

# **The Constitution In 10 Lessons**

## **Lesson 4**

Papers 8 and 9

Original lessons by Publius Huldah

## LESSON SUMMARY

# to keep the courts right:

1. Recognize the REAL source of our rights
2. Learn *and teach* the Constitution
3. Watch that Federal Courts rule only in their enumerated areas
4. Demand that our representatives impeach, try and remove from office judges usurping their authority

Paper 8:

# Enumerated Powers of the Federal Courts

The following are the  
**ONLY CASES**

the Federal Courts  
are permitted to hear:



# ARTICLE III § 2

## “FEDERAL QUESTION” JURISDICTION:

- all Cases, in Law and Equity, **arising under this Constitution**, the **Laws of the United States**, and Treaties made, or which shall be made, under their Authority;

## “STATUS OF THE PARTIES” JURISDICTION:

- to all Cases affecting **Ambassadors**, other public Ministers and Consuls;
- to all Cases of **admiralty and maritime** Jurisdiction;
- to Controversies to which the **United States shall be a Party**;

## “DIVERSITY” JURISDICTION:

- to Controversies between **two or more States**;
- between a **State and Citizens of another State**,
- between **Citizens of different States**,
- between **Citizens of the same State claiming Lands under Grants of different States**, and
- between a **State, or the Citizens thereof, and foreign States, Citizens or Subjects.**



**That is all.**

## Federalist 83, 8<sup>th</sup> para

...the judicial authority of the federal judicatures is declared by the Constitution to comprehend certain cases particularly specified. ***The expression of those cases marks the precise limits beyond which the federal courts cannot extend their jurisdiction,*** because the objects of their cognizance being enumerated, the specification would be nugatory\* if it did not exclude all ideas of more extensive authority. (*emphasis added*)

\* Of no force, inoperative, ineffectual

Discussing how the Judiciary  
*could* overreach is  
unnecessary because of  
**enumerated powers and the  
check of impeachment.**

# Examples of Supreme Court cases *outside of its* “federal question” jurisdiction

Roe v. Wade (1973)

Lawrence v. Texas (2003)



# ROE V. WADE

*“...right of privacy...founded in the **Fourteenth Amendment**’s concept of personal liberty and restrictions upon state action...” (p. 153)*

**negates as  
unconstitutional (sic)  
State laws criminalizing  
abortion**

# LAWRENCE V. TEXAS

*“...right to liberty under the  
Due Process Clause...of the  
Fourteenth Amendment...”*

*(pp. 564, 578, 579)*

**negates as  
unconstitutional (sic)  
State laws criminalizing  
homosexual conduct**

**Yet**  
**NOTHING**  
**in the Constitution**  
**prohibits states from**  
**making these laws.**

## FROM LESSON 1

The Federal Government is  
**permitted** to do only a few things.

States, on the other hand, are  
**prohibited** from doing only a few  
things.



# STATE LAWS DECLARED UNCONSTITUTIONAL

- Laws against aborting babies
- Laws against homosexual behavior
- Laws that restrict benefits to illegal aliens.

# STATE LAWS *TO BE* DECLARED UNCONSTITUTIONAL?

- Laws against sex with children
- Laws against crack cocaine and heroin
- Laws against prostitution
- (insert a law you support here)

If there is a 'liberty & privacy right' in the 14<sup>th</sup> Amendment, why not?

Federal judges use the

# 14th Amendment

as a blank check to prevent the States  
from outlawing conduct which they  
want to legalize.

**They simply *make up* a  
“Constitutional right”  
to do so.**



## **ANTHONY KENNEDY:**

*“...as the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”*

*(Lawrence v. Texas, p. 579)*

**thus negating as  
unconstitutional (sic)  
Article III, § 2**

The  
**REAL**  
meaning of the  
**Due Process**  
**Clause**





GOVERNMENT  
BY JUDICIARY

*The Transformation of the  
Fourteenth Amendment*

Raoul Berger

*with a Foreword by Forrest McDonald*

SECOND EDITION





## AMENDMENT XIV

*Passed by Congress June 13, 1866. Ratified July 9, 1868.*

### SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of **life, liberty, or property**, without **due process** of law; nor deny to any person within its jurisdiction the equal protection of the laws.



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# DUE PROCESS OF LAW

A person's Life, Liberty or Property can't be taken away ***except by the judgment of his peers pursuant to a fair trial.***

Specifically, that freed slaves could not be punished except pursuant to the judgment of their peers after a fair trial where they could appear, cross-examine witnesses and put on a defense.



# LIFE

As opposed to being lynched

# LIBERTY

Being out of prison, as opposed to being in prison

# PROPERTY

That stuff the person owns



## **LIBERTY TO FEDERAL JUDGES...**

Freedom from moral restraints

## **THE DUE PROCESS CLAUSE**

### **TO FRAMERS OF THE 14<sup>TH</sup> AMENDMENT...**

Protect freed slaves from being put to death, imprisoned or having their property stolen

## **LIBERTY TO STRICT CONSTRUCTIONISTS...**

Freedom from coercive civil government



# What to do?



Ensure that Congress uses its  
**enumerated powers** to  
**impeach and**  
**remove**  
**usurping judges.**





# Federalist 81, 9<sup>th</sup> para

*...the important constitutional check which the power of instituting impeachments in one part of the legislative body [House], and of determining upon them in the other [Senate], would give to that body [Congress] upon the members of the judicial department. This is alone a complete security. There never can be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted with it [the impeachment power], while this body [Congress] was possessed of the means of punishing their presumption by degrading them from their stations.* While this ought to remove all apprehension on the subject it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments [some had said impeachments should be tried in the supreme court].

[italics added]



*We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution.*

Abraham Lincoln

*The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty bound to do his share in this defense are the constitutional rights secure.*

Albert Einstein

## Paper 9:

**DO OUR RIGHTS  
COME FROM GOD,  
THE SUPREME  
COURT, OR  
CONGRESS?**



## The Source of our Rights

“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. - That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . .

# Foundational Principles

- Our Rights are unalienable and come from God;
- The purpose of civil government is to protect our God-given Rights;
- Civil government is legitimate only when it operates with our consent;
- The US Constitution is the formal expression of We The People — ***our consent is only for \*\*constitutional\*\* government.***

# Natural Law

Refers to that body of Law which is woven into the Fabric of Reality: The laws of physics, economics, logic, morality, etc. Non-theists, such as the philosopher Ayn Rand, saw Rights as inherent to the nature of man. Either way, one comes up with essentially the same set of Rights. And if you listen carefully to some as they speak on any topic, you will see that their war is against Reality itself - they reject altogether the concept of transcendent Law. This is because they know no “law” but their own wills.”

Publius Huldah

# Identifiable Natural Rights

- Life
- Liberty
- Pursuit of Happiness
- To inherit, earn, keep property
- Self-defense
- Right and duty to demand civil authorities obey the Law
- Right to speak and gather to petition gov't
- Right to worship God free from gov't interference



# Distinguishing Characteristics of Rights

- Each of these rights may be held and enjoyed at NO expense or loss to any other person.
- Each right is not subject to someone else's interpretation.



# Therefore . . .

- It is incorrect to speak of our *Constitutional Rights*.
- The Constitution is about the Powers which We The People delegated to the federal government.



- The Constitution is **NOT** about our Rights.
- Our rights pre-date and preexist the Constitution because they originated with God.
- **The purpose of the Constitution is to limit the power of government through:**
  - Representation,
  - Enumerated powers, and
  - Separation of Powers.

# We Invite the Supreme Court

- To regulate our rights when we refer to our “Constitutional Rights”

*because...*

- Art III, Sec. 2, clause 1, gives them power over all cases “arising under the Constitution.”

# Rights appear as definitions shift

From *Liberty* a judge references *Privacy*... so now we incorrectly speak of the *Right of Privacy*...

From the *Right of Privacy* we now have a special room in every house where anything goes... *the bedroom*.

Or a human organ, such as the womb.



# Phony Rights

- Right to education,
- Right to job, healthcare, living wage,
- Right to marry
- (can you think of others?)

# Legalizing immorality demeans Liberty

- Every criminal can surely appreciate that Liberty now means the freedom to conduct in privacy those things that are now free from moral constraint.
- Meanwhile, civil society — the very purpose we come together to form a government — is destroyed.



# **“Only God can save us now...”**

“The Declaration of Independence states that the Creator gave man the right to liberty. It seems man can realize that liberty only if he does not forget the One who endowed him with it.”

The Need for Transcendence in the Postmodern World by former Czech Republic President Vaclav Havel at Independence Hall, Philadelphia, July 4, 1994.