Remember that dust, dirt, and moisture are enemies of electrical equipment. Spill dust and dirt onto the points where the wires in electric motors connect with terminals, and onto insulating parts. Inefficient transmission of current and, in some cases, short circuits will result. Wet generator motors to produce short circuits.

(4) "Accidentally" bruise the insulation on wire, loosen nuts on connections, make faulty splices and faulty connections in wiring, to waste electric current and reduce the power of electric motors, the power output or cause short circuiting in direct-current motors: Loosen or remove commutator holding rings. Sprinkle carbon, graphite, or metal dust on commutators. Put a little grease or oil at the contact points of commutators. Where commutator bars are close together bridge the gaps between them with metal dust, or sawtooth their edges with a chisel so that the teeth on adjoining bars meet or nearly meet and current can pass from one to the other.

(6) Put a piece of finely grained emery paper half the size of a postage stamp in a place where it will wear away rotating brushes. The emery paper and the motor will be destroyed in the resulting fire.

(7) Sprinkle carbon, graphite or metal dust on slip-rings so that the current will leak or short circuits will occur. When a motor is idle, nick the slip-rings with a chisel.

(8) Cause motor stoppage or inefficiency by applying dust mixed with grease to the face of the armature so that it will not make proper contact.

(9) To overheat electric motors, mix sand with heavy grease and smear it between the stator and rotor, or wedge thin metal pieces between them. To prevent the efficient generation of current, put floor sweepings, oil, tar, or paint between them.

(10) In motors using three-phase current, deeply nick one of the lead-in wires with a knife or file when the machine is at rest, or replace one of the three fuses with a blown-out fuse. In the first case, the motor will stop after running awhile, and in the second, it will not start.

(f) Transformers

(1) Transformers of the oil-filled type can be put out of commission if you pour water, salt into the oil tank.

(2) In air-cooled transformers, block the ventilation by piling debris around the transformer.

(3) In all types of transformers, throw carbon, graphite or metal dust over the outside bushings and other exposed electrical parts.

(g) Turbines for the most part are heavily built, stoutly housed, and difficult of access. Their vulnerability to simple sabotage is very low.

(1) After inspecting or repairing a hydro turbine, fasten the cover insecurely so that it will blow off and flood the plant with water. A loose cover on a steam turbine will cause it to leak and slow down.

(2) In water turbines, insert a large piece of scrap iron in the head of the penstock, just beyond the screening, so that water will carry the damaging material down to the plant equipment.

(3) When the steam line to a turbine is opened for repair, put pieces of scrap iron into it, to be blasted into the turbine machinery when steam is up again.

(4) Create a leak in the line feeding oil to the turbine, so that oil will fall on the hot steam pipe and cause a fire.

(h) Boilers

(1) Reduce the efficiency of steam boilers any way you can. Put too much water in them to make them slow-starting, or keep the fire under them low to keep them inefficient. Let them dry and turn the fire up; they will crack and be ruined. An especially good trick is to keep putting limestone or water containing lime in the boiler; it will deposit lime on the bottom and sides. This deposit will provide very good insulation against heat; after enough of it has collected, the boiler will be completely worthless.

(3) Production. Metals

(a) Iron and Steel

(1) Keep blast furnaces in a condition where they must be frequently shut down for repair. In making fire-proof bricks for the inner lining of blast furnaces, put in an extra proportion of tar so that they will wear out quickly and necessitate constant re-lining.

(2) Make cores for casting so that they are filled with air bubbles and an imperfect cast results.

(3) See that the core in a mold is not properly supported, so that the core gives way or the casting is spoiled because of the incorrect position of the core.

(4) In tempering steel or iron, apply too much heat, so that the resulting bars and ingots are of poor quality.

(b) Other Metals

No suggestions available.

(4) Production: Mining and Mineral Extraction

(a) Coal

(1) A slight blow against your Davy oil lamp will extinguish it, and to light it again you will have to find a place where there is no fire damp. Take a long time looking for the place.

(2) Blacksmiths who make pneumatic picks should not harden them properly, so that they will quickly grow dull.

(3) You can easily put your pneumatic pick out of order. Pour a small amount of water through the oil lever and your pick will stop working. Coal dust and improper lubrication will also put it out of order.

(4) Weaken the chain that pulls the bucket conveyers carrying coal. A deep dent in the chain made with blows of a pick or shovel will cause it to part under normal strain. Once a chain breaks, normally or otherwise take your time about reporting the damage; be slow about taking the chain up for repairs and bringing it back down after repairs.

(5) Derail mine cars by putting obstructions on the rails and in switch points. If possible, pick a gallery where coal cars have to pass each other, so that traffic will be snarled up.

(6) Send up quantities of rock and other useless material with the coal.

(5) Production: Agriculture

(a) Machinery

(1) See par. 5 b. (2) (c), (d), (e).

(b) Crops and livestock probably will be destroyed only in areas where there are large food surpluses or where the enemy (regime) is known to be requisitioning food.

(1.) Feed crops to livestock. Let crops harvest too early or too late. Spoil stores of grain, fruit and vegetables by soaking them in water so that they will rot. Spoil fruit and vegetables by leaving them in the sun.

(6) Transportation: Railways

(a) Passengers

(1.) Make train travel as inconvenient as possible for enemy personnel. Make mistakes in issuing train tickets, leaving portions of the journey uncovered by the ticket book; issue two tickets for the same seat in the train, so that an interesting argument will result; near train time, instead of issuing printed tickets write them out slowly by hand, prolonging the process until the train is nearly ready to leave or has left the station. On station bulletin boards announcing train arrivals and departures, see that false and misleading information is given about trains bound for enemy destinations.

(2) In trains bound for enemy destinations, attendants should make life as uncomfortable as possible for passengers. See that the food is especially bad, take up tickets after midnight, call all station stops very loudly during the night, handle baggage as noisily as possible during the night, and so on.

(3) See that the luggage of enemy personnel is mislaid or unloaded at the wrong stations.

Switch address labels on enemy baggage.

(4) Engineers should see that trains run slow or make unscheduled stops for plausible reasons.

(b) Switches, Signals and Routing

(1) Exchange wires in switchboards containing signals and switches, so that they connect to the wrong terminals.

(2) Loosen push-rods so that signal arms do not work; break signal lights; exchange the colored lenses on red and green lights.

(3) Spread and spike switch points in the track so that they will not move, or place rocks or close-packed dirt between the switch points.

(4) Sprinkle rock salt or ordinary salt profusely over the electrical connections of switch points and on the ground nearby. When it rains, the switch will be short-circuited.

(5) See that cars are put on the wrong trains. Remove the labels from cars needing repair and put them on cars in good order. Leave couplings between cars as loose as possible.

(c) Road-beds and Open Track

(1) On a curve, take the bolts out of the tie-plates connecting to sections of the outside rail, and scoop away the gravel, cinders, or dirt for a few feet on each side of the connecting joint.

(2) If by disconnecting the tie-plate at a joint and loosening sleeper nails on each side of the joint, it becomes possible to move a sections of rail, spread two sections of rail and drive a spike vertically between them.

(d) Oil and Lubrication

(1) See 5 b. (2) (b).

(2) Squeeze lubricating pipes with pincers or dent them with hammers, so that the flow of oil is obstructed.

(e) Cooling Systems

(1) See 5 b (2) (c).

(f) Gasoline and Oil Fuel

(1) See 5 b (2) (d).

(g) Electric Motors

(1) See 5 b (2) (e) and (f).

(h) Boilers

(1) See 5 b (2) (h).

(2) After inspection put heavy oil or tar in the engines' boilers, or put half a kilogram of soft soap into the water in the tender.

(i) Brakes and Miscellaneous

(1) Engines should run at high speeds and use brakes excessively at curves and on downhill grades.

(2) Punch holes in air-brake valves or water supply pipes.

(3) In the last car of a passenger train or or a front car of a freight, remove the wadding from a journal box and replace it with oily rags.

(7) Transportation: Automotive

(a) Roads. Damage to roads [(3) below] is slow, and therefore impractical as a D-day or near D-day activity.

(1) Change sign posts at intersections and forks; the enemy will go the wrong way and it may be miles before he discovers his mistakes.

In areas where traffic is composed primarily of enemy autos, trucks, and motor convoys of various kinds remove danger signals from curves and intersections.

(2) When the enemy asks for directions, give him wrong information. Especially when enemy convoys are in the neighborhood, truck drivers can spread rumors and give false information about bridges being out, ferries closed, and detours lying ahead.

(3) If you can start damage to a heavily traveled road, passing traffic and the elements will do the rest. Construction gangs can see that too much sand or water is put in concrete or that the road foundation has soft spots. Anyone can scoop ruts in asphalt and macadam roads which turn soft in hot weather; passing trucks will accentuate the ruts to a point where substantial repair will be needed. Dirt roads also can be scooped out. If you are a road laborer, it will be only a few minutes work to divert a small stream from a sluice so that it runs over and eats away the road.

(4) Distribute broken glass, nails, and sharp rocks on roads to puncture tires.

(b) Passengers

(1) Bus-driver can go past the stop where the enemy wants to get off. Taxi drivers can waste the enemy's time and make extra money by driving the longest possible route to his destination.

(c) Oil and Lubrication

(1) See 5 b. (2) (b).

(2) Disconnect the oil pump; this will burn out the main bearings in less than 50 miles of normal driving.

(d) Radiator

(1) See 5 b. (2) (c).

(e) Fuel

(1) See 5 b. (2) (d).

(f) Battery and Ignition

(1) Jam bits of wood into the ignition lock; loosen or exchange connections behind the switchboard; put dirt in spark plugs; damage distributor points.

(2) Turn on the lights in parked cars so that the battery will run down.

(3) Mechanics can ruin batteries in a number of undetectable ways: Take the valve cap off a cell, and drive a screw driver slantwise into the exposed water vent, shattering the plates of the cell; no damage will show when you put the cap back on. Iron or copper filings put into the cells i.e., dropped into the acid, will greatly shorten its life. Copper coins or a few pieces of iron will accomplish the same and more slowly.

One hundred to 150 cubic centimeters of vinegar in each cell greatly reduces the life of the battery, but the odor of the vinegar may reveal what has happened.

(g) Gears

(1) Remove the lubricant from or put, too light a lubricant in the transmission and other gears.

(2) In trucks, tractors, and other machines with heavy gears, fix the gear case insecurely, putting bolts in only half the bolt holes. The gears will be badly jolted in use and will soon need repairs.

(h) Tires

(1) Slash or puncture tires of unguarded vehicles. Put a nail inside a match box or other small box, and set it vertically in front of the back tire of a stationary car; when the car starts off, the nail will go neatly through the tire.

(2) It is easy to damage a tire in a tire repair shop: In fixing flats, spill glass, benzine, caustic soda, or other material inside the casing which will puncture or corrode the tube. If you put a gummy substance inside the tube, the next flat will stick the tube to the casing and make it unusable. Or, when you fix a flat tire, you can simply leave between the tube and the casing the object which caused the flat in the first place.

(3) In assembling a tire after repair, pump the tube up as fast as you can. Instead of filling out smoothly, it may crease, in which case it will wear out quickly. Or, as you put a tire together, see if you can pinch the tube between the rim of the tire and the rim of the wheel, so that a blow-out will result.

(4) In putting air into tires, see that they are kept below normal pressure, so that more than an ordinary amount of wear will result. In filling tires on double wheels, inflate the inner tire to a much higher pressure than the outer one; both will wear out more quickly this way. Badly aligned wheels also wear tires out quickly; you can leave wheels out of alignment when they come in for adjustment, or you can spring them out of true with a strong kick, or by driving the car slowly and diagonally into a curb.

(5) If you have access to stocks of tires, you can rot them by spilling oil, gasoline, caustic acid, or benzine on them. Synthetic rubber, however, is less susceptible to these chemicals.

(8) Transportation: Water

(a) Navigation

(1) Barge and river boat personnel should spread false rumors about the navigability and conditions of the waterways they travel. Tell other barge and boat captains to follow channels that will take extra time, or cause them to make canal detours.

(2) Barge and river boat captains should navigate with exceeding caution near locks and bridges, to waste their time and to waste the time of other craft which may have to wait on them. If you don't pump the bilges of ships and barges often enough, they will be slower and harder to navigate. Barges "accidentally" run aground are an efficient time waster too.

(3) Attendants on swing, draw, or bascule bridges can delay traffic over the bridge or in the waterway underneath by being slow. Boat captains can leave unattended draw bridges open in order to hold up road traffic.

(4) Add or subtract compensating magnets to the compass on cargo ships. Demagnetize the compass or maladjust it by concealing a large bar of steel or iron near to it.

(b) Cargo

(1) While loading or unloading, handle cargo carelessly in order to cause damage. Ar range the cargo so that the weakest and lightest crates and boxes will be at the bottom of the hold, while the heaviest ones are on top of them.

Put hatch covers and tarpaulins on sloppily, so that rain and deck wash will injure the cargo.

Tie float valves open so that storage tanks will overflow on perishable goods.

(9) Communications

(a) Telephone

(1) At office, hotel and exchange switch boards delay putting enemy calls through, give them wrong numbers, cut them off "accidentally," or forget to disconnect them so that the line cannot be used again.

(2) Hamper official and especially military business by making at least one telephone call a day to an enemy headquarters; when you get them, tell them you have the wrong number.

Call military or police offices and make anonymous false reports of fires, air raids, bombs.

(3) In offices and buildings used by the enemy, unscrew the earphone of telephone receivers and remove the diaphragm. Electricians and telephone repair men can make poor connections and damage insulation so that cross talk and other kinds of electrical interference will make conversations hard or impossible to understand.

(4) Put the batteries under automatic switchboards out of commission by dropping nails, metal filings, or coins into the cells. If you can treat half the batteries in this way, the switchboard will stop working. A whole telephone system can be disrupted if you can put 10 percent of the cells in half the batteries of the central battery room out of order.

(b) Telegraph

(1) Delay the transmission and delivery of telegrams to enemy destinations.

(2) Garble telegrams to enemy destinations so that another telegram will have to be sent or a long distance call will have to be made. Some times it will be possible to do this by changing a single letter in a word — for example, changing "minimum" to "maximum," so that the person receiving the telegram will not know whether "minimum" or "maximum" is meant.

(c) Transportation Lines

(1) Cut telephone and telegraph transmission lines. Damage insulation on power lines to cause interference.

(d) Mail

(1) Post office employees can see to it that enemy mail is always delayed by one day or more, that it is put in wrong sacks, and so on.

(e) Motion Pictures

(1) Projector operators can ruin newsreels and other enemy propaganda films by bad focusing, speeding up or slowing down the film and by causing frequent breakage in the film.

(2) Audiences can ruin enemy propaganda films by applauding to drown the words of the speaker, by coughing loudly, and by talking.

(3) Anyone can break up a showing of an enemy propaganda film by putting two or three dozen large moths in a paper bag. Take the bag to the movies with you, put it on the floor in an empty section of the theater as you go in and leave it open. The moths will fly out and climb into the projector beam, so that the film will be obscured by fluttering shadows.

(f) Radio

(1) Station engineers will find it quite easy to overmodulate transmissions of talks by persons giving enemy propaganda or instructions, so that they will sound as if they were talking through a heavy cotton blanket with a mouth full of marbles.

(2) In your own apartment building, you can interfere with radio reception at times when the enemy wants everybody to listen. Take an electric light plug of! the end of an electric light cord; take some wire out of the cord and tie it across two terminals of a two-prong plug or three terminals of a four-prong plug. Then take it around and put it into as many wall and floor outlets as you can find. Each time you insert the plug into a new circuit, you will blow out a fuse and silence all radios running on power from that circuit until a new fuse is put in.

(3) Damaging insulation on any electrical equipment tends to create radio interference in the immediate neighborhood, particularly on large generators, neon signs, fluorescent lighting, X-ray machines, and power lines. If workmen can damage insulation on a high tension line near an enemy airfield, they will make ground-to-plane radio communications difficult and per haps impossible during long periods of the day.

(10) Electric Power

(a) Turbines, Electric Motors, Transformers

(1) See 5 b. (2) (e), (f),and (g).

(b) Transmission Lines

(1.) Linesmen can loosen and dirty insulators to cause power leakage. It will be quite easy, too, for them to tie a piece of very heavy string several times back and forth between two parallel transmission lines,

winding it several turns around the wire each time. Beforehand, the string should be heavily saturated with salt and then dried. When it rains, the string becomes a conductor, and a short-circuit will result.

(11) General Interference with Organizations and Production

(a) Organizations and Conferences (1) Insist on doing everything through "channels." Never permit short-cuts to be taken in order to expedite decisions.

(2) Make "speeches." Talk as frequently as possible and at great length. Illustrate your "points" by long anecdotes and accounts of personal experiences. Never hesitate to make a few appropriate "patriotic" comments.

(3) When possible, refer all matters to committees, for "further study and consideration." Attempt to make the committees as large as possible — never less than five.

(4) Bring up irrelevant issues as frequently as possible.

(5) Haggle over precise wordings of communications, minutes, resolutions.

(6) Refer back to matters decided upon at the last meeting and attempt to re-open the question of the advisability of that decision.

(7) Advocate "caution." Be "reasonable" and urge your fellow-conferees to be "reasonable" and avoid haste which might result in embarrassments or difficulties later on.

(8) Be worried about the propriety of any decision — raise the question of whether such action as is contemplated lies within the jurisdiction of the group or whether it might conflict with the policy of some higher echelon.

(b) Managers and Supervisors

(1) Demand written orders.

(2) "Misunderstand" orders. Ask endless questions or engage in long correspondence about such orders. Quibble over them when you can.

(3) Do everything possible to delay the delivery of orders. Even though parts of an order may be ready beforehand, don't deliver it until it is completely ready.

(4) Don't order new working materials until your current stocks have been virtually exhausted, so that the slightest delay in filling your order will mean a shutdown.

(5) Order high-quality materials which are hard to get. If you don't get them argue about it. Warn that inferior materials will mean inferior work.

(6) In making work assignments, always sign out the unimportant jobs first. See that the important jobs are assigned to inefficient workers of poor machines.

(7) Insist on perfect work in relatively un important products; send back for refinishing those which have the least flaw. Approve other defective parts whose flaws are not visible to the naked eye.

(8) Make mistakes in routing so that parts and materials will be sent to the wrong place in the plant.

(9) When training new workers, give in complete or misleading instructions.

(10) To lower morale and with it, production, be pleasant to inefficient workers; give them undeserved promotions. Discriminate against efficient workers; complain unjustly about their work.

(11) Hold conferences when there is more critical work to be done.

(12) Multiply paper work in plausible ways.

Start duplicate files.

(13) Multiply the procedures and clearances involved in issuing instructions, pay checks, and so on. See that three people have to approve everything where one would do.

(14) Apply all regulations to the last letter.

(c) Office Workers

(1) Make mistakes in quantities of material when you are copying orders. Confuse similar names. Use wrong addresses.

(2) Prolong correspondence with government bureaus.

(3) Misfile essential documents.

(4) In making carbon copies, make one too few, so that an extra copying job will have to be done.

(5) Tell important callers the boss is busy or talking on another telephone.

(6) Hold up mail until the next collection.

(7) Spread disturbing rumors that sound like inside dope.

(d) Employees

(1) Work slowly. Think out ways to in crease the number of movements necessary on your job: use a light hammer instead of a heavy one, try to make a small wrench do when a big one is necessary, use little force where considerable force is needed, and so on.

(2) Contrive as many interruptions to your work as you can: when changing the material on which you are working, as you would on a lathe or punch, take needless time to do it. If you are cutting, shaping or doing other measured work, measure dimensions twice as often as you need to. When you go to the lavatory, spend a longer time there than is necessary.

Forget tools so that you will have to go back after them.

(3) Even if you understand the language, pretend not to understand instructions in a foreign tongue.

(4) Pretend that instructions are hard to understand, and ask to have them repeated more than once. Or pretend that you are particularly anxious to do your work, and pester the foreman with unnecessary questions.

(5) Do your work poorly and blame it on bad tools, machinery, or equipment. Complain that these things are preventing you from doing your job right.

(6) Never pass on your skill and experience to a new or less skillful worker.

(7) Snarl up administration in every possible way. Fill out forms illegibly so that they will have to be done over; make mistakes or omit requested information in forms.

(8) If possible, join or help organize a group for presenting employee problems to the management. See that the procedures adopted are as inconvenient as possible for the management, involving the presence of a large number of employees at each presentation, entailing more than one meeting for each grievance, bringing up problems which are largely imaginary, and so on.

(9) Misroute materials.

(10) Mix good parts with unusable scrap and rejected parts.

(12) General Devices for Lowering Morale and Creating Confusion

(a) Give lengthy and incomprehensible explanations when questioned.

(b) Report imaginary spies or danger to the Gestapo or police.

(c) Act stupid.

(d) Be as irritable and quarrelsome as possible without getting yourself into trouble.

(e) Misunderstand all sorts of regulations concerning such matters as rationing, transportation, traffic regulations.

(f) Complain against ersatz materials.

(g) In public treat axis nationals or quislings coldly.

(h) Stop all conversation when axis nationals or quislings enter a caf.

(i) Cry and sob hysterically at every occasion, especially when confronted by government clerks.

(j) Boycott all movies, entertainments, concerts, newspapers which are in any way connected with the quisling authorities.

(k) Do not cooperate in salvage schemes.

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Some Thoughts on Taxation

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Introduction

Taxation is often considered one of the most burdensome and oppressive duties of government. "There are only two things certain; Death and Taxes", quite adequately describes the effect of taxes upon our daily lives.

Though far from truth, schoolbooks have, for generations, proclaimed that "No Taxation without Representation" was the cause of the Revolutionary War. There is no doubt that the fact that the colonies had no representation in Parliament was one of many points of contention between colonies and Crown. This very fact was the subject of many speeches, on both sides of the Atlantic.

It has been suggested, on the western side of the Atlantic, that if the colonies were allowed to raise their own taxes, based upon both their needs and requisitions from Parliament, this objection would have been overcome. So, let's keep that thought in mind as we look at our history with regard to the subject of taxation.

We need to understand that the Framers had to deal with the touchy subject of taxation based upon the role it played in leading up to separation from England as well as the brief history and problems posed between Independence and the Constitution. The former has just been addressed, so we will look at the later.

Two situations provided the Framers some concern in dealing with the subject. The first was that the requisitions imposed by the Continental Congress, both before and under the Articles of Confederation were ignored by a number of states, ultimately resulting in abandoning efforts to collect the requisitions and relieving those debts not paid.

The second situation was known as Shay's Rebellion [1787]. Farmers in Western Massachusetts had been taxed by the State, the purpose being for the State to be able to pay its obligations to the Congress, as well as have operating funds for the function of the Massachusetts government. This was compounded by the absence of specie (gold or silver) through the colonies. Repayment of debt on foreign loans required specie.

Now, to source documents:

Constitution

Article I, Section 2, clause 3:

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

Article I, Section 7, clause 1:

> 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.

Article I, Section 8, clause 1:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article I, Section 9, clause 1:

> The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Article I, Section 9, clauses 4 & 5:

> No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.
>
> No Tax or Duty shall be laid on Articles exported from any State.

Article I, Section 10, clauses 1 thru 3:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts;

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Amendment 16 [1913]:

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment [XVII] [1913]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Amendment 19 [1964]:

Section 1--The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Federalist Papers

The Federalist Papers are accepted as an indication of the intent to the Framers, and, of those who ratified that Constitution.

Federalist Papers #12, Alexander Hamilton:

The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares.... It has been found in various countries that, in proportion as commerce has flourished, land has risen in value.

***

The ability of a country to pay taxes must always be proportioned, in a great degree, to the quantity of money in circulation, and to the celerity with which it circulates. Commerce, contributing to both these objects, must of necessity render the payment of taxes easier, and facilitate the requisite supplies to the treasury.

***

But it is not in this aspect of the subject alone that Union will be seen to conduce to the purpose of revenue. There are other points of view, in which its influence will appear more immediate and decisive. It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation. Tax laws have in vain been multiplied; new methods to enforce the collection have in vain been tried; the public expectation has been uniformly disappointed, and the treasuries of the States have remained empty.

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No person acquainted with what happens in other countries will be surprised at this circumstance. In so opulent a nation as that of Britain, where direct taxes from superior wealth must be much more tolerable, and, from the vigor of the government, much more practicable, than in America, far the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description.

***

Revenue, therefore, must be had at all events. In this country, if the principal part be not drawn from commerce, it must fall with oppressive weight upon land.

Federalist Papers #30, Alexander Hamilton:

Let us attend to what would be the effects of this situation in the very first war in which we should happen to be engaged. We will presume, for argument's sake, that the revenue arising from the impost duties answers the purposes of a provision for the public debt and of a peace establishment for the Union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government in such an emergency? Taught by experience that proper dependence could not be placed on the success of requisitions, unable by its own authority to lay hold of fresh resources, and urged by considerations of national danger, would it not be driven to the expedient of diverting the funds already appropriated from their proper objects to the defence of the State? It is not easy to see how a step of this kind could be avoided; and if it should be taken, it is evident that it would prove the destruction of public credit at the very moment that it was becoming essential to the public safety.

Federalist Papers #45, James Madison:

If the federal government is to have collectors of revenue, the State governments will have theirs also. And as those of the former will be principally on the sea-coast, and not very numerous, whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true, that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; then an option will then be given to the States to supply their quotas by previous collections of their own; and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States.

***

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs; concern the lives, liberties, and properties of the people and the internal order, improvement, and prosperity of the State.

Constitutional Intent

"*Representation and Direct Taxes shall be apportioned among the several States*" provides an insight into one of the methods of funding for the federal government. Representation was to be based upon population, and, the funds needed in excess of those derived by other means were to be supplemented proportioned on the strength of voting power of each state in the House of Representatives.

Let's look at the relationship between taxation, spending, and representation. First, we have "*All Bills for raising Revenue shall originate in the House of Representatives*", giving that representative body the exclusive power to raise taxes, though concurrence by the Senate and the President were still required.

Now, let's look at the Senate. Senators were appointed by the State legislatures, prior to the adoption of the 17th Amendment, and, consequently, would look out for the interest of the State, while the representatives would look out for the interests of the people who comprised their constituency. So, we have both the people and the state with representation to look out for their respective interests.

If the Representatives felt a need for raising revenue, the would "originate" a bill to that effect. The Senate, if the burden were put upon the states to raise the revenue, might be concerned and refuse to approve the bill, saving the respective legislatures from having to raise taxes to raise revenues to meet the needs of the federal government.

In a sense, we would have three, independent bodies exerting caution over any increase in revenue; the House of Representatives ; the Senate; and, the respective state legislatures, which would have the responsibility of raising additional revenue, as well as the ire of the people in so doing.

If we delve a bit deeper into this concept, we can see that there is a consistency with the feelings of the Founders when they coined the phrase, "*No Taxation without Representation*". If we equate the Parliament with the Congress, and, the state legislatures with the colonial assemblies, we can see a parallel, which would require the state legislature (colonial assembly) to enact revenue laws based upon requisitions by the Congress (Parliament). Clearly, this concept has strong support from our history books.

To address the Founders concerns, perhaps it would be appropriate to have representatives in the Congress to enact and approve revenue bills, and then, requisition to the states; the state legislature to raise the revenues so required.

Also, the intent of the involvement of the states in collecting the revenue was made clear by James Madison (FP #45), when he said, "*It is true, that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; then an option will then be given to the States to supply their quotas by previous collections of their own*."

We need not wonder why this method, of the state paying quotas, was not primary. The experience of the recent past had proven, under the Articles of Confederation, that collection would be, at best, difficult. There had been no experience under the Constitution and strengthened federal government to dispel such concern. Recent history, however, has demonstrated that the federal government is quite able to enforce compliance, which makes moot this concern.

Madison also points out, in the same number, that the primary need for additional revenue would be consistent with, "*The powers delegated by the proposed Constitution to the federal government [which] will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected*."

Subsequently, in 1913, this whole concept of taxation was turned on end. With the enactment of the 16th and 17th Amendments to the Constitution (coincidently, the same year that the Federal Reserve Act and currency contrary to the Constitution) were ratified, changing our whole economic structure by rendering gold and silver equal to, or subordinate to, promissory notes (Federal Reserve Notes). Money was relegated to a system without value.

Clearly, the type of expenditures we have today were not within the scope imagined by Madison. Quite possibly, if the tax structure was maintained along the original concepts, we would not have the enormous debt to repay.

Continuing on with the subject, let's see what Alexander Hamilton thought should be the primary source of revenue.

In Federalist Papers # 12, he said, "*The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares...*"

He continues, "*The ability of a country to pay taxes must always be proportioned, in a great degree, to the quantity of money in circulation, and to the celerity with which it circulates. Commerce, contributing to both these objects, must of necessity render the payment of taxes easier, and facilitate the requisite supplies to the treasury."*

He then advises that, "*[i]t is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation*..."

In support of the use of commerce as the primary source of revenue, he says, "*No person acquainted with what happens in other countries will be surprised at this circumstance. In so opulent a nation as that of Britain, where direct taxes from superior wealth must be much more tolerable, and, from the vigor of the government, much more practicable, than in America, for the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description."* Included in this is a comparison to England, where the rich are well defined, and a source of revenue. Something that might be worthy of consideration.

Finally, in this number, he concludes with the significance of the burden on other sources than revenue, when he says, "*Revenue, therefore, must be had at all events. In this country, if the principal part be not drawn from commerce, it must fall with oppressive weight upon land."*

To demonstrate the nature of change in how government operates, we can look at the concerns that Mr. Hamilton placed upon the ability of the country to borrow money, should the need arise, in Federalist Papers #30:

> Let us attend to what would be the effects of this situation in the very first war in which we should happen to be engaged. We will presume, for argument's sake, that the revenue arising from the impost duties answers the purposes of a provision for the public debt and of a peace establishment for the Union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government in such an emergency? Taught by experience that proper dependence could not be placed on the success of requisitions, unable by its own authority to lay hold of fresh resources, and urged by considerations of national danger, would it not be driven to the expedient of diverting the funds already appropriated from their proper objects to the defence of the State? It is not easy to see how a step of this kind could be avoided; and if it should be taken, it is evident that it would prove the destruction of public credit at the very moment that it was becoming essential to the public safety.

Clearly, times have changed. The ability of the government to borrow money on the *"public credit*" is, without question, indisputable. So, many of the concerns of the Framers have fallen by the wayside. Perhaps legitimate under the then circumstances, times, and the new federal government under the Constitution, have changed. Perhaps, now, it is time to reevaluate the method of federal taxation to be consistent with what was expressed, then, though not put into service because of those concerns.

Some Definitions

From Webster's 1828 Dictionary:

Apportion, *v. t.*
To divide and assign in just proportion; to distribute among two or more, a just part or share to each; as, to *apportion* undivided rights; to *apportion* time among various employments.

Duty, *n.*
Tax, toll, impost, or customs; excise; any sum of money required by government to be paid on the importation, exportation, or consumption of goods. An impost on land or other real estate, and on stock of farmers, is not called a duty, but a direct tax.

Impost, *n.*
1. Any tax or tribute imposed by authority; particularly, a duty or tax laid by governments on goods imported, and paid or secured by the importer at the time of importation.

Excise, *n.*
An inland duty or impost, laid on commodities consumed, or on the retail, which is the last stage before consumption; as an excise on coffee, soap, candles, which a person consumes in his family. But many articles are excised at the manufactories, as spirit at the distillery, printed silks and linens at the printers, &c.

Capitation, *n.*
1. Numeration by the head; a numbering of persons.
2. The tax, or imposition upon each head or persons; a poll tax.

Income, *n.*
That gain which proceeds from labor, business or property of any kind; the produce of a farm; the rent of houses; the proceeds of professional business; the profits of commerce or of occupation; the interest of money or stock in funds.

Tarif, n.
1. Properly, a list or table of goods with the duties or customs to be paid for the same, either on importation or exportation, whether such duties are imposed by the government of a country, or agreed on by the princes or governments of two countries holding commerce with each other.
2. A list or table of duties or customs to be paid on goods imported or exported.

Considerations

There can be little doubt that the structure of government and apportionment had a purpose, in the minds of the Framers. At the time of the Federal Reserve Act, 16th and 17th Amendments [1913], the national debt had remained relatively level with that of just after the Civil War, about 2.5 billion dollars. Within just a few years, it has gone from that stable 2.5 billion to nearly 5,000 times that amount in 2010. Can there be any question as to the ability of the government to borrow money. The problem remains, however, that as we continue to borrow, can that debt be repaid. Taxation has become a means to pay the interest, though it is not sufficient to retire the debt.

By having direct taxes, without apportionment, easily imposed upon us, we have implemented a direct line from our wallets to the government. Considering that all direct taxes were intended to be apportioned, we can look at the Sixteenth Amendment to see what it really says. Remember, the Constitution required apportionment, and, it anticipated that direct taxes would be on land, not on the earnings of a workingman. The Amendment reads:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Rather than going in to the legal ramifications of the Amendment, which has yet to be resolved by the courts, we can wonder what "gain" (definition of income) meant, then, as well as, if it was a direct tax upon something not previously granted, why it had to include the exclusion of apportionment.

If our debt had not grown since the civil war, and there was no need for additional revenue, why would Congress propose, and the states ratify, an amendment that created a completely new method of taxation. After all, they had not exercised all of those taxes anticipated by the Framers, though in the slow evolution of the "income tax" to what it has become, invading our private records for information; multitudes of new officers to seize our property. After all, from an historical perspective, we can look to the Declaration of Independence to see that such a means as was to be used to collect this new tax was well defined in the objections to the British Rule that resulted in our independency. From the enumerated complaints in the Declaration, "*He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance".* What conceivable method of taxation could require more new *offices* and *officers* to *harass our people* and *eat out their substance*?

Now, with this in mind, what impelled Congress to establish the most burdensome and intrusive means of tax collection possible? Duties are based upon tariffs, and easily collected at ports of entry. Excise taxes are collected by those licensed for the particular activity upon which the tax applies. Finally, land, which doesn't move, is already assessed as to value, and has collection methods in place. Instead, the Congress established a new form of taxation, never before conceived as to being practical, and at present, requiring review and collecting from over two hundred million people, along with the forces necessary to review, audit and collect those taxes. To add to the idiocy of that system, how many of the people's own hours of life are committed, each year, to the production of the necessary records to satisfy those tens of thousands of agents, taking that time away from them, their families, their leisure, and their productive pursuits?

We need to consider, too, a couple more events in our history that reflect on taxation. First was the excise tax on WHISKEY, resulting in the Whiskey Rebellion in 1791. The country needed money. They imposed a tax on the production of whiskey. Whiskey was a product of surplus grain. Since the producers of whiskey in Pennsylvania had very little in the way of circulating money, they were unable to pay the taxes. So, they would either have to stop producing, which meant that they could not barter with the whiskey, or they would have to find some "hard currency" to pay the taxes. They were put down by force, and all we have to gain from this event is the experience of the effect of misplaced excise taxes.

The other situation lead to the bloodiest war in our history. Contrary to popular belief, the slave issue was not the primary event leading to the Civil War. Slavery did not become an issue until well into the war, though states had seceded from the Union even before Lincoln was inaugurated.

Congress, however, had enacted tariffs that were unequal, and detrimental to the South and its economy. High important tariffs forced them to buy manufactured goods from the North, paying more than what overseas source would require for the same products. It was based upon forms of taxes more than slavery that forced the disjointing of the Union.

Conclusion

Federal taxes must be Constitutional, and should be as little burden on the people as possible. Regardless of what the tax is imposed on, the people will ultimately be the source of that revenue. If on import duties, the people will pay higher prices. If on excise taxes, the people will pay higher prices. The importers and manufacturers will simply add the cost to the product to recover the cost of the taxes.

Excise, impost and duties can be applied in an equitable manner if due consideration (not benefit for contributions to campaigns) of their source is considered.

Let's look at Duty taxes. If the duty is on a product produced in a foreign country, and also produced in the United States, a duty tax that penalized the foreign importer in favor of the American producer might be warranted, unless it was high enough to be protective of the American product, allowing excessive profit to the American Manufacturer. Balance of trade should also be considered with regard to import duties. If we allow too many imports and reduce our exports, we create an imbalance of trade whereby we owe foreign nations more than they owe us. Ultimately, this will have a detrimental effect on our whole economy.

Consideration should also be made as to whether a product is a necessity, or, for comfortable life, or, a luxury, something only desired by a small portion of our population. Consideration of the circumstance that lead to the Civil War, where the duties tended to place an economic burden on an entire region should be avoided.

To provide fairness in such taxes, perhaps a list of general categories could be developed and all products within that category be taxed at the same rate, or a very small range within that category.

Excise taxes pose a different sort of problem. When the tax is applied to one object, the price of that object is increased. In many instances, today, the tax on an item may well exceed the cost to produce, distribute, and sell that item. This amounts to an extremely unfair burden on those who use that product. It might also provide an economic favor to a similar item that is not subject to the same excise tax.

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Now, let us look at the direct taxes. At the time of the Constitution, there were two forms of direct tax. One was on land; the other was a capitation tax, which was an equal tax on each 'head'. One form of capitation tax was the poll tax, which was made illegal by the 19th Amendment. The only tax even remotely similar to the Capitation Tax, that we have, today, though not envisioned by the Framers, is the income tax. It is not apportioned, though the Framers considered apportioning to be absolutely necessary in both direct taxes and representation. Surely, the impracticality, along with the expense associated with collecting the income tax, makes it a likely candidate for history, not for a means of efficiently and effectively raising revenue.

Perhaps an alternative in the method of collection, consistent with what Mr. Madison gave us, would be in order. Suppose we realize that the federal government will never again face the difficulty in receiving monies due from requisitions to the states. Can there be any doubt that the means, and, more than likely, the willingness to "pay up", by the states, exists? Especially, if the 17th Amendment is repealed, thereby returning to the state legislatures the means to resist excessive taxation that they will have to *eat out [the] substance* of their constituent's pockets? Clearly, they understand more than the federal government the economic abilities of their own state. Clearly, they would best represent us in defending against excessive spending by the federal government.

We can include another benefit to this method of collection. Today, the federal government collects taxes through their burdensome system. They then establish a bureaucracy, which is assigned the responsibility to determine redistribution back to the states, based upon evaluation of need determined by people appointed, not elected, into that capacity. How susceptible to undue influence is such a system? And, how many dollars are squandered in the re-administration of funds that left the state only to be returned to them? Finally, how much influence has the redistribution given to the state and local government by simply putting conditions, probably detrimental to the people, on those agencies that are the beneficiary of these returned funds? Are not our local and state governments more qualified to determine where this money should go to support the needs of the state? Need we pay federal people to ask state people, whom we also have to pay, to decide the what, where and how much will come back to the state, and pay both ends of this middleman when he is not even necessary if the State collects the funds before settling the requisition, and then retains that which is left?

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An Economic Solution

An Economic Solution

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To return to a sound economic base, primarily a free market economy, a series of steps must be taken to achieve an understanding of where "existing" money is, and how it will be accounted in the conversion to the plan proposed herein.

To initiate the plan, fractional reserve banking must cease. Usury laws shall be enacted limiting interest to 3% per annum. All outstanding obligations to any financial institution will be held in abeyance, with no accruing interest, until the redemption process (2 years) has been completed.

The plan calls for the replacement of currency in two general areas, internal money and external money. Internal being that held by citizens of the United States or corporations operating solely within the United States. External being money held by any person not a citizen of the United States and any corporation operating internationally.

The sources of obligations are of three natures. First is the money circulating within the United States, currently, which will be identified as "A". Next will be money circulating in the international realm based upon trade or other money legitimately held. This will be referred to as "B". Finally, there is a lot of money which is circulating internally and internationally which was acquired by means considered illegal, such as the millions of dollars stacked in closets in Mexico, which will be identified as "C".

The money of the "A" type will be redeemed as follows All coins and currency in circulation or on deposit , of an internal nature, will be identified based upon criteria to be developed, though will not include banking reserves, or any dollars not based upon real assets.

Replacement of value for internal money will be replaced . first, with US Greenback dollars, based on the full faith and credit of the United States. All redemption will require a physical return of Federal Reserve Notes in exchange for US Greenback dollars. This will become the interim money for internal use only, until the final resolution to specie based dollars.

Redemption will be conducted over a period of one year, with an additional years in which to hear appeals to decisions regarding whether the dollars are redeemable, or not, and any other petitions for consideration of redemption, all of which can only be presented by citizens of the United States.

For the sake of discussion, we will assume that the recognized type "A" money, Greenback Dollars ($), issued over this period amounts to $4 trillion.

The gold and silver on deposit at Fort Know is to be audited and the actual dollar value determined based upon the original value of $20 per ounce of gold and $1 per ounce of silver. This will include only the assets of the United States held at Fort Knox. We will assume, then, that the value determined by this audit comes to $80 billion.

Gold and Silver Certificates will be issued based upon the value determined by the audit. The certificates are not redeemable for gold or silver, but are value based upon the deposit at Fort Know, which will be audited every five years to assure that the sound backing of the United States Dollar (designated by $) continues, and that the internal money supply is limited, and cannot be expanded by other than additional gold or silver deposits made to the Depository.

Gold and silver may circulate as specie, though the United States government will not mint, guarantee, or participate in circulation thereof. Any specie made in payment to, or bought by, the United States government will be deposited in the Depository and Certificates ($) issued into circulation.

The existing United States Greenback Dollars ($) will be redeemed for the new United States Dollars ($) based upon the ratio of recognized type "A" money ($4,000,000,000,000.00) to the United States Dollar ($80,000,000,000.00), [$/$ = 50], the Greenback dollars will be redeemed at the rate of $50 for one United States Dollar ($1). This would require an adjustment of the value of goods to 1/50th of their current value. For example, if something now costs $5, the new price would be $0.05 (5¢).

The new United States Dollars would only circulate within the United States. If returned from outside of the United States, they will be redeemed for United States Trade Credits (see below), at the value at the time of redemption.

Type "B" money and any type "A" money not redeemed as aforesaid shall be redeemed by redeeming all such outstanding obligations for United States Trade Credits. A determination will be made of each application to determine the rate of redemption. For Treasury Bills (full faith and credit of the United States), redemption should be at face value. For Federal Reserve Notes and other obligations based upon Federal Reserve Notes, redemption should be based upon the ratios determined for type "A" greenback to United States Dollars.

United States Trade Credits, while determined in dollars ($), will not be on par with the United States Dollar ($). Trade Credits will be used only for international commerce, and will not be circulated within the United States. They will be converted to United States Dollars upon entry into the country, based upon the aforesaid ratio, and United States Dollars will be converted to Trade Credits (even for citizens of the United States going abroad) upon leaving the country. United States Dollars returned to the United States will be penalized and redeemed at 50% of value.

Adjustments may be made to the Dollar to Trade Credit ratio, from time to time, to assure that a beneficial to the United Sates value is attached thereto.

Outstanding obligations in Trade Credits (existing outstanding obligations) will be assured, though no timely redemption is implied.

Balance of trade, in the international market, must be pursued to extinguish the outstanding debt in Trade Credits.

Type "C" money along with any type "A": or type "B" money not redeemed timely, or determined to be ill-gotten, will not be redeemed, and will not become an obligation on the United States. This does not preclude actions against the Federal Reserve Board, which will, upon initiation of this plan, no longer have standing within the United States.

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