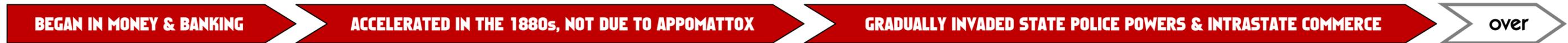


- 1776 : The American Revolution spurned centralized Parliamentary sovereignty.
- 1777 – 88 : The Articles of Confederation recognized individual state sovereignty.
- 1789 : The U.S. Constitution shared sovereignty between state and federal governments.

# AMERICAN COUNTER-REVOLUTION: A YET MORE-RADICAL RECONSTRUCTION

Successive accretions of federal sovereignty over time, contrary to original intent and strict construction, wrought an incremental fundamental shift ...

- from Trinitarian shared state-federal sovereignty\* in the Constitution, to Unitarian centralized federal sovereignty in practice.
- from pessimism to optimism on human nature\*, thus denying the need for federalism, checks and balances, and separation of powers.
- from harmonizing public policy with the deity of Christ\* and the Constitution's Puritan Whig ethos, to effectively negating both.



## BACKED BY IDEOLOGICAL HALF-TRUTHS, SELECTIVE DISINFORMATION, & EDITORIAL MYTH-MAKING IN U.S. "HISTORY" TEXTBOOKS

### Misrepresentation of Strict and Loose Construction

- Textbooks explain that implied powers exist, but often pretend that loose constructionists alone believe in them while strict constructionists think the federal government possesses only delegated powers.
- Jefferson insisted that strict constructionists also believe in implied powers, but that "necessary and proper" means ABSOLUTELY necessary, while loose constructionists say it means CONVENIENT, and not prohibited.
- This pro-loose construction textbook error re-enshrines the *expressio unius exclusio est alterius* principle,\*\* which the 9<sup>th</sup> and 10<sup>th</sup> Amendments reject, that the federal government can do whatever is not forbidden.

### Misinterpretation of the Constitution's "Supremacy Clause"

- Textbooks usually claim this passage establishes "federal" or "national" supremacy, where federal law automatically trumps state law if they conflict.
- In fact that clause declares *Constitutional* supremacy, hence the need for judicial review. Unconstitutional federal laws are null and void.
- The people are the ultimate proper arbiters of constitutionality, even over the Supreme Court, through elections, impeachments, and amendments.

Blindness to the clash between *lawful* states' rights under the Constitution and *unlawful* state sovereignty over the Constitution



Mistaken conclusion that Appomattox therefore extinguished states' rights as well as state sovereignty



Implied *de facto* repeal of the 10<sup>th</sup> Amendment



Neglect of the original intents of both the U.S. Bill of Rights and the 14<sup>th</sup> Amendment



Silence on how direct election of U.S. senators ended states' check on the Supreme Court through the Senate's power to confirm appointed Justices\*\*\*



Uncritical acceptance of the "incorporation" doctrine that the 14<sup>th</sup> Amendment "nationalized" the U.S. Bill of Rights (as interpreted by the Supreme Court) to apply to the states as well as to the federal government

Most textbooks wrongly equate these opposites. The former shares sovereignty. The latter does not.

Madison stressed this clear distinction. He supported the former in 1798, but attacked the latter in 1832-33.

This false notion is rife in textbooks. Jeffersonian-Jacksonian original intent and strict construction were still strong in 1865.

This dysfunctional logical corollary of the first two misconceptions has crippled subsequent interpretation and wrought much mischief.

The original intent of the 14<sup>th</sup> Amendment was only to constitutionalize the 1866 Civil Rights Act, which the 1857 *Dred Scott* decision imperiled, not to override the U.S. Bill of Rights' original intent to restrain just the federal government, not the states.

Contrary to the 14<sup>th</sup> Amendment's original intent, this novel 1925 construction by the Supreme Court first achieved legal standing 60 long years after Appomattox and 57 long years after the 14<sup>th</sup> Amendment's 1868 adoption, but a mere 12 short years after the 17<sup>th</sup> Amendment began the direct election of U.S. senators.

### Lawful states' rights under the Constitution

1. Jefferson's 1798-99 Kentucky Resolutions said states could nullify (Madison's 1798 Virginia Resolutions said "interpose" against) the 1798 federal Sedition Act, which violated the First Amendment right of free speech. Jefferson wrote that if the federal government were the sole judge of its powers under the Constitution, it and not the Constitution would be supreme. States also must judge federal constitutional powers, he said, to help protect the people.
2. Maryland's bid to tax the 2<sup>nd</sup> Bank of the U.S. echoed the Constitutional Convention's original intent in voting down a proposal to authorize the federal government to charter banks.
3. Free states' "personal liberty laws" barred state officials from enforcing federal fugitive slave acts.

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### Unlawful state sovereignty over the Constitution

1. New England states in the War of 1812 withheld their militias from federal service and broke federal laws against trading with British Canada during hostilities.
2. Georgia defied an 1832 Supreme Court ruling against its authority over Cherokee lands.
3. South Carolina tried in 1832-33 to nullify a federal protective tariff, although the Constitution delegates power to the federal government to levy any tariff, for protection or for revenue. Jefferson had died in 1826 but Madison, still alive, publicly denounced Calhoun on this.
4. In *Briscoe v. Bank of Kentucky* (1837), the Supreme Court upheld state-owned banks' issuing paper money, although the Constitution forbids states to "emit bills of credit."

\* The connection between pessimism on human nature and Trinitarianism is that because corrupt man cannot self-redeem, Christ must be divine to atone for man's sin; and conversely, Christ's deity implies man's depravity, in that only a divine Savior can regenerate man, who cannot self-regenerate.

\*\* *Expressio unius exclusio est alterius* ("Expression of one is exclusion of another") means whatever rights are not specifically enumerated as reserved to the people or to the states are respectively among the unenumerated powers either of government in general or of the federal government in particular.

\*\*\* 1913, the fateful high tide of "progressivism," saw the passage of the Federal Reserve Act as well as ratification of the 16<sup>th</sup> (income tax) and 17<sup>th</sup> (direct election of U.S. senators) Amendments. Before the 17<sup>th</sup> Amendment in 1913, state legislatures elected U.S. senators.