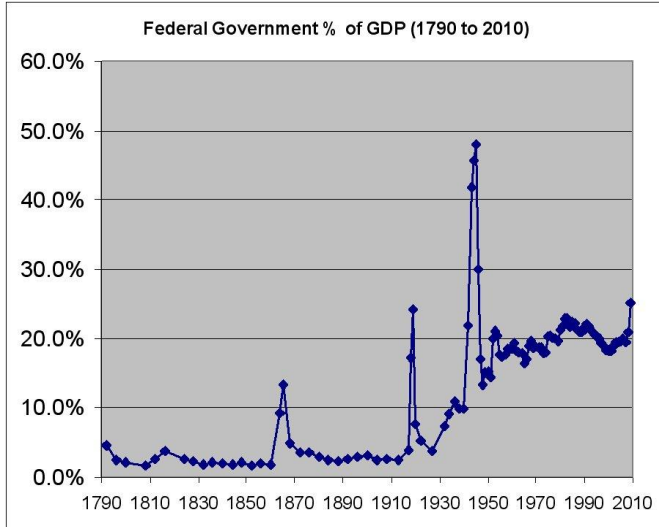


What has happened to the American Constitution? (and how to fix it)

The Essential Balance of American Federalism is Broken

“The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

James Madison, The Federalist, Essay Number 45



The original idea: More States, Less Feds

For most of American history (1790-1930) and with exceptions during war, the national government remained small and limited (2-5% of GDP). But since the Great Depression, Second World War and Cold War eras, the national government has eroded its limitations (based upon Article I Section 8 and the Tenth Amendment of the Constitution.)

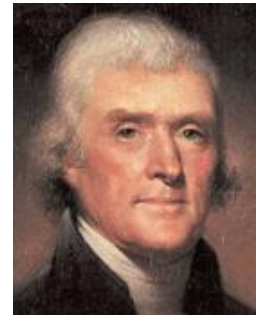
Over time the powers of the federal (national) government have overtaken the states, breaking the essential balance of our Constitution.

There also exists a foundational issue within the original Constitution. The federal government (nor any branch of it, such as the Supreme Court), cannot be the rightful judge of whether its own limited powers have been exceeded.

Simply put: **No one is a fair judge in their own case.**

“the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers.”

Kentucky Resolutions, November, 1798, 1st Resolution (Thomas Jefferson)



Who decides what the Constitution means?

- **The federal government should not be the final judge of its own limited powers.** In Jefferson’s words, this makes the Constitution “a mere thing of wax in the hands of the judiciary” and the national government eventually assumes all powers unto itself, as Jefferson predicted and we now witness. By the 1820s, Jefferson saw an underlying tendency to centralize powers in the federal government (through the Courts.)
- **Each state cannot decide on its own what the Constitution means for all.** This contradicts the “supremacy” clause, defeats the original purpose of the Constitution and breaks the union apart.
- **“We, the People” must ultimately decide what the Constitution means,** but elections are not immediate and they involve multiple trade-offs. We need a pragmatic **“bottom-up”** check on unconstitutional federal laws that is also **specific and timely**, just like a Supreme Court ruling. As Madison wrote (Federalist 51) “A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”

What’s missing? A “bottom-up” check on the Congress by the States (on behalf of the People)

We’re missing a pragmatic way for “the several states” acting together to check the national government: We need a State Powers Amendment (SPA) so a representative majority of states can repeal federal laws and regulations, in whole or part.

The State Powers Amendment (or SPA) [Madison's "Lost" Amendment]

What is the State Powers Amendment?

“Section 1. Any provision of law or regulation of the United States may be repealed by the several states, and such repeal shall be effective when the legislatures of a representative majority of the several states approve resolutions for this purpose that particularly describe the same provision or provisions of law or regulation to be repealed. [A representative majority of the several states is a majority of the states also having together a majority of the Representatives in the Congress.]”

(See also the Repeal Amendment <http://www.repealamendment.org>

An earlier approach that differs only in requiring two-thirds of states, not a representative majority.)

Talking points for the SPA

- Amending the Constitution has historically been a focus for successful political movements. (Those who want small limited government can learn from initiatives such as BBA and ERA.) SPA is exactly the right cause to organize the right people: those who want “More States, Less Feds” and who understand why federalism is better than unlimited centralized powers.
- As a practical matter, if the SPA existed, Obamacare would have been repealed in whole or part.
- Following the 17th amendment (1913, Senators elected by the People) and the early practice of choosing presidential electors by popular vote, the States have lost their only practical checks on federal powers. The SPA would correct this deficiency and directly repair the imbalance.
- SPA will focus a national debate to overturn deeply false doctrines such as the “Living Constitution” and its real meaning of Judicial Supremacy.
- Switzerland has had a similar “bottom-up” check in its Constitution since 1847 which has kept its central national government small in comparison with its regional governments (cantons)
- Objections to a Constitutional (Article V) Convention approach are reasonable, but secondary. First: does SPA solve a major Constitutional problem? If not, the means are irrelevant-- just don't do it! On the other hand, if SPA saves the American Constitution, it is worth some risk.

In Search of Madison's "Lost Amendment"



What is the “Lost Amendment” of James Madison?

The original concept for the State Powers Amendment (SPA) can be found in letters and private notes of James Madison written late in his life. After John C. Calhoun defended the nullification of a national tariff by South Carolina (1832), Madison denounced Calhoun's doctrines as “a contradiction in terms”, “a fatal inlet to anarchy” and an invitation to civil war. In 1835, Madison wrote that interposition (in the Virginia Principles of '98) was meant “a concurring authority, not that of a single state” (three-fourths of states being supreme in theory.) Madison wanted to amend the Constitution so “as to provide a more satisfactory mode” for guarding against violations.

About the Book

Constitutional Awakening: How to Restore American Federalism with Madison's “Lost” Amendment Idea

*It's easy to show the Constitution is “broken”--
It's hard to fix it!*

Designed for a six-week home study course, here is the class for a 21st-century “Constitutional Awakening!”

About the Author

Lloyd Sloan hosted “The Sloan Ranger Show” on WGNU (2001 to 2007) Lloyd graduated from Harvard College in 1978. He's worked as a math teacher, actuary and computer programmer.

