Constitutional and Legal Jurisdictional Limitation on the General Government

Introduction

There is a legal and symbiotic relationship between the Constitutional Doctrines of the "Equal Footing," "Enumerated Constitution," "States Rights," the "Uniformity Clause," and fundamental contract law. Never, in the history of State sovereignty, has a state stood united on these aforementioned doctrines and tenants. Uniting these five into the argument for full State Sovereignty will pave the way for almost ALL States in one capacity or another to begin working together in taking back their Constitutional roles, responsibilities, and powers.

The Equal Footing Doctrine and the Uniformity Clause

In accordance with Article IV Section 3 subsection 1 of the Constitution, Congress has the responsibility (i.e. not a power) to admit new States into the union. Congress did not receive any power whatsoever in this portion of the Constitution, nor in any Amendment to the Constitution to admit States into the union with varying degrees of Sovereignty or burdens placed upon a State that was not applied to ALL States. In accordance with Article I Section 8 in the preamble of the enumerated powers Congress has the power to "lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises **shall be uniform throughout the United States.**" Therefore, the general government must deal and treat with each State uniformly and equally. The States have not delegated any power to the general government to allow them to create unequal burdens, taxes, or hardships upon the States and their resources. The equal footing Doctrine and principle was evident in the admission of the Enabling Acts of Kentucky, Tennessee, and Vermont.

The Enumerated Constitution, States Rights, and Fundamental Contract Law

In accordance with Article VII of the Constitution, the Constitution is a compact and the only "Parties" to the compact are the States who ratified the Constitution and each State that has been admitted to the union, which is why ALL States must possess equal footing and Sovereignty.

During the Ratification Debates of the Constitution, the original thirteen States were emphatically told that the jurisdiction of the general government was limited to the enumerated powers within the Constitution. Keep in mind the primary argument the Anti-Federalists used was the fact that the Constitution lacked a "Bill of Rights." The reason this argument was rejected and why the States actually ratified the Constitution was due to the fact that the Constitution granted no general powers, that the powers were enumerated and were defined to be specific.

As those States vigorously debated the Constitution, the insights into fundamental contract law became very clear. There were two ways powers can be delegated in a "Constitution" (i.e. the Constitution is a compact between the Parties, which consisted only of the States, as Jefferson and Madison stated). Those two methods are either in general powers or clearly delineated powers, similar to powers of

attorney (i.e. general or enumerated). The Constitution for the United States possesses no general powers, there are two preambles and each were contained and defined as granting no powers during the Ratification Debates; thus, based on the clarifications of the compact during the Ratification Debates, these "definitions, terms, and conditions" that were stipulated in the Ratification Debates are legally binding terms and definitions to the compact.

Here are six primary examples of the Federalist arguments that were used and "accepted" during the Ratifying of the Constitution limiting the general government to what was enumerated within the Constitution; thus, limiting their jurisdiction to those powers and property enumerated:

1. "The gentleman has wandered out of his way to tell us — what has so often been said out of doors — that there is no declaration of rights; that consequently all our rights are taken away. It would be very extraordinary to have a bill of rights, because powers of Congress are expressly defined; and the very definition of them is as valid and efficacious a check as a bill of rights could be, without the dangerous implication of a bill of rights. The powers of Congress are limited and enumerated. We say we have given them those powers, but we do not say we have given them more. We retain all those rights which we have not given away to the general government. The gentleman is a professional man. If a gentleman had made his last will and testament, and devised or bequeathed to a particular person the sixth part of his property, or any particular specific legacy, could it be said that that person should have the whole estate? If they can assume powers not enumerated, there was no occasion for enumerating any powers. The gentleman is learned. Without recurring to his learning, he may only appeal to his common sense; it will inform him that, if we had all power before, and give away but a part, we still retain the rest" (Mr. MacLaine, July 28 1788, *Debates in the Convention of the State of North Carolina, on the Adoption of the Federal Constitution*).
2. "Did any man ever hear, before, that at the end of a power of attorney it was said that the attorney should not exercise more power than was there given him? Suppose, for instance, a man had lands in the counties of Anson and Caswell, and he should give another a power of attorney to sell his lands in Anson, would the other have any authority to sell the lands in Caswell? — or could he, without absurdity, say, "'Tis true you have not expressly authorized me to sell the lands in Caswell; but as you had lands there, and did not say I should not, I thought I might as well sell those lands as the other." A bill of rights, as I conceive, would not only be incongruous, but dangerous. No man, let his ingenuity be what it will, could enumerate all the individual rights not relinquished by this Constitution" (Mr. James Iredell, July 28 1788, *Debates in the Convention of the State of North Carolina, on the Adoption of the Federal Constitution*).
3. "Whoever views the matter in a true light, will see that the powers are as minutely enumerated and defined as was possible, and will also discover that the general clause, against which so much exception is taken, is nothing more than what was necessary to render effectual the particular powers that are granted" (Mr. James Wilson, December 4, 1787, *Debates in the Convention of the State of Pennsylvania, on the Adoption of the Federal Constitution*).
4. "the powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction." (Mr. Madison, June 6 1787, *Debates in the Convention of the State of Virginia, on the Adoption of the Federal Constitution*).
5. "In England, in all disputes between the king and people, recurrence is had to the enumerated rights of the people, to determine. Are the rights in dispute secured? Are they included in Magna Charta, Bill of Rights, &c.? If not, they are, generally speaking, within the king's prerogative, In disputes between Congress and the people, the reverse of the proposition holds. Is the disputed right enumerated? If not, Congress cannot meddle with it" (Mr. George Nicholas,

June 10 1787, *Debates in the Convention of the State of Virginia, on the Adoption of the Federal Constitution*).

6. "If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void." (Mr. John Marshall, June 20, *Debates in the Convention of the State of Virginia, on the Adoption of the Federal Constitution*).

The reason why the terms and definitions provided to the States during the Ratification Debates are legally binding, is because these terms and definitions were what sold the States into accepting the Constitution without a Bill of Rights. This is a fundamental tenant in Contract Law and in 1821, James Madison pointed to this fundamental tenant when he was asked by John G. Jackson to release his notes on the Constitutional Convention of 1787 so that people could understand the Constitution in contrast to some of the verdicts coming from the federal courts. This is what Madison stated in his response:

> "But whatever might have been the opinions entertained in forming the Constitution, **it was the duty of all to support it in its true meaning as <u>understood by the Nation at the time of its ratification</u>**. No one felt this obligation more than I have done; and there are few perhaps whose ultimate & deliberate opinions on the merits of the Constitution, accord in a greater degree with that obligation" (James Madison, 27 Dec 1821, *Personal Letter to John G Jackson*).

More importantly, in 1800 after James Madison and Thomas Jefferson attempted to unite the States on interposing full compliance to their compact, Mr. Madison expounded on the point in fact as to who the Parties were in stating:

> "founded in common sense, illustrated by common practice, **and essential to the nature of compacts**, that, where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges, in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the states, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority, of the Constitution, that it rests on this legitimate and solid foundation. The states, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity **that there can be no tribunal, above their authority, to decide, in the last resort, whether the compact made by them be violated; and consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition.**
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> It does not follow, however, because the states, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed either in a hasty manner or on doubtful and inferior occasions. Even in the case of ordinary conventions between different nations, where, by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole,--every part being deemed a condition of every other part, and of the whole,--it is always laid down that the breach must be both wilful and material, to justify an application of the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only deeply and essentially affecting the vital principles of their political system" (James Madison, Jan 1800 *Report on the Virginia Resolutions*).

In this same report Madison even pointed to the fact that the Judiciary could not be the final arbiters regarding violations committed by the general government in stating:

> "But it is objected, that the judicial authority is to be regarded as the sole expositor of the Constitution in the last resort; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.
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> On this objection it might be observed, first, that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of the judicial department; secondly, that, if the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final with the decisions of that department. **But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution**; and, consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another--by the judiciary as well as by the executive, or the legislature.
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> However true, therefore, it may be, that the judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, **this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government; not in relation to the rights of the parties to the constitutional compact, from which the judicial, as well as the other departments, hold their delegated trusts**. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve."

Consequently, any and ALL roles, responsibilities, and powers exercised by the general government that are not specifically granted in the Constitution, requires the states unify into the tribunal that Madison spoke of, to interpose upon the general government into full compliance with their compact.

In the early Nineteenth Century, when Congress tried three times to expand the powers of the general government to assume powers over State highways and waterways, ALL three Presidents vetoed these bills, that in essence would establish the footings for a Department of Transportation. In 1817, President Madison vetoed what was referred to as the Bonus Bill stating the power does not exist within the Constitution. If Congress desired to exercise this power, President Madison admonished Congress to seek an Amendment to the Constitution, as the only mode for the States to constitutionally delegating this power to the general government. In 1822 Congress attempted a similar bill with President Monroe who also vetoed it for the same reason. In 1830, Congress tried again to obtain this power from the States with President Jackson. He cited Presidents Madison and Monroe's reasons for vetoing the previous bills and asserted that Congress must seek an Amendment to the Constitution to properly exercise this power.

Background

To be clear, not only were the roles, responsibilities, and powers specifically enumerated in the Constitution but the possession, use, and sovereignty the general government could exercise over land was also specifically enumerated to as well. In Article I Section 8 subsection 17 the States delegate to the general government the ability to solely possess the District of Columbia, "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Not once have the States delegated any role, responsibility, or power to the general government to possess, control, or regulate any land within States for the purpose of forests, parks, environment, persons, or for any other purpose.

Today, States that have been encumbered regarding their resources or property by the general government have been illegally manipulated into an unconstitutional subservient role to the general government and their fellow States. The unconstitutional exertion of controls over a State's property and resources is tantamount to executing economic warfare in specific industries, such as the timber, and lumber industries, all of which violates the spirit and the letter of the Constitution.

Historical Precedence

- "It is a well -established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears;" see:
    - *Caha v. United States*, 152 U.S. 211, 215, 14 S.Ct. 513 (1894)
    - *American Banana Company v. United Fruit Company*, 213 U.S. 347, 357, 29 S.Ct. 511 (1909)
    - *United States v. Bowman*, 260 U.S. 94, 97, 98, 43 S.Ct. 39 (1922)
    - *Blackmer v. United States*, 284 U.S. 421, 437, 52 S.Ct. 252 (1932)
    - *Foley Bros. v. Filardo*, 336 U.S. 281, 285, 69 S.Ct. 575 (1949)
    - *United States v. Spelar*, 338 U.S. 217, 222, 70 S.Ct. 10 (1949)
    - *United States v. First National City Bank*, 321 F.2d 14, 23 (2nd Cir. 1963).
- This principle was perhaps best expressed in the first such ruling, *Caha v. United States*, 152 U.S., at 215, where the Court declared:
    - "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."
- This particular principle of law is expressed in a number of cases from the federal appellate courts; see:
    - *McKeel v. Islamic Republic of Iran*, 722 F.2d 582, 589 (9th Cir. 1983) (holding the Foreign Sovereign Immunities Act as territorial)
    - *Meredith v. United States*, 330 F.2d 9, 11 (9th Cir. 1964) (holding the Federal Torts Claims Act as territorial)
    - *United States v. Cotroni*, 527 F.2d 708, 711 (2nd Cir. 1975) (holding federal wiretap laws as territorial)
    - *Stowe v. Devoy*, 588 F.2d 336, 341 (2nd Cir. 1978)
    - *Cleary v. United States Lines, Inc.*, 728 F.2d 607, 609 (3rd Cir. 1984)
    - *Thomas v. Brown & Root, Inc.*, 745 F.2d 279, 281 (4th Cir. 1984) (holding federal age discrimination laws as territorial)

    - *United States v. Mitchell*, 553 F.2d 996, 1002 (5th Cir. 1977) (holding marine mammals protection act as territorial)
    - *Pfeiffer v. William Wrigley, Jr., Co.*, 755 F.2d 554, 557 (7th Cir. 1985) and
    - *Zahourek v. Arthur Young and Co.*, 750 F.2d 827, 829 (10th Cir. 1984) (holding age discrimination laws as territorial)
    - *Airline Stewards & Stewardesses Assn. v. Northwest Airlines, Inc.*, 267 F.2d 170, 175 (8th Cir. 1959) (holding Railway Labor Act as territorial)
    - *Commodities Futures Trading Comm. v. Nahas*, 738 F.2d 487, 493 (D.C.Cir. 1984) (holding commission's subpoena power under federal law as territorial)
    - *Reyes v. Secretary of H.E.W.*, 476 F.2d 910, 915 (D.C.Cir. 1973) (holding administration of Social Security Act as territorial)
    - *Schoenbaum v. Firstbrook*, 268 F.Supp. 385, 392 (S.D.N.Y. 1967) (holding securities act as territorial)
- From the above citations it is very plain that federal law applies only within the territorial jurisdiction of the United States and not within the 50 states.

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