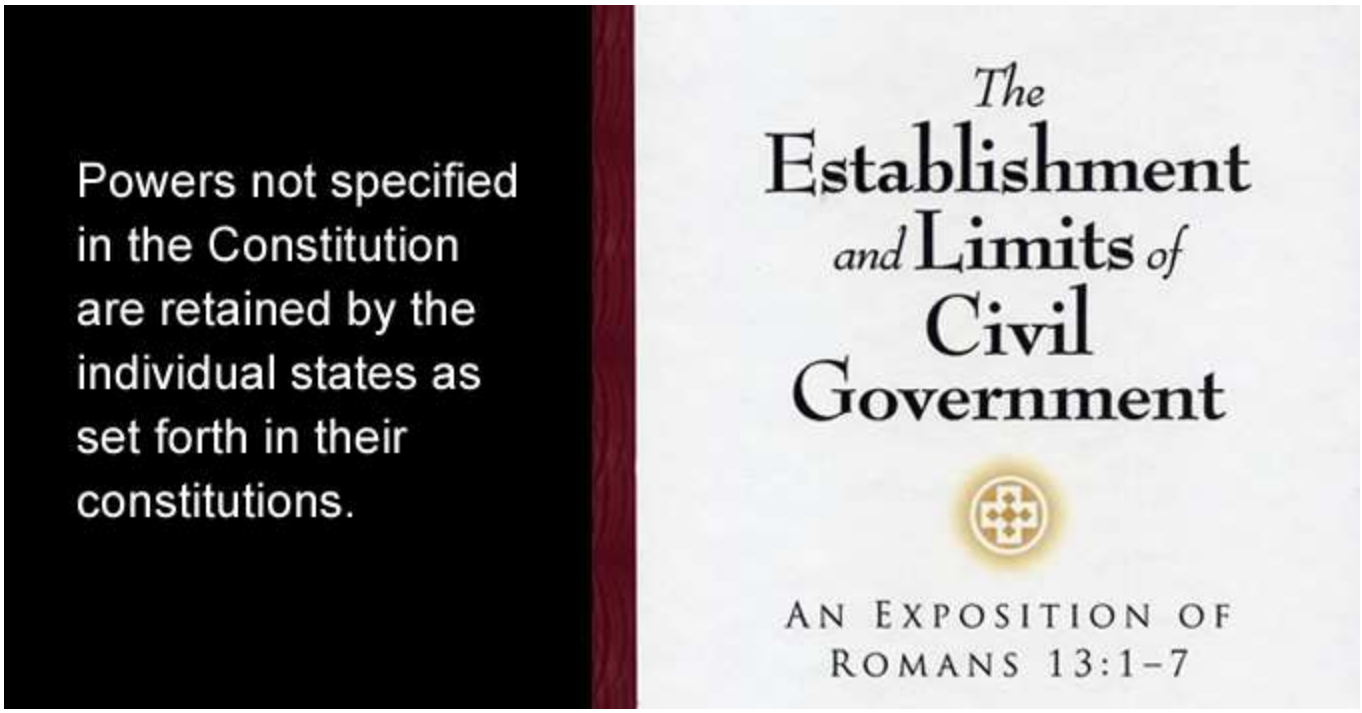
The Necessary Limits of Government



by Gary DeMar, Feb 23, 2010

The first place to go to understand the proper relationship between church and state is to study the nature of jurisdictions. Jurisdictional separation deals with the legitimate boundaries of authority. A person who owns a piece of property has *jurisdiction* over his own property, but he does not have jurisdiction over someone else's property. A property owner can only "speak the law" (*juris* = law + *diction* = speak) within the confines of the boundaries of his own property. In this way, a property owner's jurisdiction is limited. Property lines are legal entities that limit authority.

What's true of property is also true of civil governments. State governments have limited jurisdictional authority. A state government and its courts can only "speak the law," have jurisdiction over, those who reside within the boundaries of the state or those passing through. That's why each state has its own constitution, courts, and elected officials. An elected official in one state has no jurisdictional authority in or over another state.

In the same way, the Federal government's jurisdiction is designed to be limited by the Constitution, although such limitations are not often acknowledged by the courts, the President, or Congress. These delegated agencies are always attempting to test the limits of their specified boundary

markers. Nevertheless, the Constitution is a jurisdictionally limited document in that its enumerated powers are the only ones it possesses. Powers not specified in the Constitution are retained by the individual states as set forth in their constitutions. These Federal jurisdictional limitations are set forth in the Ninth and Tenth Amendments to the Constitution:

Ninth: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Tenth: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Jurisdictional limitation at all levels of civil government is one of the governmental principles that makes America a stable and free nation.

When the Constitution was signed on September 17, 1787, it did not contain a bill of rights. The constitution as drafted was sent to the states for ratification. The Federalists supported it while the Anti-Federalists opposed it. The Anti-Federalists wanted a bill of rights. The Federalists argued that a bill of rights was unnecessary since the Constitution created a national government of enumerated powers. With this form of government, unless a power was actually spelled out in the document, it did not exist. Since the Constitution did not give the national government legislative power over religion, Federalists considered a bill of rights unnecessary and even dangerous. To mention a subject was thought to give the Federal government control over it. John Jay stated it this way:

Silence and blank paper neither grant nor take away anything. Complaints are also made that the proposed Constitution is not accompanied by a bill of rights; and yet they who make the complaints know, and are content, that no bill of rights accompanied the constitution of this State [New York].**[1]**

Jay failed to note George Mason's Virginia Declaration of Rights (1776), the English Bill of Rights (1689), and earlier English political documents such as Magna Charta (1215). The specification of rights was part of English history that served as an example to those who had a public mistrust of government.

The Anti-Federalists disagreed with the claim that silence made rights undeniable. They had an innate and historical suspicion of centralized civil government. Without further restraints on basic individual rights, they feared that the Federal government could exercise powers not granted to it because they were not prohibited by the Constitution. They argued that a formal declaration of rights

was essential to secure certain liberties. Virginia, New York, Rhode Island, and North Carolina requested amendments concerning freedom of religion, press, assembly, and speech. The Virginia Convention stated the following regarding religion in Article 16 of the Virginia Declaration of Rights:

That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.**[2]**

Borrowing language from the Declaration of Independence, the Federalists made it clear that this and other rights are not granted by civil governments but are “natural and unalienable.”

The Anti-Federalists won the argument. Their mistrust of government was broad enough that the states insisted on adding amendments over the objections of the Federalists. Twelve amendments were put forth by James Madison, but only ten were adopted and voted on.

Fear of jurisdictional usurpation was as real 220 years ago as it is today. Unfortunately, there aren’t enough people who see it as a problem. If we are ever to win back our nation, understanding jurisdictional limitations is a necessary first step.

Endnotes:

[1] Henry P. Johnston, ed., *The Correspondence and Public Papers of John Jay: 1782–1793*, 4 Vols. (New York: G. P. Putnam’s Sons, 1891), 3:305–306.
[2] Adopted unanimously June 12, 1776 by the Virginia Convention of Delegates: http://avalon.law.yale.edu/18th_century/virginia.asp