



Written by [Staff](#) on January 23, 2017

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Letters to the editor

Beating Bad Law

I read Steve Byas' article in the November 7 edition, regarding Senator Mike Lee addressing violations to the U.S. Constitution. There are further corrections that need to be addressed. Here is a major one: removing bad judges from the bench and erasing their unconstitutional judgments.

Federal judges can only rule on that which is expressly written in the U.S. Constitution. Article III, Section 1 states a judge's ability to hold office is premised on good behavior. Good behavior means to comply with the U.S. Constitution. A judge has acted in bad behavior whenever a decision violates the U.S. Constitution. Consequently he should be removed from office.

Then bad judges' bad law needs to be dealt with. As Chief Justice John Marshall stated in the landmark case *Marbury v. Madison*: "Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument."

Voiding of an unconstitutional act dates to when the act occurred, not when it was decided by any branch of government. Therefore the People need not comply with an unconstitutional act from the date the act was created.

The question then becomes how can the People uphold the U.S. Constitution? The answer lies within that document. Amendment VII states: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

This provision was not considered a passing thought by the Founding Fathers nor did it pertain only to civil suits. In their time the common law was common practice. It is also rooted in Article III, Section 2, Clause 3: "The Trial of all Crimes, except in Case 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."

Under common law only the jury considers all matters of law and fact, and it cannot be overturned unless done by another common-law jury as referenced in Amendment VII. Alexander Hamilton confirmed this fundamental principle in *The Federalist*, No. 81.

This reduces the role of a judge to merely referee to ensure court procedures are followed and as an advisor to the jury should they have any questions for the judge on a point of law. Neither the judge nor the prosecuting attorney can instruct a common-law jury on any matter of law and fact. A common-law jury is not required to follow statute law, since the former is not premised on the latter but instead their collective common sense, as has been the case dating back to the origins of the common law in medieval England.

Moreover, the prosecuting attorney must issue an indictment before the common-law grand jury or the grand jury can initiate the process with a presentment. The prosecution cannot proceed without the common-law grand jury's consent. The grand jury operates independently of the other three branches



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per the late Justice Antonin Scalia's decision in the case of *U.S. v. Williams* via other cases he cites: "Rooted in long centuries of Anglo-American history, the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles. It is a constitutional fixture in its own right."

The U.S. Constitution gives the People the power to uphold it and their unalienable rights, but it is only effective if the People educate themselves and each other, and maintain a constant vigil.

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