

Constitutional Corner – America’s Fundamental Principles: The principles of abolishing and reforming government

"If there be a principle that ought not to be questioned within the United States, it is, that every nation has a right to abolish an old government and establish a new one. This principle is not only recorded in every public archive, written in every American heart, and sealed with the blood of a host of American martyrs; but is the only lawful tenure by which the United States hold their existence as a nation."¹

OK, Mr. Madison, we will not question this. But while this principle may still be “recorded in every public archive,” I’m not sure it remains “written in every American heart;” in fact, I’m sure it is not. I’m reasonably certain that if Jessie Waters conducted another of his famous street polls and asked: “Do the American people have a right to abolish and reform their government?” the average response would be a puzzled look followed by: “No, and why would they ever want to do such a thing?” Americans who emerge from our public education system are taught to be polite global citizens, definitely not revolutionaries.

This reaction comes as a natural result of downplaying the Declaration of Independence in our national consciousness. Despite its status as part of our nation’s Organic Law, except for perhaps on July 4th, few Americans ever visit or revisit its truths. And the federal government has gone out of its way to make what Madison might have called “revolutionary governmental reform,” dangerous. Consider these extracts from the U.S. Code:

Rebellion or insurrection. Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof ... shall be fined under this title or imprisoned not more than ten years, or both.... 18 U.S.C. §2383.

Seditious conspiracy. If two or more persons ... in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, ... they shall each be fined under this title or imprisoned not more than twenty years, or both. 18 U.S.C. §2384.

Advocating overthrow of Government. Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State ... by force or violence, * * * Shall be fined under this title or imprisoned not more than twenty years, or both.... 18 U.S.C. §2385.²

¹ James Madison, Helevidius, No. 3, 1793.

² Found at <http://lonang.com/commentaries/foundation/right-to-alter-or-abolish-government/>.

So who is right? Madison or the federal government? Do we have a right to abolish and replace our government or will we go to jail for even “advocate[ing], abet[ing], or advis[ing]” such a thing? Am I at risk for even writing on this subject?

Let’s first review where the idea came from and how it came to reside with Americans.

In mid-June 1776, Thomas Jefferson, loser of the argument with John Adams over who should draft the declaration, wrote: “whenever any Form of Government becomes destructive of [the responsibility to secure our rights], 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.”³

This was not Mr. Jefferson’s novel idea. The principle of abolishing and reforming government was well-known in colonial America, at least to anyone who had read John Locke’s Second Treatise on Government.⁴ What had Mr. Locke said?

Locke said that in a “Constituted Commonwealth” the Legislature is supreme -- except that the people who emplaced the Legislature retain “*a Supreme Power to remove or alter the Legislative, when they find the Legislative act contrary to the trust reposed in them.*” The Legislature is acting as a fiduciary in trust to the people and any “*Legislative act contrary to the trust reposed in them*” forfeits that trust and the power the people gave the Legislature “*devolves*” back into the hands of the people. The people, “*the Community,*” perpetually “*retains a Supreme Power of saving themselves from the attempts and designs of any Body, even of their Legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the [Community’s] Liberties and Properties... For no Man, or Society of Men, having a Power to deliver up their Preservation, or consequently the means of it, to the Absolute Will and arbitrary Dominion of another.*” The Community retains “*a right to preserve what they have not a Power to part with.*”

Thus we see that the right to abolish government is an act of self-preservation, thus an inalienable right granted by God. But when can this right be invoked? Locke says the passage of any legislative act “*contrary to the trust reposed in [the Legislature]*” is grounds for invoking this right. Were that the case, the passage of the Affordable Care Act itself would provide such grounds. Despite consistent national polls showing a 60% or better disapproval, the Democrat-

³ Here’s an interesting paradox: if governments are instituted to secure our rights and we have an inalienable right to abolish and replace government, how does government secure this right, which will result in its own abolishment?

⁴ We know Jefferson received a copy from a bookseller in late 1769, but we are also reasonably certain it was among the books destroyed when his manor house, Shadwell caught fire on 1 Feb 1770. There is reliable evidence, however, that Jefferson, a prodigious reader, became familiar with the contents; he probably consumed the book the moment it arrived.

controlled Congress passed it anyway. The President and his supports wanted it - that was enough. But Jefferson must have realized that the passage of a single onerous, even disastrous bill, was shaky justification.

In another part of Second Treatise, Locke provides us with a second justification for replacing the government.

“The constitution of the legislative is the first and fundamental act of society, whereby provision is made for the continuation of their union, under the direction of persons, and bonds of laws, made by persons authorized thereunto, by the consent and appointment of the people, without which no one man, or number of men, amongst them, can have authority of making laws that shall be binding to the rest. When any one, or more, shall take upon them to make laws, whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection, and may constitute to themselves a new legislative, as they think best, being in full liberty to resist the force of those, who without authority would impose any thing upon them. Every one is at the disposal of his own will, when those who had, by the delegation of the society, the declaring of the public will, are excluded from it, and others usurp the place, who have no such authority or delegation.”⁵
(emphasis added)

Thus Locke says that to allow laws to be made in a manner not approved by the people constitutes grounds for “*constitut[ing] to themselves a new legislative.*” But is Locke talking about a “remove and replace” operation, or replacement, as we potentially do every two years in this country, through election? Given a 96% incumbency rate in the House of Representatives, elections would seem to fall short as an effective replacement mechanism.⁶

As I’ve pointed out in earlier essays, Congress’ delegation of legislative authority to executive branch agencies is a problem. Yes, it has been blessed by the Supreme Court,⁷ but did “the people” approve this change in our constitutional order? I certainly wasn’t asked; how about you?

In other words, our current Administrative State, itself provides grounds for revolution.

Back to Locke, another justification for “remove and replace” occurs “whenever [the Legislature] shall be so foolish, or so wicked, as to lay and carry on designs against the Liberties and Properties of the [the Community].” Would driving the nation into near-bankruptcy and putting at risk the saved wealth of most Americans not qualify? Perhaps, but Jefferson didn’t

⁵ John Locke, Second Treatise on Government, CHAP. XIX. Of the Dissolution of Government.

⁶ <https://www.opensecrets.org/bigpicture/reelect.php>

⁷ *Mistretta v. United States*, [488 U.S. 361](#) (1989).

focus on any of these aspects of Locke's reasoning. He changed the equation completely; a "long train of abuses and usurpations, pursuing invariably the same Object" would be the necessary pre-requisite to "throw off such Government, and to provide new Guards for their future security."⁸

So have the American people sustained a "long train of abuses and usurpations?" That's where it gets sticky. To those on the Right, particularly the Tea Party groups, the answer is obvious: we passed that point long ago. John Whitehead's "The Second American Revolution" was published in 1982! But even some on the Left are coming to the same conclusion. In "Wages of Rebellion, The Moral Imperative of Revolt", published just last year, journalist Chris Hedges argues that "We live in a revolutionary moment. The disastrous economic and political experiment that attempted to organize human behaviors around the dictates of the global marketplace has failed....The Constitution remains in place but has been so radically reinterpreted by the courts and by the executive and legislative branches of government, all serving corporate power, as to be essentially nullified."⁹

Hedges is careful to point out: "While violence and terrorism are often part of revolutions, the fundamental tool of any successful revolt is the nonviolent conversion of the forces deployed to restore order to the side of the rebels. Most successful revolutions are, for this reason, fundamentally nonviolent."¹⁰ In other words: if you don't have the nation's armed forces on your side: forget about it! I doubt Hedges is in danger of a visit from Homeland Security anytime soon, he holds up as examples, only small acts of rebellion and revolt, not outright insurrection. But he also applauds as heroes those who today some call "eco-terrorists," people who pour concrete down fracking pipes, as well as Julian Assange of Wikileaks fame, who "Chelsea Manning" (Hedges refers to Manning as "she") provided a half-million classified documents. Hedges is no Tea-Partier.

So back to the point, when do we decide that the "long train of abuses and usurpations" threshold has been reached and, more importantly, what do we do about it?

The titles of many books suggest we have,¹¹ and continue to suffer that "long train of abuses and usurpations." Presidents abuse their executive power nearly unmolested by Congress, certainly not impeached. The Congress enjoys and exploits unenumerated power the Court has given it. The Courts facilitate multiple usurpations of the State's and the People's reserved

⁸ Thomas Jefferson, Declaration of Independence, July 4, 1776,

⁹ Chris Hedges, *Wages of Rebellion, The Moral Imperative of Revolt*, Nation Books, 2015, pp. 1, 17.

¹⁰ *Ibid*, p. 3.

¹¹ Some examples: *The Struggle to Limit Government*, by John Samples, *Restoring America, One Country at a Time*, by Joel McDurmon, *Restoring the Lost Constitution*, by Randy E. Barnett, *The Constitution in Exile, How the Federal Government has Seized Power by Rewriting the Supreme Law of the Land*, by Judge Andrew P. Napolitano, *Our Lost Constitution*, by Senator Mike Lee, to name just a few.

power without hindrance, and even applauded at times. In my view, and I'm sure many will agree, the time for action is upon us.

So how do we go about "abolishing and reforming" our government without getting shot or thrown in jail? More than one author I've encountered recently echoes Charles Murray when he writes: "[W]e are at the end of the American project as the founders intended it."¹² Will it take a "revolution?"

Author Garry Wills reminds us in "Inventing America, Jefferson Declaration of Independence" that the word "revolution" originally had a more benign even mundane meaning, and that many of the colonies had gone through "revolutions" of their own before 1776. "Americans had undergone their own smaller revolutions while adjusting to the expulsion of James in 1688. The Dominion of New England was dissolved and Governor Andros imprisoned, while a committee of safety took it upon themselves to govern Massachusetts"¹³ Let's review some other instances of American "revolution."

In 1776-1780, eleven of thirteen colonies, now states, unilaterally replaced their old governments by enacting new Constitutions. The people were not always asked whether they endorsed the new document (Virginia being one example, the new Constitution was not put to a popular referendum; it was just put into operation).

In 1781, the thirteen states voluntarily joined themselves in a "perpetual league of friendship" that lasted a short six years before it became apparent the Confederation was on the verge of dissolution.

In 1787, the thirteen states took the initiative to hold a "Grand Convention" to "render the Federal Constitution adequate to the exigencies of the Union."

Each of these constituted a "revolution" in government.

The 1787 Constitution is what we ostensibly operate under today. But as Chris Hedges points out: "The Constitution" has been "essentially nullified." I would say, instead, that the Constitutional safeguards of liberty and freedom, of property and contract, the right to live your live unmolested as long as you respect the rights of others, have been effectively nullified.

So what are the remedies available to us?

Secession is one.

¹² Charles Murray, *By the People, Rebuilding Liberty Without Permission*, Crown Forum, 2015, p. xiii.

¹³ Garry Wills, *Inventing America, Jefferson's Declaration of Independence*, Doubleday & Company, 1978, p. 53.

Nowhere in the Constitution is secession prohibited and many contend that the Founders would have supported the idea. “The Civil War proved that is not an option,” say some. No, the “Civil War” proved that under a President Lincoln such would not be countenanced, so I return to my first point: show me where in the Constitution peaceful secession is prohibited.

The Texas Constitution specifically reserves to its citizens the “inalienable right to alter, reform or abolish their government in such manner as they may think expedient.” (emphasis added) Many other state Constitutions include the exact or similar language. When Virginia ratified the Constitution they stated that “that the powers granted under the Constitution, being derived from the people of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression.”

How are these powers to be resumed by the people of Virginia? I guess that’s up to us to figure out, but abolishing and reforming government by secession seems to me to provide one mechanism.

I’ll admit, there seems to be little taste for abolishing the government these days, not with nearly 50% of the citizenry dependent upon that government for most, if not all of their financial support.

So what if we focus instead on the “reforming” part of the equation? Here remedies abound.

In his 2015 book “By The People, Rebuilding Liberty Without Permission,” Charles Murray proposes individual acts of rebellion through ignoring federal regulations, not paying taxes. A fund would be set up (by whom is yet to be determined) to defend such persons in court. Once the government saw that they would have to take each case to court, and they they couldn’t afford the time or resources to do so, the government would change or repeal the onerous regulations. Could happen. What else?

“Elect better representatives.” Certainly. Many of the present ones have failed us miserably. But what constitutes a “better” representative, how do you determine whether you’ve found a candidate, and how do you convince 51% of the electorate to vote for him or her? Is there a plan lurking out there to accomplish this?

“Educate the American People.” Certainly. The average American knows little to nothing of the Constitution and the history behind it. But how many of the 325 million Americans need to attend a class on the Constitution (OK, nearly all of them), how many classes are available, and how long will this project take given that the public school system continues to pump out nearly 3 million constitutional illiterates each June. Is there a plan lurking out there to accomplish this?

“Force Congress to abide by the Founders’ Constitution and its limited, enumerated powers.” This suggestion is one of my favorites because it reflects a total unwillingness to accept reality. Congress today doesn’t have to abide by the original limitations of the Constitution because the Supreme Court has erased them; even Chris Hedges, an avowed Progressive, admits this. Congress has been given the legal latitude to do everything they do, and the only way to change Congress’ behavior is to change a supermajority of Congress; 290 Representatives and 67 Senators¹⁴ have to be replaced with people pledged to ignore the expansive power the Supreme Court has provided them and instead agree to begin dismantling a government we can no longer afford, financially or constitutionally. Is there a plan lurking out there to accomplish this?

“The states must nullify unconstitutional federal actions.” Certainly. But as the now-defunct nullification of the Real ID Act demonstrates, nullification does not change the law, and the federal government is still free to enforce that law to the extent of its own resources. If you want to fly on the nation’s airlines, your state will have to comply with the Real ID Act. Nullification has some gaping limitations.

That leaves amending the Constitution, the “Holy Grail” to some conservatives. They think the Constitution is fine as is, we only need to obey it; and if you go “tinkering” with it you could lose the whole enchilada.

I must ask: would replacing the U.S. Constitution wholesale be outside the rights of Americans?

“No,” they must admit, “but any replacement would definitely be worse, just look at the [“Constitution for the Newstates of America”](#) which has been ‘waiting in the wings’ since 1974.”

I’ll admit, the “Newstates” Constitution contains some terrible features, I would also suggest that the American people wouldn’t ratify it. But I would also not stand, I could not stand, in the way of a people who retain the right to “reform or abolish their government in such manner as they may think expedient.”

"Should the provisions of the Constitution as here reviewed be found not to secure the Govt. & rights of the States agst. usurpations & abuses on the part of the U. S. the final resort within the purview of the Constn. lies in an amendment of the Constn. according to a process applicable by the States."¹⁵

"If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be

¹⁴ The 2/3 majorities need to override expected Presidential vetoes and ensure the success of the project.

¹⁵ James Madison, Letter to Edward Everett, 1830.

the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."¹⁶

Congress could undertake the needed amendments themselves using “Option 1” of Article 5. They will not, of course, as they have ably demonstrated, until you achieve your 2/3 majority of “Constitutionalists” in both houses. Various Representatives and Senators routinely introduce amendment legislation in Congress and it is just as routinely ignored. Senator Zell Miller of Georgia, a Democrat, annually introduced legislation in the Senate to repeal the 17th Amendment during his term in office – and it was annually ignored.

For this reason, the Framers, George Mason specifically, provided us with “Option 2” of Article 5: a convention to draft amendments to the Constitution. I’ve argued for this in these and other pages and bills have been introduced in at least 21 states this year to call for just such a convention. I’ll not belabor the point.

Last year George Washington University law professor Jonathan Turley suggested the nation had been brought to a “[Constitutional Tipping Point](#)” by the Obama Administration. Everyone held their breath and waited to see the reaction – and the American people took no notice; the country plunged ever onward into deeper and deeper debt.

"The spirit of resistance to government is so valuable on certain occasions, that I wish it to be always kept alive. It will often be exercised when wrong, but better so than not to be exercised at all. I like a little rebellion now and then. It is like a storm in the atmosphere."¹⁷

The National Debt Clock is spinning away and everyone knows we have little time to make substantive changes to our federal government. Will we wait until there is no recourse but to march on Washington, D.C. perhaps to suffer the fate of [the veterans of 1932](#)? Or will we begin to reform our government through peaceful means and “resume the powers” that the federal government has “abused and usurped.”

While you are contemplating that answer, here are some examples, culled from last years “Week in Review” essays, of other things you might also consider.

In February, [a group of Missouri taxpayers](#) sought an injunction to halt implementation of Common Core in their state and found a favorable ear in Judge Daniel R. Green of the Circuit Court of Cole County.

¹⁶ George Washington, Farewell Address, 1796.

¹⁷ Thomas Jefferson, letter to Abigail Adams, 1787, referring to Shays Rebellion

Also in February, six Americans from six different states showed up at the local offices of their senator or representative and informed them of an "[Intent to Repossess](#)" their offices. The group is called: [AmericaAgain!](#) And they have a website that explains their goals.

In March, [two military veterans](#) issued citizen summons and had the Clark County Park District Board of Supervisors arrested because the Board was ignoring state law concerning required citizen comment periods in their public meetings.

Also in March, [a group of Christians conducted](#) a sit-in outside House Speaker John Boehner's office. The group's grievance was the "Pain Capable Unborn Child Protection Act," which was supposed to be voted on Jan. 22 in conjunction with the anniversary of Roe v. Wade. Boehner scuttled the bill at the last minute.

"I do not know whether it is to yourself or Mr. Adams I am to give my thanks for the copy of the new constitution. I beg leave through you to place them where due. It will be yet three weeks before I shall receive them from America. There are very good articles in it: and very bad. I do not know which preponderate. What we have lately read in the history of Holland, in the chapter on the Stadtholder, would have sufficed to set me against a Chief magistrate eligible for a long duration, if I had ever been disposed towards one: and what we have always read of the elections of Polish kings should have forever excluded the idea of one continuable for life. Wonderful is the effect of impudent and persevering lying. The British ministry have so long hired their gazetteers to repeat and model into every form lies about our being in anarchy, that the world has at length believed them, the English nation has believed them, the ministers themselves have come to believe them, and what is more wonderful, we have believed them ourselves. Yet where does this anarchy exist? Where did it ever exist, except in the single instance of Massachusetts? And can history produce an instance of a rebellion so honourably conducted? I say nothing of it's motives. They were founded in ignorance, not wickedness. God forbid we should ever be 20. years without such a rebellion. The people can not be all, and always, well informed. The part which is wrong will be discontented in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions it is a lethargy, the forerunner of death to the public liberty. We have had 13. states independant 11. years. There has been one rebellion. That comes to one rebellion in a century and a half for each state. What country ever existed a century and a half without a rebellion? And what country can preserve it's liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon and pacify them. What signify a few lives lost in a century or two? The tree of liberty must be

refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."¹⁸

This has been a long essay, much longer than normal, but the subject is perhaps the most imperative I've written about. If you still have a taste for more on this subject I offer: "[The Right to Alter or Abolish the Government: God Makes Nations, Men Make Governments](#)," by Gerald R. Thompson. It is extraordinarily well written and worth your time. You may download it and related essays [here](#).

We will be discussing this subject on "We the People, The Constitution Matters" on WFYL radio Friday morning, 29 January, 7-8am. You can "Listen Live" at www.1180wfyl.com, or you can later download the podcast of the show and listen at your leisure, or you can listen to one of the rebroadcasts. Hope you'll join us.

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¹⁸ Thomas Jefferson to William Stephens Smith, 13 Nov. 1787.