



## The Founders Wanted Big Government? I Object.

Recently an article was published at [lewrockwell.com](#) wherein the author, Kirkpatrick Sale, asserts that it was the Founders' evident intention to establish a powerful federal government. In fact, contrary to what many constitutionalists may believe, the Constitution as framed was intended to, and was successful in, paving the way for the massive federal usurpations that plague the United States today.



Mr. Sale wants to “wake up these ‘Tentherers’ and tell them that it’s a waste of time to try to resurrect that document [the Constitution] in order to save the nation — because the growth of government and the centralization of powers is inherent in its original provisions.” In fact, proclaims Mr. Sale, the Constitution “is not a document that will lead them to liberty and sovereignty.”

Despite some of the questionable activities listed in Mr. Sale’s résumé, I shall restrict my remarks to the refutation of the theses posited by him in the [lewrockwell.com](#) article. In this brief, I shall attempt to prove that the conclusions as to the Founders’ intentions have been grossly misconstrued by Mr. Sale in a blatant effort to wrest them to fit his notion of the best method of opposing tyranny.

Before beginning his unusual exegesis of the Constitution and the words of the Founders, Mr. Sale turns his sights on the Tenth Amendment Center and opens fire. After briefly quoting a segment of the Tenth Amendment Center’s mission statement, Mr. Sale explains that the true aim of the Tenth Amendment Center is to advocate for a “rigid interpretation of that amendment reserving to the states the powers not expressly given to the Federal government.” I do not speak for the Tenth Amendment Center — their spokesmen are able and informed — but as an attorney I would advise them to plead guilty to this charge.

As for the Tenth Amendment, Mr. Sale insists that it was no more than an afterthought for the Founders whose true affinity, he claims, was for a big, powerful, supreme central authority. As evidence of the Founders’ disdain, Mr. Sale points out that this “deficiency in that Constitution” was the last of ten amendments known as the Bill of Rights.

Every student of American history and the Constitution should be aware that a great many bills were considered for inclusion into the Bill of Rights. After lengthy congressional deliberation, however, 12 of the proposed measures were selected for a final vote, 10 of which passed. On December 15, 1791 these 10 amendments were ratified by the requisite number of states, thus being incorporated into the original constitution (one of the two “lost” amendments was ratified in 1992 and became the 27th Amendment). So, the Tenth Amendment is no more “at the end” of the Bill of Rights than is the First



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Amendment as a matter of legislative history.

With the Tenth Amendment Center and unincorporated “Tenthers” thus dismissed, Mr. Sale wheels around and takes aim at the Constitution Party. This group also suffers, he says, from a woeful lack of understanding of constitutional principles. Says Mr. Sale, the Constitution Party “has the idea that the nation’s problems can be solved by ‘a renewed allegiance’ to the Declaration of Independence and the Constitution and hence a return to ‘limited government.’”

Again, I’ve not been retained by the Constitution Party to represent their interests, but I’ll take this one pro bono and advise them to plead “no contest” to the charges levied against them.

The problem with all of these constitutionalists, argues Mr. Sale, is that they don’t understand that this “bloated, overstretched, intrusive, and unwieldy government” is exactly what the Founders had in mind when they created a powerful central government. Such usurpations, he insists, are “inherent in its [the Constitution’s] original provisions.” In his words, “we have a big overgrown government because that’s what the Founding Fathers founded....”

Before my ultimate rebuttal, I will allow Mr. Sale to present his final few pieces of evidence of the “true” purpose behind the government formed by the “renegade Congress” that met “in secret.” If it please the Court.

Turn your attention, Mr. Sale demands, to the phrase “right there at the start” of the Preamble to the Constitution. “We, the People,” it reads, formed this government. If the “amorphous ‘people’” control the government, warns Mr. Sale (from behind the skirts of the noble Patrick Henry), then they could “willy-nilly ignore the individual states” and thus obliterate all vestiges of the sovereignty of the several states.

There are two problems with this interpretation. First, there is the problem of context and second, there is the problem of comprehension.

Simply reading the rest of the paragraph would solve the first weakness in Mr. Sale’s analysis of the Preamble. The sentence he quotes does indeed recognize the natural sovereignty of the people (an unassailable principle of republicanism); however, it continues by recognizing the pre-existing sovereignty of another entity — the states. In fuller context, the Preamble states, “We, the People, of the United States of America....” Therefore, the Founders memorialized their correct understanding of self-government: that is, that we, the people, are the ultimate sovereigns (so endowed by our Creator), but we have established intermediaries (the states) and these too are to be represented in the new government.

As for Mr. Sale’s conclusion that “ ‘the people’ spoke through Congress,” he is partially correct. The people do speak through Congress by way of the popular election of members of the House of Representatives. Perhaps Mr. Sale is unaware that the legislative branch as established by the conspiring Founders is bicameral. The other house of Congress, the Senate, *as originally constituted*, was the branch wherein the interests of the states were to be protected. The fact that the 17th Amendment destroyed this defense against the unchecked growth of the central authority is a crime of which others are to be accused, not the Founders. In fact, to blame the Founders for the lack of state representation in Congress is akin to blaming homebuilders for the damage later caused by termites.

In several of the letters collected in the volume that has come to be known as *The Federalist Papers*, no lesser lights than James Madison, Alexander Hamilton, and John Jay argued vigorously for the Constitution’s model of federal arrangement. Please read *Federalist* 9, 10, 45, 51, and 62 for a primer



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on this subject. As coroners examining the lifeless bodies of the dead republics of history, the Founders sought an inoculation for the fatal malady that affected all self-governing nations that came before. The cure they devised was federalism: co-equal and co-existent sovereignties, each with separate spheres of power. As for the particular ratio of the ingredients in this tonic, Madison wrote in *Federalist No. 45*: “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.” No further questions, Your Honor.

Finally, in his accusation that the Founders’ insidious purpose to “abolish and annihilate all State governments” is revealed by the havoc that has been wreaked by the so-called Commerce Clause and General Welfare Clause, Mr. Sale is again seeking indictment of the innocent for a crime they did not commit.

As with his earlier assertions, here too, Mr. Sale mistakes the intent of the Founders for the intent of subsequent usurpers sitting as justices of the Supreme Court. It was not in Philadelphia that the crime Mr. Sale is prosecuting was committed. It was in Washington, D.C. at the dawn of the Progressive Era that the Supreme Court destroyed the foundational doctrine of enumerated powers. Then, about a year later, it split the Bill of Rights into two separate and unequal parts: those rights that it deemed fundamental and those that are not so protected.

In the first case, the Court created from whole cloth a new General Welfare clause with not a single thread from the one woven by the Founders remaining in the new garment. In the next case, the Court converted the Commerce Clause from a shield against governmental overreaching into a powerful weapon of legislative tyranny. There is no basis in natural or constitutional law for this judicial gerrymandering.

So, ladies and gentlemen of the jury, I leave the case in your capable hands. You are called to decide whether, as Mr. Sale avers, the Framers were “centralists” and “nationalists” who all along, despite their own words to the contrary, secretly intended to establish in the original Constitution a federal leviathan capable of and committed to abolishing state sovereignty — or, as I have herein demonstrated, that as with the wheat field in the parable spoken by our Lord, while we slept an enemy (in this case, the Supreme Court and a combining cabal of legislative and executive despots) has unlawfully trespassed and cruelly sown tares into the fruitful plot planted long ago by our noble Founding Fathers.

Thank you.



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