

The Exceptional Structure: How the Compound Republic Secures the People's Rights

Constitutional Authority for the Limits, Divisions, Balance, Checks, and Restraints of Governing Power in the State–Federal Governing Partnership

A documentary record drawn from the Federalist Papers, the ratifying conventions, the Bill of Rights, presidential addresses and veto messages, and the Supreme Court of the United States

Where's the Line? YOU Are the Answer · Class 2 Brief · iGovern.us

Executive Summary

American liberty does not rest on electing the right person. It rests on a **structure** — a carefully engineered system of limits, divisions, balance, checks, and restraints on governing power. The Framers' singular innovation was the **Compound Republic**: the power surrendered by the people is first divided between two distinct governments — State and National — and then subdivided among legislative, executive, and judicial branches. "Hence a double security arises to the rights of the people."

This report assembles the primary-source record establishing three propositions: first, that the Framers, the Presidents, and the Supreme Court uniformly teach that it is the structure of American government — not the virtue of officeholders — that secures the people's rights; second, that the balance of power in the State–Federal governing partnership is the load-bearing wall of that structure, deliberately drawn as a line between "few and defined" national powers and "numerous and indefinite" State powers; and third, that maintaining that line — knowing where it is, and preventing either government from stepping over it — is the perpetual constitutional task of the sovereign people.

I. A Government of Structure, Not of Men

The Framers did not gamble the people's rights on the goodness of rulers. They assumed the opposite — and engineered accordingly.

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. ... Ambition must be made to counteract ambition."

James Madison, Federalist No. 51 (1788). Full text at the Yale Avalon Project.

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

James Madison, Federalist No. 47 (1788). Full text at the Yale Avalon Project.

"... to the end it may be a government of laws and not of men."

John Adams, Massachusetts Constitution, Declaration of Rights, Art. XXX (1780).

Two centuries later, four Justices of the Supreme Court restated the principle in the joint dissent in the Affordable Care Act case:

*“The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril. ... Structural protections — notably, the restraints imposed by federalism and separation of powers — are less romantic and have less obvious a connection to personal freedom than the provisions of the Bill of Rights or the Civil War Amendments. Hence they tend to be undervalued or even forgotten by our citizens. It should be the responsibility of the Court [of us all] to teach otherwise, to remind our people that **the Framers considered structural protections of freedom the most important ones.**”*

Joint dissent of Justices Scalia, Kennedy, Thomas, and Alito, *NFIB v. Sebelius*, 567 U.S. 519 (2012).

II. The Compound Republic: A Double Security

In a single republic, the people’s power goes to one government, checked only by dividing that government into branches. The American design goes further — the division of power between two governments comes **first**.

*“In the compound republic of America, **the power surrendered by the people is first divided between two distinct governments,** and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.”*

James Madison, Federalist No. 51 (1788). Quoted by the Supreme Court in *Printz v. United States*, 521 U.S. 898 (1997), and in Justice Kennedy’s concurrence in *United States v. Lopez*, 514 U.S. 549 (1995).

“[The federal government’s] jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. ... The proposed Constitution ... is, in strictness, neither a national nor a federal Constitution, but a composition of both.”

James Madison, Federalist No. 39 (1788). Full text at the Yale Avalon Project.

Alexander Hamilton — the founding generation’s foremost advocate of energetic national government — told the New York Ratifying Convention that this balance is the point of the whole design:

*“**This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance.** It forms a double security to the people. If one encroaches on their rights, they will find a powerful protection in the other. Indeed, they will both be prevented from overpassing their constitutional limits by a certain rivalry, which will ever subsist between them.”*

Alexander Hamilton, Speech to the New York Ratifying Convention, June 21, 1788. Text at Founders Online, National Archives.

The Supreme Court has described this two-government design as the Framers’ signature achievement:

“Federalism was our Nation’s own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other.”

Justice Anthony Kennedy, concurring, U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995).

“Though on the surface the idea may seem counterintuitive, it was the insight of the Framers that freedom was enhanced by the creation of two governments, not one. ... [O]f the four structural elements in the Constitution — separation of powers, checks and balances, judicial review, and federalism — federalism was the unique contribution of the Framers to political science and political theory.”

Justice Anthony Kennedy, concurring, United States v. Lopez, 514 U.S. 549 (1995).

III. Where’s the Line? “Few and Defined” vs. “Numerous and Indefinite”

“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. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. ... The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”

James Madison, Federalist No. 45 (1788). Cited as authoritative by Chief Justice Roberts in NFIB v. Sebelius, 567 U.S. 519 (2012).

James Wilson told the Pennsylvania Ratifying Convention that the line between the two jurisdictions was drawn with deliberate precision:

“... this Constitution deserves approbation [praise] ... [for] the accuracy with which the line is drawn between the powers of the general government and those of the particular state governments. ... The powers are as minutely enumerated and defined as was possible.”

James Wilson, Pennsylvania Ratifying Convention, December 1787.

“I wish to preserve the line drawn by the federal constitution between the general and particular governments as it stands at present, and to take every prudent means of preventing either from stepping over it.”

Thomas Jefferson, Letter to Archibald Stuart, December 23, 1791. Text at Founders Online, National Archives.

The Bill of Rights Makes the Line a Rule of Law

The Bill of Rights was adopted, in the words of its own preamble, to add “further declaratory and restrictive clauses” to the Constitution “in order to prevent misconstruction or abuse of its powers.” Its final two amendments codify the structure itself:

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

U.S. Constitution, Amendment IX (1791).

“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.”

U.S. Constitution, Amendment X (1791).

“To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.”

Thomas Jefferson, Opinion on the Constitutionality of a National Bank, February 15, 1791. Text at the Yale Avalon Project.

“The Tenth Amendment is not ‘a general assumption,’ but a prohibitory rule of law. ... The Constitution draws a sharp and clear line between federal jurisdiction and state jurisdiction.”

Senator Barry Goldwater, The Conscience of a Conservative (1960).

The States’ “Police Power” — the General Power of Governing

“Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the ‘police power’.”

Chief Justice John Roberts, NFIB v. Sebelius, 567 U.S. 519 (2012), citing United States v. Morrison, 529 U.S. 598, 618–619 (2000).

“... the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.”

Keller v. United States, 213 U.S. 138 (1909).

IV. The “Police Power”: The States’ Jurisdiction of General Governance

No feature of the constitutional design is more misunderstood than the States’ “police power.” The term, in the first instance, is not merely about police officers or law enforcement. It derives from the Greek *polis* — the political community itself — and names the general, inherent power of a sovereign government to order the affairs of that community. In the American system, this general power of governing belongs to the States alone. The Federal Government has never possessed it.

Two Definitions

Jurisdiction — from the Latin *juris dictio*, “to speak the law” — is “the power, right, or authority to interpret and apply the law; the authority of a sovereign power to govern or legislate; the power or right to exercise authority; the limits or territory within which authority may be exercised.” (Merriam-Webster Dictionary.) Jurisdiction, in short, answers the question: who has the lawful authority to speak the law on this matter, in this place?

Police power is the name the law gives to the general jurisdiction of a sovereign over the internal life of its community — the inherent authority to legislate for the health, safety, morals, education, and general welfare of the people. Chief Justice Roger Taney supplied the classic definition:

“[The police powers of a State] are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions.”

Chief Justice Roger Taney, *License Cases*, 46 U.S. (5 How.) 504, 583 (1847).

Not Merely Law Enforcement — But the General Power of Governing

Because the modern ear hears “police” and thinks of patrol cars, most Americans assume the police power concerns only criminal law enforcement. The Supreme Court has been explicit that it is something far larger — it is the **general power of governing itself**, the whole residual jurisdiction over daily life that the people never surrendered to the national government:

“The States thus can and do perform many of the vital functions of modern government — punishing street crime, running public schools, and zoning property for development, to name but a few — even though the Constitution’s text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the ‘police power.’”

Chief Justice John Roberts, *NFIB v. Sebelius*, 567 U.S. 519, 535–536 (2012), citing *United States v. Morrison*, 529 U.S. 598, 618–619 (2000).

Law enforcement is one exercise of the police power. But so are schools, roads, hospitals, licensing, zoning, water law, family law, property law, contract law, public health, and the development of a State’s economy and resources. It is the jurisdiction of everyday life — and it carries a corresponding **duty: the States hold this power as trustees for their people, charged to exercise it for the “common benefit, protection, and security of the people”** (Virginia Declaration of Rights, Art. III).

The Breadth, Extent, and Reach of the Jurisdiction

The Supreme Court has described the sweep of this State jurisdiction — and its denial to the Federal Government — in every era of its history.

“[Inspection laws, quarantine laws, and health laws of every description] form a portion of that immense mass of legislation, which embraces every thing within the territory of a State, not surrendered to the general government: all which can be most advantageously exercised by the States themselves.”

Chief Justice John Marshall, *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 203 (1824).

“... the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.”

Keller v. United States, 213 U.S. 138 (1909), echoing *Barbier v. Connolly*, 113 U.S. 27, 31 (1885).

“According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.”

Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905).

“Public safety, public health, morality, peace and quiet, law and order — these are some of the more conspicuous examples of the traditional application of the police power ... yet they

merely illustrate the scope of the power and do not delimit it ... An attempt to define its reach or trace its outer limits is fruitless.”

Berman v. Parker, 348 U.S. 26, 32 (1954).

“[The] States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.”

Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 756 (1985), quoted in Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996).

Mark the asymmetry: the **State jurisdiction is so broad the Court calls attempts to trace its outer limits “fruitless”** — while the same Court has repeatedly refused to read any federal power in a way that would create its national equivalent:

“[We have always] rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power.”

United States v. Lopez, 514 U.S. 549 (1995) (Kennedy, J., concurring); accord id. at 566–567 (majority opinion).

“[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.”

Chief Justice William Rehnquist, United States v. Morrison, 529 U.S. 598, 618 (2000).

Jurisdiction Over the Land Itself

The same principle governs territorial jurisdiction. A comprehensive federal study commissioned under President Eisenhower — *Jurisdiction over Federal Areas within the States* (Interdepartmental Committee Report, 1955–57) — confirmed that **the States have jurisdiction over all land within their boundaries unless a recognized exception applies**: exclusive federal jurisdiction (e.g., forts, arsenals, and dockyards purchased with State consent under Art. I, § 8, cl. 17), concurrent jurisdiction (shared by State agreement), or partial jurisdiction (a measure ceded by the State). For all other federal areas within a State, **the Federal Government holds only a proprietary interest — the position of an ordinary landowner, with no governing jurisdiction at all**.

The sum of the record: **the police power is the general power of governing — vast in the hands of the States, denied to the Federal Government, and held in trust for the people**. When citizens assume “police power” means only law enforcement, they surrender in their imagination the very jurisdiction the Constitution reserves to the governments closest to them.

V. Presidential Voices: Guarding the Line Across Two Centuries

“If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.”

George Washington, Farewell Address, September 19, 1796. Full text at the Yale Avalon Project.

*“The **support of the State governments in all their rights**, as the most competent administrations for our domestic concerns and **the surest bulwarks against antirepublican tendencies**; the preservation of the General Government in its whole constitutional vigor ...”*

Thomas Jefferson, First Inaugural Address, March 4, 1801. Full text at the Yale Avalon Project.

*“Such a view of the Constitution would have the effect of giving to **Congress** a general power of legislation, instead of the **defined and limited** one hitherto understood to belong to them.”*

James Madison, Veto Message on the Bonus Bill (internal improvements), March 3, 1817.

*“The Government of the United States is one of **delegated and limited powers**.”*

James Monroe, First Inaugural Address, March 4, 1817.

“Local self-government is ... the true principle of our institutions.”

Rutherford B. Hayes, Inaugural Address, March 5, 1877.

*“The **States should not** be induced ... to **surrender the management of their own affairs**.”*

Calvin Coolidge, Message to Congress, 1926.

*“All of us need to be reminded that the Federal Government did not create the States; **the States created the Federal Government**. ... It is my intention to curb the size and influence of the Federal establishment and to **demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people**.”*

Ronald Reagan, First Inaugural Address, January 20, 1981. Ronald Reagan Presidential Library.

*“Federalism is rooted in the knowledge that **our political liberties are best assured by limiting the size and scope of the national government**. ... The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.”*

Ronald Reagan, Executive Order 12612 on Federalism, October 26, 1987.

VI. The Supreme Court: The Structure Is Enforceable Law

*“... **a law repugnant to the Constitution is void**; and ... courts, as well as other departments, are bound by that instrument.”*

Chief Justice John Marshall, Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

*“We start with **first principles**. The Constitution creates **a Federal Government of enumerated powers**.”*

Chief Justice William Rehnquist, United States v. Lopez, 514 U.S. 549 (1995), citing Federalist No. 45.

*“Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, **a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front**. ... **In the tension between federal and state power lies the promise of liberty**.”*

Justice Sandra Day O'Connor, Gregory v. Ashcroft, 501 U.S. 452, 458–459 (1991).

“The theory that two governments accord more liberty than one requires for its realization two distinct and discernable lines of political accountability: one between the citizens and the Federal Government; the second between the citizens and the States. ... ‘Federalism serves to assign political responsibility, not to obscure it.’ Were the Federal Government to take over the regulation of entire areas of traditional state concern ... the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory.”

Justice Anthony Kennedy, concurring, *United States v. Lopez*, 514 U.S. 549 (1995), quoting *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992).

“Although the States surrendered many of their powers to the new Federal Government, they retained a residuary and inviolable sovereignty. ... The Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.”

Justice Antonin Scalia, *Printz v. United States*, 521 U.S. 898 (1997) (second sentence quoting *New York v. United States*).

“The federal system rests on what might at first seem a counterintuitive insight, that ‘freedom is enhanced by the creation of two governments, not one.’ ... By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.”

Justice Anthony Kennedy (unanimous Court), *Bond v. United States*, 564 U.S. 211, 220–222 (2011).

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. ... The independent power of the States also serves as a check on the power of the Federal Government: ‘By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.’”

Chief Justice John Roberts, *NFIB v. Sebelius*, 567 U.S. 519 (2012).

VII. The People’s Instinct: Knowing Which Government Does What

The structure works only when citizens can answer the four-word question that summarizes the whole Constitution: ***If Government, Which Government?*** The Ninth Amendment asks whether the people delegated a matter to any government at all; if they did delegate a particular power, the Tenth asks which government — the national government, farther away and less accountable — “few and defined” powers, or the State governments — closer at hand and more accountable — “numerous and indefinite” powers. Tocqueville found that ordinary Americans of the founding era could do exactly this:

“I scarcely ever met with a plain American citizen who could not distinguish with surprising facility the obligations created by the laws of Congress from those created by the laws of his own state, and who ... could not point out the exact limit of the separate jurisdictions of the federal courts and the tribunals of the state.”

Alexis de Tocqueville, *Democracy in America*, Vol. I (1835).

VIII. Six Settled Propositions

Proposition	Primary Authority
1. It is the structure of government — limits, divisions, balance, checks, and restraints — not the virtue of officeholders, that secures the people’s rights	Madison, Federalist Nos. 47, 51; Adams, Mass. Const. Art. XXX (1780); NFIB v. Sebelius joint dissent (2012)
2. The Compound Republic divides power FIRST between two governments, then among branches — a double security to the rights of the people	Madison, Federalist No. 51; Hamilton, N.Y. Ratifying Convention (1788); U.S. Term Limits v. Thornton (Kennedy, J., concurring) (1995)
3. Federal powers are few and defined; State powers are numerous and indefinite, with a residuary and inviolable sovereignty	Madison, Federalist Nos. 39, 45; United States v. Lopez (1995) (“first principles”)
4. The States — not the Federal Government — possess the general power of governing, the “police power”	NFIB v. Sebelius (Roberts, C.J.) (2012); United States v. Morrison (2000); Keller v. United States (1909)
5. The Ninth and Tenth Amendments make the line a prohibitory rule of law: powers not delegated remain with the States or the People	U.S. Const. amends. IX, X; Jefferson, Bank Opinion (1791); Goldwater, The Conscience of a Conservative (1960)
6. Two clear lines of political accountability — citizens↔Federal, citizens↔State — are what let the people govern; blur the lines and responsibility becomes illusory	United States v. Lopez (Kennedy, J., concurring) (1995); FTC v. Ticor Title Ins. Co. (1992); Tocqueville, Democracy in America (1835)

Conclusion: Rebalance the Tires

The constitutional record assembled here establishes that **the State–Federal balance is not a policy preference — it is the mechanism the Framers built to secure the people’s rights**, and the Supreme Court enforces it as law. Today the federal “tire” is bloated far beyond “few and defined,” and the State “tire” rides flat, far below “numerous and indefinite.” The founders’ answer is not a better rider or a harder yank of the handlebars to the left or right. It is to restore the pressure the Constitution prescribes on each tire — through the State governments the people elect, train, and sustain — so the structure can again carry the people to their pursuit of happiness.

“The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril.”

Joint dissent, NFIB v. Sebelius (2012)

“It forms a double security to the people.”

Alexander Hamilton, New York Ratifying Convention (1788)

“In the tension between federal and state power lies the promise of liberty.”

Justice Sandra Day O’Connor, Gregory v. Ashcroft (1991)