THE PERSONAL RIGHT TO BEAR ARMS

Through the Constitution, the people were guaranteed arms for their own personal defense, for the defense of their states and nation and for the purpose of keeping those at the reigns of government sensitive to the rights of the people. This right is found explicitly in the Second Amendment but is supported by the Title of Nobility Clauses and the clauses providing for a military as well.

Although the Constitution does provide for a military, the applicable provisions must be understood in light of the Title of Nobility Clauses and the Second Amendment. The Nobility Clauses prohibit a standing army in peacetime. However, it is clear through the clauses providing for an army and navy that they were interested in their own defense. In this sense, the Second Amendment should also be understood in a military context.

These three Constitutional provisions are not contradictory. The clauses providing for a military must be understood to be consistent with the Title of Nobility clauses because they were implemented together. The Second Amendment also supports the intended prohibitions of the Title of Nobility clauses. Furthermore, since the Second Amendment was implemented later in time and was intended to modify the Constitution, any explicit or implicit inconsistencies between the two should be found in favor of the Second Amendment. Considered as a whole, these provisions limit the government to providing arms--to each individual and in community armories--and training and organization for the citizenry in their use.

I. The Title of Nobility Clauses

Our ancestors equated an absence of government with freedom. As John Quincy Adams said, "Our Country began its existence by the universal emancipation of man from the thralldom of man."

Our ancestors escaped from the shackles and tyranny of a feudal society and government controlled by nobility. Nobility and the principles underlying the self-serving, deceptive and cruel myth of *noblesse obligee* were discarded--in form and substance. The implementation of the Title of Nobility Clauses into the Constitution was a key element in that effort.

A. Nobility

The concept of nobility and what it means to be titled are key elements of the Clauses. Understanding these concepts will illuminate the colonist's intended prohibition. The two key words in the Clauses are title and nobility. A title is an appellation of rank, distinction, privilege or profession. Nobility is a condition of possessing characteristics of a higher kind or order, either inherited or acquired.

A historical understanding of nobility helps give definition to the Clauses. The colonists had a deep understanding of nobility. Britain ruled the colonies and nobility governed the British Empire--an empire based upon a feudal system. The feudal system was spawned by vassals who provided military services to their lords in exchange for protection and economic maintenance. The protection and support provided by the lord eventually

became a vassal's right and the structure that developed created discernible class distinctions. This basic framework, over time, produced a myriad of social classes inextricably linked with government.

Under the feudal system, society became a complex hierarchy of governmental powers and privileges. Multiple exchanges of obligations developed within the government hierarchy of kings, greater lords and lesser lords. But nobility did not necessarily mean eminence. Lower nobility occupied various levels of public office according to their importance, and governmental power was centralized and consolidated, not representative.

The nobility abused this centralized and consolidated power. It produced the phrase coined by Lord Acton, "Power tends to corrupt and absolute power corrupts absolutely." The abuse the colonists suffered from the nobility led to war and the founding of a new nation.

Consequently, the colonists were essentially unanimous in their efforts to prohibit government supported nobility in their new nation. The very concept was repulsive to the colonists. One writer has noted that "[t]he records of the Constitutional Convention are replete with expressions of fear of monarchy." Elbridge Gerry, Edmund Randolph and George Clymer, representatives to the Constitutional Convention, said aristocratic forms were to be avoided. Randolph went on to state that "the permanent temper of the people was adverse to the very semblance of Monarchy."

The prohibition against government endowed nobility was first enacted by the Continental Congress. It is found in every draft of the Articles of Confederation except the first. The first draft of the Constitution provided that "The United States shall not grant any title of nobility" and it became law virtually without change. The Nobility Clauses were implemented into the Constitution with little dissent.

B. Aristocracy and the Military

The colonists were completely against the establishment of a standing army. The colonists knew that a peacetime standing military contingent is, in part, a direct reinstitution of feudalism. During the American Constitutional Convention, Elbridge Gerry opposed the standing army and centralized control of the militia on the grounds that monarchy and a centralized military are inseparable. One led to the other and a "system of Despotism" was the inevitable result, he argued. The will of the few was ennobled over the many because it could be implemented by force.

Madison linked aristocracy, the military and its inevitable ennobling-ignobling effect: "Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people." He said a characteristic of European despotism was that they were "afraid to trust the people with arms." An aristocracy cannot last without a standing army. The reason it cannot last is because the people will eliminate an aristocratic government by force if they have the opportunity.

The concept of slavery, the ultimate status of ennobling and ignobling, was used several times to capture the effect of a standing army. George Mason reiterated the colonist's view that it is the goal of monarchs to "disarm the people; that . . . was the best and the most effectual way to enslave them." Whether or not the ruler or the army means the people harm is irrelevant. The effect of a centralized army disarms and enslaves the people.

Even indirect support of the military establishment during peacetime is prohibited by the Clauses. The colonists knew a title of nobility when they saw it--even if it was disguised. The Continental Congress, which had the same prohibition against titles of nobility, tried to convey a lifetime pension to the officers of the Revolutionary War and then, because of the uproar, tried to limit it only to five years.
The protest over the Continental Congress' resolution to commute the officers' promised life pension to a simple five years was scarcely abated when, in May of 1783, the officers formed a permanent fraternal organization called the Society of the Cincinnati. The organization aroused suspicions that the officers proposed to become an aristocracy as well as a group of pensioners.
In a letter published in the Connecticut Journal in October 1787, there was a discussion about whether the Title of Nobility Clauses prohibited forms of nobility--like that of the Cincinnati. It was thought that the Clauses were the best way to prevent an aristocracy from reforming.

II. The Second Amendment
A. An Armed Populace
The colonists were completely against the establishment of a standing army. The militia was the colonist's army and the colonists believed a militia to be adequate for national defense. The foundation of this ideal starts with the personal right to bear arms. The right of each individual to bear arms is unmistakably clear from other documents of that era. One of the proposals for a bill of rights from Pennsylvania said,

> That the people have a right to bear arms for the defense of themselves and their own State or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them . . . .

Patrick Henry, who was appointed co-chairman of a committee to draft a Bill of Rights, said,

> Are we at last brought to such a humiliating and debasing degradation, that we cannot be trusted with arms for our own defence? Where is the difference between having our arms in our own possession and under our own direction, and having them under the management of Congress? If our defence be the real object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to us, as in our own hands?
>
> Guard with jealous attention . . . liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined. The great object is that every man be armed . . . . Everyone who is able may have a gun."

Samuel Adams said that the "constitution be never construed . . . to prevent the people of the United States . . . from keeping their own arms." Congressman Fisher Ames noted that "the rights of conscience, of bearing arms . . . are declared to be inherent in the

people." Thomas Jefferson said, "[n]o free man shall be debarred the use of arms in his own lands." James Monroe included "the right to keep and bear arms" in a list of basic "human rights" that he would propose be added to the Constitution.
Madison intended to place the clause explicitly protecting the peoples right to keep and bear arms with other individual rights rather than with the Congress' powers to support an army. Even this intended construction supports the premise that the right to bear arms is personal in nature.
Colonial era Constitutional scholar William Rawle, who was well-known and influential enough to have been offered the attorney generalship several times by Washington, flatly declared that the second amendment prohibited state, as well as federal, laws from disarming individuals.

> "In the words of 'Philodemos':
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> > 'every free man has a right to the use of the press, so he has a right to the use of his arms.' But if he commits libel, 'he abuses his privilege, as unquestionably as if he were to plunge his sword into the bosom of a fellow citizen . . . .' Punishment, not 'previous restraints,' was the misuse of either right."

Virginia Supreme Court justice St. George Tucker commented that the right to possess firearms was constitutionalized in the second amendment as among the most the "absolute rights of individuals." He said,

> This may be considered as the true palladium of liberty . . . . The right of self defence is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

Can the condemnation of the modern notion of gun control and a standing army be any more explicit?

B. An Armed Populace to Defend Against Foreign Aggression
The standing army in peacetime was rejected as a means of defense against foreign aggression. A 1769 resolution of the Massachusetts House of Representatives epitomizes the intent of all the colonies and the people who eventually prevailed in the formation of the Constitution:

> That the establishment of a standing army, in this colony . . . is an invasion of the natural rights of the people, as well as of those which they claim as free born Englishmen, confirmed by magna charta, the bill of rights, as settled at the revolution, and the charter of this province.

The word invasion embodied certain principles. With invasion comes the eventual depriving of ones arms and the establishment of a centralized military which is, and always has been, inimicable to the interests of the people. The people knew that this process, by degrees, would render them to a state of being little more than slaves.

"A Democratic Federalist" rejected the standing army as "that great support of tyrants." He went on to say,

> Had we a standing army when the British invaded our peaceful shores? Was it a standing army that gained the battles of Lexington and Bunkers Hill, and took the ill-fated [John] Burgoyne? Is not a well-regulated militia sufficient for every purposes of internal defense? And which of you, my fellow citizens, is afraid of any invasion from foreign powers, that our brave militia would not be able to immediately to repel?

The passage of the second amendment eliminated any implicit notion that a standing army was intended through the enumerated provisions for an army. The second amendment's right to keep and bear arms "came into being primarily as a way of dispersing military power across the entire population."

Although the word army is used in the Constitution, the term simply refers to militias under federal leadership. The repeated call for the decentralization of military power at the ratification conventions was, in its overt phrasing, consciously poised against the centrist habits of the Constitutional Assembly. The right to bear arms works to amplify, rather than to contradict, the dispersal of military power that had already occurred at the center. During the deliberations of the ratification assemblies, the insistent call for a "right to bear arms" amendment envisioned military responsibility dispersed across the entire population.

The Constitution guarantees popular control of any coercive force. Centralized control of an army was, from the infancy of the republic onward, consistently seen as the subversion rather than the fulfillment of the requirement for civilian authority. The discussions of the militia and of the right to bear arms stressed civilian control. The concept of civilian expresses a distance from, not proximity to, centralized control. Adam Smith wrote:

> In a militia, the character of the labourer, artificer, or tradesman, predominates over that of the soldier: in a standing army, that of the soldier predominates over every other character; and in this distinction seems to consist the essential difference between those two different species of military force.

Elbridge Gerry said the militia supplanted the need for a standing army--"the bane of liberty." This view is also supported by the pen of George Mason, from whom James Madison drafted the second amendment. Mason's proposal delineates that 1) the dispersed populace were to have arms; 2) they were to provide defense for themselves individually and corporately and; 3) a peacetime standing army was not intended in the Constitution:

> That the people have a right to keep and bear arms; that a well-regulated militia, composed of the people trained to arms, is the proper natural, and safe defence of a free state; that standing armies, in time of peace are dangerous to liberty, and therefore ought to be avoided.

According to Madison, the dispersed populace was the militia and the militia was the dispersed populace. When the armed individuals are together in an organized group they are a militia. He said at the Virginia Convention,

> If insurrections should arise, or invasions should take place, the people ought unquestionably to be employed, to suppress and repel them, rather than a standing army. They best way to do these things was to put the militia on a good and sure footing, and enable the government to make use of their services when necessary.

C. Militias and Standing Armies

During the American Constitutional Convention, Elbridge Gerry opposed the standing army and centralized control of the militia on the grounds that monarchy and a centralized military are inseparable. One led to the other and a "system of Despotism" was the inevitable result: He said,

> freedom revolts at the idea [of even a small standing army] . . . . By the edicts of authority vested in the sovereign power by the proposed constitution, the militia of the country, the bulwark of defence, and the security of national liberty is no longer under the control of civil authority; but at the rescript of the Monarch, or the aristocracy, they many either be employed to extort the enormous sums that will be necessary to support the civil list--to maintain the regalia of power-- and the splendor of the most useless part of the community, or they may be sent into foreign countries for the fulfillment of treaties, stipulated by the President and two thirds of the Senate.

James Madison supported this view,

> The means of defence agst. foreign danger, have been always the instruments of tyranny at home. Among the Romans it was a standing maxim to excite a war, whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people.

Madison said a characteristic of European despotism was that they were "afraid to trust the people with arms." He went on to say that

> [a] government resting on a minority is an aristocracy, not a Republic, and could not be safe with a numerical and physical force against it, without a standing army, an enslaved press, and a disarmed populace.

George Mason reiterated the colonists view that it is the goal of monarchs to "disarm the people; that . . . was the best and the most effectual way to enslave them." Whether or not the ruler or the army means the people harm is irrelevant. The effect of a centralized army disarms and enslaves the people. No where is the violation of this principle more direct than the compelling of military service. The Antifederalist writer "Centinel" was prophetic in some of his concerns that the federal enumerated provisions for an army would be construed into a tool of oppression by tyrants to allow for centralized control of a military force:

> This section will subject the citizens of these states to the most arbitrary military . . . you may be dragged from your families and homes to any part of the continent and for any length of time, at the discretion of the future Congress . . . however incompatible with their interests or consciences; in short, they may be made as mere machines as Prussian soldiers.

This prophecy came true in 1917. That is when the Court decided that one may be coerced to "serve" in the military. The Court's rationale for allowing this kind of "service" rests on the notion that the enumerated provisions which provide for an army allow for it by implication. The one word that could be construed to support such a construction is the word "discipline." However discipline did not mean to coerce one to conform to the dictates of another but simply the development of a skill. The people did not even want a standing army let alone be coerced to "serve" in it.

Military participation in this country has been voluntary. Voluntary participation recognizes that consent is the fundamental right of those who participate in the use of force of arms. Kant wrote, "Every nation must be so organized internally that not the head of the nation--for whom, properly speaking, war has no cost (since he puts the expense off on others, namely the people)--but rather the people who pay for it have the decisive voice as to whether or not there should be war." Kant asserted that war ought to be consensual and Hobbes asserted that war is consensual. The people intended that their defense be based on the militia which is inherently voluntary. The people have never changed this principle.

Furthermore, to coerce a person into military "service" is outside the proper scope of government. In addition, since the fourteenth amendment specifically prohibits involuntary servitude and was implemented after the enumerated provisions, if nothing else, it overrules any previous "implicit" powers of the enumerated provisions inconsistent with it.

D. A Populace to Defend Against Domestic Tyranny

An armed citizenry would defend not only against foreign aggression but also against domestic tyranny. The colonists believed that force might be necessary to recover the reigns of government. The Declaration of Independence recognizes that the only just powers of government are derived from the consent of the people and that a long train of usurpations and abuses gives the people the right and the duty to "throw off such Government and provide new Guards for their future security."

John Adams relied on classical sources in the context of an analysis of quotations from Marchamont Nedham's The Right Constitution of a Commonwealth (1656) to vindicate a militia of all the people. He maintained that the "sword and sovereignty ever walk hand in hand together. This is perfectly just." "The government is only just and perfectly free . . . where there is also a *dernier* resort, or real power left in the community to defend themselves against any attack on their liberties."

Noah Webster said the people should annihilate the government on the first exercise of acts of oppression. The only thing stopping them would be a standing army. Even though he thought it likely that a standing army would be implemented by tyrants:

> Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America

> cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretense raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the *power*, and jealousy will instantly inspire the *inclination* to resist the execution of a law which appears to them unjust and oppressive.

Before the amendments, William Lenoir worried that Congress could "disarm the militia." But he knew that if the people "were armed, they would be a resource against great oppressions . . . . If the laws of the Union were oppressive, they could not carry them into effect, if the people were possessed of proper means of defense."

Before passage of the second amendment, Bostonian Antifederalist "John De Witt" wrote,

> It is asserted by the most respectable writers upon government, that a well regulated militia, composed of the yeomanry of the country, have ever been considered as the bulwark of a free people. Tyrants have never placed any confidence on a militia composed of freemen.
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> Congress, at their pleasure, may arm or disarm all or any part of the freemen of the United States, so that when their army is sufficiently numerous, they may put it out of the power of the freemen militia of America to assert and defend their liberties . . . .

Before passage of the second amendment, Richard Henry Lee contended,

> It is true, the yeomanry of the country possess the lands, the weight of property, possess arms, and are too strong a body of men to be openly offended--and, therefore, it is urged, they will take care of themselves, that men who shall govern will not dare pay any disrespect to their opinions. It is easily perceived, that if they have not their proper negative upon passing laws in congress, or on the passage of laws relative to taxes and armies, they many in twenty or thirty years be by means imperceptible to them, totally deprived of that boasted weight and strength.

Before passage of the second amendment, George Clinton, writing as "Cato," predicted a permanent force because of "the fear of a dismemberment of some of its parts, and the necessity to enforce the execution of revenue laws (a fruitful source of oppression) . . . ." "M. T. Cicero" wrote to "The Citizens of America":

> Whenever, therefore, the profession of arms becomes a distinct order in the state . . . the end of the social compact is defeated . . . . No free government was ever founded, or ever preserved its liberty, without uniting the characters of the citizen and soldier in those destined for the defence of the state . . . . Such are a well regulated militia, composed of the free holders, citizen and husbandman, who take up arms to preserve their property, as individuals, and their rights as freemen.

Before passage of the second amendment, Madison, during the federal convention, identified "large standing armies" as "the greatest danger to liberty." Tench Coxe, the writer of the probably most complete exposition of the amendments published during the ratification period, said,

> As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize . . . the people are confirmed by the next article in their right to keep and bear their private arms. The militia, who are in fact the effective part of the people at large, will render many troops quite unnecessary. Who are the militia? Are they not ourselves . . . . [T]he unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hand of the people. Should tyranny threaten, the friends to liberty . . . using those arms which Providence has put into their hands, will make a solemn appeal to 'the power above.'

After the passage of the second amendment, Madison wrote in a February 6, 1792 article in The National Gazette,

> In bestowing the eulogies due to the particular and internal checks of power, it ought not the less to be remembered, that they are neither the sole nor the chief palladium of constitutional liberty. The people who are the authors of this blessing, must also be its guardians.

Madison said "the ultimate authority . . . resides in the people alone," and he promoted "[p]lans of resistance" and an "appeal to a trial of force" should the federal government encroach on the people's freedom. That the people did not consent to the government's creation of a standing army is reflected in an October 14, 1789 article in the United States Gazette:

> The right of the people to keep and bear arms has been recognized by the General Government; but the best security of that right after all is, the military spirit, that taste for martial exercises, which has always distinguished the free citizens of these States; From various parts of the Continent the most pleasing accounts are published of reviews and parades in large and small assemblies of the militia . . . . Such men for the best barrier to the Liberties of America.

Theodorick Bland wrote Patrick Henry that "I have founded my hopes to the single object of securing (*in terrorem*) the great and essential rights of freemen from the encroachments of Power--so far as to authorize resistance when they should be either openly attacked or insidiously undermined."

"A Framer" argued to "The Yeomanry of Pennsylvania":

> Under every government the dernier resort of the people, is an appeal to the sword; whether to defend themselves against the open attacks of a foreign enemy, or to check the insidious encroachments of domestic foes. Whenever a people . . . entrust the defense of their country to a regular

> standing army . . . the power of that country will remain under the direction of the most wealthy citizens . . . . [Y]our liberties will be safe as long as you support a well regulated militia.

That the dispersed populace should have arms to enforce the Constitution as they intended it is supported by the writings of J.L. De Lolme, an eighteenth century author much read at the time of the American Revolution.

> . . . but all those privileges of the People, considered in themselves, are but feeble defences against the real strength of those who govern. All those provisions, all those reciprocal Rights, necessarily suppose that things remain in their legal and settled course: what would then be the recourse of the People, if ever the Prince . . . should no longer respect either the person, or the property of the subject . . . it would be resistance . . . . [R]esistance is looked upon by them as the ultimate and lawful resource against the violences of Power.

Alexander Hamilton said,

> I trust the friends of the Constitution will never concur with its enemies in questioning that fundamental principle of republican government which admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness.
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> If the representatives of the people betray their constituents, there is then no recourse left but in the exertion of that original right of self defense, which is paramount to all positive forms of government . . . .

Supreme Court Justice Joseph Story summed things up fairly well. He recognized that a centralized military or a police state was not necessary or needed and was a threat to liberty. He said an armed citizenry was sufficient and necessary to provide a defense

> against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers. It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses, with which they are attended, and the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. The right of the citizen to keep and bear arms has been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

Supporting the current military structure need not be based on pragmatic concerns. A large military is dangerous and is not needed. When the colonists won their independence, they did so against the most powerful military force on the face of the earth at that time. The colonists were successful because they were decentralized and had arms with which to defend themselves. The people of Vietnam and Afghanistan have

provided contemporary examples of this principle.
A citizen military provides many advantages. It is a bulwark against the tyranny and destruction of offensive actions. It provides the most effective means for preventing tyrants from rising to power. It ensures a responsible government. It provides the best defense and does it in the most economical fashion.
The people's right to bear arms has slowly been eroded by a governmental aristocracy. The people have been tolerant but it is unlikely that they will restrain themselves forever while their liberties are being stripped away. The "Tree of Liberty" has gone a long time without a substantial watering. Tyrants will have to be eliminated and, unfortunately it will require the blood of patriots to do it. Thomas Jefferson said,

> God forbid we should ever be twenty years without such a rebellion . . . . And what country can preserve its liberties, if its rulers are not warned from time to time, that this people preserve the spirit of resistance? Let them take arms . . . . The Tree of Liberty is watered by the blood of patriots and tyrants.

However, Jefferson may not have seen what a "Federal Republican" foresaw; that an army would be used "to suppress those struggles which may sometimes happen among a free people, and which tyranny will impiously brand with the name of sedition."

III. The People and the Constitution
A. The Legal Aristocracy

The Nobility Clauses indicate who should be interpreting the Constitution. The colonists did not intend to create a constitutional or even a legal priesthood in light of the underlying precepts of the Title of Nobility Clauses. Alexis de Tocqueville said, "[b]y birth and interest a lawyer is one of the people, but he is an aristocrat in his habits and tastes . . . ." Although his comments were phrased in such a way not to denigrate the American legal aristocracy (because of his predisposition to aristocracy), De Tocqueville did say that it is at the bar or the bench that the American aristocracy is found.
1. Masters as Servants and Servants as Masters: The People and the Constitution
The colonists did not intend to create a constitutional or even a legal priesthood in light of the underlying precepts of the Title of Nobility Clauses. However, judges have ordained themselves as the ultimate interpreters of the law and the constitution. United States Supreme Court Chief Justice Charles Evans Hughes said, "we are under a Constitution, but the Constitution is what the judges say it is." Because the Supreme Court has ultimate control over the whole legal system, five people can exert their will over hundreds of millions of people.
This structure is a very ominous and foreboding one. It is quintessential embodiment of an entrenched aristocracy, as George Mason defined it, "the governt. of the few over the many" in our society today. De Tocqueville warned America of the dangers of such tyranny several hundred years ago. He acknowledged that the President could abuse his power, but his power was limited. De Tocqueville said Congress had great power but legislation could be changed after the election of representatives more sensitive to the wishes of the people. But the United States Supreme Court could plunge a nation into anarchy or civil war. De Tocqueville's words were prophetic. They still are. Thadeus

Stevens was similarly prophetic when he said in 1850, speaking of the slavery of the black man and its likely transmutation into a larger sphere, that "[t]he people will ultimately see that laws . . . will eventually enslave the white man."
The fundamental tool of tyranny used by judicial aristocrats is the doctrine of stare decisis--"to abide by, or adhere to, decided cases." Everyone must abide by the decisions of the few at the top. This doctrine sprang from the same tyrannical aristocratic atmosphere from which the colonists fought to free themselves. Even though this is not just, the Court knows that it must appear to be so. They substitute consistency for justice. Although, technically, stare decisis is only a "principle of policy, not a mechanical formula," it has been treated like a rule of law. Practically speaking, rarely can a "lower" court decide a case differently than a similarly decided case by a "higher" court. The Court has articulated the arrogance and contempt for justice embodied in this policy: "Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right."
Not only do judges enforce their views upon everyone else but they have also taken it upon themselves to drastically change the kind of government the colonists implemented. Any changes made to government were to be made by the people--a foundational premise upon which the government of this nation rests. If the Constitution needs changing, the people have provided the mechanism for its change--Constitutional amendments. If there isn't sufficient impetus among the populace to change the Constitution, it shouldn't be changed.

2. Masters as Servants and Servants as Masters: Juries and the Law
The doctrine of stare decisis typifies the attitude of those people at the reins of government and is further reflected in the diminution of the role of the jury. Not only have those people in the legal profession ennobled themselves but they have ignobled their masters--the people. Early in this nation's history, the jury had the right to decide questions of law and fact in each case. They were essentially a mini-governmental body with veto power. The role of the jury ensured that the government did not rest on a small number of persons because juries changed in composition with each case and were drawn from the general population. The judiciary has since made the jury little more than their rubber stamp.
When the Constitution was established, the people were adamant about having ultimate control of the law. They established themselves as the final arbiter of the law by establishing a jury in which they had the power to determine both law and fact.
The infringement upon the role of the jury in the application of the law was one of the key issues which triggered the colonist's struggle for independence. Their rights under the Magna Charta of having "judgment of his peers on the law of the land" was being taken away from them. In the colonial era, the jury had the right and obligation to decide matters of both law and fact--even contrary to the instructions of the judge or the will of the legislature. In fact, they were a mini-governmental body for each case. Thomas Jefferson said, "[t]he jury, which was the most energetic means of making the people rule, is also the most effective means of teaching it to rule."
The jury's protective role was praised as a "safeguard against the arbitrary exercise of power by the government. . . ." The jury, by design for pragmatic and philosophical reasons, served as mechanism to keep power in the hands of the people and out of the

hands of judges. Thomas Jefferson said, "I know of no safer depository of the ultimate powers of the society but the people themselves."

3. Masters as Servants and Servants as Masters: Honor

The people at the reins of government, irregardless of the branch of government or whether they are elected or appointed, have ennobled themselves by crowning themselves as masters and have ignobled the people to the level of servants. The ennobling, preeminence and majesty of the legal profession is typified by the requirement that people stand when a judge enters into or leaves the courtroom. In addition, the requirement that the person fulfilling the role of judge or justice is entitled to be called by those words as a prefix to their name or by "your honor" indicates that judges are in an elevated position.

The issue of honor came up, indirectly, with respect to the presidency of George Washington. Congress attempted to bestow titles such as "His Excellency" and "His Highness, the President of the United States and Protector of their Liberties." The issue generated controversy in Congress and among the people. Some felt an exalted title was necessary to elicit respect from foreign leaders. Others said an exalted title would violate the principles for which the people fought. The latter carried the day.

The concept of honor presupposes a society in which individuals are accorded status, and therefore deference, within a hierarchically arranged social order. The colonists sought to eliminate this kind of society. It is inconsistent with the egalitarian principles of American democracy. Special veneration is not due to those who are at the reins of government.

According to Montesquieu, honor is the primary "spring" of aristocracy. "[I]t is the nature of honor to aspire to preferments and distinguishing titles," and "[a] monarchical government supposeth . . . preeminences, ranks, and likewise a noble descent."

Just as a king uses the coercive force of government to elicit "honor" from his kingship, judges compel "honor" which is supposedly attributable to their status. To compel honor is to establish a system of stratification and to prescribe appropriate behavior for people at the various points in the hierarchy; it entails acceptance of superordination and subordination. Berkeley Law Professor Robert Post said,

> Honor presupposes that individuals are unequal. An individual's honor is but the personal reflection of the status which society ascribes to his social position. Individuals are therefore inherently unequal because they occupy different social roles. It is a characteristic of honor that these social roles are hierarchically arranged.

Generally, there are two ways to look at the relationship between those at the reins of government and the people. Officials can be viewed as superior to the people in character, wisdom and mission and consequently the people must be subject to their guidance. It then follows that even legitimate public censure of a ruler is wrong because the ruler is due utmost respect and this would diminish the official’s authority. Officials, however, can be viewed as agents or servants and therefore, in their position, inferior to the people. From this perspective, the character, wisdom and mission of the people is considered superior to that of the official. The official should be deferential to and subject to the criticism of his master because it this is within the proper scope of their

relationship.
Our nation rejects the notion that government officials are superior to the people and subscribes to the principle that the people are superior to government officials. In New York Times Co. v. Sullivan, the Court said that in America, government officials are "public servants," and the people are their masters. Masters have status and rightly demand veneration; servants do not. Hence the Court reaffirmed Madison's view that in "the American form of government," where the people are in control of the Government, and not the Government in control over the people." In this country, government officials are not "the superior of the subject." The unarticulated implication of Sullivan is that compelling or vindicating official honor is not a constitutionally legitimate function.

IV. Conclusion

George Mason said when an aristocratic body rises to power, it is "like the screw in mechanics," it works "its way by slow degrees" and holds "fast whatever it gains" and "should ever be suspected of an encroaching tendency." Slowly but surely, over several hundred years, a veritable American aristocracy has arisen to exercise expansive control over the lives of the people of this nation.
The Title of Nobility Clauses are an indicator of the extent of the liberty the people have lost. The ascendant aristocrats have reduced the people to servants and they have elevated themselves to masters. The people have been enslaved by the establishment of a standing army, their right to self-government has been swept away by aristocratic innovations and the institution of the corporation and a welfare state have reduced the people to slavery. Correctly understood and applied, the Title of Nobility Clauses can act like a pin to an over-inflated balloon. They burst the bubble of a myriad of supposedly legitimate governmental functions. We have been led to believe that these powers were derived from the Constitution but, in reality, they are supported by nothing but the whim and caprice of tyrants.
Will the people at the reins of government recognize and correct the errors of their predecessors? If not, a just solution through self-help seems unreachable in the face of the most powerful military and economic force ever on the face of the earth. Nevertheless, the people are not without a solution. The colonials expected that tyrants, over time, would entrench themselves in government. They also recognized that the people have a liberator. Thomas Jefferson said, "Can the liberties of a nation be thought secure when we have removed their own firm basis, . . . that these liberties are a gift of God; . . . that they are not to be violated but with His wrath."
However coincidentally, Billy Graham referenced a conversation between Habakkuk and God, respectively, applicable to our dire straight in his May 1994 newsletter:

> The law is paralyzed, and justice never prevails. The wicked hem in the righteous, so that justice is perverted. Look at the nations and watch--and be utterly amazed. For I am going to do something in your days that you would not believe, even if you were told.