



## **OUR CONSTITUTION DOESN'T GRANT OR GUARANTEE RIGHTS! ITS GOAL IS TO PREVENT THE GOVERNMENT FROM INFRINGING UPON RIGHTS WITH WHICH WE WERE BORN!**

Stephen L. Bakke  February 15, 2012

### **It All Started With an Article in the New York Times**

There was a NYT article last week entitled “‘We the People’ Loses Appeal With People Around the World” for purpose of use as a model for their own constitution. The article states:

*The United States Constitution is terse and old, and **it guarantees relatively few rights** ... The rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber ... But the Constitution is out of step with the rest of the world in failing to protect, **at least in so many words**, a right to travel, the presumption of innocence and entitlement to food, education and health care.*

Adding fuel to the fire, U.S. Supreme Court Justice Ruth Bader Ginsburg, who often rules “creatively” from the bench, when asked about counties developing their own forms of government, stated:

*You should certainly be aided by all the constitution-writing that has gone on since the end of World War II. **I would not look to the U.S. Constitution**, if I were drafting a constitution in the year 2012 ..... Yes, why not take advantage of what there is elsewhere in the world?*



It’s seems that some U.S. Officials would like to see our Constitution “shredded” – symbolically at least. Even our President repeated (at half-time of the Super Bowl) the common progressive lament about the obstacles to creating fundamental sweeping change in the United States:

*[Our Founders] designed a system that makes it more difficult to bring about change than I would like sometimes. (And from an interview in 2001) [The Constitution is] a charter of negative liberties. It says what the states can’t do to you, it says what the federal government can’t do to you, but it doesn’t say what the federal government or the state government must do on your behalf.*

For Obama, it's "all about government" controlling the details of our lives. *Investor's Business Daily* responded to this recent commentary as follows:

*A lack of respect for the Constitution isn't peculiar to Obama. It's shared by democrats. .... We're not ashamed to declare the U.S. Constitution a magnificent document that, along with the Declaration of Independence, forms the greatest national charter in human history. No other document has ever guarded freedom the way it has, and no other contract has provided such a foundation for prosperity. It's not perfect, but it's as close to perfect as man has come.*

### **Let's Remember What Our Constitution is All About!**

It all begins with the *Declaration of Independence* which states:

*We hold these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.*

Thus was introduced the creed upon which our system of government was based. We then fought for a victory in the Revolutionary War after which ultimately was born the United States Constitution based on this concept of individual rights "endowed by their Creator." Furthermore, from this document arose the concept that all power comes from the people – the citizens of this new Republic – an experiment in liberty.

### **The United States Constitution Was Completed after Several Years of Hard Work – and Then Came the Bill of Rights**

After the Constitution was ratified by the states in 1788, there was some criticism, particularly among the "Anti-Federalists" that it contained few guarantees of individual rights. Memories, whether Anti-Federalist or not, were still prominent about the many violations of liberty carried out by the British. Those violations led to grievances which had been enumerated in the Declaration of Independence. On the other hand, some of our Founders did not want to include "specified rights" in the Constitution for fear that if certain rights were specified, then the people could be denied other rights that were not specifically listed. A compromise was reached by adding the Bill of Rights. How they "got around" the conflict of whether rights should be extensively enumerated is dealt with later (hint – the 9<sup>th</sup> Amendment).

And so, it was agreed the Constitution needed to expand on individual rights as described in the Declaration of Independence and hence the motivation, in 1791, to adopt the first 10 Amendments. These became known as the "Bill of Rights." James Madison, then a member of the U.S. House of Representatives, led Congress in this undertaking. Here is a depiction of the signing of the Bill of Rights.



The Bill of Rights was inspired by three remarkable documents: John Locke's 1689 thesis, *Two Treatises of Government* regarding the protection of "property"; in part from the *Virginia Declaration of Rights* authored by George Mason in 1776 as part of that state's Constitution; and, of course, in part from our *Declaration of Independence* authored by Thomas Jefferson.

Read in context, the Bill of Rights is both an affirmation of innate individual rights and a clear delineation on constraints upon the central government. When I read about "rights" in the constitution, I view them as the Founders' way of saying boldly "government cannot mess with this." And the 9th amendment clarifies this by saying the rights and power not enumerated in the document are left to the people – **"retained by the people."** It reads:

*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

This amendment states simply and un-specifically that just because a right is not enumerated in the Constitution, does not mean that the people do not retain that right. Some of our Founders did not want to include a "Bill of Rights" in the Constitution for fear that if certain rights were specified, then the people could be denied other rights that were not specifically listed. **This amendment was therefore a compromise between the Federalists and Anti-Federalists.** And then followed the 10<sup>th</sup> Amendment to "round out the compromise." It follows:

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

This 10<sup>th</sup> Amendment relinquishes to the state governments, or to the people, those powers the Constitution did not **expressly grant the federal government** or deny the states, thereby **limiting the power of the federal government to that which is granted in the Constitution.**

### **What is it About "Unalienable Rights" that Progressives Don't Understand?**

The concept of rights of citizens is so simple, some people make it complicated. Our Founders had an idea in mind in terms of rights and how we get them. I think their approach showed "genius at work." I know some don't, but most would if they looked below the surface. Let's recap what our Founders had in mind when they dealt with individual rights:

- The essence of the Constitution is its **design for limited government.**
- Rights simply exist. You don't buy them. Nobody but your creator "endows" them.
- If the government provides something it may be a service, but not a right as envisioned by the Founders.
- If something can be granted only by government action such as social security, that's not what the Founders were talking about – consider free health care – a misguided government program perhaps, but not an unalienable right.
- Progressive critics usually **fail to differentiate between rights retained by the people from the government (those endowed), and entitlements** which are actually government services involving transfers of money – often redistributive.
- Our Founders' concept of rights was at a **much higher level than mere handouts.**
- The rights that have been "endowed by our Creator" are to be considered in relation to the **individual**, similar to the Judeo/Christian tradition of individual salvation.

- The Bill of Rights can be viewed alternatively as a “[Bill of Federal Government Limitations.](#)”
- [Our Constitution doesn't grant or guarantee rights!](#) It prevents, or attempts to prevent, the government from infringing upon rights with which we were born.

The Constitution is seemingly dismissed, and is accused by Ginsberg and the New York Times of being old, with the natural implication that it is archaic. This IS the oldest written constitution in force in the world! And [it's still in force because it was done right!](#) As Paul Kengor reasons:

*It is based on timeless values and virtues and universal rights that work; that are true. It has been amended less than 30 times in 220-some years. It is the most stable, successful, remarkable constitution in history ..... [The U.S. Constitution is the perfect model, at once both beautifully broad and specific.](#)*

Individuals such as Justice Ginsberg and many progressives seem uncomfortable with rights which are not enumerated and constantly try to create them out of whole cloth for political reasons. They need a checklist so they can better see what more they can add to the list.

### **Progressives Want a List of Rights and a Smoother Pathway to Change Our Government**

Progressives consistently bemoan the difficulty inherent in our Constitution to make fundamental changes in our form of government. As political analyst Arnold Ahlert reminds us:

*Progressives don't like the amendment process, because getting two-thirds of Congress and three-fourths of the state legislatures to agree on something is too “difficult.” No doubt it is – for an ideology that worships both moral relativism and instant gratification. The idea that the amendment process is both deliberative and requires the consent of an overwhelming majority of Americans who still believe in the concept of a democratic republic, as opposed to the fevered idiosyncrasies of mob rule .....*

And if the Founding Fathers would have attempted to list every right or freedom, the list would not have been completed to this day. Any time you say “let's enumerate our rights,” the implication is that they are thereby granted and guaranteed by the body making that declaration. **[That's not what our constitution is all about – like it or not!](#)**

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*The Constitution was made to [guard the people against the dangers of good intentions.](#)*  
– Daniel Webster

*Can the Liberties of a nation be secure when we have removed a conviction that [these liberties are the gift of God?](#)* – Thomas Jefferson

*The Constitution is not an instrument for the government to restrain the people; [it is an instrument for the people to restrain the government](#) – lest it come to dominate our lives and interests.* – Patrick Henry

*[It's called the separation of powers, Mr. President, and it was created to protect the nation from a dictatorial executive branch.](#)* – Cal Thomas