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Craig L. Bosley, MD

The beginning of the end – Part II

September 20, 2010

Three Supreme Court rulings changed our lives, making our Constitution near irrelevant. One gave the Supreme Court unlimited, unchecked power; the other two gave Congress unlimited power.

The first ruling created the concept of judicial review, which is the claimed power by the Supreme Court to have the final voice in all issues concerning the United States Constitution. This power is not granted it in the Constitution; moreover, it is not granted to any branch of the federal government. Why might that be? Why would such a critical power not be assigned to one of the three branches of the federal government?

The accepted explanation is that the Constitution is our ultimate law, therefore the judicial branch, the Supreme Court, logically has this power, no need to expect language in the Constitution because it was intended.

This Supreme Court ruling, claiming the power of judicial review, occurred in 1804 during the presidential term of Thomas Jefferson. Following his defeat of John Adams, Congress created 58 new judgeships for Adams to appoint before Jefferson took office. Jefferson objected, but Adams made the appointments and the night before Jefferson was sworn into office, John Marshall, acting as secretary of state, affixed the official seal to the commissions but failed to deliver them before Jefferson took office the next day.

One of Jefferson's first directives to his new secretary of state was to stop delivery of several of the commissions, including that of William Marbury. Marbury sued, using the Judiciary Act of 1789 to

bring the case directly before the Supreme Court. The Chief Justice was John Marshall, the same John Marshall who affixed the official seal to the commissions for Adams.

Since justices constitutionally "shall hold their Offices during good Behavior," should the House of Representatives have impeached Marshall for ruling on a case in which he was personally involved? Why did Marshall ignore such an obvious conflict of interest? Was it because he saw Marbury as an opportunity to create the concept of judicial review, as Hamilton voiced in the Federalist papers?

If one of the three branches of the federal government was to have the power to "interpret" the United States Constitution and the other two branches powerless to override it, why didn't the founding fathers include language in the Constitution defining this?

Further, why would the founding fathers give this power to the only branch of the federal government not elected to office by the people? Why would they give this power to only four people, appointed for life by the president? Is that consistent with the intent of the Constitution? Is that consistent with a government that answers to the people?

Let's revisit the purpose of the Constitution. It is a contract, written by the states, outlining specifically what they are "hiring" the federal government to do for them. The states divided the federal government into three branches, assigning specific, limited tasks for each to perform on behalf of the states. The federal government was the employee, the states and the people the employer.

But, in 1804, one of those employees, the Supreme Court, headed by John Marshall, claimed it had the sole authority to determine what the contract said. Four men claimed absolute power over the United States Constitution. Further, neither of the other branches of government, nor the states, nor the people could override the court's determination; the court could simply rule contrary opinions unconstitutional.

Was there a reason the states did not give this power to any of the branches of the federal government? Could it be that the states did not want any branch of the federal government to have this power? The Tenth Amendment states, "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." They did not assign the power of judicial review; therefore, it resides the states and the people.

Ironically, Marshall agreed with this while defending his power grab. Referring to the other two branches of government and the limited powers granted them by the states, he said the limits would serve no purpose "if these limits may, at any time, be passed by those intended to be restrained." Justice Marshall ignored that the Supreme Court was one of those "intended to be restrained."

Judicial review by the Supreme Court is unconstitutional and is "reserved to the States respectively, or to the people."

(Next week – Sharing unlimited power – Part III)