



Jefferson, State Sovereignty, and the Constitution

It is not surprising then, given Jefferson's admiration and estimation of Wythe's character and insight, that it is to him that on September 16, 1787 Jefferson penned the following expression of his notion of the principles of good government. That letter, written on the very day before the delegates to the convention in Philadelphia would endorse the Constitution of the United States, read in relevant part:



You ask me in your letter, what ameliorations I think necessary in our Federal Constitution. It is now too late to answer the questions, and it would always have been presumptuous in me to have done it. Your own ideas and those of the great characters who were to be concerned with you in these discussion will give the law, as they ought to do, to us. My own general idea was that the States should severally preserve their sovereignty in whatever concerns themselves alone, and that whatever may concern another State or any foreign nation should be made a part of the Federal sovereignty; that the exercise of the Federal sovereignty should be divided among three several bodies, Legislative, Executive, and Judiciary, as the State Sovereignties are; and that some peaceable means should be contrived for the Federal head to force compliance on the part of the States....”

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As he alludes in his letter to Wythe, Jefferson was not present at the Constitutional Convention. He was in Paris, but remarkably the principles of sound government explicated by Jefferson in this missive were nearly identical to the precise arrangement established by the Convention and embodied in the Constitution produced by their thoughtful and impassioned deliberations.



Written by [Joe Wolverton, II, J.D.](#) on September 16, 2010

Jefferson's first priority, as stated above, is the protection of state sovereignty. After years of federal overreaching and collusion among the three branches of government to expand the bailiwick of the national government, the states are beginning to reassert their natural right of self-determination and their "Lockean outburst" is ringing in the ears of Establishment politicians in both parties, on both coasts, and in every state in between. If Leviathan is to be cowered and restrained by the fetters of Constitutional limited government, then it will surely be the states and the citizens thereof that will deserve the credit.

Part of Jefferson's defense of the sovereignty of the several states concerns the right implicit in that status to legislate in matters that "concern themselves alone." There is probably no principle of Constitutional law more debated in the daily newspapers of our day than this one. Arizona, Pennsylvania, Oklahoma, Utah, and other states have expressed their control over their own borders by enacting laws proscribing the presence of illegal aliens within their boundaries. With various methods, these sovereign states have boldly defended the rights and safety of those legally present in their territory and upon whom they depend for their legitimacy. Many opposed to the enactment of these statutes argue that immigration and the control thereof is a matter within the exclusive jurisdiction of the federal authority. This attitude ignores a hundred years of American jurisprudence and Constitutional interpretation, as well as the clearly expressed intent of the Founders (see, for example, [this article](#) published recently in *The New American*).

James Madison, Father of the Constitution and longtime friend of Thomas Jefferson, summed up the Founders' position simply and succinctly: "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." Statists disregard such clear statements, preferring instead to wrest from the imagined penumbras and emanations of the Constitution the scaffolding upon which they will construct their temple to the goddess of Progress.

The division of power among three departments was well-established years before Jefferson espoused such in his wish list to George Wythe. In his influential book *L'Esprit des Lois (The Spirit of the Laws)* Charles de Secondat, Baron de Montesquieu, described this critical separation of the various powers of government as essential to liberty.

In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.



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Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

In the spirit of giving credit where credit is due, however, one must admit that Montesquieu only paraphrased a doctrine of good government praised by philosophers centuries before he was a household name on two continents. Polybius, for example, in his history of the laws of Rome, ascribed the strength and longevity of the Roman constitution to its enshrinement of a mixed government, that is a single state with elements of all three forms of government at once: monarchy (consuls), aristocracy (Senate), and democracy (popular assemblies). This unique mixture and division of power requires each of the three branches of government to at once check the strength of and balance the weakness of, the other two. (See Book VI of Polybius's *Histories*).

Finally, Jefferson recommends the endowment of the federal government with the power to "force compliance on the states...." This statement is in no way inconsistent with Jefferson's jealous defense of the right of states to rule themselves. Jefferson and his generation were acquainted with the dangers and delay that accompany an impotent central authority. The United States were too much of the latter and too little of the former under the Articles of Confederation. Local concerns and regional disputes were spinning the states into centrifugal chaos and were exposing them to the whims of the government of His Majesty that they had so recently shuffled off.

To the end of remedying this weakness through the formation of "a more perfect union," the Convention of 1787 was held in Philadelphia from May to September of 1787. While the compromise hammered out by the delegates of the twelve states present at the convention is not perfect, it is certainly an improvement on the government created by the Articles of Confederation and it is inarguably the finest expression of the timeless principles of sound and limited government ever produced by the mind of mortals in the history of mankind. The novelty of the experiment in harmony with the peculiar genius of the American people, a people inculcated from the cradle with zeal for liberty, combined in that document to produce a penetrating peal of freedom that is ringing still.

For tomorrow: the story of the final day of the Convention.



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