

Civil Disobedience and the Census

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I recently heard someone say the time has come for some civil disobedience and the intrusive nature of the Census makes it the perfect place to start. I could not agree more. The American people need to draw a line in the sand and tell the reprobates in the federal government we will no longer tolerate their usurpations of power.

If the American people are going to make a stand and go toe to toe with the federal government, then they need a basic understanding of some constitutional principles because these principles are universal and pertain to every power exercised by the federal government.

Constitutional Principles

Principle No. 1. The Constitution established a separation of power between the States and their federal government. James Madison explained this principle in Federalist Essay No. 45:

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; with which last the power of taxation will, for the most part, be connected. 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.

The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments in times of peace and security.

In the New York State Convention debating ratification of the proposed constitution in 1788, John Jay, who was one of the authors of the Federalist Essays and would later become a justice of the United States Supreme Court, expressed this principle as follows:

What are the objects of our state legislatures? Innumerable things of small moment occupy their attention; matters of a private nature, which require much minute and local information. The objects of the general government are not of this nature. They comprehend the interests of the states in relation to each other, and in relation to foreign nations.

Thomas Jefferson discussed this principle in various writings throughout his political career. In 1816 he wrote:

The way to have good and safe government is not to trust it all to one, but to divide it... Let the national government be entrusted with the defense of the nation, and its foreign and federal relations; the state governments with the civil rights, laws, police, and administration of what concerns the state generally...

*The best key for the solution of questions of power between our governments is the fact that 'every foreign and federal power is given to the federal government, and to the states every power purely domestic. * * * The federal is, in truth, our foreign government...*

The federal government was empowered to deal with foreign affairs and relations between the States while the States would concern themselves with domestic affairs.

The powers of the federal government are commonly known as *delegated powers* because when that government was established, the States delegated, not surrendered, a portion of their sovereign powers to the federal government. The powers not delegated to the federal government are known as *reserved powers*.

Principle No. 2. The Constitution established a federal government of limited enumerated powers. Under this system of government, every power not granted to the federal government and enumerated in the Constitution is denied. This principle is the foundation of the Constitution and exists independent of the Tenth Amendment. That Amendment is merely a secondary level of restraint on the powers of the federal government.

In Federalist Essay No. 14, James Madison wrote that adoption of the proposed constitution would not grant the federal government general legislative authority throughout the United States:

[I]t is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects...

Alexander Hamilton addressed the principle of limited government in Federalist Essay No. 83:

The plan of the convention declares that the power of Congress...shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended.

The federal government only exists within the sphere of its delegated powers and is constitutionally powerless to act absent a specific grant of power. It should be noted that there are no implied powers beyond the delegated powers. For example. Congress has been granted "the power to establish post offices." Therefore, Congress can pass any law necessary to the establishment and maintenance of post offices. This would include such incidental powers such as printing stamps, affixing their value, appropriating money for postal trucks, etc.

Members of Congress constantly attempt to reverse this principle. I have lost count of the number of times I have watched one of these clowns hold up a copy of the Constitution and claim their powers are unlimited except in those instances where the Constitution places a restriction on their power. These individuals are either corrupt, incompetent, or both.

Principle No. 3. Constitutionally, the federal government cannot use its delegated powers to encroach on the powers reserved to the States. In other words, the federal government cannot

convert its federal and foreign powers into domestic powers to do things not entrusted to that government, i.e., use principle No. 2 to circumvent principle No. 1.

Constitutional Provisions for the Census

The provision for the Census is found in Article I, Section 2, Clause 3 of the Constitution. It is confined to determining the number of Representatives [in the House] and imposing direct Taxes among the several States.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Number... The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

The reader will note the power to make laws concerning the Census is restricted to the “actual enumeration.”

In the case of direct taxes (a direct tax is a tax on property based on ownership), this provision requires Congress to apportion the tax among the individual States based on population. For example. Let’s say in 1790, two years after the ratification of the Constitution, Congress prepared a budget and decided to impose a direct tax to raise the needed revenue. And, based on the Census, Virginia had 30% of the population of the United States. Under the rule of apportionment, Virginia would have been responsible for 30% of the tax. The States collect the tax and turn the money over to the federal government.

Direct taxes are inherently unfair because one State, with ten percent of the population, might be one of the richest States while another State, with the same percentage of the population, might be one of the poorest. Yet, under the direct tax formula imposed by the Constitution, both States would be required to pay the same amount. The Founders feared the use of direct taxes so they created a system to discourage their use.

Since direct taxes must be apportioned based on population, an enumeration is needed to determine the percentage of tax for each State.

The Federal Government Distorts the Purpose of the Census

On their web-page, the Census Bureau explains the purpose of the Census as follows:

The U.S. Constitution (Article I, Section 2) mandates a headcount of everyone residing in the United States. The population totals determine each state’s Congressional representation. The numbers also affect funding in your community and help inform decision makers about how your community is changing.

The reader will note that the federal government’s statement of purpose does not comport with the Article I, Section 2, Clause 3 of the Constitution. Since decisions about our communities are not within the class of powers granted to the federal government (see constitutional principle No.

1), the reader will not find a reference to it in the limited powers granted to the federal government (see constitutional principle No. 2).

No More Census Long Forms

On their web-page, the Census Bureau states the long form used in the past has been replaced with a new short form:

In the past, most households received a short-form questionnaire, while one household in six received a long form that contained additional questions and provided more detailed socioeconomic information about the population.

The 2010 Census will be a short-form only census and will count all residents living in the United States as well as ask for name, sex, age, date of birth, race, ethnicity, relationship and housing tenure – taking just minutes to complete.

The more detailed socioeconomic information is now collected through the American Community Survey. The survey provides current data about your community every year, rather than once every 10 years. It is sent to a small percentage of the population on a rotating basis throughout the decade. No household will receive the survey more often than once every five years.

The reader will note that the additional information requested on the 2010 form will have absolutely nothing to with apportioning direct taxes or determining the number of representatives in the House of Representatives.

The American Community Survey

As stated above, the Census Bureau will be using the American Community Survey to extract personal data that it previously received on the old long form. Once again, this information will have absolutely nothing to with apportioning direct taxes or determining the number of representatives in the House of Representatives.

Authority for the Census and the American Community Survey

On their web-site, the Census Bureau claims the American people are “required by law” to provide the information requested on either form and our response is “mandatory.”

For the Census, they cite the provision of the Constitution referenced above as their authority to request the information.

For the American Community Survey, they cite Title 13, United States Code (U.S.C.), Sections 141 and 193 as their authority to request the information.

Section 141 (d) states, in part: *...the Secretary, in the year 1985 and every 10 years thereafter, shall conduct a mid-decade census of population in such form and content as he may determine...*

Section 141 (e) (2) states: *Information obtained in any mid-decade census shall not be used for apportionment of Representatives in Congress among the several States, nor shall such information be used in prescribing congressional districts.*

Section 141 (g) As used in this section, “census of population” means a census of population, housing, and matters relating to population and housing.

Section 193 states: *In advance of, in conjunction with, or after the taking of each census provided for by this chapter, the Secretary may make surveys and collect such preliminary and supplementary statistics related to the main topic of the census as are necessary to the initiation, taking, or completion thereof.*

The first thing reader should note is the difference between the statement of authority for the 2 surveys. The Census falls under the Constitution while the American Community Survey is merely based on a statute passed by Congress.

The second thing the reader should note concerning section 141 is the reference to *a mid-decade census* of population. There is no constitutional authority for mid-decade census. See again Article I, Section 2, Clause 3 of the Constitution.

The third thing the reader should note concerning section 141 is the statement that the information obtained from the mid-decade census cannot be used for the constitutional purpose of the actual Census.

The fourth thing the reader should note concerning section 141 is the statement that the mid-decade census is being used for *housing, and matters relating to population and housing*. Article I, Section 2, Clause 3 does not contain a grant of power concerning these subjects.

This takes us to the other section cited as the authority for the American Community Survey. Section 193 restricts census surveys and the collection of *preliminary and supplementary statistics...to the main topic of the census...necessary to the initiation, taking, or completion thereof*. Constitutionally, the only *topic* of a census is a head count for apportioning direct taxes or determining the number of representatives in the House of Representatives. Article I, Section 2, Clause 3 does not contain a grant of power for any other census. The other ones referenced in section 193 fail to meet the constitutional *topic* of the only census enumerated in the Constitution.

Note: See again the first 2 constitutional principles discussed at the beginning of this article and then apply them to the American Community Survey.

Penalty Provisions for Failure to Comply with Either Survey Request

On their web-site, the Census Bureau states the penalty provision for failing to comply with either survey request is found in Title 13, U.S.C., Section 221.

Pursuant to this section, refusing to provide the requested information or neglecting to complete either survey subjects you to a fine of not more than \$100.00. Willfully giving information that is false subjects you to a fine of not more than \$500.00.

Then, in what I believe is a blatant attempt to misrepresent federal law and install fear in the hearts and minds of the American people so they will provide the requested information, the Census Bureau included the following statement after their reference to the section 221 penalties referenced above:

Title 18 U.S.C. Section 3571 and Section 3559, in effect amends Title 13 U.S.C. Section 221 by changing the fine for anyone over 18 years old who refuses or willfully neglects to complete the questionnaire or answer questions posed by census takers from a fine of not more than \$100 to not more than \$5,000.

A review of Title 18 shows it is entitled:“CRIMES AND CRIMINAL PROCEDURE.”

Section 3559 is entitled: “Sentencing classification of offenses.” Section (a) states: “Classification.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—(9) five days or less, or if no imprisonment is authorized, as an infraction.

Section 3571 is entitled: “Sentence of fine. Section (a) states: “A defendant who has been found guilty of an offense may be sentenced to pay a fine.” Section (b) states in part: “...an individual who has been found guilty of an offense may be fined not more than the greatest of—(7)for an infraction, not more than \$5,000.” This is the only reference to a fine in the amount cited by the Census Bureau that matches the provision in section 3559 above.

The \$5,000.00 fine referenced in section 3571 is a post conviction fine that only applies to an individual who has been charged and convicted of a criminal infraction as defined in section 3559. Unless an individual has been charged and convicted of some criminal offense connected to the Census and the crime is classified as an infraction, this \$5,000.00 fine does not apply. Thus, their assertion that these sections changed the fines in section 221 to \$5,000.00 is...you fill in the blank. In my mind, it’s a blatant lie that borders on fraud.

My Rules and Plan of Attack

Here are the 3 basic rules I follow when I receive requests for personal information on the Census and/or American Community Survey forms.

* I never destroy or deface the forms.

* I never put false information on the forms.

* I never partially complete the forms. If I am going to make the assertion that the requested information does not apply to me or the requested information exceeds the government's constitutional authority to request the information, I return the form with a cover letter explaining why.

Here is my plan of attack for the Census and American Community Survey forms.

When I receive the 2010 Census form I will return it with a cover letter. In the letter I will give them the number of people residing in the house and state that pursuant to Article I, Section 2, Clause 3 of the Constitution that is the only information they are empowered to request. My "name, sex, age, date of birth, race, ethnicity, relationship and housing tenure" have absolutely nothing to do with apportioning direct taxes or determining the number of representatives in the House of Representatives. Therefore, neither Congress nor the Census Bureau has the constitutional authority to make that information request a component of the enumeration outlined in Article I, Section 2, Clause 3. In addition, I cannot be subject to a fine for basing my conduct on the Constitution because that document trumps laws passed by Congress. Period end of story.

When I receive the American Community Survey form, I will return it with a cover letter. The letter will simply state that since the Constitution established a federal government of limited enumerated powers and that document does not grant them the general power to request the information, I am under no constitutional obligation to provide it.

If they attempt to distort the law and threaten me with the bogus \$5,000.00 fine, as discussed and exposed above, I will send a letter to the Justice Department and request prosecution of the individuals making the threat.

The Coup de Gras to their Unconstitutional Information Requests

Even though I do not like to cite court cases, I either attach this one to my letter or hold it in reserve to support my refusal to comply with their bogus requests because it usually ends the discussion and any threat of a fine.

"Neither branch of the legislative department [House of Representatives or Senate], still less any merely administrative body [insert Census Bureau], established by congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. *Kilbourn v. Thompson*, 103 U.S. 168, 190. We said in *Boyd v. U.S.*, 116 U. S. 616, 630, 6 Sup. Ct. 524,—and it cannot be too often repeated,—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of government and its employees of the sanctity of a man's home and the privacies of his life. As said by Mr. Justice Field in *Re Pacific Ry. Commission*, 32 Fed. 241, 250, 'of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.'" [The bracketed words added for clarification]

Interstate Commerce Commission v. Brimson, 154 U.S. 447, 479 (May 26, 1894)

Note: This United States Supreme Court case has never been overturned.

If the federal government had been granted the general power to make inquiries into the private affairs of the American people through the Census or a congressional mandated survey, then the Supreme Court could not have made this statement.

Now that we know the federal government was not granted the constitutional authority to make general inquiries into our private affairs under the umbrella of the Census or a survey, I hope the American people will consider engaging in some civil disobedience and refuse to comply with these unconstitutional requests.

Robert Greenslade focuses his writing on issues surrounding the federal government and the Constitution. He believes politicians at the federal level, through ignorance or design, are systematically dismantling the Constitution in an effort to expand their power and consolidate control over the American people. He has dedicated himself to resurrecting the true intent of the Constitution in the hope that the information will contribute, in some small way, to restoring the system of limited government established by the Constitution.

<http://www.thepriceofliberty.org/greenslade.htm>