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Summary

Many believe that the rights of the American people come from the Constitution. However, this is not true. The Constitution was designed to limit the government rather than give rights. Instead, human rights exist independently of any government. The government exists solely to protect these rights.

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“Rights such as life, liberty, property and the pursuit of happiness exist independently of government, not because of government.”

Do Our Rights Come from the Constitution?

by Jacob G. Hornberger

Celebrate this Independence Day by remembering where our rights come from. It is commonly believed that the rights of the American people come from the Constitution. Nothing could be further from the truth.

Throughout history, the standard belief was that people were unconditionally subject to the commands of their government. If the king ordered a person to leave his family to fight in far off wars, that person would have to obey. The king could control and regulate both lives and property because he was sovereign and supreme, and the citizens, as subjects, were subordinate and inferior. When the king commanded, people obeyed.

Gradually, people began questioning the notion of the king having unrestricted control over their lives and fortunes. For example, in 1215, with Magna Carta, the king was forced to admit that his powers over the citizenry were limited.

It was in 1776, however, with the publication of the Declaration of Independence, that the historical concept of sovereignty got turned upside down. Government wasn't sovereign and supreme, Jefferson declared to the world, individuals are. And government officials are subordinate to the citizenry.

The Declaration emphasizes that human kind has been endowed with certain fundamental and inherent rights that preexist government. In other words, one's rights don't come from any government official. Rights such as life, liberty, property and the pursuit of happiness exist independently of government, not because of government.

It also emphasizes that the reason people call government into existence is to protect the exercise of these rights. That is, in the absence of government, undesirables such as murderers, rapists and thieves would make life quite miserable for everyone else. Government is needed to arrest, prosecute and punish these types of people.

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What happens when government transgresses its rightful duty of protection? The Declaration tells us that it is the right of the people to alter or abolish that government and to implement a new government that is designed to protect, not destroy, the exercise of man's rights.

The quandary, of course, that our Founders faced was whether it was possible to bring a government into existence that would remain limited to a subordinate role rather than attempt to assume the more traditional sovereign and supreme role.

In 1787, the Founders attempted to solve the problem by writing a Constitution that called the federal government into existence. The result was historically significant. The Constitution made it clear that this government, unlike others in history, would not be one of unlimited powers. Instead, by the express terms of the Constitution itself, the federal government would be one of limited, enumerated powers.

Thus the correct question is not: What rights does the Constitution give to the American people? But rather: What powers does the Constitution grant to the government? If a certain power is not enumerated, the government is not permitted to exercise it.

Not trusting government officials, however—even democratically elected ones—the American people ensured the passage of the first 10 amendments to the Constitution. These should more appropriately have been called the “Bill of Prohibitions” than the Bill of Rights. Why? Because a careful examination reveals that they are express restrictions on government powers rather than a grant of rights to the citizenry.

Fearful of the propensity of government to move toward dominance and control, the people felt safer with express restrictions on the power to interfere with rights that they believed were of the utmost importance. Playing it safe, they included the Ninth Amendment, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

So the next time someone refers to your “constitutional rights,” remind them that people's rights don't come from the Constitution. And if you really want to stimulate thinking, ask them whether they believe that today the federal government is destructive of the very rights it was designed to protect.

Jacob G. Hornberger is president of The Future of Freedom Foundation in Fairfax, VA and an associate of Cascade Policy Institute, a Portland, Oregon think tank.

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Please contact:

Nicole Williams
Director of Publications
Cascade Policy Institute
813 SW Alder Street, Suite 450
Portland, Oregon 97205

Phone: (503) 242-0900
Fax: (503) 242-3822

www.cascadepolicy.org
nicole@cascadepolicy.org