



# Tenth Amendment: Power **From** the People

Foundational Principles of the Revolution,  
From Sovereignty to Resistance

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*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.*

-Thomas Jefferson, Opinion on the Constitutionality of a National Bank (1791)

*"An act against the Constitution is void."*

-James Otis, Jr., Speech Against the Writs of Assistance (1761)

## **CONTENTS**

1. Natural Rights Foundation	4
2. Liberty is the Goal	12
3. Consolidation	20
4. Delegated and Reserved	30
5. Parchment Barriers	42
6. How to Stop the Feds	50



# 1. Natural Rights Foundation.

In a speech at the hotly-contested Massachusetts ratifying convention on Feb. 5, 1788, Theophilus Parsons affirmed one of the central principles from America's revolutionary tradition.

*“No power was given to Congress to infringe on any one of the **natural rights** of the people by this Constitution; and, should they attempt it without constitutional authority, the act would be a nullity, and could not be enforced.”* [emphasis added]

No one asked Parsons what he meant by “natural rights” because everyone knew what he was talking about. That is, all human beings are by nature free and equal, and the only legitimate government is one that is derived from the “consent of the governed.”

The philosophy underpinning the entire American system rests on a foundation of natural rights. Thomas Jefferson put those principles into words in the Declaration of Independence.

It made clear that the moral order, defined by our natural rights, comes first. The political and legal

order, which was structured to help ensure that those rights could thrive, comes second.

But Thomas Jefferson didn't invent these ideas. In a letter to Henry Lee, he noted that the object of the Declaration was "not to find out new principles, or new arguments." But rather, to express the "harmonizing sentiments of the day," as they were understood from people such as "Aristotle, Cicero, Locke, Sidney, Etc."

These ideas were, so to speak, "in the air" for many years.

In 1764, James Otis, Jr. put it this way in *The Rights of the British Colonies Asserted and Proved*:

*"The Colonists are by the law of nature free born, as indeed all men are, white or black."*

John Dickinson's *Letters from a Farmer in Pennsylvania*, published in 1767 in response to the hated Townshend Acts, were the most widely-read documents on American liberty until the publication of Thomas Paine's *Common Sense* in January 1776. They earned him the name "Penman of the Revolution."

In the last of these 12 letters, Dickinson expanded on this budding natural rights tradition.

*“Let these truths be indelibly impressed on our minds - that we cannot be HAPPY, without being FREE - that we cannot be free, without being secure in our property - that we cannot be secure in our property, if, without our consent, others may, as by right, take it away”*

While it might be one of the least-known documents from the revolutionary era, *The Rights of the Colonists* by Samuel Adams may have had the greatest impact on the members of the Second Continental Congress. As noted in *Life of Samuel Adams*, “Upon this paper was based all that was written or spoken on human liberty in the Congress which declared independence.”

Approved by Committee of Correspondence to the Boston Town Meeting (Nov. 20, 1772), it started with this:

*“Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they*



*can. These are evident branches of, rather than deductions from, the duty of self-preservation, commonly called the first law of nature.”*

Life. Liberty. Property. And the right to support and defend.

These are natural rights. And they are derived from the “first law of nature,” as Adams described it.

The “Father of the American Revolution” was not just building a case for putting natural rights front and center, he was reiterating and expounding on what so many Old Revolutionaries wrote years before.

This natural rights foundation drove an evolution in the understanding of “sovereignty” in American political thought.

When people today talk about the Revolution, they generally mean the war with the British. But a more fundamental revolution began long before the first shot was fired, ultimately driving the American colonists to seek independence. It was a revolution of thought based on natural rights,

and it radically altered the conception of “sovereignty” - or final authority, which had always rested in the hands of a single person or a small group of rulers.

In an 1818 letter to Hezekiah Niles, John Adams described the American Revolution in just such terms.

*“But what do we mean by the American Revolution? Do we mean the American war? **The Revolution was effected before the war commenced.** The Revolution was in the minds and hearts of the people; a change in their religious sentiments of their duties and obligations. ...*

*This radical change in the principles, opinions, sentiments, and affections of the people, was the real American Revolution.” [emphasis added]*

As the founders and old revolutionaries helped build and expand on the idea of natural rights, this led to a radical notion that drove the colonists to eventually part ways with England - the idea that government doesn't hold sovereignty, or final authority. If people have natural rights that cannot be violated, it follows

that government has limits and, in fact, can only exist by the “consent of the governed,” as Jefferson asserted in the Declaration.

In fact, the idea goes all the way back to the earliest colonial settlements. The Mayflower Compact reflected these ideas. By signing it, the parties did two things: First they set forth their common goals. Then, to accomplish their goals, they agreed to “combine ourselves together into a civil body politic . . . and . . . enact . . . such just and equal laws . . . as shall be thought most meet [appropriate] and convenient for the general good of the colony; unto which we promise all due submission and obedience.”

In other words, the signatories agreed to establish laws by common consent.

This conception of political power served as the foundation for the constitutional system the United States would eventually adopt.

In a speech during the Pennsylvania ratifying convention, James Wilson eloquently summed up this revolutionary American understanding of sovereignty.

*“The truth is, that, in our governments, the supreme, absolute, and uncontrollable power **remains** in the people. As our constitutions are superior to our legislatures, so the people are superior to our constitutions. Indeed, the superiority, in this last instance, is much greater; for the people possess over our constitutions control in act, as well as right.” (26 Nov 1787)*  
[Emphasis added]

This reaffirmed George Mason’s April 1775  
Remarks on Annual Elections for the Fairfax  
Independence Company:

*“In all our associations; in all our agreements let us never lose sight of this fundamental maxim - that all power was originally lodged in, and consequently is derived from, the people. We should wear it as a breastplate, and buckle it on as our armour.”*

Natural Rights. Sovereignty. Final Authority.

The goal was always to support and advance liberty, which we’ll cover next.



## 2. Liberty is the Goal

By the summer of 1783, the “free and independent” States had effectively won the War for Independence. But a question remained. Would they hold to their principles?

Just months after the fighting broke out in 1775, John Dickinson and Thomas Jefferson co-authored the *Declaration of the Causes and Necessity of Taking up Arms*, and the Second Continental Congress passed it on July 6. They wrote:

*“Our attachment to no Nation upon earth should supplant our attachment to liberty.”*

This echoed Samuel Adams, who in 1748 wrote that “true loyalty” was not to any individual or nation. Instead, “it is founded in the love and possession of liberty.”

In 1764, Dickinson had also called liberty “a foundation and security of all the rest.” And just 3 years later, he expanded on this in the last of his widely-read Letters from a Farmer in Pennsylvania.

*“Let these truths be indelibly impressed on our minds—that we cannot be HAPPY, without being FREE—that we cannot be free, without being secure in our property—that we cannot be secure in our property, if, without our consent, others may, as by right, take it away”*

Mercy Otis Warren reaffirmed these principles in her 1803 publication of *The History of the Rise, Progress, and Termination of the American Revolution*.

*“Every domestic enjoyment depends on the unimpaired possession of civil and religious liberty.”*

But even as the war with Great Britain was ending, the struggle for liberty was far from over.

While peace negotiations with Great Britain started as early as April 1782, a peace treaty still hadn't been signed in the summer of 1783. In fact, it wouldn't be finalized until September 3, 1783.

There was uncertainty domestically, too.

Although they had formed a union under the

Articles of Confederation, there was a great deal of tension between the states, which was exacerbated by a Congress with little real power. In an environment rife with distrust, Congress struggled to get anything done.

Some veterans threatened mutiny over a lack of payment from Congress.

Not to mention, the war saddled the United States with massive debt. In the midst of this uncertain and even chaotic atmosphere, General George Washington decided to offer some parting advice for the future success of the Union - his first "Farewell Address" - before retiring from command.

On June 8, 1783, he addressed his "Circular Letter to the States" to state executives, but he really intended it for the general public, and it was printed and distributed widely in the press.

Washington felt that winning the war left the people a great choice - happiness and freedom, or contempt and misery. But, he added it was ultimately up to the people themselves, not some far off empire.



*“At this Auspicious period the United States came into existence as a Nation, and if their Citizens should not be completely free & happy, the fault will be entirely their own.”*

This echoed Thomas Paine, who in 1776 wrote about the “birthday of a new world” in the Appendix to Common Sense:

*“We have it in our power to begin the world over again. A situation, similar to the present, hath not happened since the days of Noah until now.”*

As Americans strove toward Independence, both Washington and Paine asserted that sovereignty - final authority - was finally in the hands of the people themselves.

But having power means nothing if it's not exercised.

In his seventh Letter from a Farmer, Dickinson argued that real freedom was about much more than waiting for government to do the right thing. He wrote that a free people are not those *“over whom government is reasonable and equitably exercised.”*

Instead, a free people are those *“who live under a government so constitutionally checked and controlled, that proper provision is made against its being otherwise exercised.”*

In other words, people aren't free just because government happens to be doing the right thing. That's more like good fortune, and it's not permanent.

People are truly free only when **they don't allow** government to go beyond its limits.

As James Otis, Jr. put it in a 1767 essay under the name Freeborn American, *“If we do not resist at the first attack, it may soon be too late.”*

Thomas Jefferson took this another step in his 1774 Summary View of the Rights of British America.

**“A free people [claim] their rights**, as derived from the laws of nature, and not as the gift of their chief magistrate.” [emphasis added]

What path would the people take at this historic crossroads in 1783? Their choice, Washington

warned, was one that would reverberate for generations to come:

*“For with our fate will the destiny of unborn millions be involved.”*

Washington said “the people must never forsake the foundation,” if they are to secure happiness for those future generations.

**“Liberty is the basis** - and whoever would dare to sap the foundation, or overturn the structure, under whatever specious pretexts he may attempt it, will merit the bitterest execration and the severest punishments which can be inflicted by his injured country.” [emphasis added]

Liberty - built on a natural rights foundation - remains our basis today. In fact, it is our overarching goal. In his oration of March 5, 1772, commemorating the Boston Massacre, the great Revolutionary War Hero Joseph Warren summed it up perfectly:

**“May our land be a land of liberty**, the seat of virtue, the asylum of the oppressed, a name and a praise in the whole earth, until the last shock of

*time shall bury the empires of the world in one common undistinguished ruin!" [emphasis added]*

Liberty, unfortunately, has a lot of enemies.

And, as the Founders repeatedly warned us, few, if any, were more dangerous than “consolidation,” which we’ll cover next.



### 3. Consolidation

In one of his many passionate speeches during the Virginia Ratifying Convention, Patrick Henry issued a stark warning:

*“Dangers are to be apprehended in whatever manner we proceed; but those of a consolidation are the most destructive.”* (7 June 1788)

Henry warned consolidation, a term the Founders used to describe a centralized government with vast power and control, would “end in the destruction of our liberties.”

While Henry was arguing against ratification, supporters of the Constitution often made the same case.

For example, Fisher Ames said that “too much provision cannot be made against a consolidation” during the Massachusetts Ratifying Convention on Jan 18, 1788.

And on July 25, 1788, William Davie told the North Carolina Ratifying Convention that “so extensive a country as this can never be managed by one

consolidated government.”

Back in Virginia, William Grayson pulled no punches when he said “the idea of consolidation is **abhorrent** to the people of this country.”

And James Madison was also concerned about the prospect of consolidation and the possibility that the power of the general government would swallow up the states.

He considered the separation of powers so important he not only called it a “dogmatic maxim,” he expressly included it as part of his proposed amendments for the Bill of Rights.

The idea that political power should be separated predates the founding era.

In 1648, Clement Walker argued that the remedy for tyranny lay in a separation of “the Legislative power,” and “the Judicative power.”

John Locke’s 2nd Treatise in 1698 distinguished between legislative, executive, and federative powers.

But nothing had more impact on this part of the Founders' thinking than "the celebrated Montesquieu," and the "tripartite system" from *The Spirit of the Laws* (1748).

*"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.*

*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.*

*There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."*

During the ratification debates, there actually was



little to no discussion about *why* consolidation would lead to a destruction of liberty - both supporters and opponents of ratification mostly agreed that it would.

The debate was primarily over whether or not the proposed constitution would lead to such a thing.

In his first paper discussing the proposed Constitution, one of the leading Anti-Federalist writers, Brutus, gave possibly the best explanation. He pointed out that such a government could never rest on the consent of the people, that it would lead to factions and fighting, standing armies, and abuse of power, among other threats to liberty.

There was still some debate in Massachusetts, Virginia and elsewhere over just what qualified as a proper definition of “consolidation,” the general understanding was that it meant centralizing too much power in too few hands.

James Madison put it this way on June 16, 1788:

*“Were all powers vested in the general government, it would be a consolidated government”*

The notion that a far-off central government might try to exercise “all powers” was not a foreign one to people of the founding generation.

In fact, it was the **primary cause** of the American Revolution.

Although most history texts point to “taxation without representation” as a leading cause, focusing on this alone misses the bigger picture. This was just one well-known example of *how* the British government used their claimed power to make binding law in “all cases whatsoever.”

Passed in conjunction with the repeal of the Stamp Act, the Declaratory Act of 1766 asserted this very power, stating that Parliament “had hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America ... **in all cases whatsoever.**” [emphasis added]

The text was copied almost word for word from the Irish Declaratory Act of 1719, which removed Ireland's ability to govern itself, implying that the same fate would come to the American Colonies.

Just weeks after it passed, a young John Adams wondered how such a power might be used, writing in his diary, “I am solicitous to know whether they will lay a Tax, in Consequence of that Resolution, or what Kind of a Law they will make.”

And laws, they certainly did make.

Some that followed under this unlimited power included the New York Restraining Act (one of the Townshend Acts), the Tea Act, and the Coercive Acts.

In his oration commemorating the Boston Massacre (5 Mar 1775), John Hancock reminded the people of this unlimited power, and that the taxation without representation was just one result of it:

*“They have declared that they have ever had, and of right ought ever to have, full power to make laws of sufficient validity to bind the Colonies in all cases whatever. They have exercised this pretended right by imposing a tax upon us without our consent”*

The first sentence of the Declaration and Resolves of the First Continental Congress (14 Oct 1774) also cited this power as their top concern.

In the Declaration of the Causes and Necessity of Their Taking Up Arms (6 July 1775), Thomas Jefferson and John Dickinson made the case that it was pointless to list out all their grievances - because unlimited power means there will always be more.

*“But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can **“of right make laws to bind us in all cases whatsoever.”** What is to defend us against so enormous, so unlimited a power?”*

It also made its way into the Declaration of Independence:

*For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.*

And, in the Winter of 1776, after starting with a more famous line of “These are the times that try men’s souls,” Thomas Paine may have summed it

up best in The American Crisis No. I:

*Britain, with an army to enforce her tyranny, has declared that she has a right (not only to TAX) but “to BIND us in ALL CASES WHATSOEVER,” and if being **bound in that manner**, is not slavery, then is there not such a thing as slavery upon earth. Even the expression is impious; for so unlimited a power can belong only to God.*

In his Farewell Address (19 Sept 1796), Pres. Washington again warned of the dangers of consolidation, noting that allowing any branch of government to exercise powers meant for another (encroachment), would lead to consolidation - and despotism:

*“The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism”*

It was in this spirit that the founding generation sought to create a new system based on limited powers, with everything not expressly delegated to the federal government “reserved to the states, respectively, or to the people.”

This is the soul of the 10th Amendment, what Thomas Jefferson called the “foundation of the Constitution.”

We’ll discuss that next.



## 4. Delegated and Reserved

“WHO ARE A FREE PEOPLE?”

John Dickinson asked this very question (all-caps included) in the 7th of his “*Letters from a Farmer in Pennsylvania*,” written in response to the hated Townshend Acts of 1767.

His answer might surprise a lot of people today.

*“Not those, over whom government is reasonable and equitably exercised, but those, who live under a government so constitutionally checked and controlled, that proper provision is made against its being otherwise exercised.”*

To the “Penman of the Revolution,” people weren’t free just because the government didn’t happen to be violating their rights at that moment in time.

He viewed that as basically just good luck. In short, you can’t pin the fate of liberty on the hope that people with power won’t abuse it.

Patrick Henry passionately warned against



relying on government to do the right thing in a speech during the Virginia Ratifying Convention (5 June 1788)

*“Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.”*

As Dickinson noted, freedom only has a chance to thrive when the people throw up enough roadblocks to keep the government in check. That way, they don't have to rely on the goodness of those holding power to protect their liberties.

And that's the approach the Framers took at the Philadelphia Convention.

In his highly influential State House Yard Speech (6 Oct 1787), James Wilson explained how the proposed Constitution was novel in its structure, a new form of government grounded in delegated and reserved powers. This was almost a complete 180 in comparison to most governments in history, which usually had sweeping power

limited only by explicit restrictions. Wilson highlighted this dramatic difference by comparing the proposed Constitution to state constitutions the people were already familiar with.

He pointed out that under state constitutions, the people *“invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question, respecting the jurisdiction of the house of assembly, if the frame of government is silent, the jurisdiction is efficient and complete.”*

In other words, a state government could exercise any power that wasn't explicitly prohibited by the state Constitution.

But the Constitution for the United States is different. The general government can only exercise powers specifically delegated to it. All other powers are off limits. Wilson continued:

*But in delegating foederal powers, another criterion was necessarily introduced, and the congressional authority is to be collected, not from tacit implication, but from the positive grant*

expressed in the instrument of union. Hence it is evident, that in the former case every thing which is not reserved is given, **but in the latter the reverse of the proposition prevails, and every thing which is not given, is reserved.** [emphasis added]

Federalist supporters of ratification repeatedly made this same case - noting that anything not “expressly delegated” would be reserved to the states or to the people.

James Madison put it this way in *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. [emphasis added]

Edmund Randolph agreed in his June 10, 1788 speech in the Virginia Ratifying Convention:

*Every power not given it by this system is left with the states.*

In South Carolina, Charles Pinckney echoed this

in a speech supporting ratification (16 Jan 1788):

*“No powers could be executed, or assumed, but such as were expressly delegated”*

Even Alexander Hamilton made this same case in a speech to the New York Ratifying Convention (28 June 1788)

*“Whatever is not expressly given to the federal head is reserved to the members.”*

But, with a form of government so different from all the others, not everyone was convinced it was a good idea to just leave it unspoken.

Enter Massachusetts.

Records show that John Hancock was likely drafting recommended amendments for the proposed constitution as early as October, 1787 - just weeks after the Philadelphia Convention adjourned.

In January 1788, supporters of ratification polled delegates, and did multiple counts to gauge support for ratification. At the time, prominent supporters felt the opposition was firmly in the

lead. Defeat in Massachusetts was almost certain to lead to further losses in places like New York, Virginia, and elsewhere, spelling doom for ratification.

While some of the Massachusetts opposition was going to vote against ratification no matter what, many were willing to support ratification if their concerns over the proposed constitution “as it now stands” were addressed.

Under the leadership of Hancock, along with Samuel Adams, Theophilus Parsons and others, a deal was struck supporting ratification with a number of *recommended* amendments.

John Hancock delivered a speech on February 5 acknowledging that the proposed Constitution “has its defects.” But he argued that “as the matter now stands, the powers reserved by the people render them secure,” and that they should move forward with ratification. Hancock said, “I give my assent to the Constitution, in full confidence that the amendments proposed will soon become a part of the system.”

The promise of amendments was enough to swing the pendulum in support, and

Massachusetts ratified on February 6, 1788.

The first proposed amendment on that list set the foundation for what eventually became the Tenth Amendment:

**First,** *That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.*

Although he was in France, Thomas Jefferson wielded some significant influence during the later stages of the ratification debates. Initially, Jefferson wanted the remaining states to reject ratification in order to force amendments, but after Massachusetts ratified, he shifted his strategy and supported the Massachusetts approach. He explained this shift in a May 28, 1788, letter to Edward Carrington.

*“My first wish was that 9 States would adopt it in order to ensure what was good in it, & that the others might, by holding off, produce the necessary amendments. But the plan of Massachusetts is far preferable, and will I hope be followed by those who are yet to decide.”*

Jefferson's position likely helped sway opposition to ratification, particularly in his home state of Virginia.

South Carolina, New Hampshire, Virginia and New York all followed Massachusetts' lead and agreed to ratify the Constitution with similar recommended amendments, hammering home the principle of delegated and reserved powers.

But once the Constitution went into effect, it still took some time to draft and debate which amendments would be sent to the states for consideration. By August 1789, Samuel Adams was starting to get a little impatient.

Writing to Elbridge Gerry on August 22, he noted:

*I hope Congress, before they adjourn, will take into very serious Consideration the necessary Amendments of the Constitution.*

He continued, pointing out the importance of what became the 10th:

*[The people] wish to see a Line drawn as clearly as may be, between the federal Powers vested in Congress and the distinct Sovereignty of the*

*several States upon which the private and personal Rights of the Citizens depend. Without such Distinction there will be Danger of the Constitution issuing imperceptibly, and gradually into a Consolidated Government over all the States*

Two days later, he fired off another letter to his friend, and now Senator from Virginia, Richard Henry Lee:

*I mean, my friend, to let you know how deeply I am impressed with a sense of the Importance of Amendments; that the good People may clearly see the distinction, for there is a distinction, between the federal Powers vested in Congress, and the sovereign Authority belonging to the several States, which is the Palladium of the private, and personal rights of the Citizens.*

The rest, as they say, is history. The Tenth Amendment was finally ratified, along with the rest of the Bill of Rights, on December 15, 1791.

But, that's not really the end of the story.

While many people associate the Tenth Amendment with “states rights,” it actually serves two very important functions.



First, it's a legal "rule of construction."

It doesn't add anything to the Constitution, nor does it take anything away. But it serves a very important function. It tells us how to read the entire document. Think of it like a lens through which we evaluate everything the federal government does.

The Tenth Amendment makes explicit two fundamental constitutional principles that are implicit in the document itself.

1. The federal government is only authorized to exercise those powers delegated to it.
2. The people of the several states retain the authority to exercise any power that is not delegated to the federal government as long as the Constitution doesn't expressly prohibit it.

In a nutshell, the federal government has a very limited number of things it is authorized to do. These powers are listed throughout the Constitution.

Second, and possibly even more important, reserving power to the states ... "or to the people" affirmed a radical shift in American political

thought on the notion of “sovereignty,” or final authority.

Throughout history, this final authority was usually in the hands of a single person, like a king or queen, or a small cabal of oligarchs. But the American system flipped that on its head.

As James Wilson explained during the Pennsylvania ratifying convention, powers of both the “general government and the state governments” were “emanations of power from the people.” The 10th Amendment was widely understood to reaffirm this revolutionary principle.

As Tench Coxe put it January 1788:

*“The sovereignty of the people is never to be infringed or destroyed.”*

Thus, the Tenth Amendment is not so much about empowering state governments as it is about rejecting consolidation, one of the greatest threats to liberty.

Decentralization through federalism was established by the people of the several states to

give liberty a better chance to survive and thrive.

This one-two punch of a rule of construction and the sovereignty of the people is likely what motivated Thomas Jefferson to call the Tenth Amendment the “foundation of the Constitution.”

And although that foundation is strong, it can't defend itself. We'll cover that next.

## 5. Parchment Barriers

*“The powers reserved by the people render them secure”*

When making the case for ratification - with recommended amendments - at the end of the Massachusetts Ratifying Convention, John Hancock packed two essential principles in one short statement.

1. Sovereignty - final authority - rests with the people, not the federal government.
2. The people and the states are the true “checks and balances” on federal power.

Hancock, like so many other Founders and Old Revolutionaries, recognized that people with power were always likely to abuse and expand their power at the expense of liberty.

As Abigail Adams put it in a letter to John Adams (27 Nov 1775):

*“I am more and more convinced that Man is a dangerous creature, and that **power whether***

***vested in many or a few is ever grasping, and like the grave cries give, give.*** [emphasis added]

In what might be the greatest pun in history, Samuel Adams echoed this sentiment in a letter to James Warren (24 Oct 1780):

*“Power is intoxicating; and Men legally vested with it, too often discover a Disposition to make an ill Use of it & an Unwillingness to part with it.”*

George Mason recognized this maxim of human nature as well, noting that *“Those who have power in their hands will not give it up while they can retain it. On the contrary we know they will always when they can rather increase it.”*

John Dickinson wrote a series of essays urging ratification of the Constitution. Despite his support for the proposed system, in his fourth “Fabius” letter the “Penman of the Revolution” acknowledged the limits of a constitution in light of these problems of power and human nature:

*“A good constitution promotes, but not always produces a good ad-ministration.”*

On the day we commemorate as “Constitution Day” - Sept. 17, 1787 - the delegates at the Philadelphia Convention approved the Constitution and sent it to the states for ratification.

Even while making the motion for convention members to sign the document, Benjamin Franklin issued a dire warning:

*“This is likely to be well administered for a course of years, **and can only end in despotism**, as other forms have done before it.” [emphasis added]*

Today, many who say they support the founders’ vision, or liberty - or both - take the position that the Constitution **itself** has failed to keep the federal government within its proper limits.

For example, some libertarians cite 19th-century writer and individualist anarchist Lysander Spooner in the appendix to the 1870 printing of his great book “No Treason.”

*“But whether the Constitution really be one thing, or another, this much is certain - that it has either authorized such a government as we have had, or*

*has been powerless to prevent it. In either case, it is unfit to exist.”*

On the other hand, some constitutionalists take the position that all we need are some amendments to improve on what the Founders and ratifiers gave us in the Constitution.

They’ll tinker with clauses hoping to make sure that things are clear - now - finally. Or they’ll add new limits to ensure that federal politicians follow them today, and in the future.

As Dickinson noted, while getting the right words on paper - setting the rules and limits for government - can be extremely helpful in advancing liberty - relying on words alone misses the point entirely:

**Constitutions don’t enforce themselves. They never did. And never will.**

James Madison made this case in *Federalist* No. 48, referring to the proposed constitution he supported and helped draft as a mere “parchment barrier.”

*“Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and **to trust to these parchment barriers** against the encroaching spirit of power?” [emphasis added]*

Madison wasn't just speculating. He was relying on his knowledge of history.

But he observed that the framers of many state Constitutions hadn't learned this lesson, noting that *“This is the security which appears to have been principally relied on by the compilers of most of the American constitutions.”*

He observed that this wasn't enough.

*“But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government.”*

Madison, Dickinson, Franklin and others took the position that a good constitution is a good starting point. It makes it more difficult for the government to violate your liberty. But that



doesn't mean it will always play out that way.

You can't just rely on the document itself. You need something more to ensure "a good administration."

Going back to Madison, he closed out *Federalist* No. 48 with a similar observation.

*"The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands."*

Relying on the federal government to keep itself in check or thinking "fixing" the Constitution with amendments - **without something else** - defies the truth Dickinson, Franklin, Madison, Hancock and so many others gave us.

That is - however good a constitution might be, it can't enforce itself. It's up to the people to get the job done when the government refuses to follow the rules given to it.

That's just how Samuel Adams put it in an October 14, 1771 essay in *The Boston Gazette*:

*"The truth is, all might be free if they valued freedom, and defended it as they ought."*

How to defend freedom - whether the federal government wants us to or not - is what we'll cover next.



## 6. How to Stop the Feds

*“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”*

In his draft of Resolutions for Kentucky in response to the hated Alien and Sedition Acts of 1798, Thomas Jefferson spelled out the proper way to deal with the federal government.

But wait, there’s more.

Jefferson continued, *“where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy.”*

In short, “voting the bums out” is a strategy to use when the federal government implements bad policy, but still remains within the confines of the Constitution.

When they go beyond those limits, nullification is **“the rightful remedy.”**

Similar to his approach to writing the Declaration

of Independence, Jefferson's goal here was "not to find out new principles, or new arguments." Instead, he was reiterating long-held views that were foundational to the American Revolution.

The people understood that government overreach must be **resisted** or there's no reason for the government to stop overstepping its bounds.

This idea that overreaching government must be resisted stretched back to the earliest days of conflict between the American colonists and the British.

In 1764, James Otis, Jr. wrote:

*"He that would palm the doctrine of unlimited passive obedience and non-resistance upon mankind ... is not only a fool and a knave, but a rebel against common sense, as well as the laws of God, of Nature, and his Country."*

John Dickinson carried the idea forward, urging people to put this principle into practice in a November 1765 broadside calling for resistance to the hated Stamp Act.

*“IF you comply with the Act by using Stamped Papers, you fix, you rivet perpetual Chains upon your unhappy Country.”*

Dickinson explained why - precedent:

*“You unnecessarily, voluntarily establish the **detestable Precedent**, which those who have forged your Fetters ardently wish for, to varnish the future Exercise of this new claimed Authority.” [Emphasis added]*

Just days earlier, John Hancock summed up the sentiments of the time, warning his London Agent that *“the people of this country will never be made slaves of by a submission to the damned act.”*

Writing as Freeborn American in 1767, James Otis Jr. reiterated this view:

*“It is my countrymen of the utmost consequence that we boldly oppose the least infraction of our charter, and rights as men. Obsta Principiis is a maxim never to be forgot: If we do not resist at the first attack, it may soon be too late.”*

As the colonies marched toward independence,

John Adams brought these ideas together in his 1775 “Letters of Novanglus.”

“Obsta principiis—Nip the shoots of arbitrary power in the bud, **is the only maxim which can ever preserve the liberties of any people.** When the people give way, their deceivers, betrayers and destroyers press upon them so fast that there is no resisting afterwards. The nature of the encroachment upon the American constitution is such, as to grow every day more and more encroaching. Like a cancer, it eats faster and faster every hour.” [emphasis added]

Years later, in the debates over ratification of the Constitution that spirit of resistance was still alive, and it became part of the “checks and balances” intended to keep the proposed federal government within the limits of its delegated powers.

Dickinson, writing in favor of ratification in *Fabius* No. IV, asked the essential question – when government goes beyond its limits, “what is then to be done?”

The answer, he wrote, “is to be instantly found...

before the **supreme sovereignty** of the people.”  
[emphasis in original]

He continued:

*It is the DUTY of the people “TO WATCH, AND THEIR RIGHT TO TAKE CARE, THAT THE CONSTITUTION BE PRESERVED; Or in the Roman phrase on perilous occasions – TO PROVIDE, THAT THE REPUBLIC RECEIVE NO DAMAGE.”*

And yes, Dickinson did use all caps there too.

On the opposing side, we often found a similar view on sovereignty. For example, Mercy Otis Warren wrote *“That the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation.”*

Over and over again we find supporters of ratification arguing that the people have the duty and the ability to hold the proposed general government in check.

Future Supreme Court Justice James Iredell put it this way in the North Carolina Ratifying Convention:



*“The only resource against usurpation is the inherent right of the people to prevent its exercise. This is the case in all free governments in the world. The people will resist if the government usurp powers not delegated to it.”*

Notice he didn't consider resistance a mere “good idea,” or a **potential** solution. Iredell - like Jefferson - considered it essential, the “only resource” in response to usurpation - an exercise of powers not delegated in the Constitution.

He was far from alone.

Theophilus Parsons was a delegate to the Massachusetts ratifying convention and a supporter of the proposed Constitution. He later served as Chief Justice of the Supreme Judicial Court of Massachusetts. He recognized that parchment barriers need enforcement, and understood that states would have the power to oppose and defeat federal acts that go beyond the limits of the Constitution.

*“But there is another check, founded in the nature of the Union, superior to all the **parchment checks** that can be invented. If there should be a*

*usurpation, it will not be on the farmer and merchant, employed and attentive only to their several occupations; it will be upon thirteen legislatures, completely organized, possessed of the confidence of the people, and **having the means, as well as inclination, successfully to oppose it.***

[emphasis added]

Just months earlier, Roger Sherman of Connecticut made a similar case:

*“All acts of the Congress not warranted by the constitution would be void. Nor could they be enforced contrary to the sense of a majority of the States.”*

In these two short sentences, Sherman - the only person to have signed all four of the Continental Association, the Declaration of Independence, the Articles of Confederation, and the Constitution - perfectly summed up our approach today.

1. Acts outside the delegated powers are unconstitutional from the moment they go into effect.
2. While “void” in theory, it takes action and resistance from the people of the states to render

them void in practice and effect.

Writing as PUBLIUS just weeks later, James Madison made a similar case in *Federalist* No. 46, noting that “the means of opposition” to **unconstitutional** acts - and even constitutional acts that happen to be unpopular - “are powerful and at hand.”

In his four-step blueprint for how individuals and states can defeat federal programs without relying on the federal government to limit its own power, Madison recommended “*legislative devices*” and “*a refusal to cooperate with officers of the Union.*”

Should the people of a number of states use this approach simultaneously, wrote Madison, it “*would present obstructions which the federal government would hardly be willing to encounter.*”

Keep in mind that this was at a time when the government under the proposed Constitution was expected to be small - so small it would be unrecognizable in comparison to the monster state of today.

During the so-called government “shutdown” of

2013, the National Governors' Association thought they raised the alarm when they lamented that "states are partners with the federal government on most federal programs."

A 2021 Pew Research Foundation report on surface transportation funding reiterated this important point. The paper was the first in a series on "Fiscal Federalism in Action." In the "about this report" section, the authors make the same admission as the National Governors Association made eight years before.

*"The federal government and the states are partners in **almost every major domestic policy** area. **Together**, their dollars pay for health care, education, transportation, public safety, and many other programs important to the American public."*  
[Emphasis added]

Here's the dirty little secret they don't want you to know - partnerships don't work too well when half the team quits.

As Sherman put it, "*when [the federal government] overleaps those bounds and interferes with the rights of the State governments, they will be*

*powerful enough to check it.”*

The people and the states have always had the power to check the federal government. They just need the knowledge they possess it, and the courage to use it.

That doesn't mean that liberty will come easy in the face of the largest government in history. But as Thomas Paine implored the American revolutionaries in his Sept. 12, 1777 *American Crisis* essay, freedom requires effort.

*“Those who expect to reap the blessings of freedom, must, like men, undergo the fatigues of supporting it.”*

Samuel Adams may have summed it up best, writing as Candidus in the *Boston Gazette* (14 Oct 1771):

*“The truth is, all might be free if they valued freedom, and defended it as they ought.”*













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