

Lesson 17. Article 1, section 1.

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In this lesson we will begin our discussion of the constitution itself. The framers considered lawmaking the central power of government. This why the congress is considered the Power-Plant of the constitution. (Quiz question 1)

First things first: Article 1, section 1 (right after the Preamble – and just one sentence). “All legislative powers granted herein shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” (Quiz question 2)

This provision gives every citizen the right to know where laws affecting them originate. This central location gives Americans a place to suggest new laws, and the ability urge representatives to vote one way or the other. This is the very heart and soul of a republic. (Quiz question 3)

The system set up by the founders for creating laws was described by George Mason as, “either genius, or a miracle.” (Quiz question 8). The House represents the people. The senate (as conceived) represented the states. The president represents the nation. A bill must pass through all three to become law. Then the federal courts may scrutinize laws in terms of the constitution.

At least that was the plan. For a while, it worked out pretty well.

As Madison wrote, “The powers delegated ... to the federal government are few and defined.” This was embodied by President Thomas Jefferson, who wrote, “... we have nothing scarcely to propose [to congress].” Can you imagine a presidential candidate running on the platform that everything's fine? Can you imagine ANY politician running on Hope for no change?

States' rights and individual rights are being trampled every day. Federal blackmailers think nothing of handing over great piles of money to the states, cities, even individuals – as long as the money comes with a mile of regulatory strings attached. This is how the feds have taken over local schools, city planning, environmental programs, day care, unemployment and job training. How did we get here from there? One way was through “executive orders.” (Quiz question 4)

The president, as the leader of the executive branch, would be expected to issue orders to his minions. Who is the executive branch? The military and nearly every alphabet soup agency you've ever heard of: the ICC, EPA, IRS, NSA to name but a few. Executive branch agencies often write regulations with the power of law – even though none of these regulations were ever discussed or voted on in the congress. This is called “administrative law.” (Quiz question 4)

If a president issues an executive order, for example, which forbids any agency in the executive branch from discriminating against women when hiring, that would be perfectly legal. As long as an executive order only effects the executive branch, it's fine.

And for a long time, that's how it worked. Washington signed eight orders. Adams, Madison, and Monroe had ONE each. Jefferson issued four. This era, which lasted about 100 years, is known as the “Constitutional Stage.” (Quiz question 5)

But then came the “Strong President Stage.” (Quiz question 5) Ushered in by republican Theodore Roosevelt. He signed 1,081 executive orders. (The book says 1,006, but US archives gives the higher number). He believed that as president he could do ANYTHING in the course of his duties that wasn't expressly forbidden by the constitution or by law.

What he failed to realize is: the tenth amendment *does* expressly forbid what he was doing. “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.” (Quiz question 6)

This stage only lasted for about eight years.

Then came the “World War I stage.” (Quiz question 5) (Like the Strong president stage on steroids). Under the pressure of the war, president Woodrow Wilson used his emergency powers in ways never intended. He and his administration issued executive orders and administrative laws impinging on every aspect of the life of ordinary citizens. He set up entire alphabet soup agencies without so much as a nod from the legislature.

Shortly thereafter, the great depression and World War II, were the excuses for the “New Deal Stage.” (Quiz question 5) (Like the WWI stage on crystal meth). Proving that no crisis should ever go to waste. Executive orders and administrative laws flew out of the Roosevelt administration (Franklin, this time) in every direction. So many that in 1935, congress made a provision to try and keep track of them all, creating the “Federal Register.”

For example, he stopped backing dollars with gold, and forbid citizens from owning gold. Later, Japanese-Americans were rounded up and put into relocation camps. All through executive orders.

Back to the 1930's, congress started to get concerned about the tsunami of laws flowing out of the executive branch, and decided that they should have some oversight. But the supreme court slapped congress down; told them they could not interfere with the administration of the executive branch – it violated separation of powers. *Separation of powers? The supreme court didn't notice that laws shouldn't be coming out of the executive branch in the first place?*

In addition to executive orders and administrative laws, still during the New Deal Stage, specifically during World War II, the administration started making “secret” deals with foreign nations. (Quiz question 4) While certain secret deals are to be expected during wartime, these should be limited to the war effort (strategy, logistics etc.). The Yalta agreement of 1945 is an example of a wartime agreement gone wild. All of the facts in the Yalta agreement have never been revealed. Some of the provisions were released ten years later, but some have never been disclosed. We do know that The three leaders of the allied powers met, once it looked as though victory was at hand. Churchill, Roosevelt, and Stalin met to divvy up the world as if it were a pack of baseball cards. Stalin got half of Germany and all the rest of eastern Europe; placing untold millions of people under the yoke of Soviet communism. Shouldn't such a far sweeping agreement have been voted on by the senate?

Related to secret deals, are the public deals presidents make with their foreign counterparts. How often have you seen a US president visit some other country, and at the end of the visit they announce some petty agreement or other? (Cultural exchanges, for example). Even these mundane agreements should be fed through the senate for confirmation, since they involve a foreign power.

Okay, I think I've finally run the table on executive branch abuses of Article 1, Section 1. As P.T. Barnum used to say, “That's only the beginning!”

Back in 1936, the supreme court heard, “the Butler case.” The decision greatly expanded the understanding of the “General Welfare” clause. In short, it said the government can redistribute wealth. Take from the rich and give to the poor – **OR** whoever deserves it more. As a result, the federal budget soared from 6 billion, to 600 billion in just one generation. Government transformed itself from Protector to Provider. And what it provides, might as well be called welfare (whether offered to rich or poor, young or old, healthy or sick, family farmer or "fat-cat" financier), it's ALL welfare.

Although not the official beginning, this illustrates one of the worst cases of Judicial Activism. (Quiz question 4). Activist judges try to both write and enforce laws from the bench. (Judicial legislation and judicial administration). Activism joined the big leagues under the direction of supreme

court chief justice Earl Warren. From 1953 to 1969 the Warren court handed down decisions based, not on the constitution, but on “social necessity” and “established policy.”

Slavery was once “established policy.” So was the slaughter of Indians. The supreme court is not supposed to venture into the realm of “Policy.” It's supposed to concern itself with constitutionality.

Not since the Civil War have states' rights suffered so much. Under Warren, the feds took over virtual control of schools, state prisons, employment policies, how states could apportion their own state senators. The court imposed federal standards for local police officers, clean air, workplace safety. You've heard it 1,000 times on TV – “You have the right to remain silent, if you give up this right...” You have heard about busing students to distant schools to achieve racial equilibrium. You know a daily prayer in school is no longer allowed.

God and morality have been expelled from school. Replaced by “non-judgmental tolerance.”

The constitution did provide two devices to protect the people from usurpation, either by congress or the courts. Direct amending of the constitution by way of convention. A convention called for by 2/3 of the states – but the proposed amendments would still have to be ratified by ¾ of the states. This method has never been used.

The second device is called the “common law jury.” A jury could find a defendant not guilty if they saw the law itself being unjust or unconstitutional. This would not overturn the law, just create a one time exclusion for that particular defendant. But this has been pretty ineffective since 1895, when a judge's instructions to juries were altered – to omit this fact.

I recently read an interesting article on the American Thinker website: What if ¾ of the states voted to repeal an amendment? No convention, no new amendment canceling out the previous one. Just states removing their approval that was voted for years ago? Interesting.

Equally compelling: Did you know that Thomas Jefferson proposed his own amendment? It stated that a 2/3 vote in both houses of congress could overturn a supreme court decision. Just like overriding a presidential veto. Think about that. Some possible oversight for unelected, lifetime justices.

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a Congress of the United States, shall consist of a Senate and House of Representatives.

As already covered, The House represents the people. The senate (as conceived) represented the states. The president represents the nation. A bill must pass through all three to become law.

Representatives are up for election every two years. (*two reasons*) Since they are the people's direct connection to congress, this short term is necessary to ensure the will of the people is being followed – no matter how capricious the people are. The founders determined shorter terms for more powerful positions to avoid tyranny.

Senators serve for six years, and were supposed to represent the interests of the state (or the state legislature). The very long term was supposed to insulate the senators from the the volatility of public opinion. Senators were to take the long term view on the results of proposed legislation.

The seventeenth amendment was ratified by the very states who – as a result – lost their only representation in congress. Now, senators are little more than super representatives. States rights have, again suffered.

Next lesson, Provisions 10 – 16. Pages 263 – 275 (The House of Representatives)