Article 1.1: “All Legislative Powers...Shall be Vested In a Congress...”

The New Hampshire Center for Constitutional Studies Newsletter

Usurpation: A Constitutional Taxonomy - By Ed Vieira Jr., Ph.d.

From the very beginning, the primary mechanism by which public officials have evaded, subverted, flouted, and even sought to destroy the Constitution has been usurpation. Usurpation consists of either (i) the exercise of a governmental power to which the official has no right, or (ii) the failure of the official to exercise a power he has a duty, and which the people have a corresponding right to expect him, to exercise. Usurpation manifests itself in many forms:

- The assertion of a power not granted at all (or even affirmatively withheld).

The classic example is Congress’s claim of a power supposedly implied in Article I, Section 8, Clause 2 of the Constitution to emit legal-tender paper currency not redeemable in silver or gold coin, either directly from the Treasury (e.g., the Civil War Greenbacks) or indirectly through private banks (e.g., Federal Reserve Notes). In fact, the original draft of that Clause in the Federal Convention empowered Congress to “emit bills” (i.e., generate paper currency), in conformity with the power under the Articles of Confederation. But the Founding Fathers struck those words from the final version of the Constitution. How

In Memory of “Charlie Johnson—Patriot & Constitutionalist” - By The Honorable Harriet Cady

I was fortunate to meet the “Johnson Boys” along with a number of other NH patriots as a delegate to the 1984 NH Constitutional Convention. They loved to hold spirited debate on the State and National Constitution. They loved to hold constitutional conventions. They loved to hold spirited debates about what this or that meant — usually something written by a politician or a constitutionalist. Charlie usually had the right answer, having read every State and National Constitution in addition to many law books. However, I enjoyed trying to one-up him; but, even when I managed to, it wasn’t a lasting thing. He would wait a bit then surprise me with some new piece of research he’d done and we’d be at it again.

Charlie Johnson was not a wealthy man, but he certainly was rich in friends. I count myself among them and feel blessed and enriched for having known him.

Good-bye Charlie, be at peace in God’s loving hands.

What The Founders Would Say...

“The first grand right is that of the people having a share in their own government by their representatives chosen by themselves, and...of being ruled by laws which they themselves approve, not by the edicts of men over whom they have not controul...”

- Continental Congress 1774
Fisher Ames – Forgotten defender of liberty, was born in Dedham, Massachusetts in 1758 the son of Nathaniel Ames. Born to a family long settled in New England, Fisher Ames received a superior early education steeped in the classics and knowledge of antiquity. The first school he attended what that of his native town school; then later he received his education by way of private instruction. At the age of twelve, Ames was admitted to Harvard College; he became known for his oratorical skills. After studying under one of Boston’s leading lawyers, Ames joined the Bar in 1781 and rose to prominence in Massachusetts’ politics. As a public servant, Fisher Ames served as a member to the Concord Convention, which met during the American Revolution to set and regulate prices. Later while serving as a member of the Massachusetts House of Representatives, he was called to serve in the 1788 Massachusetts Ratification Convention to consider the proposed new Constitution. After the ratification of the Constitution, he served in the 1st through 4th Congresses of the new nation covering the period March 4, 1789 to March 3, 1797. Fisher Ames was a Federalist; in 1790, he replaced James Madison as the Federalist lead in the House of Representatives. He wore many hats. He was a Publicist, a Statesman as well as a Judge. He wrote the initial draft of the 1st Amendment to the Bill of Rights. This is the amendment often misquoted today as banning religious expression from public life and, in particular, in public schools. Respecting this, Fisher Ames must be rolling over in his grave. This quote which was printed in Palladium Magazine, September 20, 1789 says it all: “We have a dangerous trend beginning to take place in our education. We’re starting to put more and more textbooks in our schools. We’ve become accustomed of late of putting little books into the hands of children, containing fables and moral lessons. We’re spending less time in the classroom on the Bible, which should be the principal text in our schools. The Bible states these great moral lessons better than any other man-made book.”

To most modern thinkers, Fisher Ames’ words must seem absolutely foreign. Yet history records that this is how the author of the First Amendment interpreted freedom of religion as it applied to educating childhood. Who would know better? After all he is the author of the First Amendment.

As a Congressman (1789-97), and after his retirement as well, he was high in party councils. He was a staunch supporter of Alexander Hamilton, and a steadfast opponent of Thomas Jefferson. Among Ames’ most memorable speeches is one he delivered in 1796 while a member of the House of Representatives. Here he spoke in support of Jay’s Treaty while the House itself was disposed to nullify it by withholding appropriations. He was the archetype of the New England conservative of his time, a strong proponent of order and of property rights. Ames was considered a melancholy man who held a pessimistic outlook on America’s future. In retrospect, his foresight and warnings regarding the challenges to American liberty were not off the mark. Later in life he would record these ideas in a number of different essays; they have survived to depict Fisher Ames as one of America’s greatest advocates of a free society.

Ames’ ideas regarding politics and economics were formed during the tumultuous years at the close of the 18th century. Shay’s Rebellion both frightened and outraged Ames; he became convinced that only through a limited but energetic government could individual rights be protected from force or fraud. Though convinced that government was necessary to prevent anarchy in society, Ames never envisioned a State which intervened in the economy or the private affairs of its citizens. What he wanted, was a government that was given just enough powers such that it could act in the role of umpire and thereby as guardian of individual freedom. He sought a strong, central government which would ensure peace and order but leave men free to pursue their own ends within the framework of the law.

He sought market solutions to business and economics issues supported by moral and spiritual principles. He understood man’s light and dark sides; for this reason and this reason alone government, its institutions and laws were needed to ensure order. Ames was troubled by the drive for equality of condition, which, he prophesized would end in the loss of individual freedom, the impoverishment of the people, and the aggrandizement of the demagogues. Government enforced equality would mean mediocrity, equality of poverty and no opportunity for self betterment through hard work for there would be no incentive to work hard if one could not reap the fruits of his labors. He warned that egalitarians would attack both private property and free enterprise as a means to their ends: “The philosophers among the democrats will no doubt insist, that they do not mean to equalize property, that they contend only for an equality of rights.” He continues, “…on close examination, it turns out, that their notion is, that all the citizens of a republic have an equal right to political power.” He warned the people time and again that the demagogues will promise “power to the people,” but then will grab the purse strings and use it to wield power themselves. Property rights would inevitably be violated. In the end, the people themselves would be treated as their property.

Fisher Ames, of Massachusetts, believed in limited government and a free market economy. These were the ideas he espoused throughout his lifetime; these are the ideas he applied throughout his lifetime. He died expecting the imminent collapse of American liberty; he wasn’t wrong, just early. In many ways history has proven him to be frighteningly accurate. Four years before his death, he was chosen President of Harvard University. He declined the position for health reasons. Fisher Ames, patriot, statesman, great American died in Dedham, Mass., July 4, 1808. He was the third founding father to die on July 4 - the other two being John Adams and Thomas Jefferson.

How America could use a modern day Fisher Ames. Harvard graduate, eloquent orator, member of the Massachusetts House of Representatives and U.S. Congress, one of the key framers of the Bill of Rights, namely: The First Amendment. He was specific in defending America for what she was intended to be—a Constitutional Republic—built with his own hands—never to be a democracy. He was so blessed to have him walk among us today. – Adapted from a publication written by Mr. Wolfe, former student, Hillsdale College in Michigan.
the laws by participating in the act of legis-
lation… The great work of society is ever
going on before his eyes, and, as it were, un-
der his hands. In the United States, poli-
tics are the end and aim of education."

“There is a Malice Against us…”

But what was not obvious to de Toc-
queville, was that the seeds of destruction
were already being sown. “The philoso-
phical plants of derailment were seeded
and began to grow full force sometime be-
tween the very early years of the Republic
and the Civil War… These plants were lav-
ishly fed and nourished, sometimes unwit-
tingly, after the Civil War, so that by the
turn of the [20th] century the so-called pro-
gressivist historians and political scientists
could burst forth with their notions about
America’s self-governing character; that is
their bottom-up form of government, where
power was dispersed among the people to
a top-down, highly centralized govern-
ment. The fruits of their effort are clearly
visible in today’s behemoth national govern-
ment now host to more than 2 million fed-
eral employees (exclusive of the mili-
tary), over fifty (50) executive and quasi-
government agencies that have the power
to affect, and do, the lives, liberty and
property of every American, in addition to
a jungle of non-profit social service orga-
nizations that feed like parasites at the
public trough.

The End of A More Perfect Union

Suffice it to say, the Framers’ plan for a
limited, Checks and Balances, Constitu-
tional government, has been derailed. According to Dr.
W. Cleon Skousen, former Professor of
Constitutional Law, the de-constructing of the
American Republic was a well
planned, well orchestrated scheme to un-
bind our Founding Covenant: “to a great ex-
tent [by] men who had helped make the
United States the most powerful industrial
nation in the world.”[Among them] was
Andrew Carnegie… another was J.P. Mor-
gan… another was John D. Rockefeller…
Congressional leaders also reveal that all
three of these men lost confidence in the
Founders’ Constitutional structure and de-
cided to promote a new system of econ-
omic and political control which would
concentrate power in Washington. They
concerned money into taxes
exempt foundations and began giving
fabulous gifts to those colleges and uni-
versities, which would promote their
ideas. They bought up networks of me-
dia, invested heavily in political candi-
dates, gained control of the Federal Re-
serve System and began manipulating
American politics and economics to suit
their purposes.

Over time their policies would find
their way into America’s classrooms. History
texts once used to teach young
18th and 19th century Americans patriot-
ism, duty, their American heritage, the
principles of limited government, and,
most importantly, that their rights came
from God were systemically replaced by
history texts teaching the new political
tradition. In less than three generations
America’s political tradition of self-
government would give way to the Euro-
pean notion of a collectivist society. That
is, the Marxist notion “that the Promised
Land, the ideal society of saints, can be
built in this world, and need not be post-
poned until the world to come.”

Somewhere around the mid-1960s, a
new American political tradition began
to emerge, radically transformed and an-
thetical to the government framed by the
United States Constitution. “And not a
shot was fired!”

The Roots of The Unconstitutional
Headless 4th Branch

Now, it should be told, that the Fram-
ers of the Constitution held no illusions as
to whether they had perfected the sci-
ence of government; they knew their
plan was not perfect and that improve-
ments would be needed in their time as
well as into the future. That was the
whole purpose of including Article V in
the 1787 Constitution, to provide a con-
stitutional process for revising the Con-
stitution. In fact, that was one of the hard
lessons the Founding Fathers learned from America’s first Constitution, the
Articles of Confederation and Perpetual
Union, whose rigid amendment process
served to obsolete it. But, unlike those
who sought to up end our tradition of
self-government, the Framers put
the whole people in charge of making any
necessary changes. They had provided a
LAWFUL METHOD for change; the inher-
ent power to amend, under the Constitu-
tion, was designed to preserve a particu-
lar way of life, namely, America’s po-
litical tradition of self-government.

But despite the repeated verbal and
written warnings from
America’s most trusted
leaders, like George
Washington, the plan was
n’t strictly followed: “Toward the preservation
of your government and the permanency of your
present happy state it is

Page 3

Volume 4—Issue 1

(Continued from page 1 Chairman’s Corner)
 forensic a point made earlier, feed at the public trough at the public’s expense. These groups, these people threaten our very existence as a free people. The Marxist assault upon the Constitution has taken its toll. American civilization, our political tradition of self-government, is at a dangerous crossroads; and, we ought not to be so foolish as to let its only protection, the Constitution, go. For, as Daniel Webster warns: “Miracles do not cluster. Hold on to the Constitution of the United States of America and the republic for which it stands. – What has happened once in six thousand years may never happen again. Hold on to your Constitution, for if the American Constitution shall fail there will be anarchy throughout the world.”

As noted earlier, the genius of the American people was their attachment to republicanism, their affinity for republican liberty. The Revolution was about our God-given right to self-government. Americans laid their lives on the line in defense of it. Where did the spirit of 1776 go?

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Congress could exercise a power the Framers affirmatively removed from the Constitution has never been explained. And nowhere else in the Constitution does a power exist to generate paper currency. Indeed, the only other provision dealing with this subject appears in Article I, Section 10, Clause 1, which absolutely prohibits the States from "emitting Bills of Credit".

In "the Cases" and "supreme law of the land", binding not only to treat its own fallible decisions as the Supreme Court arrogates to itself the authority to make all Laws.

The assertion of a power expressly granted through misuse of its power under Article I, Section 8, Clause 18 "[t]o make all Laws which shall be necessary and proper for carrying into Execution * * * all other Powers" granted by the Constitution, Congress, (with the Supreme Court's connivance) has generated a stream of new powers as wide as political imagination and as deep as political ambition, because the Court has held that what may be "necessary and proper" is for Congress to determine—that is, Congress is the final judge of its own "implied" powers.

The assertion of "emergency" powers. Where no plausible argument can be put forth for an express or even an "implied" power, politicians and judges seize upon "emergency" powers—which, in practice, are defined according to the circumstances of the perceived "emergency". Again, because the courts hold that the existence and nature of, and appropriate response to, an "emergency" is for Congress and the President to determine, Congress and the President become the final judges of their own powers. The assertion of "aggregate" powers. If no express power can be found to the purpose, no new power can be "implied" from a particular express power, and no putative "emergency" exists, politicians and judges "aggregate" two or more express powers, infringing upon the combination some power that none of the express powers taken in isolation rationally implies. That is, the whole of power becomes greater than the sum of its parts. This is perhaps the most dangerous of all forms of usurpation, because it knows no rational limitation whatsoever. The assertion of powers supposedly necessary to achieve "compelling governmental interests", notwithstanding the denial of rights (First Amendment) or the right "* * * to keep and bear Arms" (Second Amendment)—the courts allow officialdom to infringe the integral structures of a society.
of all “governmental interests” is the protection of individual liberty. The assumption of the power to delegate power to improper recipients:

1) Congress often delegates powers to the President (or some office in the Executive Branch) that the Executive is constitutionally incapable of exercising—for two glaring examples, the power to take the country into war (Article I, Section 8, Clause 11), as applied in the present incursion into Iraq; and the power to “regulate the Value” of “Money” (Article I, Section 8, Clause 5), as applied during Roosevelt’s New Deal in 1933 and 1934. Under pre-constitutional English law, the War and Money Powers were among the prerogatives of the King (the English Executive). The Framers expressly granted them to Congress to make clear they were to be no longer Executive, but instead Legislative, powers. So, for Congress to purport to delegate these powers back to the President demolishes a basic structural element of the Constitution.

2) Congress also delegates sweeping powers to “administrative agencies”. Such delegations might be valid, if the agencies merely “filled in the details” of an otherwise constitutional statutory scheme in a ministerial fashion. For instance, the Department of Commerce might put into practical form “the Commerce”. A delegation is and operation valid Congressional “regulation[s] of Commerce”. A delegation is plainly invalid, though, where the agency is delegated important examples is the delegation to the Federal Reserve System of the unconstitutional power to emit legal-tender paper currency not redeemable in silver or gold coin. Here, the delegation is triply defective: Congress has no power to emit such currency itself; it cannot delegate away any of its actual monetary powers; and it cannot delegate any governmental power to a private party. (4) Increasingly, too, Congress delegates powers to “globalist” institutions, such as the UN, the IMF, the WTO, and the NAFTA complex. This not only violates the Constitution, but undermines the very legal foundation upon which the Constitution rests: namely, American national independence and sovereignty. As the Declaration of Independence recites, the United States are, and of Right ought to be FREE AND INDEPENDENT STATES”, which have “assume[d] among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them”. Had this freedom and independence not been achieved, the Constitution would lack all legal validity. Short of a constitutional amendment whereby WE THE PEOPLE renounce some or all of our national independence, then, no Branch of the national government could possibly be authorized to alienate or surrender any amount of American sovereignty, because all governmental authority derives solely from, and depends for its continued existence upon, that sovereignty. The refusal to exercise powers that must be exercised for the “general Welfare”. (1) Even while grasping for new and improper powers every day, Congress refuses to exercise many of its most important legitimate powers. For example, it has utterly failed properly and prudently to exercise the Militia Powers of Article I, Section 8, Clauses 15 and 16—the result being that America lacks the properly organized, equipped, and trained para-military, civil-defense, and auxiliary-police systems at the local level necessary to protect the country from international terrorism, rampant domestic crime, invasions by illegal immigrants, and so on. And the absence of an effective constitutional Militia has indirectly rationalized Congress’s creation of a centralized police-state apparatus in the Department of Homeland Security. For another example, Congress has failed to provide the country with constitutional systems of money and banking—thereby threatening America with economic, political, and social chaos when (not if) the present Ponzi scheme of cartelized fractional-reserve banking and irredeemable legal-tender currency collapses. For yet another example, Congress has failed to enforce on judges of the national courts the constitutional requirement of “good Behaviour”, thereby allowing the judicial system to run amok. (1) The States, too, have failed to exercise their constitutional powers, perhaps the most glaring example being the atrophy of the reserved power under Article I, Section 10, Clause 1 to “make * * * gold and silver Coin a Tender in Payments of Debts” within their own jurisdictions—which would at least partially protect their own citizens against a collapse of the Federal Reserve System. Every usurpation abridges Americans’ constitutional rights, and violates public officials’ “Oath or Affirmation, to support this Constitution” under Article VI, Clause 3. Therefore, there are potential remedies. First, usurpation can be criminally prosecuted as a violation of individuals’ civil rights, under Title 18, United States Code, Sections 241 and 242. Second, as a violation of Article VI, Clause 3, usurpation can be made the subject either of civil suits under the doctrine of the Supreme Court’s Bivens decision (which correctly recognizes causes of action implied directly from the Constitution), or of criminal prosecutions under national and State statutory or common-law charges of perjury or false swearing. So, if the national and State courts were not primary parts of the problem, Americans could seek such relief, by demanding indictments in both national and State courts, and litigating civil actions, against wayward public officials. In fact, however, one can expect that contemporary judges—who themselves are no strangers to wide-ranging usurpations—will be anything but keen even to participate in, let alone to facilitate, such a program of reform.

President’s 00-00, by John Yoo, Jr. NOTES: Dr. Vieira is a featured speaker at Constitution Day 2003—Grapevine Center, Concord, NH. Sept. 21, 2003

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It is now obvious that American children know very little about the history of their own nation. This past year the U.S. Department of Education released its History Report Card and the results were predictably awful: 57 percent of high school seniors flunked even a basic knowledge of American history, and only 10 percent tested at grade level.

What is less obvious—and more dangerous—is that the history they do know is utterly subservive of American culture and values.

I recently attended the annual meeting of the American Historical Association, the nation’s largest and most influential organization of academic historians. What goes on at this meeting will eventually make its way into your child's classroom. I was shocked by what I saw and heard.

Of the roughly two hundred panels, there was virtually nothing on subjects such as the American Revolution, the Civil War, or America’s involvement in the two World Wars. Instead, there were dozens of papers on subjects ranging from the basic to the bizarre and perverse.

Participants were subjected to scintillating presentations on topics such as “Meditations on a Coffee Pot: Visual Culture and Spanish America, 1520-1820,” or “The Joys of Cooking: Ideologies of Housework in Early Modern England,” or “Body, Body, Burning Bright: Cremation and  Spanish America, 1520-1820,” or “Meditations on a Coffee Pot: Visual Culture and Spanish America, 1520-1820.”

But without question the dominant theme of the conference was sex. Historians at America’s best universities are obsessed with it.

One historian from an Ivy League college delivered a paper on “Strange Hard Filth and the Aroma of Washington Square: Art, Homosexual Life, and Postal Service Censorship in the Ulysses Obscenity Trial of 1921.” Another scholar from Berkeley spoke on “Solitary Self/ Solitary Sex.” And one spoke on “Constructing Masculinity: Homosexual Sedomony, Ethnicity, and the Politics of Penetrative Manhood in Early Modern Spain.”

But historians’ obsession with sex is the least of their vices. Academic history has become thoroughly egalitarian. It seeks to elevate the history of ordinary men and women doing ordinary things at the expense of great men and women doing great things. Thus, the history department at Harvard University no longer offers a course on the American Revolution. In its place, it now offers a course on the history of midwives and quilting.

Worse yet, mainstream historians are driven by a pernicious political agenda that seeks to elevate “group rights” over individual rights. By sanctifying the stories of oppressed and “marginalized” groups, historians subtly indoctrinate students with the idea that justice and rights are synonymous with one’s group identity, be it one’s race, ethnicity, gender, or sexual orientation.

But what of America’s founding ideals, such as the principle of inalienable individual rights?

Ultimately, academic history is driven by a hatred of America and its ideals. It is common these days for students to be told that the colonization of North America represents an act of genocide; that the Founding Fathers were racist, sexist, “classist,” “homophobic,” Euro-centric bigots; that the winning of the American West was an act of capitalist pillage; that the so-called “Robber Barons” forced widows and orphans into the streets; that hidden in the closets of most white Americans is a robe and hood.

To help put over this slander, historians dissolve American history into a chaotic hodge-podge of trivial stories about politically correct victim groups. It is no wonder that our children no longer learn the truly important facts about their nation’s history.

There was a time, not too long ago, when students were required to study the great events, the magnificent statesmen, the brave warriors, the brilliant inventors, and the ingenious industrialists of American history.

There was a time when American students knew in intimate detail the heroic story of the American Revolution and the tragedy of the Civil War.

American children once learned about honesty from George Washington, justice from Thomas Jefferson, integrity from John Adams, independence from Daniel Boone, oratory from Daniel Webster, ingenuity from Thomas Edison, perseverance from the Wright Brothers, and courage from Sergeant York. They memorized and learned the principles of the Declaration of Independence, the Constitution, and the Gettysburg Address. American history was taught as a grand story of epic scale and heroic accomplishment.

The history of America was the history of freedom.

Today, our children are being taught to be ashamed of America. By denigrating the principles and great deeds of America’s past and detracting its heroes, today’s college professors are destroying in our youth the proper reverence for the ideals that this nation stands for. And a nation that hates itself cannot last.


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Dr. Ed Vieira Jr.
Atty. & Prof. Constitutional Law

&...

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