

# Court Decisions Have Done Great Harm to Our Constitution

By [Gene Jacobs](#) - Sunday, June 13, 2010

Randy E. Barnett, a law professor at Boston University and a Senior Fellow at the Cato Institute, has written a book titled "Restoring the Lost Constitution." In it, he provides an abstract of how the Supreme Court decisions have -eliminated clause after clause of our Constitution that were intended to limit the power of the government.

He follows that summary with an in-depth analysis of the original meanings of the clauses that are central to understanding the intent of the Constitution and its application to a given set of facts. He then shows how the court's decisions have obscured or removed the sensitive portions of the intent of these vital clauses.

He writes that the Constitution is to be "construed" rather than "interpreted." Therefore, the original meanings of the controlling clauses such as "necessary and proper," "commerce," "privileges" and "immunities" are paramount to legal construction and should be unchanging.

But we find that these important clauses have been redacted from the text by numerous decisions by the Supreme Court in order to allow the adoption of laws supposedly in the "public interest," which step by step remove the constitutional restraints on the power of government.

"The Constitution was written for the purpose of defining the limits of the legislature powers so that those limits may not be mistaken or - forgotten," John Marshall, chief -justice for more than 30 years, wrote in 1803. "If the legislature is allowed to change these limits, then there will be government with unlimited -powers."

It seems we have such a government presently.

Rufus King, delegate from Massachusetts, stated to the Constitutional Convention that the Constitution was to be to the legislature what laws are to individuals. "It purports to bind government officials, not private individuals," he said.

The framers intended that the court decide cases before it by beginning with a "presumption of liberty" for the individual rather than a "presumption of constitutionality" toward the law in question. The court, especially since the Progressive movement began in the early 1900s, has rendered decisions tending to reverse this priority of presumption.

James Madison wrote much of the Constitution and, along with Alexander Hamilton and John Jay, wrote "The Federalist Papers" setting forth the reasons for a government of checks and balances. He saw inherent problems with government actions decided solely by a majority of the people.

"In all cases where a majority is united by a common interest or passion, the rights of the minority are in danger," he wrote in Federalist 10. "We have seen that the mere distinction of the color of one's skin has allowed a majority to exercise the most oppressive dominion ever by man over man."

For this reason, the Constitution provided for a government designed to limit the opportunity for the majority to control the minority.

It required the House of Representatives to be popularly elected but not the Senate or the president. Senators were to be chosen by the state legislators and the president by an Electoral College. The judges were to be chosen by the president and confirmed by the Senate. In addition, the president was given a veto power over the legislature, and the court was given the power to decide the constitutionality of laws passed by the legislature and approved by the president.

Unfortunately, the 17th Amendment instituted the popular vote for the Senate. The result was the evolution of the thinking of the senator away from the priority of the interest of his state as opposed to the federal government.

Furthermore, it brought about the strong influence of lobbyists on senators needing to raise millions of dollars to run a statewide campaign. Additionally, it has allowed one political party to gain a majority in the House, Senate and presidency. Today we see allegiance to the party as controlling the thinking in those making the decisions of government rather than the effect of their actions on the people.

The Constitution as originally written is an inspiring document composed over many months of debates and numerous compromises by a dedicated group of men, many of whom were Christians. Some were deists, but no matter since they believed in a Creator and that individuals had natural rights given by that Creator that superseded that of the government.

Those rights were so numerous that they didn't dare attempt to list them, choosing rather to state in the Ninth Amendment that unenumerated rights were not nullified by omission from the document. Much of the greatness of the document has been taken away by the misguided rulings of the court, but it has not been repealed and can be restored if the people take the action to put in place the right kind of leaders.

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