

Amend or Enforce – Two Competing Views

How to deal with a federal government gone rogue?

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Are we dealing with “defects” in the Constitution as written? Or “bad behavior” of government entities?
Are proposed solutions based on facts? Or, on nonfactual assumptions and hopes?

Ultimately, shall the government “genie” be “put back in the bottle” by amendments (Article 5) or by enforcement (Article 6)

First, consider the “Amend it” option:

1. An *introductory premise* of all speeches and documents of Convention of States (COS) Article V advocates is: "The Article V convention was put into the Constitution for a time such as ours for the very purpose of reining in the federal government if/when it becomes tyrannical."

. . . There is zero documentation of any such "sentiment" or statement by the founders. This is simply a modern day assumption or assertion – with no basis in the historical record.

2. "There is no other way." is the most egregious non-factual assumption - On the contrary, the Founders said, many times, in many places, that the remedy for usurpation by the proposed new government would be/should be for the People and the States to oppose such usurpation by various means, including ignoring “unauthorized and null acts”.

. . . It is a great tragedy that the States and the People of subsequent generations, in general, failed to live up to the high expectations of the Founders.

3. Another assertion by the COS organization is, “An Article V convention is NOT a constitutional convention”. Black’s Law Dictionary shows this is a false statement.

Thus, analysis of assertions of the COS organization persuades many that every claim COS makes is unsupported by facts and is merely fuzzy and wishful thinking, not at all supported by facts or logic.

The Constitution is not defective – it is simply ignored and violated with impunity. Our problem is “bad behavior” – i.e., not honoring constitutional limitations on the federal government. The COS effort to amend the constitution to fix bad behavior of government is like amending the Ten Commandments to fix bad behavior of individuals.

Logically, it must be noted that IF the Constitution is amended to “reign in the government”, then it must be assumed that the same government officials who now ignore and violate the Constitution will suddenly “change their stripes” and begin to reverence and obey existing and any amended limits on federal power. How much sense does that make?

It must also be noted that the Balanced Budget Amendment would actually legitimize current unauthorized expenditures – as long as the budget is “balanced”, which cannot occur until the Constitution is obeyed and enforced. Term limits will not assure better candidates in Primary Elections – other, more effective actions by citizens are required to “improve the quality of the herd” in offices of government.

Second, now let us consider the “Enforce the Constitution” option – which the COS movement completely ignores and conceals:

The following "4 pages of quotes of the Founders" clearly lay out what they actually DID say to address the widespread fear of the new government becoming tyrannical.

. . . This is the “other way” that COS ignores when they say, “There is no other way.”

. . . These quotes are a starting point for concerned and active citizens, and state legislators, to understand enough to make an informed decision of whether or not to support the COS organization’s call for an Article V constitutional convention – and to rescind Texas’ call for such a Convention.

Cecil Bell, Jr’s “Texas Sovereignty Act”, HB 1215 87th R, is consistent with the Founders’ commentary on what every state should do to resist.

The four pages of quotes are next. (They are created to print in Landscape mode, front and back)

The quotes are arranged to support 4 principle facts. The 4 facts are listed briefly, with brief commentary concerning their neglect. Then multiple quotes are presented as evidence of each of the four facts, in order. These 4 facts must be accepted by citizens and state legislators and put into force if we truly want to reform and control the federal government and restore Constitutional government.

The 4 Facts:

1. The federal government was created and given *limited, enumerated powers* by Sovereign States, reserving all others to selves.
.. Many citizens agree with #1 , but do nothing when federal acts STEAL powers reserved to the States – they surrender to the bully.
2. Acts by federal Executive, Legislative, & Judicial branches not authorized by the Constitution are usurpation & tyranny – not “law of the land”
.. The Article 6 “supremacy clause” is misquoted - with “made in pursuance thereof” omitted - so few actually “believe #2 - they surrender.
3. State legislatures have the right & duty to judge federal usurpation & tyranny - not rely on the federal government's Supreme Court
.. States generally acquiesce to the Supreme Court's claim to be the ultimate arbiter of “constitutionality” - they have not studied the Founders.
4. Founders expected States to act - to resist federal usurpation & tyranny – by state legislative resolutions condemning federal abuses of the Constitution, and by refusing to be bound by “null and void acts” that violate the Constitution or otherwise assume power not delegated.
.. After decades of States' failure to act, coupled with corrupted public education, few remember notable past acts of resistance and so – they surrender

With those 4 facts in mind, here are quotes that help us understand, believe, and implement the “4 facts” above, taken in order.

1. Limited enumerated powers of the federal government.

Madison Federalist 45: “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.” http://avalon.law.yale.edu/18th_century/fed45.asp

Madison at the Virginia Ratifying Convention June 6, 1788: “. . . the powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.”
http://www.constitution.org/rc/rat_va_05.htm

Jefferson's Opinion on the Constitutionality of a National Bank : 1791 “I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." [XIIth amendment.] To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.” http://avalon.law.yale.edu/18th_century/bank-tj.asp

2. Acts by federal Executive, Legislative, & Judicial branches not authorized by the Constitution are usurpation and tyranny – not “law of the land”.

Hamilton, Federalist Papers 78: “No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

http://avalon.law.yale.edu/18th_century/fed78.asp

3. States have the right & duty to judge federal usurpation & tyranny:

Madison, 1800 “. . . if the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution . . . dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution . . . consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another--by the judiciary as well as by the executive, or the legislature. “

<http://press-pubs.uchicago.edu/founders/documents/v1ch8s42.html>

Comment by Kris Ann Hall, “Sovereign Duty”, p.61: “But, if we allow the Judicial branch to determine the rightful powers of the central government, what we have done is allow the central government, through one of **its own branches**, to determine the limits of **its own power**. **If that happens, then the Constitution and the creators of that Constitution are not the limiting factors of the central government. The central government becomes the limit of its own power!** Let me be clear, The Supreme Court of the United States is PART of the central government. How can the central government determine the limits of its own power?”

Madison, Jan. 1800: “That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact . . . and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto have the right, and are in duty bound, to interpose, for arresting the progress of the evil and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them.” <http://press-pubs.uchicago.edu/founders/documents/v1ch8s42.html>

Thomas Jefferson, Resolutions Relative to the Alien and Sedition Acts 10 Nov. 1798: “. . . in cases of an abuse of the delegated powers, the members of the General Government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (casus non foederis,) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them” <http://press-pubs.uchicago.edu/founders/documents/v1ch8s41.html>

Able P. Upshur, Letter No. 1 circa 1833-1840: “I confess that it seems to me exceedingly clear, that our Constitution is most worthless and tyrannical, if the usurpations of those who administer it, cannot be resisted by any means short of revolution. I have always considered the reserved powers of the States, as the only real check upon the powers of the Federal Government; and I have always considered it, not only the right, but the imperious duty of the States, so to apply that check, as not to dissolve the Union. And I have never been able to discover any mode of doing this, except by the positive refusal of the States to submit to usurpations, whilst, at the same time, remaining in the Union, they force the Federal Government back within the charter of its power. “ <http://dailypost.com/an-exposition-of-the-virginia-resolutions-of-1798-no-1/>

4. Founders expected States to act - to resist federal usurpation:

Hamilton, Federalist 85: “We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority. http://avalon.law.yale.edu/18th_century/fed85.asp

Hamilton, Federalist 28: “It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority.” http://avalon.law.yale.edu/18th_century/fed28.asp

Madison, Federalist 46: “But ambitious encroachments of the federal government, on the authority of the State governments, would not excite the opposition of a single State, or of a few States only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. The same combinations, in short, would result from an apprehension of the federal, as was produced by the dread of a foreign yoke; and unless the projected innovations should be voluntarily renounced, the same appeal to a trial of force would be made in the one case as was made in the other “
http://avalon.law.yale.edu/18th_century/fed46.asp

Madison, Introduction of the Bill of Rights, The Annals of Congress 448-460: “Beside this security, there is a great probability that such a declaration in the federal system would be enforced; because the state legislatures will jealously and closely watch the operations of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty. <http://press-pubs.uchicago.edu/founders/documents/v1ch14s50.html> 6th paragraph up from bottom

John Dickenson (Fabius) letter III, 1788: “In short, the government of each state is, and is to be, sovereign and supreme in all matters that relate to each state only. It is to be subordinate barely in those matters that relate to the whole; **and it will be their own faults if the several states suffer the federal sovereignty to interfere in things of their respective jurisdictions.** An instance of such interference with regard to any single state, will be a dangerous precedent as to all, and therefore will be guarded against by all, as the trustees or servants of the several states will not dare, if they retain their senses, so to violate the independent sovereignty of their respective states,
http://archive.org/stream/lettersoffabiusi00dickuoft/lettersoffabiusi00dickuoft_djvu.txt

Samuel Adams, letter to Richard Henry Lee 1789: “I have always been apprehensive, that . . . misconstructions would be given to the federal constitution, which would disappoint the views and expectations of the honest among those who acceded to it, and hazard the liberty, independence, and happiness of the people. I was particularly afraid, that unless great care should be taken to prevent it, the constitution in the administration of it, would gradually, but swiftly and imperceptibly run into a consolidated government, pervading and legislating through all the states, not for federal purposes only, as it professes, but in all cases whatsoever : such a government would soon totally annihilate the sovereignty of the several states, so necessary to the support of the confederated commonwealth, and sink both in despotism.”
https://archive.org/stream/memoiroflifeofri01leer2/memoiroflifeofri01leer2_djvu.txt then Ctrl+F and search for “I was particularly afraid” to get through the hieroglyphics at start of page.

Thomas Jefferson, Resolutions Relative to the Alien and Sedition Acts 10 Nov. 1798: “8th Resolved . . . That they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration that that compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these States, of all powers whatsoever: **that they will**

view this as seizing the rights of the States, and consolidating them in the hands of the General Government, with a power assumed to bind the States, (not merely as the cases made federal, (casus foederis,) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: **that this would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority;** and that **the co-States, recurring to their natural right in cases not made federal, will concur in declaring these acts void, and of no force, and will each take measures of its own for providing that neither these acts, nor any others of the General Government not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories.**
<http://press-pubs.uchicago.edu/founders/documents/v1ch8s41.html>

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Additional informational resources: Watch the 2 dvds “What are they not telling you?” and “Change it or obey it?” - links to YouTube are here:
<https://www.youtube.com/watch?v=If0IXYj7jNY&t=4s> & <https://www.youtube.com/watch?v=tB1QNdDomI8>

. . . Learn the falsehoods being disseminated by the COS marketers. Then vote NO on calls for an Article V convention - or YES on bills to rescind prior calls.).

. . . Support state legislation such as the Texas Sovereignty Act - it sets up a proper way for the Texas legislature to say “NO” to unauthorized federal acts. Please choose to “enforce”, not “amend”, the U.S. Constitution. If you vote to “amend”, then you should also vote separately to “enforce” - because an “amended Constitution” would need State action to “enforce” it just as much as an “unamended Constitution.

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filename on Carter's computer= c:\David\My Documents\War\Constitutional issues\10th_State Sovereignty, Enforcement, Nullification\Constitution_Enforce & nullification\“Amend or Enforce – Two competing views – how to deal with a federal government gone ‘rogue’ v9 11Feb22 v8 10Feb22.docx v7 3Feb22 v6 30Dec21