

# Are you free to disagree?

You believe you are free because you can decide where to go to college, or not; where to worship or not, where to work, where to travel, what food to eat, whether or not to marry, play golf, gamble or swim – all without government directing your decisions. That's true. Did you know, though, that the writers of the U.S. Constitution intended to force government to go to a jury first before forcing you to answer a question, fill out a form, or forfeit property? The Founders insisted that if government needed to take money or property from you, officials must first offer you “just compensation.” They wrote in the Constitution that if you are suspected of committing a crime, it is unlawful for government to fine you or to send you to jail or prison or to take your life without a jury's permission.

## **Constitutional Conundrum**

**We the people:** “Mother dear, may I go down to swim?”

**Government:** “Yes, my darling daughter. Hang your clothes on the hickory limb, but don't go near the water.”

-- Frederick Ford, commenting during his speech at a D.C. Convention about his frustration with regulations in the U.S. as seen from his position as chairman of the Federal Communications Commission.

Administrative regulations have stolen many liberties from us. Many ask, “If I am free, why must I obey so many government regulations?” How can we answer this question? Alfred A. Knopf was quoted by *The New Statesman*, “An economist is a man who states the obvious in terms of the incomprehensible.” That is not what we will do here. Instead, we will seek to state the obvious and keep the terms obvious as well, while leaving out details that would cloud the central issue. We want to help you protect your life and property while you live in peace with the authorities. However, that means you will not find the answers to all questions here. We offer a tool of reasoning to help you think clearly about how to cooperate with government while retaining individual liberty.

For more than 200 years, government on all levels in the United States has been devising ways to do what the Constitution prohibits. Government officials have constitutionally mandated jobs to do and they continue to seek ways to make those jobs more efficient at the cost of diminished personal liberty. You should decide whose side you are on. Do you put more value on liberty or on the ability of government to keep the peace? Government manipulations of statutes, codes and regulations are often “runarounds” enabling them to place us under the weight of administrative obligations once called “Bills of Attainder.” You think you are free, but in fact you are only free to volunteer to obey rules never intended by our Founders.

What makes you free? If there is a busy street running past your fenceless back yard, you have no choice. Your young children have no liberty to play in the yard until you have built a fence. Liberty requires limits. Chaos is disorderly and dangerous. If you tighten the limits of liberty, though, you destroy it. Liberty requires us to live by the limitation of not interfering with or injuring other people. This balance creates freedom.

How do we balance government rules against individual liberty? We are imperfect people, living in an imperfect world. The most imperfect are sometimes elected to office. The Founders of our nation felt the sting of this fact. Imperfect King George demonstrated his imperfections in the way he treated his subjects in the 13 colonies. The people in those colonies had structured their societies according to the rules of the King's government. Royal Charters authorized communities to develop. Governors appointed by the King ruled over those colonies. This ordered society was in place when our Founders began to set up the rules for our new nation. Today, our courts respect those ancient controls on society. They reverence tradition by the value they place upon precedence. They call the practice *stare decisis*.

When the U.S. Constitution was written, the 13 colonies were already established. The cities and towns were there. The Articles of Confederation were in place. It was not as though the Founders were starting

something new. In their writing, it was not necessary for them to dictate that the sun should rise in the East. There were “givens,” traditions understood by all. Every reader of the new U.S. Constitution understood that society lived under an order set by those who ruled.

The Founders established individual liberty, but not at the cost of eliminating order in their communities. Within the pre-existing authoritarian framework, the writers of the U.S. Constitution set out to form a government that would place both individual liberty and personal responsibility as the chief values of the new nation. Order, to them, was a “given.” Liberty was something they were seeking to grant people who lived in the shadow of historic patterns of community life. They took for granted that government servant and citizen alike would apply common sense to the way communities work. They saw no reason to dictate that a city could limit a family to four horses. They knew that every town already had a fire department and they knew firemen needed equipment and equipment would cost money; so they left it to city counsels to determine how to order their affairs. Even with all these expensive jobs authorized by the Founders, though, they insisted that no government agency would issue “Bills of Attainder,” acts naming individuals or groups and inflicting pain or penalty upon those named without first getting permission from a jury. Pains and penalties without jury review are common practice at every level of government today, each act violating the U.S. Constitution.

Community order was supported by those very religious leaders who disdained tyranny. Thomas Hooker, the Bay Colony popular preacher in colonial New England serving churches in Connecticut and Maine, preached in his sermon, *The sum of church discipline* “...Mutual subjection is...the sinews of society, by which it is sustained and supported.” (From *The Light and the Glory*, by Marshall and Manuel, Revell, 1977.) There can be no order in a community without responsible individual cooperation. This colonial demand for “mutual subjection,” expressed in the new constitution, however, was too much for Patrick Henry. After the body of the U.S. Constitution was completed, Henry delivered his impassioned address, concluding with, “Give me liberty or give me death.” His demands helped ratify the first ten amendments: the Bill of Rights. He saw the “fence in the back yard” as too close to the house. His efforts created better balance between authority and autonomy. Balance implies the capability to teeter totter. When authoritarians ask for too much subjection, lovers of individual liberty apply more weight to their side of the balance board. When individualists oppose constitutional order, government agents throw their weight toward the need for social order. The problem is that too often tradition has more influence over agents of government than constitution and law. Government agents often do not wear the shackles of the Bill of Rights with grace.

There is nothing more complex than how we balance liberty against the demands of city, county, state and federal governments. Yet, if you understand history you can deal with whatever complicated problem you face, and defend your position. TV preacher Ed Young, on his Winning Walk program, claimed, “The foundation word of the United States is respect.” He observed that the Founders knew the key theme of the Ten Commandments is respect and they took that word as the spine of the U.S. Constitution. You can be free to disagree if you are respectful, practical and realistic when you present your case. If you are free, you can do anything you like so long as you do not hurt others or sidestep your personal responsibilities. If you work for government, respect is not only a way to win cooperation. It is a demand, required of you by our Founders. Every freedom-loving individual deserves to be treated respectfully by government servants.

### **The Con**

To take a calloused, but helpful, view of the problem we could observe that the first three letters of the word “constitution” contain the entire message. The constitution in one sense is a “con.” It is not a “con job.” It contains **con**licts. Life in the United States has become a riddle caused by government servants who lack respect for constitution and law and do not demand logical linkage backward from code to regulation to statute to constitutional authority. Too often they claim authority based only upon tradition. “My boss says this is something I have to require,” is a typical excuse. After World War II, German soldiers and government officials found “I was just doing my job” to be a weak defense.

Here are some typical conflicts:

1. How can our Founding document guarantee that we are secure in our property and papers; yet, limited by that Founding Document, the Internal Revenue Service is allowed by the courts to view our papers whenever they desire?
2. How can our Founding Document guarantee that we must not be forced to testify against ourselves; yet, empowered by that Founding Document, tax collectors believe they have the force of law to demand that we face criminal penalties if we submit “incriminating” information about our activities: information that may or may not be accurate depending upon inscrutable rules of accounting?
3. How can our Founding Document require that government provide “just compensation” when government finds it necessary to take our property; yet, under the restraints of that Founding Document, government entities believe they are allowed to require licensing, permit fees, fines and other “takings” with no compensation offered to us?
4. How can our Founding Document repeatedly forbid government from issuing “Bills of Attainder” or “Bills of Pains and Penalties” without the prior permission of a jury trial; yet, with no involvement of a jury, government under authority granted by the Founding Document, daily causes all of us to live under regulations having the effect of such un-constitutional actions?

The Founders wanted juries alone to determine whether any individual would be forced to surrender money or property to government. Since those days, multiple misreadings, misinterpretations and regulatory distortions have created conflicts between today's reality and the intent of the Founders.

### **The Conundrum**

There is more than a conflict. There is a conundrum. The constitution guarantees the individual “limited government” and “individual liberty.” Why does it seem that government employees are guided by public policy and tradition more than constitution and law? It maybe a shock for you to consider this, but the roots of all these problems and more are in the U.S. Constitution itself. Look at the Preamble. Liberty is only one of a half-dozen tasks taken on by the writers. They declare that what they write has the job of providing justice, tranquility, defense, and welfare for those who will experience “the blessings of liberty.” This five yolk egg is to be placed in the shell of a “more perfect union.” When you protest that the Founders wrote the Constitution to give us freedom and individual liberty, you are leaving out essential details. Yes, the Founders did want to establish a nation where “We the People,” as founders of the new government, would find a way to put together a government that would allow each individual maximum liberty in his personal life; but they took on other jobs. They needed to set the rules for:

1. defending the shores of the new nation (providing for an army);
2. allowing for a system to punish wrong and to provide an arena for private disputes to be settled (establishing courts);
3. providing a way for communities to organize so life would be tranquil (allowing neighbors to live in peace with each other); and
4. finding a way to set up a system that would look out for the welfare of everybody (defined over time as the right of the indigent not to suffer undue pain for their misfortune.)

The U.S. Constitution has within it a built-in tension between liberty and responsibility. The problem that developed over the centuries is that nobody has explained to us how the job of government can be done without clashes between law and constitution, without virtual war between individuality and community interests. The U.S. Constitution balances individual liberty against the burden each of us must bear to support an army, the courts, complex regulations in local communities and forced charity to benefit the less fortunate. We are both free and under obligation. As “We the People,” we are in charge. As individuals, government has charge over us, so long as it limits itself to the “back fence” put in place by the Bill of Rights. This conundrum is the central concern of countless “think tanks,” academic seminars and self-defined “patriot” groups. The cross currents of conflict between individual self-government (authorized by

the U.S. Constitution) and the laws, codes, regulations and ordinances (authorized by the U.S. Constitution) to control individuals have a complex and long-standing history. The concern of these groups is focused upon the fact that life teaches us that tradition normally trumps law and government servants pledged to limit their authority to the boundaries set by the U.S. Constitution often show disrespect for individuals as they fulfill their responsibilities.

The IRS Auditor, the Planning Commission, the Building Inspector and all the host of “enforcers” working for government today believe they have as much authority under the U.S. Constitution to do their job as you believe you have authority to demand that they not do their job on your front porch. They believe their assumed “authority” comes from the decades of “arrangements” that have been made since the Founders first decreed that they intended our nation to operate under laws that would provide justice, tranquility, defense, and welfare. Clever lawyers have been dodging the conflicting concepts in the U.S. Constitution by “wording around” this conflict and depending upon us to volunteer to cooperate with regulators even when those regulators seem bent upon disregarding our protected individual liberties.

We all want well ordered places to live. Few people are able to live as islands unto themselves. Whereas, we are at liberty under our U.S. Constitution to live life as free men and women, we are obligated under that same U.S. Constitution to observe the power over us expressed by our representative government fashioned and controlled by legislators and other government officers of our choosing, elected by us to perform their duties: duties we pay tax to support.

What we need is a disclosure by government telling us why we must live in this state of confusion. When you read and understand the Bill of Rights and you ask a government agent why he believes he has the power to violate those rights, what does he reply? Usually nothing. He customarily remains silent, giving him the appearance of either having no defense or of being arrogant. He believes he is operating under the authority and power of law. You know that his application of that law violates your guaranteed rights. How can he justify what he does? Usually, he does not bother. He fails to respect the words of the U.S. Constitution giving you your natural right to individual liberty, protected by the U.S. Constitution. Such a miscreant deserves to be called before a Grand Jury to justify his arrogant disrespect for “We the People.” So, there is a conundrum. The U.S. Constitution validates our individual liberty, and it restricts government authority. Today, however, government attempts to misuse the constitution to validate its authority, when in reality the entire mission of the Constitution was to restrict government power.

### **The Contract**

A conundrum is a riddle whose answer contains a pun. The riddle is “How can the Constitution that limits government give government almost unlimited power over individuals?” The pun is the “con” in the word “con-”tract. The “conundrum-tract” allows what would have been a limited government to operate with expanded powers. Here is the root of the conflict. The same constitution granting individuals liberty tells the elected official, the officer, the employee of government that he has the power of the CON-tract to diminish that liberty.

The same constitution that guarantees individual liberty also guarantees the right to contract. The communities of the newly formed United States may have been peopled by individualists, but those independent people, all born into the English culture of governmental structure, wanted to live peaceful, creative lives without changing the way communities were organized. The pre-existing Royal Charter towns, cities, counties, regions, states and finally federal government structures were conformed to the new Constitution, with minimal change. Obligations were agreed upon. Agreements require contracts, and contracts are binding upon the makers of the contracts. The Constitution was written during a time when communities were bound together by the tradition of common consent. The attitude goes back to the days when tribal chiefs spoke and the young braves got up and danced.

You can sit at a table and work to write a contract between yourself and another party. That contract will

be evidence of your mutually acceptable benefits and responsibilities. However, when you get an offer in the mail to subscribe to a magazine or to accept a life insurance policy “first month free,” you do not negotiate terms. You send back a reply card. Sometimes on that card you must place a sticker. That action on your part is your acceptance of a contract. You didn't sit down and write the contract, but it is there. It will provide a benefit so long as you meet your obligation to pay.

Sending back a card makes you a party to the contract. So, what is it that gets you involved in the obligation to pay sales tax? The answer is that you were born into your city, county, your state. Your birth is your “signature” on the contract that obligates you to give up a measure of what our Founders considered to be your natural rights guaranteed by the U.S. Constitution. This kind of contract is called an “adhesion” contract. Black'sLaw Dictionary explains that an adhesion contract is a contract that gives you one option: “Take it or leave it.” The problem with the social contracts controlling our lives today is that we have only half a choice. We “take it.” Period. Do you want to live free of sales tax? Make your own clothing out of fiber you grow yourself. Do you want to live free of property tax? You had better have a large tank of water on your property in case you need fire protection. We cannot live free of police protection and those policemen deserve to be paid a fair salary. Fire the police and you will have to pay a private security force.

If you are a party to a contract, common sense dictates that you be informed:

1. that there is a contract;
2. that you are a party to the contract;
3. of the benefits you should expect;
4. about your obligations under the contract, what price is expected of you in money and/or effort; and
5. how to cancel the contract in the event you believe you no longer need the benefits or that you can no longer afford the price.

This “up front” honest procedure is never followed. Instead, when confronted, the government agent, using powers he should not possess, will fall silent, in disrespect earning the contempt of the citizen. After refusing to discuss issues, the agent customarily will depend upon a cooperative judge to enforce the con. Our societies are built upon the constitutional mandate requiring government to provide justice, tranquility, defense and welfare to help us experience “the blessings of liberty.” Under the Constitution we are guaranteed we can live free and enjoy specified immunities from governmental interference.

In my youth, President Franklyn Delano Roosevelt promised “Four Freedoms” motivating the U.S. to fight the Second World War: freedom of speech and worship, want and fear. He did not make it clear where in the U.S. Constitution we are guaranteed freedom from want and fear. In that failure he violated his oath of office, justifying profound expansions of the powers of the federal government, violating constitutional limits. His government did not disclose their intent. If FDR felt obligated to transgress constitutionally guaranteed liberties, he should have been required to respect his obligation to assert his knowledge of the constitutional protection of individual liberty, to state the nature of his obligation under the Constitution to do his job, to admit the conflict and respectfully give the citizen the opportunity to “take it or leave it.”

The contract, undisclosed, will nevertheless be enforced: enforced in a way that benefits the corporate provider of “justice, tranquility, defense and welfare” all dedicated with profound irony to apply the “blessings of liberty” to a numb and perplexed victim who trusts a more simple dependence upon his constitutionally guaranteed natural rights, rights too often trampled upon by distorted clever chains of authority lacking logic but loaded with clever manipulation and hidden codes.

Though our nation was founded before the days of Hegel, what Hegel taught can be reflected in what the writers of the U.S. Constitution accomplished. They wrote an antithesis (individual liberty) against the thesis (pre-existing order in communities), but what they did not do was to define their view of an appropriate synthesis. The conflict between these elements of the U.S. Constitution can be expressed in the idea that any servant of government is obligated out of respect to disclose his inferior status and to request

voluntary compliance of individuals in the interests of community order.

If you are a victim, respectfully demand disclosure. Demand that the government official disclose to you his authority by which he seeks your papers or your property without “just compensation.” A fair minded public servant will disclose the source of his power. That disclosure on the table matched against your declaration of protected individual right will provide the arena for a fair fight. Who knows, the result might satisfy both your need for fair treatment and society's need to fulfill government's constitutionally mandated tasks within constitutional limits. The case of *McCullock vs. Maryland*, 1819, established a rule of law that has never been overturned: “If congress should pass a law which by the Constitution it may not pass, the court would declare that law of no effect; but if the court pretended to annul a law of congress made in the field proper to the activity of congress, the court would by that action enter the field of law-making, a thing it had no right to do.” Common courtesy demands that those who work for government respectfully limit their activities, honoring the balance of powers, because they value individual liberty: or if they do not value individual liberty, at least they should value their personal honor in that they have taken an oath to defend the U.S. Constitution. Individuals dealing with government employees, likewise, should respect the fact that government officials have important jobs. They provide services our Founders viewed as necessary to a well ordered society.

Everyone should expect that laws and regulations are consistent with the limitations and definitions in the state and U.S. Constitutions and that all actions of government involving “pains and penalties” must be authorized by jury adjudication. We should also assume that any individual, having the right to “opt out,” will do so with the understanding that this option means he will live without the benefits offered by the service he rejects. A nation of law is a nation where both government and individual are bound by objective rule. When there is a need for judgment to be applied there is never a valid constitutional justification for a judge alone to apply that judgment. Juries were given that job by our Founders.

### **Conclusion**

Do you work for government? Good. We need government servants. Do you have a problem with government? Good. Your solution to that problem will give you the opportunity to restore balance in favor of individual liberty. If you work for government, have you made certain that what you do is based upon actual law, not just public policy? If not, don't be surprised when you are confronted with a person seeking to live under the protection of individual rights guaranteed by the U.S. Constitution, who will file a complaint against you with your local Grand Jury accusing you of violation of your oath to uphold the U.S. or your state constitution.

If you are that free individual and a government servant oppressing you is violating constitution and law, study carefully, make your case, fight back. Help keep the constitutional conundrum in respectful balance. Start by openly demanding that anyone serving government assure you that he has taken an oath to defend the U.S. Constitution and that he intends his behavior to conform to that oath: to grant you the full measure of individual liberty within the constraints of “mutual subjection” demanded by the adhesion contracts government uses to justify providing justice, tranquility, defense, and welfare to help us experience “the blessings of liberty.”

An individual who refuses to respect society's lawful need for order and the need to pay for the services of government deserves contempt. An agent of government acting outside the limits of constitutional authority or depending upon the weak links of tradition or precedence to justify his unconstitutional actions, or knowingly serving industrial or monetary powers seeking power by manipulating government should not be surprised if the individuals who are wronged demonstrate equal contempt. Government officials who deserve respect will respect laws in harmony with constitutional limits. Individuals desiring to live free will determine not to receive services for which they do not pay.

Tradition or law? Respect or contempt? Balance within constitutional limits avoiding the distortions of

tradition will bring contentment out of the conundrum.

### **Confrontation**

When governmental adhesion contracts or other regulatory conundrums complicate your life, how can you confront your adversary? The first rule is: “immediately.” As soon as possible after the letter of demand comes, or as soon as you can confront a demand of any nature you believe violates your constitutionally guaranteed natural rights, you should find a way to get the agent of government, whether building inspector, tax collector or judge, to affirm these points. Get the affirmation in writing if possible. If you send it by mail use Certified Mail, with the number written in full on the letter, with return receipt requested. Read the accusation carefully and pick and choose from this list to make your reply relevant to your case:

1. I thank you for your dedication to public service and I support your place in the process of assuring order in our society. However, I am having difficulty in harmonizing your authority in accomplishing your mandated tasks with my understanding of my constitutionally guaranteed individual liberty. Perhaps if you disclose a little more about the nature of your authority, we might come to agreement. Let us use our best efforts to find common ground.
2. The results of this (letter, conversation, etc) could be used against you. You have the right to reply to me through an attorney. I (we) waive that right, as we have nothing to hide and we seek only to find a peaceful and just resolution to our problem with you.
3. Many believe the words of the U.S. Constitution can be relied upon to reflect the highest law of the land. Do you agree? (Circle what applies) Yes. No.
4. You have taken an oath the support and defend the U.S. Constitution. Yes No.
5. The U.S. Government was established by a group called “We the People,” the sovereign entity in the United States. As a member of that group I have no individual authority; however, I do have the responsibility to use my influence to assure that all aspects of government operate within the limits of the U.S. Constitution. When a government official appears to fail this test, I have the responsibility to report that official to a Grand Jury to explain his/her behavior and to justify the authority for his/her actions. Do you agree? Yes. No.
6. The U.S. Constitution gives me the assurance that I am secure in my papers and property and that without a warrant based upon an affidavit citing probable cause, you have no authority to view my papers nor to access my property. Do you agree? Yes. No.
7. The U.S. Constitution gives me the assurance that I must not be called upon to testify against myself. The demand you have made, though I have committed no crime, could develop information, when contorted by artful means, that would wrongfully be used to develop a criminal case against me. What gives you the authority to cancel my protection against self-incrimination as guaranteed in the U.S. Constitution?
8. The U.S. Constitution prohibits the use of “Bills of Attainder.” A Bill of Attainder names a person or group of person and applies to that individual or group a pain or a penalty. (Describe here the accusation against you or the demand facing you.) Do you agree that this demand you are making constitutes a pain or penalty? Yes No. If your demand is not in the nature of a Bill of Attainder, how do you describe it?
9. The U.S. Constitution, Amendment Five, makes it unlawful for you to take something from me without first offering “just compensation.” What compensation are you offering me?
10. Will you issue a bond guaranteeing your performance in providing to me that “just compensation” should I meet your demand (or pay the penalty demanded.)
11. If the reliance I place upon the U.S. Constitution in this matter is inappropriate, please specify what chain of law, statute, code or court decision gives you authority to operate in opposition to the limits set by the U.S. Constitution.
12. If you believe the demand you have placed upon me is in harmony with the concept of limited government as defined in the U.S. Constitution and that it does not violate my natural rights, reply giving me a full explanation of the justification for your beliefs.

**- Richard Palmquist**

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