

McDONALD v. CHICAGO: THE GREAT MISUNDERSTANDING OF STATE SOVEREIGNTY

PART 1, 2

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<http://www.newswithviews.com/Timothy/baldwin144.htm>

One of my highly-esteemed colleagues, Wilton Strickland, who is an author,¹ columnist, attorney in Florida and Montana, magna cum laude graduate of the college of William and Mary law school and a fond friend of liberty accurately described a major problem in America relative to restoring freedom in the States in his recently-released article entitled, “**Staying Away from the Federal Courthouse.**”² In this article, Strickland rightly identifies as a serious error in political judgment our using the federal government to enforce “freedom” against the States, as though freedom can long exist at the elimination of state sovereignty. The supposed “victory” in the recently-decided **McDonald v. Chicago case**³ goes to the core of this issue and illustrates, yet again, that the U.S. Constitution operates to eliminate state sovereignty and to cement federal supremacy, the dreadful results of which we see more keenly and feel more obviously every day.

In this case, the U.S. Supreme Court opined that the fourteenth amendment (which was ratified only three years after the War Between the States under not-so-favorable conditions of the Southern states and which supposedly created national citizenship for all citizens of the States) nationalizes the second amendment such that all the States are bound to the federal government’s enforcement of those limitations. In other words, the federal government was supposedly given the power to ensure that all the States not deprive their citizens the “privileges and immunities” of the constitution. In essence, the States would have no sovereignty regarding this subject matter to the extent the federal government denies them permission, or any other matter that the federal government deemed “incorporated” into the federal constitution through the fourteenth amendment. This political application is a serious error and its consequences contradict the meaning and purpose of creating a federation of states and of separating state and federal powers. Literally speaking, there is no way that we can “get back to the constitution”⁴ where the application of the fourteenth amendment exists in this manner, not to mention the myriad of other reasons we will never “get back to the constitution.”

I acknowledge right off the bat that my view in this article is not likely in the majority of “conservative” groups, especially when it comes to a matter that has recently favored their “conservative” view. But that is all the more reason to express what I believe is the truth of this matter, for it goes to the very heart of freedom’s future and without an understanding of what jurisdiction, sovereignty and limitations of power mean, freedom will never be restored and will continue to suffer. Furthermore, I acknowledge that for what I am proposing to be the correct form of government to take place, the States must revolutionize the way they

handle their politics, especially their relationship to the federal government. I also admit that not all of the States in the union will do this. In fact, maybe only a small percentage will, but the people living in those States must capture this vision for freedom to prosper in their State.

Ironically, most conservatives who praise this “gun-rights victory” also claim that the only way freedom will be restored is if we “get back to the constitution,” not recognizing that the constitution of 1787 and the constitution of 1868 and the constitution of 2010 do not closely resemble each other, not even considering what the Anti-Federalists warned of the U.S. Constitution. This simply shows that their understanding is misguided, incoherent and conflicted. On one hand, they praise a “supreme law of the land” that nationalizes a matter which the constitution of 1787 originally and purposely left to the states in a federal form; but on the other, they complain that the federal government is too intrusive in our lives and would admit that the fourteenth amendment (of the constitution of 1868) has a large role to play to that end. They hate Peter when he robs them to pay Paul, but they love Peter when he robs Paul to pay them. This approach to federal politics does not produce freedom.

Let me make this abundantly clear: *today, the federal constitution is no longer federal, but is national in its character and nature.* Ever since the fourteenth amendment was “ratified,” the federal government has become more increasingly the national supreme government at the expense of state sovereignty and the tenth amendment. It matters not that the federal government appears to be doing a good thing. Their power is obtrusive, encroaching and limitless, all through the use and instrumentality of the constitution.

Freedom is not victorious when the federal government obtains more power and control over the States through the use of a constitution that was supposedly designed to leave to the States all powers not delegated to the federal government and not expressly waived by them. The tenth amendment is as integral to the meaning of the constitution as the second amendment, if not more so; yet it is swept aside. *Those who opposed the U.S. Constitution in 1787 did so based upon the conclusion that the U.S. Constitution created a national form of government and all but eliminated the sovereignty of the States.* They were apparently more astute in their assessment of the U.S. Constitution’s future than were the Federalists. They did not base their opposition to the constitution upon the fear that the States would retain too much power and thus would potentially deprive their citizens of fundamental rights.

The States had their own constitutions (and still do) to secure the blessings of liberty. In fact, Illinois’ state constitution protects the right to keep and bear arms without reference to the U.S. Constitution: “Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.” Everything not delegated to the federal government was deemed the inherent right of the States regarding internal police. The people of the States did not need the federal government to protect them from themselves. If they thought otherwise, they would have formed a national form of government, just as Alexander Hamilton proposed in the constitutional convention. But this plan was rejected; yet somehow it now has a stronghold on our minds through a century of moral depravity, individual ill-virtue, philosophical expediency, religious despondency and political subterfuge.

The founding generation wanted to leave to the States the sovereignty which they deservedly won fighting a bloody war against Great Britain, so that they could govern themselves as the people in those States deemed best. They rejected nationalism at every turning point, and it was for this reason that the tenth amendment was insisted upon: to protect State sovereignty

and to draw that inviolable line against the federal government. The Bill of Rights had absolutely nothing to do with limiting the States regarding their internal affairs. Yet today, it is another federal government arrow in their quiver to shoot down State sovereignty, piercing the heart of the original union.

A constitution cannot maintain a federal nature of parallel lines of state and federal sovereignty while at the same time allowing the federal government to intrude on the states' sovereignty retained in that same document. If our founders were so wise as to create a constitution of parallel lines of sovereignty and as to leave to the states all matters not delegated to the federal government, including those matters in the bill of rights, then why would we happily accept a principle that completely contradicts that understanding and intention? Why do we rejoice when a State's sovereignty is destroyed by the weapons we supposedly locked away from the federal government for our own sake? Do we not recognize that the weapons they use to destroy one State on one issue can be used to destroy another state on a different issue? -- that they are the sole distributor of "justice"?

That the founding generation did not want the federal government to be in control of those matters which most people willingly hand over to the federal government today, including the second amendment, is undeniable. If the answer to the question of federal power rests in a conclusion reached through the use of contemporary-standard application, such that you are happy when the federal government encroaches upon the lines of sovereignty retained by the States, then I advocate and propose a different contemporary standard -- one that rests upon the maxims of self-government, limited government, state sovereignty and real federalism, not based upon national supremacy, encroachment and interposition.

I reject the principles of nationalism, which have created our demising situation and plight today. I would much rather accept the evils of my state than the evils from the federal government. Evidently, the founding generation felt the same way. However, such cannot be said of supposed "conservatives" today.

PART 2

The objections I will likely receive from part 1 of this article are these main two: (1) the fourteenth amendment guarantees to every "United States citizen" the privileges and immunities in the United States Constitution and that includes the second amendment; and (2) the states do not have a right to deprive their citizens of a fundamental right, such as the right to keep and bear arms, such that, the matter is not one of granting power to the federal government, but of limiting the state government. To these arguments, I preemptively respond.

As to the first argument, let us admit a historical fact: *the states did not waive any right to govern themselves unless it was delegated to the federal government and this included the regulation of those matters listed in the bill of rights.* This was held by the United States Supreme Court and State Supreme Courts up until and even after the fourteenth amendment was ratified, concluding that *the States retained the power to govern themselves in those areas, except as delegated to the federal government in article 1, section 8, or expressly waived in article 1, section 10.* More pertinently, the founding generation agreed that the bill of rights did not restrict the States to govern internally, much less than the powers delegated to Congress did. Thus, the argument that the fourteenth amendment gives power to the

federal government to enforce against the states is a recent one in America's history and is founded only upon the "privileges and immunities" clause of the fourteenth amendment. Unfortunately, however, this constitutional application, in part, sacrifices the federal form of government for a national form -- a concept that was rejected in the constitutional convention debates of 1787 and was most certainly rejected by the Anti-Federalists. I likewise reject it.

As to the merits of this argument, I do not feel it necessary to delineate the decisions of federal courts. Admittedly, you could take your pick of cases post 1900 that would support your argument to give the federal government this power to control the States. Rather, I want to express the political dangers and implications of this argument. In essence, this fourteenth-amendment-limits-the-states argument overturns the foundation upon which America was founded: *the federal government has no power to intrude upon the states in any matter not delegated to it or waived by them*; the states enjoyed all natural and constitutional rights to govern themselves; the state governments were closer to the people and more apt to meet the needs of those people; the state governments could be affected and changed by state citizens more easily than the federal government could be controlled by a mass of divergent peoples; matters regarding the intricate and essentials of life must be left to the States; the inviolable separation of powers is crucial to the sustenance of a federation of states; a national form of government is more dangerous to the liberty of the people than a federal form.

These, among others, are the maxims upon which America rested. The fourteenth amendment argument opposes these principles and prevents their practicality in a real and substantial way. In short, it is dangerous. It is no wonder that the fourteenth amendment was pushed through by those modern-day nationalists immediately after the War Between the States and defeat of the Confederate States of America. I reject this argument from a political and statehood perspective and advocate, as James Madison did, for an inviolable line of separation between state and federal authority. This line is worthless to control the federal government unless the people understand it and the States enforce it.

As to the second argument that the states do not have the right to deny their citizens of a fundamental right, such that the second amendment does not such much [sic] grant power to the federal government as it does limit the power of the state governments, I find it to be missing the point entirely and calling "six eggs" by the name "one-half dozen." That the second amendment's purpose purportedly only limits the States and does not increase the federal government's power attempts to hide in the passive voice what is reality in the active voice. Indeed, actions speak much louder than words: the federal government's power is increased at the expense of the States. With the responsibility to govern comes the power to force.

Additionally, this argument ignores the matters of separation of powers; the limited nature and scope of the federal government; the essence of the tenth amendment; and the nature and character of the union formed in 1787-1789. Let us take one example to illustrate what we mean by these concepts. Suppose the Chinese government denied its citizens the right of trial by jury of their peers. Admittedly, this would deny what we consider to be a fundamental right. So, would America have the right and power to demand that the Chinese government change its law and force it to do so? Or put it in the reverse, would China have the right to force America to do this or that? The answer should be obvious: no, because neither has jurisdiction over the internal political affairs of the other. America's and China's powers are

inviolably separate from each other. For one to attempt to encroach on the other is an act of war.

That harms may have been committed is beside the issue and does not justify foreign interference. Does the lack of power to interfere make China's government correct? No, it does not. Likewise, the federal government's lack of jurisdiction to force a State to do *such and such* does not justify a State using its power to limit its citizens of a right. Such is the price we are all willing to pay to maintain our national sovereignty. Yet somehow the price is too high when it comes to State sovereignty in America.

If the argument to enforce the federal government's will upon the States is based upon "what the states *should* do," then why not form a world government to ensure that all the governments of the world follow the fundamental laws of freedom set forth by a world constitution? -- which would be, of course, enforced by a world police, military and executive leader. Why stop "justice" from reaching all ends of the earth? Why not just copy and paste the U.S. Constitution and ratify "the Constitution for the United Nations of the World"? Oh wait, the U.S. Constitution would not be suitable for the circumstances involving governing the world, and thus, there would be need for a new and different constitution for that purpose; but of course, the U.S. Constitution is perfectly conducive for self-government and freedom for a diversely-interested population of 400 million people living in geographically-unique 50 states, across an entire continent and beyond. I am sure that the founding generation would have done everything exactly the same as they did in 1787 were they to see what we see today. (Sense the sarcasm.)

Attempts to form such a world-government constitution are likely considered by those reading this article to be evil and corrupt to its core, most likely based upon the principles of self-government, limited government and national sovereignty. Indeed, and the same principles apply to the federal government's force upon the States. Separation of powers; limited government; self-government; federalism and state sovereignty: those words are not just words to be ignored. They have active application, just as you would utilize them to rationally oppose world government. They have meanings of jurisdiction and authority to be applied on our national scale as well, and they are just as important. Just because you do not like what a particular State is doing does not justify the federal government's intervention against that State. And even if it were "constitutional" based upon the 1868 amendment, it is flawed in its principle and dangerous in its application.

Each state has its own constitution -- for political and societal reasons. If there is a State that does not protect the right to keep and bear arms, so as to limit the state government's authority to regulate that matter (just as the second amendment limits the federal government's power to regulate that matter), then the citizens who care about freedom in their State should endeavor to amend their constitution. At last, if it appears that freedom is utterly not capable of thriving in that populace, there are forty nine other states from which to choose, and such a fact would prove that the vast populations throughout the States do not share fundamental ideas and beliefs as to what freedom is and should not be sharing the union together. Indeed, if those people care so little about their rights, why should my State be detrimentally affected by the politicians they elect to the federal government? Furthermore, what good does it do those citizens to exchange their State tyranny for Federal usurpation and encroachment upon all of the other States' powers and sovereignty? They are trading in one small beast, for one very large one.

If you insist that that federal government has the power to force its will upon the States based upon the fourteenth amendment, then do not expect that this ever-intrusive, out-of-control, ever-growing and ever-taxing/spending federal government will “restore” freedom. By the nature and implication of that thought process and belief, you desire that the States be controlled by the federal government; you desire that a national form of government be maintained and perpetuated in this once-union-of-sovereign-states; you have elevated forced-union principles above individuality of State self-government; you have discounted the irreparable harm that this federal government has done to the States in the name of their “national supremacy;” you do not believe that the citizens of the States should solve State problems on State levels under State constitutions; you believe that self-government on State levels is impossible and should be used as a down-payment for the purchase of federal statism.

I agree with my good friend, Wilton Strickland: forget the federal courts and refuse to use the constitution (which was intended to limit only the federal government) as a way of controlling States and eliminating their sovereignty. Freedom will only be restored when people realize that using the federal government to solve their problems is creating a much bigger problem than the founding generation bargained for or anticipated.

Get back to self-responsibility and self-government. Get back to State constitutions, self-sufficiency and self-reliance. Become a statesman in your State. Enlighten the minds of your fellow citizens. Get back to internal dignity and polite. Restore freedom in your State. Do not trample over the freedom of everyone else as you run to Uncle Sam to correct the behavior for which you should be responsible. For part one click below.

EndNotes:

1 http://www.amazon.com/Unlawful-Government-Gathering-Threat-Hegemony/dp/0741450984/ref=sr_1_fkmr0_3?ie=UTF8&qid=1277775421&sr=8-3-fkmr0

2 <http://libertydefenseleague.com/2010/06/22/staying-away-from-the-federal-courthouse/>

3 <http://liveshots.blogs.foxnews.com/2010/06/28/high-courts-big-ruling-for-gun-rights/>

4 <http://libertydefenseleague.com/2010/06/23/freedom-is-for-the-living/>

Timothy Baldwin is an attorney from Pensacola, FL, who received his bachelor of arts degree at the University of West Florida and who graduated from Cumberland School of Law at Samford University in Birmingham, AL. After having received his Juris Doctorate degree from Cumberland School of Law, Baldwin became a Felony Prosecutor in the 1st District of Florida. In 2006, he started his own law practice, where he created specialized legal services entirely for property management companies.

*Like his father, Chuck Baldwin, Timothy Baldwin is an astute writer of cutting-edge political articles, which he posts on his website, www.libertydefenseleague.com. Baldwin is also the author of the soon-to-be-released book entitled, **Freedom For A Change**, in which Baldwin expounds the fundamental principles of freedom believed by America's forefathers and gives inspiring and intelligent application of those principles to our current political and cultural standing.*

Baldwin is involved in important state sovereignty movement issues, including being co-counsel in the federal litigation in Montana involving the Firearms Freedom Act, the likes of which is undoubtedly a pivotal and essential ingredient to restoring freedom and federalism in the states of America. Baldwin is also a member of freedom organizations, such as The Oath-Keepers, and believes that the times require all freedom-loving Americans to educate, invigorate and activate the principles of freedom within the States of America for ourselves and our posterity.

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