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# COOPERATIVE FEDERALISM

How the States of the Union are  
Separate, Distinct, and Foreign  
to the United States

*Revised Edition*

Gerald Brown, Ed.D.



**Distress Publishing Trust**

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Dr. Gerald Brown is co-author of *IN THEIR OWN WORDS*, a 450 page resource book compiled exclusively of extracts from federal and state authorities establishing the jurisdictional authority of the federal and state governments. The book draws special attention to the issues of sovereignty, citizenship, the construction and interpretation of law, federal taxation, and remedies for the innocent. All cases were Shepardized prior to publication for timeliness and currency. Nearly all the citations in this essay can be found in that book. That book may be ordered from [www.LibertyMall.com](http://www.LibertyMall.com) or send your name, clearly written address and a donation in the amount of just \$24.00 plus \$5.00 for S/H in an envelope addressed to:

Gerald Brown, Ed.D.  
% Distress Publishing Trust  
1040 S. Mt. Vernon Ave., #G-118  
Colton, California 92324

[DistressPub@KingdomWeb.org](mailto:DistressPub@KingdomWeb.org)

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## How the States of the Union are Separate, Distinct, and Foreign to the United States

Things are not as they seem in American history and law. Most often, people speak and write as if America is one country operating under one government that has plenary authority throughout a single nation. Most often, people speak and write under the notion that any government in America, whether it be local, state, or federal, is all part of one gigantic system. The federal government is often described as both a national government and a central government. It is sometimes described as an umbrella government over the States. Conversely, the States are typically described as regions or subdivisions of the United States. History textbooks in schools and colleges, newspapers in common circulation, and other forms of media tell stories that lead one to believe that federal law supersedes State law because federal law is the law of the land and nation and, thus, State law must yield to the "higher" authority.

The problem with all this is that none of it is accurate or true to our American heritage. Every one of these positions is based on an assumed premise that is false. The result is that the American people are deceived regarding the proper role these governments are to have in their lives and acquiesce to government requests when the agents of government have no lawful authority to make the request.

From its beginning the federal government was designed to be a government of limited jurisdiction for specific, enumerated purposes, and not one of plenary jurisdiction over all of American society. The passion for individual liberty the Founding Fathers had is reflected in the design of the federal government as a government of limited authority that would not interfere in the lives of Americans, but would promote and protect personal liberty. For decades we Americans have been slowly, unwittingly, and nearly imperceptibly surrendering our unalienable rights to our federal government in many ways. This has allowed that government to grow into a huge, unwieldy machine in its behavior back toward the citizens of the States. In turn, each of the States exercises power over its people not authorized by fundamental law. Those in control of the machinery of government seem to be more interested in building the empire of government than in protecting and promoting the personal liberties upon which American society was founded and upon which it has flourished. Because we have lost sight of the nature of the relationship between the federal and State governments and the limited authority each possess, our individual rights and liberties have been trampled on, Americans are routinely coerced into doing things that fundamental law does not require, and both property and freedoms are being threatened and lost.

This essay is a brief outline of some of the legal aspects of early American history, the step-wise progress of how the United States government came into existence, the relationship between the States of the Union and the United States government as recorded in historical documents and court cases, and how it all applies to us today in the principle of cooperative federalism. I will show that the States of the Union existed before the United States government, that the people of the states created the United States government as a federal government, not as a national government, and that the United States government has limited authority within any of

the States of the Union. I will provide, in summary format, the dominant features of cooperative federalism as it is designed to operate in the American experience. My purpose is to expose the fallacy of the assumed premise that the federal government is superior to the States of the Union, that federal law supercedes State law, and that the United States of America is "one nation". Of course, this has strong implications with respect to the issues related to federal authority within the 50 States of the Union on *any* topic of law. I begin by establishing the context and setting the foundation as to why the States of the Union are nations and how they are separate, distinct, and even foreign to the United States.

I understand the disbelief and frustration many folk display with the position I express when I say that the States of the Union are separate, distinct, and foreign to the United States. When I first began my search for truth in this legal jungle, my mind was clouded with the rhetoric of the history textbooks and media jargon. I believe that, fundamentally, the disbelief is based on the popular notion which this current generation has very effectively been taught — the rhetoric that the United States is "one nation under God", when in fact, The United States of America is a collection of nations banded together for a common purpose. Because historians, politicians, journalists, and others are fond of referring to the mass of American society as a "nation", it is not well understood that the federal government has only limited authority that is separate, distinct, and foreign to the States of the Union. That the United States is separate, distinct, and foreign to the States of the Union is the basis for cooperative federalism in America and is a most fundamental part of our history and law. And it shows up in myriad ways which we often overlook. To understand this, one needs to go back in time to gain an overview of these issues.

### Colonies Become Sovereign Nations

Prior to the Declaration of Independence there was no general government among the colonies connecting one colony to any other save the relationship each had to the British crown. Each colony was established according to the terms of its own charter and its officials answered directly to the British government accordingly. The Declaration of Independence sought to terminate that relationship for each American colony. While the Declaration was worked out in a General Congress with representatives from each of the colonies, it did not create a general government nor a formal confederation among the newly declared States. The Declaration of Independence begins with a statement regarding the authority of governments to exist and claims that this authority is founded on God's approval and on the consent of the governed. The authors continue to cite truisms about the nature of man and society, but offer not the slightest legal basis for any of their declarations, claiming rather that their statements are self-evident. The majority of the document consists of a listing of claims that the King had abused the colonists by heavy handed ways. All this builds to the final paragraph where the declaration for independence is actually made. This culminating paragraph sets out the nature of these newly declared political claims, to wit:

"We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by the Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War,

conclude Peace, contract Alliances, establish commerce, and to do all other Acts and Things which Independent States may of right do. — And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor." Declaration of Independence, July 4, 1776.

The Declaration of Independence does not portend to create a single nation. If it did, its name should be "The State of New Britain", or "The State of America", or "The State of The New World", or any other name representing a single entity. But the proper name of our political arrangement is in the plural, not the singular. Also, the Declaration of Independence did not create a name for this alliance of American states. That came two years later with the Articles of Confederation. At the time of the Declaration, these American states were united in purpose and action to be free and independent of British rule first perhaps, but free and independent of each other as well.

By referring to Great Britain as a state, this paragraph tells us that the Founding Fathers understood a state to have the same status as any nation on the world scene. It is common to refer to Great Britain as a nation or a country, but most Americans are surprised to notice that Great Britain is a state. The first legal document in American history uses precisely that language.

Under international law as well as American law, the words "state" and "nation" mean exactly the same thing. Each State in our Union has its own constitution, its own land over which it exercises jurisdiction, its own citizens, its own legislative, executive, and judicial branches of government, police powers, prison system, and military (both the state's militia and the National Guard are under the control of the governor of the State as commander-in-chief). At the inception, each of the States issued its own money and had

tariff laws which operated on the importation of goods from each of the other states as well as from states outside of American society. Of course, if we stop to think about it, we hear from time to time on the news today about the "State of Israel" as well as the periodic gathering of the representatives of the "G-8 states" or the "G-8 summit". These G-8 states are not Tennessee, New York, California, or other States of the Union or subdivision of some larger entity. These states are the industrial and economic powerhouses of the world – France, Great Britain, Germany, Japan, etc. These nations are identified at the United Nations as "member states". Thus, it is perfectly within the proper usage of the terms "state" and "nation" to conclude that the Declaration of Independence created not one, but thirteen brand new nations or countries. The U.S. Supreme Court stated in the case of The Cherokee Nation v. The State of Georgia, 30 U.S. 1; 8 L.Ed. 25 (1831) that "The terms "state" and "nation" are used in the law of nations, as well as in common parlance, as importing the same thing;..." Thus, the state of Delaware is a nation. The state of Pennsylvania is a nation. The state of New Jersey is a nation. The state of Georgia is a nation. The state of Connecticut is a nation, and so on. Each of the newly declared American States is a nation that is separate, distinct, and foreign to each of the others as well as all other nations of the world. The claim to a change in status of being equal to the State of Great Britain, as opposed to being a dominion or canton of the British realm, was precisely what led to the American Revolution and it is the character which all States of the Union possess.

It is popular in some quarters today to think that Congress has the authority to create states. But that notion is not true to our history and law. Notice the following explanation in Chisholm, Ex'r v. Georgia, (Feb. 1794), from the U.S. Supreme Court:

"A State does not owe its origin to the Government of the *United States*, in the highest or in any of its branches. It was in existence before it. It derives its authority from the same pure and sacred source as itself: *The voluntary and deliberate choice of the people...* A State is altogether exempt from the jurisdiction of the Courts of the *United States*, or from any other exterior authority, unless in the special instances where the general Government has power derived from the Constitution itself... p. 448

"The question to be determined is, whether this State, so respectable, and whose claim soars so high, is amenable to the jurisdiction of the Supreme Court of the *United States*? This question, important in itself, will depend on others, more important still; and may perhaps, be ultimately resolved into one, no less *radical* than this- "do the people of the *United States* form a NATION?..

"By that law the several States and Governments spread over our globe, are considered as forming a *society*, not a NATION." [Italics & caps original.] Chisholm, Ex'r v. Georgia, 2 Dall. 419, 1 L.Ed. 440 (1794).

Here the U.S. Supreme Court informs us that our political arrangement of cooperative federalism does *not* make a nation, but rather a society. While the people of the several states share many things in common, each State retains its national character and political independence. Just a few years later the U.S. Supreme Court further stated in a landmark case dealing with the authority of a State to levy a tax on the operation of the United States within the State of Maryland, "No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass." M'Culloch v. The State of Maryland et al, 17 U.S. (4 Wheat.) 316; 4 L.Ed 579 (1819). How times have changed. As we look around today, it appears that many political dreamers have been wild enough to attempt exactly what the Supreme Court justices in 1819 never dreamed could be possible. But it is historically and

politically incorrect, as well as contrary to the determination of the U.S. Supreme Court, to refer to American society as a nation or a country. It is proper to refer to the American political alliance as a society.

### **The Alliance That Made The United States of America**

At the Declaration of Independence and the call to arms that immediately followed, it was widely believed that the colonists could not prevail against the British military power unless patriots throughout the states were to work in concert with each other. To bring about such cooperation, the Articles of Confederation were proposed in 1778, two years after the Declaration of Independence was made. The loose association that characterized the general cooperation among the people of the states began to change as the newly declared nations began to ratify the Articles of Confederation. Article I is the first instance where the American confederation was formalized with a title which named this alliance "The United States of America." Article II preserves the sovereignty and independence of each State, to wit:

"Article I. The style of this Confederacy shall be 'The United States of America.'

"Article II. Each State retains its Sovereignty, freedom and independence, and every Power, Jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled." Articles of Confederation-1778.

Through the Articles of Confederation the Founding Fathers recognized that each State was sovereign and independent of each other and that, while the Declaration of Independence expressed the collective will of the people of the American States united in purpose and action, that document did not attempt to create a single, unified government with one

jurisdiction — it merely recognized the several governments that were already in existence. And it did *not* create a federal government.

Here can be seen that "The United States of America" is an alliance of nations that are separate, distinct, independent, and foreign to each other, and do not make "one nation under God" as stated in the Pledge of Allegiance which was written many years later. The United States of America is an alliance of nations whose people have banded together in a political pact for a common (not "national") purpose. The United States of America is a confederation of sovereign States, not a consolidation of subject states into a single nation.

This relationship is not just an interesting fact of history, it is current law. The index of the California Family Law Code (established 1994) for the entry "foreign law", directs the reader to the statutes regarding extradition. There one will find annotated references to foreign jurisdictions. Interestingly, cases from Ohio, Pennsylvania, Missouri and other States of the Union are the only cases referenced as foreign law. The index to the California Education Code for the entry "in-laws" has the subheading "Death in foreign states, leave of absence" and references EDUC 44985. The only language in that code section that comes close to supporting the concept of "foreign states" is the phrase "out-of-state travel". Thus, anything outside California is foreign to California. Since all the States in the Union have the same status with respect to each other, this principle applies to every State of the Union. Each State in the Union is separate, distinct, and foreign to every other as the laws of one State do not operate within the borders of any other state.

While the Articles of Confederation were proposed in 1778, they were not ratified by all thirteen States until 1781, mainly because of issues involving the status of western lands. Upon ratification, Congress was authorized to survey the western territory by the Land Act of 1785. The Ordinance of



1787 provided for the government of the Northwest Territory, the first territorial government created by the United States. Because this land was not within any State, it was under the collective control of all the States of the Union through Congress. This model has been used by Congress, and later the federal government, throughout American history for establishing territorial governments in any of the territories belonging to America. There are currently 22 such territories. A complete list of these can be found in the Domestic Mail Manual. The most notable among these are American Samoa, Guam, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands. Just as the Northwest Territory did not have its own sovereignty, so these territories do not have sovereignty.

#### Why "Congress"?

Why did the Founding Fathers choose the name "Congress" as the name of the political body where the representatives from the several states would meet to work out their differences? They could have called their meetings a Parliament, an Assembly, a Forum, a Convention, the United States Legislature, or possibly something else. But why did they select the name "Congress" as the name for their meeting place? Black's Law Dictionary, Fourth Edition, 1951, page 373 defines "Congress" as:

**"CONGRESS.** In International Law. An assembly of envoys, commissioners, deputies, etc., from different sovereignties who meet to concert measures for their common good, or to adjust their mutual concerns.

"In American Law. The legislative assembly of the United States, composed of the senate and house of representatives (q.v.). U.S. Const. art. 1, section 1."

Congress, the legislative body of the United States, is a place where representatives from different sovereignties (i.e.,

the sovereign States of the Union) meet to work out problems for their common good. Thus, the very word "Congress" has embodied within it the concept that the sovereignty of any one State is separate, distinct, and foreign to the sovereignty and jurisdiction of every other State in the Union. However, while the Articles of Confederation recognized a Congress, the solutions proposed and agreed to there were not binding on the States, and each State was left to decide to what extent it would comply with the solutions worked out in Congress. Although historians love to refer to this arrangement as a weak central government or weak national government without the executive and judicial branches of government, in reality, there was no central or national government that applied to the states collectively. Congress was only a forum where issues could be discussed and solutions proposed, and it was up to the States to accept, reject, or modify the solutions as each, in its sovereign wisdom, saw fit. The Articles of Confederation served to keep the States bound together in Union but they did not make the States subservient to Congress.

#### The United States — a Federal Government

On September 17, 1787, eleven years after the Declaration of Independence and nine years after the Articles of Confederation were first proposed, the Constitution for the United States of America was proposed and subsequently sent to the States of the Union for ratification. This document, the U.S. Constitution, upon ratification of nine States (accomplished by the vote of New Hampshire on June 21, 1788) created the United States government as a federal government with limited, enumerated authority. Without this document there would be no United States government as we have it today.

Neither the U.S. Constitution nor the U.S. government were operational within a state just because nine States in the Union had ratified the document. Only upon its own

ratification of this document did the State cede the limited authority to the United States government for this federal government to have even limited authority within that state. Neither were the non-ratifying States permitted to participate in any federal functions without this ratification. For example, neither North Carolina nor Rhode Island participated in the first presidential election of 1789 because neither State had ratified the U.S. Constitution. North Carolina ratified on November 21, 1789 and Rhode Island ratified on May 29, 1790. Without this ratification, the new United States government did not exist for these States even though they were both members of the American Union pursuant to the Articles of Confederation.

The U.S. Constitution did not create a central government nor a national government over these thirteen nations. The purpose of this new government was "to form a more perfect union," *not a nation*. The words "nation" and "national" do not appear in the U.S. Constitution. The word "nations" (plural) is used twice (article I, section 8, clauses 3 and 10), but in both instances it is used in reference to geopolitical powers outside of American society. The U.S. Constitution could not bring into existence a national government because there were already thirteen sovereign nations in the American "league of friendship." Black's Law Dictionary, Revised Fourth Edition, 1968, sets out the distinction between a national government and a federal government at page 1176, to wit:

**"NATIONAL GOVERNMENT.** The government of a whole nation, as distinguished from that of a local or territorial division of the nation, and also as distinguished from that of a league or confederation.

"A national government is a government of the people of a single state or nation, united as a community by what is termed the "social compact," and possessing complete and perfect supremacy over persons and things, so far as they

can be made the lawful objects of civil government. A federal government is distinguished from a national government, by its being the government of a community of independent and sovereign states, united by compact."

Did you catch that? Black's Law Dictionary says that the government formed by a community of states is not a "national government"! How often we say it wrong! Rather than calling this new government a general government, central government, or national government (the U.S. Constitution does not provide a specific name, title, or style for the new federal government), it would be more accurate to refer to the federal government as a coordinating government. The role of the federal government is to coordinate various responsibilities among the States of the Union. To this extent and for this purpose *only*, the states delegated *some* of their authority to the new government (which is called the United States government by common convention). However, they specifically withheld authority from the United States government for those things not specifically delegated to it in the U.S. Constitution and preserved that relationship in the 10th Amendment as part of the Bill of Rights. The U.S. Constitution calls for the United States government to provide for a common defense (not a national defense), a common coin (not a national coin), regulation of interstate commerce, to establish post offices and post roads throughout the states, and other things stated in Article I, Section 8 of the U.S. Constitution. It was given a territory (the District of Columbia) that was separate from the States of the Union because it was to be foreign to the sovereignty of any state and not under the jurisdiction of any single state. The United States government is to be the agent of the people of the States and is not the same entity as "The United States of America" which is the alliance of American States. The United States government was formed to serve the community of American States.

**The People v. Naglee (Dec. 1850)** California Supreme Court

"In determining the boundaries of apparently conflicting powers between the states and the general government, the proper question is, not so much what has been, in terms, reserved to the states, as what has been, expressly or by necessary implication, granted by the people to the national government; for each state possesses all the powers of an independent and sovereign nation, except so far as they have been ceded away by the constitution. The federal government is but the creature of the people of the states, and, like an agent appointed for definite and specific purposes, must show an express or necessarily implied authority in the charter of its appointment to give validity to its acts." People ex rel. Attry. Gen. v. Naglee, 1 Cal. 234 (1850).

The nature of the federal government has not changed as American history marches forward. The U.S. Constitution requires that the federal government is still a government of limited, enumerated authority.

**Federations Outside of America**

Considering how sophisticated the arrangement between the States and the federal government is, one might easily wonder where the Founding Fathers got their ideas about a federal government that would serve to coordinate common issues among these newly declared American nations. For starters, they had to look no farther than the mother country.

What they called the State of Great Britain in the Declaration of Independence is actually a collection of three countries bound together by the English monarch whose jurisdiction was originally limited to England, but who over time conquered Wales and Scotland. To varying degrees, Ireland and portions of France were also ruled by the English Crown, but the English were not able to keep their holdings in France for more than a few years and the Irish were so

continually rebellious against English rule through the years that the British Parliament recognized the Irish Free State in the early 1920's as a self-governing dominion. Ireland became totally independent of all British rule in 1948. Only a few counties around Ulster in the northern part of Ireland elected to remain under British rule under the name of Northern Ireland. The collection of these four countries of England, Scotland, Wales, and Northern Ireland are properly known as the United Kingdom of Great Britain and Northern Ireland and the people of all four send their elected representatives to the British Parliament.

At the height of its power the British Empire was far more extensive than these four countries. "The sun never sets on the British Empire" was a slogan promoted by the British when the Empire encompassed more than a fourth of the world's land mass and a third of the world's population. But two world wars and other political and economic factors reduced the British Empire to a loose-knit Commonwealth of Nations whose members today are recognized as being independent nations which may or may not give allegiance to the British Crown. The Statute of Westminster (1931) put in legal form the Balfour Report of 1926 wherein the British Parliament declared that Great Britain and the self-governing dominions were "equal in status, in no way subordinate one to another." They are independent in foreign as well as in domestic affairs. However, allegiance to the British Crown is still evidenced in Canada, for example, by the decoration of British royalty on Canadian money and the National Anthem being "God Save the Queen". During the Summer Olympics of 2000 held in Sydney, Australia, Americans were reminded that Australians still pledge allegiance to the British monarch. The rise and fall of the British Empire is reminiscent of the same cycle experienced by the classical Roman Empire of centuries past.

The United Kingdom is but one example of nations that

have aligned themselves for specific political and/or economic purposes. There are several other federations that should be reviewed.

The former Union of Soviet Socialist Republics (USSR) was an alliance of Eastern European and Asiatic nations making up what was commonly called the Soviet Union. This alliance came into existence following the overthrow of the Romanov tsars of Russia in 1917. While Russia was the dominant state within the Soviet Union, it was only one of 15 socialist states in the federation.

One unique factor that sometimes chafed Western powers was the fact that three Soviet states, Estonia, Latvia, and Lithuania, were admitted into the United Nations as member states while at the same time fully members of the Soviet Union. This effectively gave the Soviet Union four votes at the United Nations. When the USSR fell apart in 1991, the fifteen sovereign states making up their alliance were still in place and each has maintained its independence.

The Socialist Federal Republic of Yugoslavia is another notable federation of several Balkan nations banding together to form a geopolitical alliance after the break-up of the Austro-Hungarian empire in 1918. The nations involved were Slovenia, Croatia, Bosnia & Herzegovina, Serbia, and Macedonia. In 1921 Montenegro, which has had a long history of strong political ties with Serbia, joined the alliance. Yugoslavia struggled to maintain its viability as a federation until 1945 when General Marshall Tito established it as a republic. With the death of Tito in 1980, the people of the individual republics of Yugoslavia began to express a desire for the federal government to lighten its grip and recognize greater autonomy for the republics and their people. But those in control of the machinery of their federal government were not willing to do so even though their federal constitution allowed any republic to secede. What has happened to these six countries lately?

With encouragement and aid of western nations, the Bosnia Parliament was the first to declare independence from the federal government of Yugoslavia in April 1991. The Croatia and Slovene Parliaments each declared independence in June 1991. Each of these three nations was admitted into the United Nations as member states in May 1992. The people of Macedonia achieved their independence in a peaceful way in the year from September 1990 to September 1991. In January 1992 it severed its relationship with the federal government of Yugoslavia and applied for membership in the United Nations in the summer of 1992. Armed forces from several western nations currently occupy Kosovo, a territory annexed by Serbia centuries ago, but which is now populated mainly by ethnic Albanians. In March 2002, representatives of Serbia and Montenegro, the two remaining nations in the alliance, signed an agreement to dismantle the federal government of Yugoslavia and create a new government that will more directly serve the needs of these two nations.

Currently the European Union (EU) is in the process of attempting to establish a strong political alliance of sovereign nations in Europe similar to what the Founding Fathers established on American soil more than 200 years ago. The Treaty of Rome of 1957 calls for an alliance of European nations that would promote a common unit of economic exchange, customs, free trade among the member states, and common rights among the peoples of the member states. This will include citizenship in the European Union and freedom to emigrate to any member state and fully participate in its political affairs including holding elective office. There are 15 nations currently participating in the alliance and 12 more that have applied for membership. While the Europeans have a great diversity of language, history, and culture, significant forces there are struggling to make progress toward a united Europe. It will be interesting to see if countries outside of Europe seek to have the United Nations make adjustments in

their voting power there.

With this overview in mind, one can see that the political arrangement of the United States of America is not as unique as some historians have made it out to be. The United Kingdom is a union of four nations. The British Empire was a collection of some 63 colonies, protectorates, and dominions. The Soviet Union was a federation of 15 nations. Yugoslavia was a federation of six nations. The European Union is an alliance of 15 nations with 12 more countries waiting to join. The United States of America is a federation of 50 nations. Furthermore, the United States government is sovereign over some 22 additional territories.

### **States of the Union Rule**

The people of the States of the Union are to control the policies and activities of the United States government through their Congress. It is the role of Congress to enact statutes that give direction to the executive and judicial branches of the United States government in fulfilling their responsibilities to the American people. To accomplish this, the voters of the States send their representatives and senators to Congress at the time prescribed, as well as elect the president and vice-president every four years. It is not the role of Congress, the executive branch, or the judicial branch of the United States to give directions to the States of the Union except for those things that have been specifically assigned to the United States in the U.S. Constitution. Even today the President's Executive Orders apply only to the District of Columbia, the federal territories, and the enclaves within the states that have been ceded to the United States.

It may be interesting to note at this point that the Congressional representatives from the federal territories have only observer status in Congress. While they may be allowed to express views in Congress that represent the interest of those who live in their territory, they are not permitted a vote

in Congress as they do not represent the people of a sovereign state. These territories are sometimes considered to be foreign to the United States of America (USA). For example, in the International Olympic Games, American Samoa, Guam, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands each enters under its own flag and not under the flag of the USA. However, at the United Nations, these same territories are not listed separately because they are under the sovereignty of the United States government and are not considered foreign to the United States. At the United Nations, the representative of the United States government speaks on their behalf as well as on behalf of the States of the Union. This is so because the insular possessions and other territories are property of the United States government. The States of the Union delegated exclusive authority to the United States government to represent their interests when dealing with political issues outside of American society. While the observers represent the interests of the people who live in the insular possessions and other territories, they also represent the interests of the United States government over these territories. These observers cannot vote on issues before Congress because the territory they represent is subject to the collective will of the citizens of the States of the Union as expressed in Congress.

The insular possessions and other territories of the United States do not have the same status as the States of the Union with respect to the United States government. The territories of the United States are under the sovereignty of the United States government which is the same sovereignty the United States government has over the District of Columbia. As already shown, each of the States of the Union has its own sovereignty which predates the creation of the United States government which makes each of them historically and inherently separate, distinct, and foreign to the United States government which they created. When dealing with issues

within American society, the sovereignty of the United States is separate from the sovereignty of the States of the Union. The States of the Union are not districts, cantons, subdivisions, or territories of the United States government, while the insular possessions and other territories are property of the United States and subject to its sovereignty.

Both historically and legally, the sovereign States of the Union are the fundamental political units in the American geopolitical arrangement. Representatives to Congress are elected by the voters of various congressional districts within a State. The purpose for the decennial census is to determine how many congressional representatives each State will have according to population. Originally, the U.S. Constitution called for U.S. senators to be appointed by the State legislatures, thereby ensuring that the States would have substantial direct control over the federal government. That was changed by the 17th Amendment so that U.S. senators are elected by the voters of an entire State. But the president and vice-president of the United States, who are required to be citizens of different states, are elected by the Electoral College and not by the popular vote of the aggregate of the voters in the States. The electors to the Electoral College are selected by the vote of the people of the individual States of the Union on election day. Because the election of the U.S. president and vice-president is not dependent on popular vote, it is possible that a candidate could be the most popular candidate and win less than the majority popular vote, but win a majority vote in the Electoral College. This actually happened to Bill Clinton twice.

Moreover, four times in U.S. history the man with the largest popular vote has lost in the Electoral College. The first was in the 1824 election when Andrew Jackson won more votes than the other three candidates and the most electoral delegates at 99 when 131 were required to win the office of the president. So the selection of a president became the

responsibility of the House of Representatives. John Quincy Adams, who had won 84 electors on his own, cut a deal with Henry Clay, who had won 37 electors, and Clay urged support of Adams. Clay had won the fewest electors among the four candidates which meant he was out of the running as the House of Representatives would decide who would be president. Pursuant to the 12th Amendment, the House is permitted to consider only the top three candidates. William H. Crawford had won 41 electors, but suffered a stroke and was not seriously considered as a candidate thereafter. The House of Representatives elected Adams president and Adams nominated Clay as his Secretary of State for his part in helping him win the presidency.

The second was in the 1876 election when Democrat Samuel Tilden won a majority of the popular vote, but lost to Republican Rutherford B. Hayes in the Electoral College by one vote. Challenges were made regarding the vote in several jurisdictions and the vote was not settled until two days before the inauguration ceremony.

The third was in the 1888 election when Grover Cleveland, running for re-election, won nearly a hundred thousand votes more than Benjamin Harrison, but won only 168 electors to Harrison's 233 electors when 201 Electoral College votes were required to win the presidency. Grover Cleveland ran for president a third time in 1892 and won both the popular vote and 277 Electoral College delegates when 223 were required to win the presidency. Grover Cleveland is the only person to win the popular vote in three presidential elections, but won the Electoral College vote in only two of those three elections.

The fourth was the recently completed election of 2000 where Al Gore won the popular vote by the aggregate of the American population by more than 300,000 votes over George W. Bush, but lost in the Electoral College by a vote of 271 to 267. The popular vote was very close in at least three States. In Florida, the less than 1% difference in the margin of victory

required an automatic recount by that State's law. Bush was certified the winner after the recount, but court challenges to the vote totals and counter challenges to the recount standards would take another month before the U.S. Supreme Court would vacate the challenges from Gore to allow the electoral votes from Florida to be applied to Bush's total.

The Electoral College protocol exists because the citizens of the States of the Union elect the president and vice-president of the United States and the popular vote for a candidate applies *only* within each state. There is no such thing as a "national election" in America, only a presidential election. The offices of president and vice-president are the only offices in America where the voters of the States collectively express their wishes on the same day. This is because each State of the Union is a sovereign nation and has retained the right to express its wishes on this issue by the vote of its own citizens separate and distinct from the vote expressed by the citizens in any neighboring state.

### Separate, Distinct, and Foreign

The notion that the States of the Union are separate, distinct, and foreign to each other also applies to the relationship the States of the Union have to the United States government. This relationship is embodied in both state and federal court decisions. State of Wisconsin v. Pelican Ins. Co., 127 U.S. 265, 8 S.Ct. 1370, 32 L.Ed. 239 (1888); Robinson v. Norato, R.I., 43 A.2d 467 (1945); Salonen v. Farley, 82 F.Supp. 25 (1949); 19 C.J.S. Corporations § 883 citing In re Merriam's Estate, 36 N.Y. 505, 141 N.Y. 479 (1894), and affirmed in United States v. Perkins, 163 U.S. 625, 41 L.Ed. 287 (1896). While Wisconsin v. Pelican Ins. doesn't specifically use the word "foreign", the next two cases, as well as the esteemed legal encyclopedia Corpus Juris Secundum (C.J.S.), do use that term. Here are quotes from those cases and C.J.S.

### **Robinson v. Norato (July 25, 1945) Rhode Island Supreme Court**

"In the sense of public international law, the several states of the union are neither foreign to the United States nor are they foreign to each other. But such is not the case in the field of private international law...

"That it is the settled view of the Supreme Court that, on questions of private international law, the states are foreign to the United States would seem to be clear from the decision in State of Wisconsin v. Pelican Ins. Co., 127 U.S. 265, 8 S.Ct. 1370, 32 L.Ed. 239. In that case Wisconsin, on a judgment obtained in one of her courts against a Louisiana corporation, brought suit in the United States Supreme Court. On the theory that Wisconsin was a foreign state and that the suit was founded upon a penal statute, the court held that it would not entertain the suit to enforce that statute, saying, 127 U.S. at page 289, 8 S.Ct. at page 1374, 32 L.Ed. 239, of the opinion: 'By the law of England and the United States the penal laws of a country do not reach beyond its own territory, except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the court of another country.' That case has been frequently cited by the Supreme Court and never has it been qualified in any manner...

"The supremacy clause of the federal Constitution cannot, in our opinion, be legitimately construed to compel state courts to take jurisdiction and enforce such penal statutes. On that score such statutes of the several states and the United States stand upon an equal footing. They are to be enforced or not enforced according to the rule of comity in private international law and not by reason of any constitutional mandate...

"To summarize our position, we hold that, in the consideration of a statute like the one before us, this court has the right and authority to determine its character before allowing it to be enforced in the courts of this state; that if



we find it to be penal we may refuse to enforce it regardless of its federal origin; and that the federal Constitution does not require us to treat the United States in a matter of this nature more favorably than we do a sister state of the Union. The contrary view would make the state courts, nolens volens, in effect, inferior federal courts to enforce all federal statutes, whenever Congress so declares." Robinson v. Norato, 71 R.I. 25, 643 A.2d 467, 162 A.L.R. 362 (1945).

**Salonen v. Farley (Jan. 18, 1949)** U.S. District Court, E.D. Kentucky, Covington District

"The government of the United States is foreign as to the states of the union within rule of private international law that penal statutes of one sovereignty will not be enforced by another...

"The defendants have correctly stated the well established principle of law that the Government of the United States is foreign as to the States of the Union within the rule of private international law that the penal statutes of one sovereignty will not be enforced by another. Robinson v. Norato, 71 R.I. 25, 643 A.2d 467, 162 A.L.R. 362; State of Wisconsin v. Pelican Ins. Co., 127 U.S. 265, 8 S.Ct. 1370, 32 L.Ed. 239. It is universally recognized that foreign jurisdictions will not enforce penal statutes of another state. Galveston, H. & S. A. R. Co. v. Wallace, 223 U.S. 481, 32 S.Ct. 205 56 L.Ed. 516; The Antelope, 10 Wheat 66, 23 U.S. 66, 6 L.Ed. 268, wherein Chief Justice Marshall made the short statement that, 'The Courts of no country execute the penal laws of another.'" Salonen v. Farley, 82 F.Supp. 25 (1949).

### 19 Corpus Juris Secundum, § 883

"The United States government is a foreign corporation with respect to a state." 19 C.J.S. Corporations § 883 citing In re Merriam's Estate, 36 N.Y. 505, 141 N.Y. 479 (1894), and affirmed in United States v. Perkins, 163 U.S. 625, 41 L.Ed. 287 (1896).

The editors of C.J.S. reached this conclusion based on the issues and language surrounding the estate of William W. Merriam, a resident of Suffolk county, New York. At his death, Mr. Merriam willed his entire estate of both real and personal property to the United States. The tax assessor for New York imposed a tax against the United States for the inheritance of this estate and the United States filed suit. The Court of Appeals of New York stated, "The United States government, as a body corporate, is capable of taking a legacy; and a legacy to it is subject to the legacy tax, since such tax is imposed on the right of succession, and not on the property." And continuing, "Stock in a foreign corporation is subject to the legacy tax." The decision of the State court was upheld in the appeal to the U.S. Supreme Court in United States v. Perkins, (supra.).

The concept that the States of the Union are foreign to each other also applies to the issues of money and finance as expressed in the following case.

**Bell v. Anderson (Jan. 30, 1941)** Superior Court of Pennsylvania

"It is not necessary that a note or domestic bill of exchange be protested, but protest is required only with respect to foreign bills of exchange; the states of the union being foreign as to each other in that regard." Bell v. Anderson, Penn., 17 A.2d 647 (1941).

The concept is further illustrated by a case dealing with the schooling of children who lived on land owned by a Veterans Administration Hospital in Pennsylvania.

**Schwartz v. O'Hara Tp. School Dist. et al., (Nov. 24, 1953)** Supreme Court of Pennsylvania

"Township school district was not required to furnish free educational facilities for children who resided on grounds of federal Veterans Administration Hospital, which was located in township, where jurisdiction of grounds had been ceded by the Commonwealth to the United States...



"The appellant's further contention is that the children here under consideration are residents of the O'Hara Township School District ... and are, therefore, entitled to attend the Township's schools free of charge. In support of this contention the appellant cites Sec. 1301 of the Pennsylvania School Code, 24 P.S. § 13-1301, which declares that 'Every child, being a resident of any school district, \* \* \* may attend the public schools in his district, \* \* \*' and Sec. 1302 which provides that 'A child shall be considered a resident of the school district in which his parents or guardian of his person resides.' But, neither the parents nor the guardians of these children reside in O'Hara Township. To be a resident of a particular political subdivision of a State a person must reside on land over which the State has jurisdiction. It has long been held that persons living on Federal reservations are not residents of the States wherein such reservations are situated. In the present instance, the Federal Government has exclusive jurisdiction of the area of O'Hara Township on which the Veterans Administration Hospital is located. Constitution of the United States, Art. I, Section 8, cl. 17; and *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525, 5 S.Ct. 995, 29 L.Ed. 264. Nor is such jurisdiction impaired in the slightest degree by reason of the minor reservation in the act of cession of concurrent State jurisdiction merely for service of process. In *Fort Leavenworth Railroad Co. v. Lowe*, supra, the Supreme Court said, 114 U.S. at pages 532-533, 5 S.Ct. at page 999, 'When the title is acquired by purchase by consent of the legislatures of the states, the federal jurisdiction is exclusive of all state authority. This follows from the declaration of the constitution that congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever.' Broader or clearer language could not be used to exclude all other authority than that of congress; and that no other authority can be exercised over them has been the uniform opinion of federal and state tribunals, and of the attorneys general.'"

*Schwartz v. O'Hara Township School District. et al.*, 100 A.2d 621(1953).

In this last case, the parents of eight children living on the grounds of this Veterans Administration Hospital sought to have their children educated in the public schools of the local township for free only to discover that the township's school district could not enroll them for free because the land where the eight children lived was not under the jurisdiction of the State of Pennsylvania, but was under the exclusive jurisdiction of the United States government. Because the United States government has the exact same authority over that Veterans Hospital grounds as it has over the District of Columbia, the hospital grounds is a territory or enclave of the United States within the State of Pennsylvania and is separate, distinct, and foreign to the State. Although the court didn't use the word 'foreign' in this case to describe the relationship between the United States and the State of Pennsylvania, the written description supports the conclusions drawn in the *Robinson* and *Salonen* cases. The United States is foreign to the States of the Union when dealing with issues within American society, and the authority of the State does not extend into a federal enclave within its boundary.

The role of Congress today with respect to the issues that have not been delegated to the United States government by the U.S. Constitution is limited to making recommendations or offering contracts to the States. For example, see the Federal Voting Assistance Act of 1955, Statutes at Large, 84th Congress, 1st Session, Ch. 656-P.L. 296, Aug. 9, 1955, where Congress made *recommendations* to the several states that they enact legislation or take administrative action to allow members of the armed forces to vote by absentee ballot in any primary, special, or general election for which they might otherwise be eligible to vote. Congress can only make recommendations to the sovereign States of the Union where the people of the states have not delegated authority to the

United States in the U.S. Constitution. Since the adoption of the organic Constitution for the United States of America in 1788, delegations of authority to the United States can only be accomplished through the amendment process.

While the United States generally can contract with any State for a mutually agreeable purpose, the United States is not allowed to create a political advantage for one State over another. The contract with a State, or with all of the States, does not constitute a delegation of authority of the citizens of the States of the Union to the United States as such delegation of authority can only be accomplished by the collective will of the people of the States through the amendment process stated in the U.S. Constitution. Such a contract operates only on the respective State government and can create no new obligation on the people who live therein.

#### **Public and Private International Law**

So how is it that the States of the Union are *not* foreign to the United States under the principles of public international law, but *are* foreign to the United States and each other under the principles of private international law?

Public international law deals with the authority the States of the Union delegated to the United States government to represent American interests *outside* of American society. Private international law deals with the role of the federal government *within* American society where federal legislation might conflict with State law and where the delegation of authority to the United States government is limited or absent.

When the people of the States adopted the U.S. Constitution and created the United States government, they transferred exclusive right to that government to represent American political interests to nations outside of American society. (See U.S. Constitution Article I, section 10, clause 1.) Thus, the United States government is responsible for providing for such things as America's military defense as well

as the diplomatic core representing American interests throughout the world. While the States of the Union may engage in commercial agreements with political powers outside of America, the States of the Union are foreclosed from negotiating political agreements with geopolitical powers outside of American society as authority for this has been exclusively delegated to the United States government. But the States did reserve the right to give final consent to any political treaty negotiated by the executive branch by requiring the president to submit the proposed agreement or treaty to the U.S. Senate for its advice and consent. (See U.S. Constitution Article II, section 2, clause 2.) The Senate originally represented the interests of the State legislatures with respect to the policies and activities of the United States government. Even though the manner in which senators obtain their offices to the United States Senate has changed, the United States government is not permitted to establish treaties with other governments without the approval of the senators representing the citizens of the States of the Union and thereby binding the States to an international agreement. When the States are acting in concert with each other through Congress for a purpose outside of American society, the States of the Union and the United States government collectively make up a single entity and are not foreign to each other. It is in this sense and this sense only that the United States of America comprises a single nation.

But the authority of the United States government is entirely different when dealing with issues *within* American society. There is no similar authority granted to the federal government when Congress or the president, through the various executive departments, deals with the States of the Union and the people who live therein. In fact, the 10th Amendment restricts the policies and activities of the federal government within the sovereign States to only those things specifically delegated to the United States government in the

U.S. Constitution. Thus, the United States has no inherent legislative jurisdiction within the States of the Union except for those things that have been specifically delegated to the United States government in the U.S. Constitution. Except in the case where the States of the Union have delegated authority to Congress to enact legislation pursuant to the U.S. Constitution, the laws enacted by Congress are domestic to the District of Columbia, the federal territories or insular possessions, and the enclaves within a state that have been ceded to the United States government. Without a specific constitutional footing, the laws of Congress are foreign to the States of the Union, and under the principle of the conflict of laws, *foreign law never supersedes nor takes precedence over any law that is domestic to the State*. Remember, the United States government is a federal government with limited, enumerated authority, not a national government with plenary authority. The States of the Union have always been fully grown up nations, each with its own sovereignty.

When Lewis & Clark were commissioned by President Thomas Jefferson to make their expedition across the Louisiana Territory, they were instructed by President Jefferson to invite the Indians they met along the way to visit him in Washington, D.C. The letter that Merriweather Lewis wrote for the Indians makes 14 separate references to the President of the United States as the Great Chief of the seventeen great nations of America. Of course, the reference to the seventeen great nations of America is an obvious reference to the fact that there were 17 States in the Union during the time Jefferson was president. President Thomas Jefferson himself wrote a letter to the Osage Indians after they had visited Washington, D.C. and twice in this letter he made reference to the "17. United nations in whose name I speak to you, and take you by the hand." *Letters of the Lewis and Clark Expedition, with related documents, 1783-1854*, Donald Jackson, Ed, University of Illinois Press, Urbana, 1962, p.

199. Thomas Jefferson, the principal author and one of the signers of the Declaration of Independence and third president of the United States, clearly understood that each of the States in the Union is a free, independent, and fully grown up nation and the federal government is the agent of these sovereign States.

About this same time, the U.S. Supreme Court was considering the interesting case of M'Ilvaine v. Coxe's Lessee (1804). This case centers around a man born in New Jersey who chose to remain loyal to the King when the Declaration of Independence was made and soon joined the British army. He was commissioned an officer, given command of a group of men, and fought for the government of the King of Great Britain, mostly in Pennsylvania. At one point he was captured, sentenced to prison, escaped, returned to the King's army in New York, given another commission, and fought in one or two more battles before the end of the war. At the conclusion of the war, he accepted the offer the King made to Americans who had fought in his army to move to Britain and live out their days there as a loyal British subject as payment for the service provided the mother country.

After a few years of living in Britain, he received word that a relative in Trenton, New Jersey, had died and willed him 200 acres of land in Trenton, whereupon he decided to return to New Jersey to claim his inheritance. Upon presentation of the proper documents of inheritance to the county clerk, he requested his name be placed upon the deed as the owner. The clerk refused, citing his status as a British subject and not a citizen of New Jersey as the reason his name could not be entered upon the record as the owner of the land. Suit was filed, which worked its way up to the U.S. Supreme Court to sort out the principles of law. Upon reviewing various principles of citizenship and state law regarding citizenship and expatriation, the U.S. Supreme Court offered this interesting opinion:

**M'Ilvaine v. Coxe's Lessee (1804)** U.S. Supreme Court

"... it is a recognized principle that a man may owe allegiance to **two countries** at the same time, and therefore, may lawfully have the intention of owing allegiance to both **Great Britain and New Jersey.**" p. 286. [Bold added.] M'Ilvaine v. Coxe's Lessee, 8 U.S. 279 (1804).

The present generation is conditioned to anticipate that the court would equate the two countries of Great Britain and the United States, and the reader might easily overlook the actual words used by the court. But here the U.S. Supreme Court recognized that Great Britain and New Jersey are two countries, equal to each other for the purposes of citizenship, allegiance and inheritance of property. Once again, the Founding Fathers, as members of the U.S. Supreme Court in 1804, recognized that each State of the Union is a fully grown up, sovereign nation equal to other nations of the world for these purposes.

### **The Limited Authority of Federal Law**

American history and law books commonly refer to the limited authority of the federal government, but the scope of the limitation is rarely discussed. Another interesting case that sheds light on the scope of the legislative authority of the United States government is the 1821 case of Cohens v. Virginia. If one looks in the bar exam review books available to any student preparing to take the bar exam, Cohens v. Virginia is cited there, of course, for other purposes. However, this amazing statement describing the legislative authority of the United States is found in that U.S. Supreme Court case, to wit:

**Cohens v. Virginia (1821)** U.S. Supreme Court

"It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to its objects but extending all over the Union; the other, an absolute, exclusive legislative power over the District of

Columbia...

"It cannot be denied that the character of the jurisdiction which Congress has over the district, is widely different from that which it has over the states; for, over them, Congress has not exclusive jurisdiction. Its powers over the states are those only which are specifically given, and those which are necessary to carry them into effect..." Cohens v. Virginia, 6 Wheat. 264, 5 L.Ed. 257 (1821).

Notice that the U.S. Supreme Court did not say that this is complicated, complex, confusing, or difficult to understand. They said "IT IS CLEAR..."!! [Emphasis mine.] There was no doubt in their minds about the limited authority of the United States government regarding its operations within any of the States of the Union. While Article III of the U.S. Constitution authorizes judicial jurisdiction for United States courts throughout the States of the Union, the United States government does not have sovereignty nor inherent legislative jurisdiction within the States of the Union. Notice how the U.S. Supreme Court expressed the inherent sovereignty of the United States government in the following case:

**United States v. Coe (Oct. 29, 1894)** U.S. Supreme Court

"It must be regarded as settled that section 1 of article 3 does not exhaust the power of congress to establish courts. The leading case upon the subject is American Insurance Co. v. 356 Bales of Cotton, 1 Pet. 511, 546, in which it was held in respect of territorial courts (Chief Justice Marshall delivering the opinion) that while those courts are not courts in which the judicial power conferred by article 3 can be deposited, yet that they are legislative courts, created in virtue of the **general right of sovereignty which exists in the government over the territories**, or of the clause which enables congress to make all needful rules and regulations respecting the territory belonging to the United States." [Bold and underline added.] United States v. Coe, 155 U.S. 76, 15 S.Ct. 16 (1894).

The inherent sovereignty of the United States is over the territories and not over the States of the Union. This is certainly not the only time the court has ruled on this issue. The U.S. Supreme Court had earlier delivered the following explanation of the limited authority of the federal government in a case dealing with public land in New Orleans:

**The Mayor, &c., of New Orleans v. United States (1836)**  
U.S. Supreme Court

"The government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power...

"Special provision is made in the constitution for the cession of jurisdiction from the states over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction...

"All powers which properly appertain to sovereignty, which have not been delegated to the federal government, belong to the States and the people." The Mayor, &c., of New Orleans v. United States, 35 U.S. 662; 10 Pet. 662; 9 L.Ed. 573 (1836).

Consider the case of Ellis v. United States, 206 U.S. 246; 27 S.Ct. 600 (1907), where the U.S. Supreme Court was asked to apply the minimum wage law of the United States to the dredging of Chelsea Creek in Boston Harbor, Massachusetts. In this case a contract had been let to dredge Chelsea Creek. The contract included a bonus for completing the dredging by a certain date. Because Chelsea Creek had been dredged on prior occasions, the contract called not only for dredging the creek bottom, but for installing timber pilings along the creek bank to prevent the channel from filling in so

quickly. The timber pilings were ordered from the Northwest, but the delivery was delayed for a couple of months which placed in jeopardy the completion of the work in time to earn the bonus. When the timbers arrived, the supervisors organized the crews to work around the clock so as to meet the contract deadline to collect the bonus. The crews were required to work more than eight hours in a day. The men worked hard, the deadline was met, and the company was able to collect the bonus for completing the work on time. But now the men wanted a portion of the bonus for their hard work. Because the contracts the men had with the company were silent on this issue, the men were not entitled to any of the bonus paid to the company. But, believing that federal law might be made to apply to them, the men filed suit to have the recently enacted minimum wage law of the United States apply to their work which would force the company to pay them one-and-a-half-times the regular wage for time worked beyond the eight-hour work day. In its deliberations, one of the main concerns of the U.S. Supreme Court was whether the laws of the United States could apply to the work done at Chelsea Creek in Boston Harbor. Notice these conclusions.

**Ellis v. United States (1907)** U.S. Supreme Court

"Congress possesses no power to legislate except such as is affirmatively conferred upon it through the Constitution, or is fairly to be inferred therefrom...

"An act which may be constitutional upon its face, or as applied to certain conditions, may yet be found to be unconstitutional when sought to be applied in a particular case...

"The work of dredging in Chelsea creek, in Boston harbor, as shown in the record, is not part of the 'public works of the United States' within the meaning of the statute in question...

"It is unnecessary to lay special stress on the title to the soil

in which the channels were dug, but it may be noticed that it was not in the United States. The language of the acts is 'public works of the United States.' As the works are things upon which the labor is expended, the most natural meaning of 'of the United States' is 'belonging to the United States.'" Ellis v. United States, 206 U.S. 246; 27 S.Ct. 600 (1907).

The conclusion of the U.S. Supreme Court could not be more clear: Chelsea Creek in Boston Harbor is *not* in the United States as defined in the federal statute under question. Chelsea Creek is in Massachusetts and the state of Massachusetts, as a sovereign State of the Union, is not under the general legislative jurisdiction of the United States Congress nor the executive branch of the federal government. The States have not delegated the work of dredging creek bottoms to the United States nor have they delegated the regulation of wages to the United States. Massachusetts has not been absorbed into the federal government so as to make Massachusetts a territory, insular possession, canton, district, region, part, or subdivision of the United States government. Massachusetts is separate and distinct from the places where the United States has general legislative and/or executive jurisdiction. The term "of the United States" means "belonging to the United States". The land making up the States of the Union are not territories of the United States. The States do not belong to the United States as though they are property or territories of the United States government. The States of the Union have a sovereignty that predates the creation of the federal government. Consequently, the court concluded that the minimum wage law of the United States did not apply to the work done at Chelsea Creek.

This is in perfect agreement with the case of Foley Bros. v. Filardo, 336 U.S. 281; 69 S.Ct. 575 (1949), wherein the U.S. Supreme Court stated that "Legislation of Congress, unless a contrary intent appears, is meant to apply only within

territorial jurisdiction of the United States." As seen in the Ellis case, Chelsea Creek in Massachusetts was not within the territorial, legislative jurisdiction of the United States.

Toward the end of the 19th century, a request was made to consolidate the laws of Congress into a single code that would apply to both the District of Columbia and the States of the Union. The committee given this responsibility found the task impossible. Notice this following statement found in 1 D.C. Code, History (1981), which gives an overview of the authority of Congress to pass legislation either for the District of Columbia and other federal places, and how that differs from its authority over the States of the Union.

#### **1 D.C. Code, History (1981)**

"The general collection [of revised statutes] might perhaps be considered, in a limited sense, as a code for the United States, as it embraced all the laws affecting the whole United States, within the constitutional legislative jurisdiction of Congress, but there could be no complete code for the entire United States, because the subjects which would be proper to be regulated by a code in the states are entirely outside the legislative authority of Congress." Statement made on December 5, 1898 by Mr. Justice Walter S. Cox of the Supreme Court of the District of Columbia, District of Columbia Code, 1981 Edition, Vol. 1, History, p. 10.

Not only was this distinction in authority well understood by the Supreme Court of the District of Columbia, this distinction in authority has long been understood by the members of the U.S. Supreme Court. Notice the ruling made at the end of the 19th century.

#### **Caha v. United States (Mar. 5, 1894) U.S. Supreme Court**

"This statute [Rev. St. § 5392, defining the crime of perjury] is one of universal application within the territorial limits of the United States, and is not limited to those portions which are within the exclusive jurisdiction of the



national government, such as the District of Columbia. Generally speaking, within any state of this Union the preservation of the peace and the protection of person and property are the functions of the state government, and are no part of the primary duty, at least, of the nation. **The laws of congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government.** [Bold added.] Caha v. United States, 152 U.S. 211 (1894).

That court had earlier held that officers of the United States government cannot expand their authority simply by claiming to have authority to act.

**Buffington (Collector) v. Day (Apr. 3, 1871)** U.S. Supreme Court

"The Government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication." Buffington v. Day, 11 Wall. 113; 78 U.S. 122 (1871).

This principle of law and limited jurisdiction was well understood throughout America into the middle of the 20th century as evidenced by the following California appellate court decision.

**People v. Kelley (Feb. 25, 1942)** District Court of Appeals, Second District, Division 2, California

"An act of Congress does not have sanctity of constitutional provision, and even though the act is valid within orbit of activities of Congress, the operation of the act can affect only those subjects over which the central government has jurisdiction." People v. Kelley, 122 P.2d 655 (1942).

In California, the legislature set up the California State Lands Commission with the responsibility of keeping an index

of all land within the state that has been ceded to the United States and the level of jurisdiction that has been granted to the United States for each of the identified properties. This is in harmony with 40 U.S.C., § 255 and 50 U.S.C., § 175 which specifies that, "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." A few years ago I wrote to the California State Lands Commission requesting that they identify the level of jurisdiction which California has granted to the United States for four properties, specifically: (1) the land where my home was located, (2) the land where the public school at which I teach is located, (3) the land where my employment records are kept at the school district office, and (4) the land where my pay warrant is processed by the county office of education. In a letter dated January 8, 1996, James R. Frey, staff counsel for the Commission responded in part:

"Because these parcels are not federally owned the United States does not have any legislative jurisdiction."

James R. Frey  
Staff Counsel

Additionally, in a letter dated February 26, 1996, I received the following explanation regarding the basis of federal jurisdiction over these lands:

"I trust that you are aware that the jurisdiction ceded under [California] Government Code Section 126 is legislative jurisdiction and that the cession process is based on Article 1, Section 8, clause 17 of the U.S. Constitution. Further the United States must have a real property interest in the land prior to a cession. Consequently, if the United States does not have a real property interest, the State of California cannot and has not ceded legislative jurisdiction to the United States."

James R. Frey  
Staff Counsel

In these two letters the staff counsel for the California State Lands Commission seems to tell me that the Acts of Congress have no application to these properties and he even tells me why: the United States does not own these properties and the State of California has not ceded legislative jurisdiction to the United States. Perhaps you have a similar office in your State from which you can obtain a similar response.

The legislative jurisdiction of the United States involves the Acts of Congress — Congress being the legislative body of the United States. There are two ways that Acts of Congress become operable within any State of the Union. One way is for the States of the Union to collectively delegate authority to the United States government through the U.S. Constitution respecting a certain issue. Its easy to see what authority has been granted as that authority will be stated in the U.S. Constitution. For those issues that have been so delegated, federal law applies throughout the Union and takes precedence over State law. The other way is for a State legislature to cede a portion of its own land to the U.S. government. It thereby removes the specified land from its own jurisdiction, making it federal land and subject to federal law. However, the U.S. Constitution authorizes this process of cession only over land purchased by the United States government and for those things itemized in Article I, section 8, clause 17, "which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings..." The U.S. Constitution does not authorize a general operation of federal law, authority, or jurisdiction on territory of the State by the cession process or any other process.

If the United States has no legislative jurisdiction over lands of the State that have not been ceded to the U.S. government, and the United States government has not accepted jurisdiction over lands within any State of the Union pursuant to the limiting requirements set out in federal law at 40 U.S.C., § 255 and 50 U.S.C., § 175, it necessarily follows

that the Acts of Congress have no inherent legal force of authority over the properties mentioned in my letters to the California State Lands Commission. It further necessarily follows that if the United States has no legislative jurisdiction, the agents of the executive branch lack authority to carry out any mandate of federal law or regulation. Thus, the land where I live, the land where I work, the land where my employment records are kept, and the land where my pay warrant is processed are not inherently subject to the Acts of Congress nor to the agents of the executive branch of the United States government. The legislative Acts of Congress do not inherently operate within the States of the Union nor do the agents of the executive branch have inherent authorization to enforce laws outside their proper jurisdiction.

When agents of the government overstate their authority, impose their demands on those over whom they have no legitimate authority, and fail to respect the limitations of their own proper authority, they invariably trample on the rights of individuals and society and demonstrate contempt for lawful government in whose name they carry out such deeds. Such an improper exercise of power results in the loss of private property and the restriction of liberty, and is as much an act of violence against individuals and society as is carried out by common criminals. To paraphrase the introduction to the little book *The Law* by French economist, statesman, and author Frederic Bastiat written in 1850 when France was rapidly turning to socialism: This is the law perverted! The law becomes the weapon of every kind of greed! Instead of checking crime, the law itself becomes guilty of the evils it is supposed to punish!

### **Diversity of Citizenship**

At its inception, all citizens in the American states were citizens of one of the States of the Union. Citizens generally called themselves citizens of their State unless traveling outside



of America. Any reference to being a citizen of the United States was a generic expression and had no legal application. Prior to the enactment of the 14th Amendment, the California Supreme Court discussed the issue of being a citizen of the United States and provided the following explanation:

**Ex Parte-Frank Knowles (July 1855)** California Supreme Court

"By metaphysical refinement, in examining the form of our government, it might be correctly said that there is no such thing as a citizen of the United States. But constant usage — arising from convenience, and perhaps necessity, and dating from the formation of the Confederacy — has given substantial existence to the idea which the term conveys. A citizen of any one of the States of the Union, is held to be, and called a citizen of the United States, although technically and abstractly there is no such thing...

"The States had the power to naturalize foreigners, and there was no necessity for this power to be surrendered to the General Government...

"Hence the necessity arose, not that Congress should have power to naturalize, but should have power to prescribe to the states a rule to be carried out by them, and which should be uniform in each. If this were not so, it follows conclusively that there is no mode by which a foreigner can be made expressly a citizen of a State, for I have already shown there is no such thing, technically as a citizen of the United States. Consequently, one who is created a citizen of the United States, is certainly not made a citizen of any particular State. It follows, that as it is only the citizens of the State who are entitled to all privileges and immunities of citizens of the several States, if the process is left alone to the action of Congress through her federal tribunals, and in the form which they have adopted, then a distinction both in name and privileges is made to exist between citizens of the United States *ex vi termini*, and citizens of the respective States. To the former no privileges or immunities are granted; and it will hardly be

contended, that political *status* can be derived by implication against express legal enactments." Ex Parte-Frank Knowles, 5 Cal. 300 (1855).

Because each of the States of the Union has a separate sovereignty from that of the United States government, there are at least two types of citizenship in America: State citizenship and United States citizenship. While most Americans readily and unwittingly claim to be United States citizens, the provisions of these two types of American citizenship are distinct from each other. The California Supreme Court stated it succinctly as follows:

**Tashiro v. Jordan (May 20, 1927)** California Supreme Court

"That there is a citizenship of the United States and a citizenship of a state, and the privileges and immunities of one are not the same as the other is well established by the decisions of the courts of this country." Tashiro v. Jordan, 201 Cal. 236 (1927).

Citizenship is always tied to a sovereign government. Because the States of the Union are the fundamental political units in American society, the first and fundamental citizenship a person living in one of the States of the Union may have is with one's State. The U.S. Supreme Court made it clear more than sixty years ago that State citizenship is the fundamental citizenship in America.

**Madden v. Kentucky (Jan. 29, 1940)** U.S. Supreme Court

"This position is that the privileges and immunities clause protects all citizens against abridgment by states of rights of national citizenship as distinct from **the fundamental or natural rights inherent in state citizenship**. This court declared in the Slaughter-House cases that the Fourteenth Amendment as well as the Thirteenth and Fifteenth were adopted to protect the negroes in their freedom. This almost contemporaneous interpretation extended the benefits of the privileges and

immunities clause to other rights which are inherent in national citizenship but denied it to those which spring from state citizenship... (pp. 90-91, 594)

"The Court has consistently refused to list completely the rights which are covered by the clause, though it has pointed out the type of rights protected. **We think it quite clear that the right to carry out an incident to a trade, business or calling such as the deposit of money in banks is not a privilege of national citizenship.**" (Pp. 92-93, 595.) [Bold added.] Madden v. Kentucky, 309 U.S. 83; 84 L.Ed. 590 (1940).

The California Supreme Court discussed the effect of the 14th Amendment on the individuals within a State in a case dealing with voter registration of women.

**Van Valkenburg v. Brown (Jan. 1872)** California Supreme Court

"It is claimed that the plaintiff is a citizen of the United States and of this State. Undoubtedly she is. It is argued that she became such by force of the first section of the Fourteenth Amendment, already recited. This, however, is a mistake. It could as well be claimed that she became free by the effect of the Thirteenth Amendment, by which slavery was abolished; for she was no less a citizen than she was free before the adoption of either of these amendments. No white person born within the limits of the United States, and subject to their jurisdiction, or born without those limits, and subsequently naturalized under their laws, owes the status of citizenship to the recent amendments to the Federal Constitution. The history and aim of the Fourteenth Amendment is well known, and the purpose had in view in its adoption well understood. That purpose was to confer the status of citizenship upon a class of persons domiciled within the limits of the United States, who could not be brought within the operation of the naturalization laws because native born, and whose birth, though native, had at the same time left them without the status of citizenship. These persons were not white persons, but were, in the

main, persons of African descent, who had been held in slavery in this country, or, if having themselves never been held in slavery, were the native-born descendants of slaves. Prior to the adoption of the Fourteenth Amendment it was settled that neither slaves, nor those who had been such, nor the descendants of these, though native and free born, were capable of becoming citizens of the United States. (*Dread Scott v. Sanford*, 19 How. 393.) The Thirteenth Amendment, though conferring the boon of freedom upon native-born persons of African blood, had yet left them under an insuperable bar as to citizenship; and it was mainly to remedy this condition that the Fourteenth Amendment was adopted...

"This is recent history—familiar to all... pp. 46-47.

"...each state was a sovereign and independent state, and the states had confederated only for the purposes of general defense and to promote the general welfare... p. 49.

"This circumstance [privilege of elective franchise] has given rise to a notion in some quarters that the privilege of voting and the status of citizenship are necessarily connected in some way—so that the existence of the one argues that of the other. But the history of the country shows that there was never any foundation for such a view." p. 50. [Brackets original.] Van Valkenburg v. Brown, 43 Cal. 43 (1872).

Americans have generally lost sight of the purpose of the 14th Amendment misconstruing that it operates directly on the individual inherently making every State citizen a citizen of the United States. However, the U.S. Supreme Court has explained that the 14th Amendment operates on the State and does *not* operate on the individual.

**Minor v. Happersett (Mar. 29, 1874)** U.S. Supreme Court

"The [Fourteenth] Amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her. That she had before its adoption... [Brackets added.]

"The Amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the Constitution and laws of the States, but **it operates for this purpose, if at all, through the States and the state laws, and not directly upon the citizen...** [Bold added.]

"All the States had governments when the Constitution was adopted...

"These governments the Constitution did not change."  
Minor v. Happersett, 88 U.S. 627 (1874).

The rights, privileges and immunities one has as a citizen of a State were not changed by the Civil War nor by the 14th Amendment. Here is how a federal court explained it in 1873.

**United States v. Anthony (June 18, 1873)** Circuit Court, N.D. New York

"The rights of citizens of the states and of citizens of the United States are each guarded by these different provisions. That these rights are separate and distinct, was held in the Slaughterhouse Cases, 16 Wall. [83 U.S.] 36, recently decided by the supreme court. **The rights of citizens of the state, as such, are not under consideration in the fourteenth amendment. They stand as they did before the adoption of the fourteenth amendment, and are fully guaranteed by other provisions.** The rights of citizens of the states have been the subject of judicial decision on more than one occasion. *Corfield v. Coryell* [Case No. 3,230]; *Ward v. Maryland*, 12 Wall. [79 U.S.] 418, 430; *Paul v. Virginia*, 8 Wall. [75 U.S.] 168. These are the fundamental privileges and immunities belonging of right to the citizens of all free government, such as the right of life and liberty, the right to acquire and possess property, to transact business, to pursue happiness in his own manner, subject to such restraint as the government may adjudge to be necessary for the general good...

"The right of voting, or the privilege of voting, is a right or privilege arising under the constitution of the state, and not under the constitution of the United States. The qualifications are different in the different states. Citizenship, age, sex, residence, are variously required in the different states, or may be so. If the right belongs to any particular person, it is because such person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States." [Bold added, brackets original.] United States v. Anthony, 24 Fed. Cas. Page 829, (Case No. 14,459) (1873).

**Jones v. Temmer (Aug. 11, 1993)** U.S. District Court, D. Colorado

"The privileges and immunities clause of the Fourteenth Amendment protects very few rights because it neither incorporates any of the Bill of Rights nor protects all rights of individual citizens. *See Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873). Instead, this provision protects only those rights peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship. *Id.* Accordingly, it is not necessary that plaintiffs have non-resident status in order to bring a claim under the privileges and immunities clause of the Fourteenth Amendment." Jones v. Temmer, 829 F.Supp. 1226 (1993).

It is often presumed today by journalists, judges, and others that American citizenship rests primarily with the United States, that State citizenship and voter registration is dependent on U.S. citizenship, and that State citizenship in the modern scheme of things is an antiquated concept that was extinguished with the 14th Amendment. However, the U.S. Supreme Court has noted the distinction between the status of U.S. citizenship and State citizenship in well over 35 cases beginning with the Slaughter-House cases in 1872 and continuing through to the present. Moreover, the two types of citizenship have never been intrinsically tied to each other.

**Crosse v. Board of Supervisors of Elections (July 21, 1966)** Court of Appeals of Maryland

"State has right to extend qualifications for state office to its citizens, even though they are not citizens of the United States..."

"Both before and after the Fourteenth Amendment to the federal Constitution it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state." Crosse v. Board of Supervisors of Elections, 221 A.2d 431 (1966).

Diversity of citizenship is a prerequisite to jurisdiction in federal district courts. Citizens of the same state (who are under the same sovereignty and jurisdiction) are foreclosed from access to the federal district courts unless a federal question is at issue. Moreover, federal law at 28 U.S.C., § 1332(a) requires that those who file suit in federal district court must be "(1) Citizens of different States; or (2) citizens of a State and citizens or subjects of a foreign state..." When Congress originally enacted this provision for federal district courts to have jurisdiction over controversies between citizens of various states, it did not include a provision for citizens of foreign states to bring suit therein. The History note provides the following information.

**28 U.S.C., § 1332, History**

"The revised section conforms with the views of the United States Attorney for Puerto Rico, who observed that the Act of April 20, 1940 permitted action between a citizen of Hawaii and of Puerto Rico, but not between a citizen of New York and Puerto Rico, in the district court. This changes the law to insure uniformity. The 1940 amendment applied only to the provision as to controversies between "citizens of different States." The new definition in subsec. (B) [redesignated (d); see the 1985 Amendments note] extends the 1940 amendment to apply to controversies between citizens of the Territories or the District of Columbia, and foreign states or citizens or subject thereof."

[Brackets original.] 28 U.S.C., § 1332, History: Ancillary Laws and Directives, p. 2.

This observation, made by the United States attorney for Puerto Rico while Hawaii was still a Territory of the United States, recognized that citizens of Hawaii and Puerto Rico could access the federal district courts because they were citizens of different states. But he further observed that the federal district courts did not have jurisdiction over controversies between citizens of Puerto Rico (who are citizens of the United States) and New York because citizens of New York are under a sovereignty and jurisdiction that is foreign to the United States, and there was no provision for citizens of foreign States to file suit therein. Congress added the provision for citizens of foreign states to have access to the federal district courts to resolve this problem. This is because Puerto Rico and the other territories belonging to the federal government are under the sovereignty of the United States, while each of the States of the Union has a sovereignty and jurisdiction that is separate, distinct, and foreign to that of the United States.

Finally, the United States government has acknowledged that one who is a citizen of one of the States of the Union may be a nonresident alien with respect to the United States. This classification was revealed after Frank Brushaber of New York lost his case against the Union Pacific Railroad for withholding a portion of the annual dividend he expected to receive from having invested in Union Pacific Railroad. He argued that he was not subject to the tax because Union Pacific Railroad with headquarters in Salt Lake City, Utah, was a corporation of the State and not subject to federal taxation. He lost his case on the single issue that Union Pacific Railroad was a corporation chartered by Congress whose headquarters were established in Salt Lake City when Utah was still a Territory of the United States. Thus, Union Pacific Railroad was domestic to the United States government and the nature of the corporation did

not change when the people of the Territory of Utah were allowed to form a State and enter the Union.

Just a few days after his case was settled, the Commissioner of the Internal Revenue referred to Mr. Brushaber as a nonresident alien in Treasury Decision 2313 when he wrote:

**Treasury Decision 2313 (Mar. 21, 1916)**

"Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway [sic] Co., decided January 24, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from bonds and dividends on the stock of domestic corporation is subject to the income tax imposed by the act of October 3, 1913." Treasury Decision 2313, March 21, 1916.

As a citizen of New York, Frank Brushaber was not living in territory that belonged to the United States government, nor was he intrinsically a citizen of the United States. Thus he was identified as a nonresident alien by the Commissioner of the Internal Revenue. By purchasing bonds of a federally chartered corporation he entered into a privileged capacity with the United States government and his income in the form of the dividends from bonds issued by a federally chartered corporation was taxable by the United States government. By the ownership of those bonds, he was engaged in the trade or business within the United States. His legal standing as a citizen of New York and subsequent classification as a nonresident alien with respect to the United States is in perfect harmony with the notion that the States of the Union are separate, distinct, and foreign to the United States.

Corporations are classified as domestic on one hand and foreign or nonresident on the other hand. A domestic corporation is one that operates within the territory of the government that creates it. A foreign or nonresident corporation is one that operates in territory outside of the

territory of the government that creates it. Thus, a corporation created by the State of California is domestic to California, while a Delaware corporation operating within California is foreign or nonresident to California. This same principle applies to corporations created by the United States government.

**Cooperative Federalism Delineated**

Now can be seen how the two sides of the puzzle fit together to accomplish cooperative federalism among the State and federal governments within American society.

From the side of the States of the Union:

- Each State in the Union is a complete government with its own constitution, its own citizens, its own legislative, executive, and judicial branches of government, its own elected and appointed officials to operate the government, and retains every right to protect its integrity;
- The States of the Union are to control all the policies and activities of the United States government collectively through their elected officials sent to Congress;
- The people of the States of the Union as well as the District of Columbia elect the president and vice-president of the United States through the vote of their electors as part of the Electoral College;
- The laws of each of the States operate only within its borders, and its laws do not invade any land within its borders that have been ceded to the United States, except by mutual agreement;
- Each of the States of the Union is sovereign and foreign to the others, as well as to the United States.

Conversely, from the side of the United States government:

- Where the U.S. Constitution delegates responsibility to the United States, the federal government is to coordinate and standardize certain government functions and the Acts of

Congress may operate within the States of the Union and take precedence over State law;

- Where the delegation of authority to the United States is absent from the U.S. Constitution, the Acts of Congress do not invade the territory of the States of the Union and federal law is foreign to the State;
- The Acts of Congress give direction to the executive and judicial branches of the United States government;
- The United States government is to be the exclusive representative of American political interests to the world;
- The United States has exclusive jurisdiction over the District of Columbia, the territories of the United States, and enclaves within a State ceded to the United States government, and it is over these places that the United States has inherent jurisdiction and sovereignty.

Any other operation of law between a State and the federal government is done on the basis of contract or comity. Insofar as the agents of government operate contrary to these restrictions, their actions are based on sophistry. So far as I am aware, there has not been a second revolution in America to throw off the principle of cooperative federalism. There appear to be many in the employ of the federal government who would like to dissolve the States of the Union, convert their territories into property of the federal government, and thereby turn America into a single nation for the purpose of building the federal empire and leaving the citizens with no fundamental or natural rights. Likewise there appear to be many State officials who have acquiesced to the demands of the federal agents to increase control over the lives of the citizens of the States. Only as We the People exercise our unalienable rights and respectfully demand that our governments, both State and federal, carry out their proper functions within the rule of law will liberty ring long upon the land of America.

### The Territories:

#### The Inchoate States of the United States

One of the issues that complicates our understanding of how the Acts of Congress are to be carried out is the fact that the United States government is in possession of a number of territories and has exclusive authority to pass legislation for those territories in the same manner as it has over the District of Columbia. The territories of the United States do not enjoy the same status that the States of the Union have with respect to the United States government. Consider the following cases.

#### **Smith v. United States (1869)** Territory of Washington

"In a qualified sense, territorial courts are United States courts. They exercise the combined jurisdiction of Circuit and District Courts of the United States...

"A Territory is not a State, nor is the word State used as synonymous with Territory...

"A Territory is not a State. Nor are the words 'Territory' and 'State' used as synonymous or convertible terms in the acts of Congress...

"Besides, a Territory sustains no such relations to the government of the United States as does a State. The several States of the Union possess all the powers and attributes of independent nations, except such as they have delegated by the Constitution to the United States. Not so with a Territory." Smith v. United States, 1 Wash.T. 262 (1869).

#### **Territory v. Alexander (Mar. 22, 1907)** Supreme Court of Arizona

"A territory is not a sovereignty. Such legislative powers as it may possess are delegated powers which may be granted or withheld at the will of Congress." Territory v. Alexander, 11 Ariz. 172, 89 P. 514 (1907).

While it was true in 1869 that the words "Territory" and "State" were not synonymous or convertible terms in the Acts



of Congress, the U.S. Supreme Court found in the case of O'Donoghue v. United States, 289 U.S. 516, 53 S.Ct. 740 (1933), that a territory is a state as that word is used in treaties with foreign powers, such as the Treaty of Paris with Spain for the insular possessions in 1899, for the purpose of ownership, disposition and inheritance of property. The territories are inchoate states under the sovereignty of the United States. Notice these explanations.

### 86 Corpus Juris Secundum, § 10

#### § 10 — "State" Compared and Distinguished

"The word 'state' is often used in contradistinction to 'territory,' and it is only in exceptional cases that the word applies to a territory. The chief distinction between a state and territory is in the matter of sovereignty and the relation of each to the government of the United States....

"*Embryo or inchoate state.* Although a territory has been regarded as an embryo or inchoate state, the use of the term 'territory' does not necessarily involve the idea or promise of future statehood." 86 Corpus Juris Secundum, Territories § 10.

### O'Donoghue v. United States (May 29, 1933) U.S. Supreme Court

"The impermanent character of these governments has often been noted. Thus, it has been said, 'The territorial state is one of pupillage at best,' Nelson v. United States (C.C.) 30 F. 112, 115; 'A territory, under the constitution and laws of the United States, is an inchoate state,' Ex parte Morgan, (D.C.) 20 F. 298, 305; 'During the term of their pupillage as Territories, they are mere dependencies of the United States.' Snow v. United States, 18 Wall. 317, 320, 21 L.Ed. 784." O'Donoghue v. United States, 289 U.S. 516, 53 S.Ct. 740 (1933).

The United States Supreme Court did what they called an "exhaustive review" of the differences between the Article III courts which were created as a forum for resolving disputes

between citizens of foreign states (States of the Union) on one hand and the territorial or legislative courts created under Articles I and IV in the case of O'Donoghue, supra. Shepard's shows that this case has not been reversed, overturned, or modified by any later ruling. Following is a quote from that case showing the limited jurisdiction of the United States government with respect to the States of the Union, references to two U.S. tax code sections, and my comments.

### O'Donoghue v. United States (May 29, 1933) U.S. Supreme Court

"As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution and upon territory which is not part of the United States within the meaning of the Constitution." O'Donoghue v. United States, 289 U.S. 516, 53 S.Ct. 740 (1933).

26 U.S.C., § 7441 states, "There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court."

26 U.S.C., § 7443(e), "Membership..." states, "(e) Term of Office.—The term of office of any judge of the Tax Court shall expire 15 years after he takes office."

It is clear from these Title 26 code sections that the U.S. Tax Court is an Article I court whose judges serve for a limited time, namely 15 years. When we consider the significance of the O'Donoghue ruling quoted above, we see that the U.S. Tax Court and the issues that would properly be accepted in Tax Court, as well as the administrative procedures established under the Internal Revenue Code and

its regulations, have nothing to do with the States of the Union and/or the people who live therein, except as an individual may have entered into some privileged capacity with respect to the federal government or any of its instrumentalities.

How does Congress get away with making all those references to the "states" in the Internal Revenue Code?

In that same O'Donoghue ruling, the court set out four general conclusions regarding the differences between the States of the Union on one hand and the District of Columbia and the territories on the other:

"1. That the District of Columbia and the territories are not states within the judicial clause of the Constitution giving jurisdiction in cases between citizens of different states:

"2. That territories are not states within the meaning of Rev. St. section 709, permitting writs of error from this court in cases where the validity of a state statute is drawn in question;

"3. That the District of Columbia and the territories are states as that word is used in treaties with foreign powers, with respect to the ownership, disposition, and inheritance of property;

"4. That the District of Columbia and the territories are not within the clause of the Constitution providing for the creation of a supreme court and such inferior courts as 'Congress may see fit to establish.'"

The third conclusion in the list is at odds with the other conclusions (as well as our common understanding of what the word "state" means) and it appears to be the basis upon which Congress uses the word "state" in Title 26, the Internal Revenue Code. Under the treaty with Spain, the territories (insular possessions) were called "states" for the purpose of ownership, disposition, and inheritance of property. These states include such territories as the Philippines (which elected to become independent of the United States in 1946), Puerto Rico, The U.S. Virgin Islands, Guam, American Samoa, and

the Northern Mariana Islands. It is these inchoate states, and not the sovereign States of the Union, that are subject to the Internal Revenue Code. Neither does Congress include any of the States of the Union in the general definition of the terms "United States" or "State" in Title 26. There are two code sections in the Internal Revenue Code that make reference to "the 50 States" (§ 4612(a)(4) & § 6103(b)), but Congress makes it clear that these definitions of "the 50 States" do not have a general application as each definition applies only in a limited sense of that code section or subchapter. Moreover, Congress deleted references to Alaska and Hawaii in Title 26 as each of these Territories was admitted into the Union thereby recognizing that the Internal Revenue Code has no inherent operation within the States of the Union. (See Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141 and Hawaii Omnibus Act, P.L. 86-624, 74 Stat. 411 where references to Alaska and Hawaii were removed from the Internal Revenue Code of 1954 "each relating to a *special definition* of 'State'.")

The federal codes typically refer to the "States of the United States" as places where federal law has operation. But it is critically important to make the distinction between the "States of the United States," that is, those states that belong to the United States (i.e., the territories), and the "States of the Union," which do not belong to the United States government, but which formed The United States of America under the Articles of Confederation before there was a U.S. Constitution and a federal government in America. The federal government is a creation of the people of the States of the Union, and the States of the Union have not become absorbed into the federal government which they created. Of course, most of those working for the federal government and the legal system have it turned around exactly backwards and no one in that government today wants to look at the conclusions of the O'Donoghue case because it would put real restrictions on the operations of the federal empire.



Title 26, The Internal Revenue Code, applies inherently only to the inchoate "States of the United States" and has no inherent application within the sovereign States of the Union and the people who reside therein. In 1962, to clarify the meaning of the word "State" in federal tax statutes, the Secretary of the Treasury wrote definitions for the terms "State" and "United States" at 26 CFR § 31.3132(e)-1. In his own words:

**26 CFR § 31.3132(e)-1**

"(a) When used in the regulations in this subpart, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the **Territories of Alaska and Hawaii before their admission as States**, and (when used with respect to services performed after 1960) Guam and American Samoa.

"(b) When used in the regulations in this subpart, the term 'United States', when used in a geographical sense, means the several states (including the **Territories of Alaska and Hawaii before their admission as States**), the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. When used in the regulations in this subpart with respect to services performed after 1960, the term 'United States' also includes Guam and American Samoa when the term is used in a geographical sense. The term 'citizen of the United States' includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and effective January 1, 1961, a citizen of Guam or American Samoa." [Bold added.] 26 CFR § 31.3132(e)-1.

This regulation shows that the Secretary of the Treasury of the United States understood that each of the Territories of Alaska and Hawaii, which were under the sovereignty and legislative jurisdiction of the United States government as inchoate States before admission to the Union, no longer qualified as "States" as defined in the Code of Federal Regulations for Title 26, the Internal Revenue Code, after admission into the Union. As Congress admitted each of these

entities into the Union, they were thereby granted a separate sovereignty on the same footing as the original States that formed The United States of America. The relationship of the United States government with respect to Alaska and Hawaii was not the same before as it now is after the admission of these Territories as States of the Union. Before their admission into the Union they were subject to the United States government in every way and their representatives in Congress had only observer status. However, upon admission to the Union, the representatives of Alaska and Hawaii in Congress joined the representatives from the other States of the Union in providing direction to the United States government through their votes in Congress. Moreover, the United States government lost its inherent sovereignty over these former Territories and was now restricted from exercising any authority over these new sovereign States where the delegation of authority was absent from the U.S. Constitution. While the Territories of Alaska and Hawaii were part and parcel of the United States, upon admission to the Union as States, they each became separate, distinct, independent, and foreign to the United States government — taking on the same character as the other States of the Union from the inception of our political alliance.

There is, then, a double application for the word "State" in American history and law. The territories and insular possessions of the United States are inchoate States of the United States because they belong to the United States government. These inchoate States of the United States must not be confused with the sovereign States of the Union which banded together under the Articles of Confederation to make The United States of America and soon after created the United States government via the U.S. Constitution and thereby established the principle of cooperative federalism as part of American political life.

Both Congress and the U.S. Secretary of the Treasury have

been careful to artfully define these terms in compliance with the concept of cooperative federalism and the rulings of the U.S. Supreme Court. Unfortunately, few seem to understand the distinction between the 50 sovereign States of the Union and the 22 inchoate States of the United States which we usually refer to as the territories. The territories have no sovereignty as they are the property of the United States government. Thus, the term "States of the United States" as expressed in federal codes and regulations normally includes only the territories as inchoate states which belong to the United States.

The Internal Revenue Code and the regulations which give guidance to its proper implementation are internal to the federal government, its instrumentalities, and the territories upon which Congress has exclusive legislative jurisdiction, but not the States of the Union. It naturally follows that the administrative procedure set forth in the Internal Revenue Code and the Code of Federal Regulations is incorrectly applied by federal officials to individuals living within the territory of the sovereign States of the Union. Pursuant to O'Donoghue, such application appears to be unconstitutional as it oversteps the authority delegated to the United States government in the U.S. Constitution. Moreover, it is contrary to the principle of cooperative federalism.

### **They Can't, But They Do**

Our most fundamental documents (i.e., U.S. and State Constitutions) place clear limitations on the government's authority to take action against citizens. These limitations were in place for the protection, security, and general welfare of the people — to prevent the agents of government from becoming a uniformed gang acting against individuals or groups within American society without just cause or due process of law. Our government officials, both State and federal, are required to observe and promote these limitations.

Throughout our history some of the best analytical minds have upheld these principles of law in favor of the liberties of individual citizens in a free society. The government even promotes the rhetoric of these freedoms around the celebration of Independence Day when it does its best to generate feelings of patriotism by extolling the virtues of liberty. But often the promotion of personal freedom is tied to the concept of obedience to government so that the citizen is led to believe that obedience to government is the essence of liberty. However, it is a truism that personal liberty is self-determined and self-directed.

In spite of the limitations embodied in law, there are those in control of the machinery of government who continue in their efforts to build the empire of the governments and unwittingly chip away at the free exercise of the unalienable rights of the people. One example is the widely held misunderstanding that one must have a Social Security Number (SSN) in order to get a job and work in America. However, every State in the Union is a right to work State, which means that there can be no law that requires a person to seek permission from the government in order to make a living. Americans have the right to contract and the U.S. Constitution restricts the government from making any law that would impair or diminish that right. The Social Security Administration has confirmed in writing that it is not necessary for a person to have an SSN in order to work or live in the United States. Here it is in their own words:

#### **Letter from Dept. of HHS (Mar. 24, 1995)**

"The Social Security Act does not require an individual to have a Social Security number (SSN) to live or work in the United States, nor does it require an SSN simply for the purpose of having one..."

"We do not have the authority to require an employer to provide or deny employment or services to anyone who refuses to disclose his or her number. This is a matter

between the individual and the employer." Department of Health & Human Services letter from Vincent Sanudo, Director, Office of Public Inquiries, March 24, 1995.

Can there be any mistake about what this means for those in the work place? Providing an SSN to an employer is an optional, voluntary act, done, if at all, as an agreement between the employer and the employee, but not as a requirement of law. Taco Bell learned this several years ago when one of its employees refused to supply an SSN to the corporation. The corporation consequently refused to pay the employee his earnings under the notion that an SSN was required by law for employment. The employee filed a grievance with the Equal Employment Opportunity Commission (EEOC) which carried on the negotiations with Pepsi Co, the parent company of Taco Bell. The result was that Taco Bell was required to pay the employee his full earnings without the employee submitting an SSN. Moreover, the Taco Bell employment application (form PCN 98118 Rev. 5/98) now clearly states that an SSN is "optional". Stop by your local Taco Bell and pick up this application form just to see for yourself. This is in perfect harmony with 26 CFR § 31.3402(n) & (p) which specifies that the withholding must be at the desire of the employee and that the withholding agreement may be canceled at any time by either the employer or the employee. As Americans, we have the right to the fruits of our industry. That means the worker is entitled to one's full earnings without government taxation or any other interference.

Another example of chipping away at the free exercise of one's rights is the practice of direct taxation by the federal government. The U.S. Constitution prohibits the direct taxation of individuals by the federal government in Article I, section 9, clause 4. It is widely misunderstood today that the 16th Amendment (the income tax amendment) removed this restriction. But some 24 years after the 16th Amendment was

declared ratified, the Alabama Supreme Court had this to say about the authority of the federal and State governments to tax citizens:

**Beeland Wholesale Co. v. Kaufman (Mar. 18, 1937)**  
Supreme Court of Alabama

"State may tax its citizens personally provided no Constitutional restriction is violated, but **federal government cannot tax citizens personally except in proportion to census.**" [Bold added.] Beeland Wholesale Co. v. Kaufman, 174 So. 516 (1937).

Perhaps in the intervening years since this conclusion was made we've simply overlooked this rule of law. Yet, every year in April ("tax time") the media dutifully carries stories about individuals or businesses that have failed or refused to file federal tax returns and the ominous results that are sure to follow. Rarely is there any mention of the lawful limitations on the government's authority to actually collect a direct tax on the ordinary citizen working to make a living regardless of the amount earned. These stories amount to nothing more than intimidation by agents of the government and the government licensed media, and the stories must be understood in their proper context. To be sure, there are individuals and businesses that certainly have a federal tax liability, but a careful review of the law shows that the federal authority for taxation applies to very few who live and work in the States of the Union.

Yet another vexing issue is the presumption that the laws of the United States controlling illicit drug use have inherent application within the States of the Union. A thorough search of the U.S. Constitution turns up no delegation of authority from the citizens of the States of the Union to the United States government regarding the enforcement of illicit drug use. So how do the agents and agencies of the United States government lawfully enforce these laws within the States of

the Union without constitutional authority? The commerce clause, you say? If a constitutional amendment was needed to enforce the laws of the United States within the States of the Union for the manufacture, transportation, and sale of alcohol in the days of prohibition, why is a constitutional amendment not needed for the same enforcement authority regarding the illicit use of drugs? The federal government's "war on drugs" should be carried out within its jurisdiction, which includes the coastline, navigable waterways, and exterior borders of the States of the Union, until an amendment to the U.S. Constitution is proposed by Congress and adopted by the required number of States of the Union.

Several States have amended their constitutions and statutes to allow for the medical use and cultivation of marijuana. The federal courts have no authority to nullify these provisions of State law except as a certain provision might be in conflict with the U.S. Constitution. The commerce clause does not apply since there is no commercial activity involved. And the commerce clause does not apply to intrastate commerce. Because the U.S. Constitution is silent on the issue of personal drug use, federal drug laws are foreign to the States of the Union and the federal courts trample on the Tenth Amendment to the U.S. Constitution, as well as the rights and liberties of individuals, whenever it applies federal drug laws to people within the States of the Union. The laws of the State take precedence over any federal law, code, statute, or regulation where federal law has no constitutional foundation.

I do not make this argument because I have any sympathy for drug use - I certainly don't! But when it comes to the authority of the federal government, the authority of the State, and the rights of the individual, the most fundamental documents in our society place the individual first. Moreover, the States of the Union have priority over the federal government except for those things that have been specifically delegated to the federal government. Any federal statute,

code, or regulation that is not founded on the Constitution is foreign to the State.

A description of how we got ourselves into this mess would require a lengthy historical account which is beyond the scope of this essay. Suffice it to say that Americans have generally acquiesced to the demands of the agents of the federal government not out of respect for, but general ignorance of, the law and the limitations of federal authority. What is certain is that careful study and application of specific provisions for taxation, drug use, and other issues will be necessary for getting the mess straightened out so that those in charge of the machinery of government understand and operate according to the limitations of the law. Vigilance is the price of freedom, which is never really free. A citizen has the responsibility to be informed and to do one's best to promote the understanding that government must operate within its proper realm. One U.S. Supreme Court jurist said it this way:

**American Communications Ass'n v. Douds (May 8, 1950)**  
U.S. Supreme Court

"It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error."  
American Communications Ass'n v. Douds, 339 U.S. 382; 70 S.Ct. 674 (1950).

This principle applies most strongly to those who serve in the employ of the government. They should know both the authority under which they operate and the limitations of that authority, and be willing to hue to the law in all circumstances. This will manifest itself when the love for personal liberty is a priority in the government workplace.

The agents of the United States government have been attempting to expand their empire by stealth, misinformation, sophistry, coercion, and otherwise in a variety of ways for many years. But the only way that the jurisdiction of the

federal government can legitimately be expanded is by the amendment process. However, the bottom line seems to be this: U.S. government officials and agents will continue to push for the expansion of their authority and power so long as the population generally goes along with the programs. The conundrum in our "free society" is that all too often the general population is quite willing, even eager, to give up fundamental rights in exchange for the ease of government solutions to either real or imagined problems. There is plenty of blame to go around for this — politicians, bureaucrats, journalists, historians, attorneys, courts, etc. But ultimately, the individual is responsible.

### **The Importance of Personal Liberty**

Personal liberty is the cornerstone of American society. The majority of those who first arrived on American soil came here to escape the religious intolerance of the governments of Europe. In many places in the Old World, coercive measures had been instituted to ensure compliance. Unfortunately, the Puritan leaders in America had not learned the great lessons of personal liberty and their governance led to the Salem witch hunts and scarlet letters. There was no room for the free expression of one's thoughts if those thoughts were divergent from that of the political leaders. Roger Williams established Rhode Island as a place where the civil government offered respect for equality of opinions before the law and incorporated liberty of conscience as the cornerstone of its government's limitations. This became the model of government followed by other colonies as well as the model for the Bill of Rights when the federal government was formed. Americans have a proud tradition of promoting personal freedom.

Personal liberty is a most powerful ingredient in society, not only to satisfy the inherent yearning of the human spirit to be free, but for several very practical societal concerns. R.J.

Rummel, political science professor emeritus at the University of Hawaii, has analyzed statistical data from 190 countries and 70 variables, and published the results and his conclusions in his book *Saving Lives, Enriching Life*. In the overview of this book he states:

### **Saving Lives, Enriching Life (Jan. 17, 2001)**

"Our accumulated scientific and scholarly knowledge, and the results of vast social and economic experiments involving billions of people over three centuries, now enable us to claim, with even more confidence than saying that orange juice is good for you, that we can create perpetual peace, long life and secure lives, abundant food, wealth, and prosperity." R.J. Rummel, *Saving Lives, Enriching Life*, www2.hawaii.edu/powerkills, p. 3, January 17, 2001.

What is it that promotes these values? Freedom. The central theme that runs through his book is that freedom promotes the best of what is good in the world and works against undesirable results. Drawing on the broad data available, Rummel explains in graphic detail how freedom is a human right and promotes social justice, economic, scientific and technological development, agricultural production, low rates of violence and crime, personal satisfaction, political stability, and is a solution to war and a moral good. In short, freedom is a human right that creates prosperity and human security.

Compared with other societies where personal liberty has not been respected, America is a beacon of hope to the downtrodden yearning to be free. But could freedoms be lost in America? Might there be forces at work to erode the personal liberties that Americans have historically enjoyed and perhaps taken for granted? Have freedoms already been lost that were enjoyed by Americans in years past? Certainly. Rummel's data show that government coercion is counterproductive to the good of society as a solution to a wide range of problems. If freedom creates prosperity and

human security, then power impoverishes and kills.

American society has flourished primarily because of the profound respect for the personal liberty and the limitations on government action that is embodied in America's most fundamental documents. As governments become stronger and encroach on the rights of individuals, those limitations are weakened, American society suffers the consequences of an exacting, perhaps intolerant government and, step-by-step, the people lose their freedoms.

### Conclusion

I began this essay by stating that my purpose was to expose the fallacy of the assumed premise that federal law supercedes State law and that the United States of America is one nation. I've traced the history and law that shows that the States of the Union are fully nations in their own right that are separate, distinct, and foreign to each other and to the United States government as well. This is not just an interesting historical construct; it is the current legal and political relationship the States of the Union have with respect to the United States government.

In any given Act of Congress, it is important to determine whether the Act is founded on some part of the U.S. Constitution whereby the States of the Union have delegated authority to the United States government and thereby bound themselves and the people who live therein to the Acts of Congress on that issue. Without the proper delegation of authority, the Acts of Congress apply only to the territory belonging to the United States and such Acts have no legal operational effect within the States of the Union. Moreover, without this delegation of authority, the agents of the United States government are without authority to enforce the Acts of Congress, Presidential Executive Orders, or regulations created by any secretary of the president's cabinet.

The principle of cooperative federalism, one of the most

fundamental principles of American history and law, is based on the notion that the States of the Union are separate, distinct, and foreign to the United States government. This principle served as the basis for establishing the United States government in its own territory called the District of Columbia where it has exclusive jurisdiction, while it has only limited, enumerated jurisdiction outside of the federal district. It is the basis upon which the name of the legislative body for the United States government was determined to be "Congress" where envoys of sovereign States meet to work out solutions to common problems. It is the basis upon which the U.S. Supreme Court could cite Great Britain and New Jersey as two countries equal to each other for the purpose of citizenship and inheritance of property. It is the basis upon which the citizens of a State have access to the federal district courts to file suit against a citizen of another State where diversity of citizenship or settling a federal question is a prerequisite to the jurisdiction of federal courts. It has only been since World War II or so that we've lost sight of this fundamental legal principle. Losing sight of this principle has given those in control of the machinery of government a tremendous advantage over "we the people".

The United States government is a federal government and not a national government. It is not an umbrella government that has supremacy or general legislative jurisdiction, or sovereignty over the States of the Union and the people who live therein. The States of the Union are not cantons, districts, territories, or subdivisions of the United States government; nor are they States of the United States, that is, States belonging to the federal government. The 50 States are a collection of fully grown up nations that make up the Union which we call The United States of America.

Personal liberty is the cornerstone of American society. Personal liberty and the necessary limitations on government activity are the most powerful aspects of American society that

have made and kept America the land of the free. Individual freedom is a human right that is at the heart of social justice, economic, scientific, and technological advancement, food production, personal satisfaction, low rates of violence and crime, political stability, and peace. Without personal liberty, America would not be the beacon of hope to the world that it has been throughout its history. Without vigilance to preserve freedom as an unalienable right, America runs the risk of losing its historical stance in favor of personal liberty. Perhaps in some instances, it has already happened.

It is only when government operates within its proper limitations that the liberties of individuals and society can be preserved. For too many years, bureaucrats have operated as if the only limitations were on the people making up American society generally and not on themselves as the agents of government. If we ever hope to restore the proper operations of our federal and State governments as governments of limited authority, and preserve our unalienable rights, privileges, immunities, and freedoms, those who serve in government must come to cherish these limitations as passionately as did the Founding Fathers.

Notes