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LET MY PEOPLE GO[1]

Human beings have a tendency toward tyranny. This has been true ever since they began to multiply on the face of the earth. It is not only prevalent today but is as extensive as it as ever been. While America is lauded as being a bastion of freedom, it only retains a few forms of freedom and is only a faint shadow of what it was and what the colonists intended it to be.

Our ancestors equated an absence of government with freedom.[2] As John Quincy

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[1] Copyright 1994-2006. Stephen Emery. All rights reserved. Exodus 5:1. This command was given to the 'government' of Egypt. Id. There are similarities between the two nations. Compare Roe v. Wade, 410 U.S. 113 (1973) (government justifying the wholesale extermination of children before birth) with Exodus 1:14, 16 (government justifying the wholesale extermination of children after birth); Thomas W. Taylor, Plain English for Army Lawyers, 118 **Mil. L. Rev.** 217, 227 (1987) (governance by a priesthood) with Exodus 7:11 (governance by a priesthood); infra notes 79-100, 113-139, 155-195, 205-228, 241-310 (slavery is prominent and supported by government) with Exodus 1:11, 2:23 (slavery is prominent and supported by government); infra notes 79-100, 113-139, 155-195, 205-228, 241-310 (a nation characterized by a pyramidal or hierarchical government, economic and social structure and a centralized military) with Exodus 5:10, 14:7 (a nation characterized by a pyramidal or hierarchical government, economic and social structure and a centralized military). Just like the government of Egypt, it is unlikely that the government of the United States will willingly allow the people to be free. Compare infra notes 326-27 (anticipating a deliverance) with Exodus 3:19, 7:4 (a spectacular deliverance). See **Biography: Maggie Thatcher**, (A & E television broadcast, June 1, 1994) (discussing the intoxicating effects of power). Lord Howe said "once one is in power, it can become intoxicating so that one cannot be separated from it willingly." Id.

[2] Edward J. Imwinkelried, Of Evidence and Equal Protection: The Unconstitutionality of Excluding Government Agents' Statements Offered as Vicarious Admissions Against the Prosecution, 71 **Minn. L.**

Adams said, "Our Country began its existence by the universal emancipation of man from the thralldom of man."[3]

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*[4] were discarded - in form and substance.[5] The implementation of the Title of Nobility Clauses[6] into the Constitution was a key element in that effort.[7]

I. NOBILITY

The concept of nobility and what it means to be titled are key elements of the

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Rev. 269, 287-88 (1986). Akhil Reed Amar, Of Sovereignty and Federalism, 96 **Yale L. J.** 1425, 1430 (1987).

[3] Quoted in Cong. Globe, 38th Cong., 1st Sess. 1319 (1864) (speech by Sen. Henry Wilson). Cf. Amar, supra note 2 at 1494 (implying that government has a tendency to be used in a lawless manner).

[4] **Webster's Third New International Dictionary** 1532 (Philip Babcock Gove ed. 1986). The dictionary states that noblesse obligee is "[t]he obligation of honorable, generous, and responsible behavior that is a concomitant of high rank or birth." Id.

[5] See **Thomas Norton, The Constitution of the United States** 89 (1922) (speaking on the nobility's illegitimate acquisition of wealth and prestige through misrule). **The Federalist** No. 43, at 274-75 (C. Rossiter ed. 1961) (remarks of James Madison) (speaking of colonist's aversion of aristocratic innovations).

[6] Article I, sections 9 and 10 of the U.S. Constitution provide, respectively, that "[n]o Title of Nobility shall be granted by the United States" and "[n]o State shall . . grant any Title of Nobility . . . ."

[7] **The Federalist** No. 43, at 274-75. Madison knew that Constitutional mechanisms were needed to eliminate the "aristocratic or monarchial innovations" that would inevitably arise. Id. If these innovations were left unchecked, they would lead to an undoing of the republican form of government they were attempting to establish. Id.

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.[8] Nobility is a condition of possessing characteristics of a higher kind or order, either inherited or acquired.[9]

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.[10] The feudal system was spawned by vassals who provided military services to their lords in exchange for protection and economic maintenance.[11] The protection and support provided by the lord eventually became a vassal's right and the structure that developed created discernible class distinctions.[12] This basic framework, over time, produced a myriad of social classes inextricably linked with government.[13]

Under the feudal system, society became a complex hierarchy of governmental

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[8] **Webster's New World Dictionary** 1404 (3d C. ed. 1988). **Webster's Third New International Dictionary**, supra note 4 at 2400. **Black's Law Dictionary** 1485 (6th ed. 1990). **The Jefferson Cyclopedia** 48-51 (John P. Foley ed. 1900).

[9] Webster's New World Dictionary, supra note 8 at 919. Webster's Third New International Dictionary, supra note 4 at 1532. Black's Law Dictionary, supra note 8 at 1485. The Jefferson Cyclopedia, supra note 8 at 48-51.

[10] Jeffrey A. Heldt, Military: Titles of Nobility and the Preferential Treatment of Federally Employed Military Veterans, 19 **Wayne L. Rev.** 1169, 1171 (1973).

[11] Id.

[12] Id.

[13] See id. at 1170 (indicating that aristocracy was a system of government-induced or supported peerage).

powers and privileges.[14] Multiple exchanges of obligations developed within the government hierarchy of kings, greater lords and lesser lords.[15] 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.[16]

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[14] Id. at 1171. To become "titled" meant to become "entitled." Id. English monarchs even granted fiefdoms to favored individuals in America**. James Bassett, A Short History of the United States** 76 (2d ed. 1924). The aristocracy in Britain intended to establish a nobility for life in America rather than a hereditarial one**. Bernard Bailyn, The Ideological Origins of the American Revolution** 278 (1967), noted in Richard Delgado, Inequality "From the Top": Applying an Ancient Prohibition to an Emerging Problem of Distributive Justice, 32 **UCLA L. Rev.** 100, 111 n.72-75 (1984). Nobility, although untitled, exists just as much in America as it does in Britain. Noted in Delgado, supra at n.11. Debrett's, which publishes the directory of Britain's nobility, announced its intention to publish **Debrett's Texas Peerage**. Id. This was the last of ten volumes devoted to "the untitled aristocracy" in the United States. **Peters, Tilting at Windmills**, Wash. Monthly, Oct. 1983, at 4, 6-7. Id.

[15] Heldt, supra note 10 at 1171. There are many noble or noble-like rankings--not all based on heredity. **Webster's Third New International Dictionary**, supra note 4 at 1244 (King), id. at 1862 (Queen), id. at 1802 (Prince), id. at 1802 (Princess), id. at 699 (Duke), id. at 698 (Duchess), id. at 1384 (Marquess), id. at 713 (Earl), id. at 178 (Baron), id. at 178 (Baroness), id. at 1249 (Knight), id. at 1337 (Lord), id. at 1263 (Lady), id. at 776 (Esquire) and id. at 2216 (Squire) are some of them.

[16] Heldt, supra note 10 at 1171. The colonists fought the Revolutionary War because government was not representative; they only had structural representation**. James K. Hosmer, Samuel Adams; American Statesmen** 62-89 (John T. Morese, Jr. ed. 1884). **Henry Mayer, A Son of Thunder: Patrick Henry and the American Republic** 130-140 (1986).

The nobility abused this centralized and consolidated power.[17] It produced the phrase coined by Lord Acton, "Power tends to corrupt and absolute power corrupts absolutely."[18] The abuse the colonists suffered from the nobility led to war and the founding of a new nation.[19]

Consequently, the colonists were essentially unanimous in their efforts to prohibit government supported nobility in their new nation.[20] The very concept was repulsive to the colonists.[21] One writer has noted that "[t]he records of the Constitutional Convention are replete with expressions of fear of monarchy."[22] Elbridge Gerry, Edmund Randolph and George Clymer, representatives to the Constitutional Convention, said aristocratic forms were to be avoided.[23] Randolph went on to state that "the permanent temper of the

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[17] 2 **Records of the Federal Convention of 1787** 224 (Max Farrand ed. 1911) [hereinafter Farrand]. Centralized and consolidated power leads to abuse. Cong. Globe, 34th Cong., 3d Sess. app. at 140 (1857) (remarks of Ohio Rep. John Bingham). Cong. Globe, 38th Cong., 2d Sess. 143 (1865) (remarks of Indiana Rep. Godlove Orth). **The Jefferson Cyclopedia**, supra note 8 at 51. **The Federalist** No. 85, at 521-22 (A. Hamilton).

[18] Quoted in **Gerry Spence, With Justice for None** 217 (1986).

[19] **The Federalist** No 85, at 521-22 (A. Hamilton).

[20] Delgado, supra note 14 at 112.

[21] Raoul Berger, Justice Samuel Chase v. Thomas Jefferson: A Response to Stephen Presser, 1990 **B.Y.U. L. Rev.** 873, 876 nn.27, 28 (1990).

[22] Berger, supra note 21 at 876. **The Federalist** No. 43, at 274-75 (remarks of James Madison) (speaking of colonist's aversion of aristocratic innovations).

[23] 2 Farrand, supra note 17 at 286. (Gerry); id. at 513 (Randolph); id. at 524 (Clymer). There were similar utterances by Constitutional Convention representatives John Rutledge, Benjamin Franklin, George Mason, Elbridge Gerry and Gouverneur Morris. 1 Farrand, supra note 17 at 119 (Rutledge); 83 (Franklin); 101 (Mason); 152, 425 (Gerry). 2 id. at 35-36 (Morris).

people was adverse to the very semblance of Monarchy."[24]

The prohibition against government endowed nobility was first enacted by the Continental Congress.[25] It is found in every draft of the Articles of Confederation except the first.[26] 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.[27] The Nobility Clauses were implemented into the Constitution with little dissent.[28]

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[24] 1 Farrand, supra note 17 at 88. **The Federalist** No. 43, at 274-75.

[25] Delgado, supra note 14 at 112. The Articles of Confederation provide:

> . . . nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

Articles of Confederation art. VI.

[26] **Drafting the Federal Constitution** 706 (Arthur T. Prescott comp. 1941) [hereinafter Prescott], in Delgado, supra note 14 at 112 n.89.

[27] Delgado, supra note 14 at 112.

[28] Prescott, supra note 26 at 711; 2 Farrand, supra note 17 at 183, noted in Delgado, supra note 14 at 112 n.87. 1 **U.S. Continental Congress, Secret Journals of the Acts and Proceedings** 294, 305, 352 (1821) (Articles of Confederation), in Delgado, supra note 14 at 112 n.88. Twenty-one state constitutions, and one autonomous political entity in voluntary association with the United States, have similar prohibitions. **Ala. Const.** art. 1, s. 29; **Ariz. Const.** art. 2, s. 29; **Ark. Const.** art. 2, s. 19; **Conn. Const.** art. 1, s. 18; **Del. Const.** art. 1 s. 19; **Ind. Const.** art. 1, s. 35; **Kan. Const. Bill of Rights** s. 19; **Ky. Const.** s. 23; **Me. Const.** art. 1, s. 23; **Md. Const. Declaration of Rights** art. 42; **Mass. Const.** Pt. 1, art. 6; **N.H. Const.** pt. 1, art. 9; **N.C. Const.** art. 1, s. 33; **Ohio Const.** art. I, s. 17; **Or. Const.** art. I, s. 29; **Pa. Const.** art. 1, s. 24; **S.C. Const.** art. 1, s. 4; **Tenn. Const.** art. 1, s. 30; **Va. Const.** art. s. 4; **Wash. Const.** art. 1, s. 28; **W. Va. Const.** art. 3, s. 19; **P.R. Const.** art. II, s. 14.

II. APPLICATION BY THE JUDICIAL, EXECUTIVE AND LEGISLATIVE BRANCHES

Only two courts have directly invoked the Title of Nobility Clauses as direct authority to support their propositions. Only one President, Andrew Jackson, arguably the most populist President, and a person who was personally acquainted with the ideals of the Revolutionary War, invoked the Clauses. Legislation is almost non-existent and provides little insight into the intended application of the Clauses.

In Horst v. Moses,[29] a law which granted an exclusive gaming license to two persons in exchange for contributions to the state's school fund was invalidated.[30] Even though the benefit was not based on heredity, nor accompanied by a formal title, the Alabama Supreme Court said the law was, among other things, in contravention of the Alabama's anti-nobility clause.[31]

In Horst, Justice B.F. Saffold explicitly defined the phrase "title of nobility" and

[29] 48 Ala. 129 (1872).

[30] Horst v. Moses, 48 Ala. 129 (1872). The General Assembly of Alabama enacted legislation giving a partnership a monopoly on gaming in Mobile for a period of ten years. Id. at 130. The partnership was obligated to pay $1,000 per year to the local school district for this privilege. Id. at 131. The partnership was exempt from taxation, except for state purposes. Id.

[31] Id. at 142. The Alabama Constitution provides, "That no title of nobility of hereditary distinction, privilege, honor, or emolument shall ever be granted or conferred in this state." **Ala. Const.** art. 1, s. 29. This clause was found at Ala. Const. art. 1, s. 32 when this opinion was written. **1 The Federal and State Constitutions, Colonial Charters and Other Organic Laws** 135 (Francis Thorpe ed. 1909) [hereinafter Thorpe]. The clause has not changed. Id.

the kind of governmental activity the term is intended to prohibit.[32] Justice Saffold said that when the government bestows a privilege, honor or emolument upon an individual or group at the expense of the rest, the anti-nobility clause is violated.[33] The benefit need not be one which extends from generation to generation or relate to an "empty title or order" but focuses rather on the benefits attached.[34] For the government to bestow privileges, honor or emoluments violates the equality of all persons that government is supposed to ensure.[35]

In In re Application of Jama,[36] a New York court refused to allow a private citizen to use the powers of government for self-ennoblement or give an individual the power to perpetuate an ennobled condition.[37] A citizen petitioned the court to allow him to change

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[32] Horst, 48 Ala. at 142.

[33] Id.

[34] Id.

[35] Id. Justice Saffold did recognize that if the ennobling governmental act was for the "public good," then it would be permissible. Id. at 142. To recognize such an exception would swallow the rule. First, the clauses specifically prohibit *any* title of nobility. **Ala. Const.** art 1, s. 29; **U.S. Const.** art. I, ss. 9, 10. Second, nearly anything can be construed as for the "public good." The Constitution was never intended to permit such a free-wheeling application. See **The Federalist** No. 10, at 79-84 (J. Madison) (stating that government is to protect the rights of each person even in the face of the combined power of all). The concept underlying the clauses prohibits the few from forcing their "ennobled" views or activities on the many. See supra notes 1-27 (stating the principles underlying the Clauses); infra notes 112-126, 202-223, 236-305 (stating the principles underlying the Clauses). If something is "good," the people will avail themselves of it and coercion is not necessary nor desirable.

[36] 272 N.Y.S.2d 677 (N.Y. Civ. Ct. 1966).

[37] In re Application of Jama, 272 N.Y.S.2d 677, 678 (N.Y. Civ. Ct. 1966).

his name from Jama to von Jama.[38] He desired the change because, historically, the family name was von Jama but after immigrating to the United States the family dropped the prefix.[39] He wanted to emphasize his Germanic heritage because without the prefix his friends and acquaintances assumed he was Slavic.[40] The court rejected his request because "von" has historically been a prefix designating nobility.[41] The court relied exclusively on the Title of Nobility Clauses for authority.[42]

Other references to the Clauses have been made inversely or tangentially and only in support of equal protection arguments. The Clauses have been invoked to prevent ignobility. In Eskra v. Morton,[43] the Board of Indian Appeals of the Department of the Interior had held that an individual born out of wedlock could not inherit through her mother.[44] This ruling was reversed by the Eskra court.[45] Although the holding of the case was grounded in the due process clause of the 5th Amendment,[46] Justice Stevens, writing for the court, also reasoned that preventing one from inheriting property on the basis of an official stigma constituted a badge of ignobility in contravention of the anti-

[38] Id. at 677.

[39] Id.

[40] Id.

[41] Id. at 678. The learned judge determined that even the act of using government powers to merely bestow upon an individual what might be considered an ennobled name to be un-American and to cut at the very heart of the principles of this nation. Id.

[42] 272 N.Y.S.2d at 678.

[43] 524 F.2d 9 (7th Cir. 1975).

[44] Eskra v. Morton, 524 F.2d 9, 11 (7th Cir. 1975).

[45] Id. at 15.

[46] Id. at 13-15.

nobility clauses.[47]

In Mathews v. Lucas,[48] the United States Supreme Court upheld a Social Security provision which entitled all legitimate and some illegitimate children to a presumption of dependency, but which required other illegitimate children to prove dependency.[49] Justice Stevens, in a dissent, argued that all illegitimate children should have the right to receive survivors insurance benefits.[50] He said the anti-nobility clause forbids the government from attaching any badge of ignobility or economic distinction to a citizen.[51]

In Zobel v. Williams,[52] the United States Supreme Court struck down an Alaska statute which awarded cumulative dividends from the state's oil revenues derived from drilling on state-owned land on the North Slope to its citizens based on length of

[47] Id. at 13 n.8. Stevens stated, "The rationale behind the prohibition against the grant of any title of nobility by the United States, . . . equally would prohibit the United States from attaching any badge of ignobility to a citizen . . . ." Id. An argument could be made against ex-convict labels because they tend to ignoble a person even though the individual has given what was due. Trop v. Dulles, 356 U.S. 86 111 (1958) (Brennan, J., concurring).

[48] 427 U.S. 495 (1976).

[49] Mathews v. Lucas, 427 U.S. 495, 516 (1976).

[50] Id. at 520 (Stevens, J., dissenting). Stevens' equal protection argument eventually prevailed - at least in part. Mills v. Habluetzel, 456 U.S. 91 (1982).

[51] Id. at 520 n.3. This was not his main point - equal protection was his focus. Id. at 516. He essentially repeated his Eskra comment. Id. He seemed to use the clause only as a last resort.

[52] 457 U.S. 55 (1982).

residency.[53] Four concurring Justices invoked the anti-nobility clauses in a footnote to disapprove this preferential treatment by government.[54] Justice Brennan, joined by Justices Marshall, Blackman and Powell, charged Alaska's degrees-of-citizenship approach with establishing a latter-day nobility, observing that the "American aversion to aristocracy developed long before the Fourteenth Amendment and is, of course, reflected elsewhere in [Art. I, sec. 9, cl. 8 of] the Constitution."[55]

In Fullilove v. Klutznick,[56] Justice Stewart, joined by Justice Rehnquist in a dissent, cited the anti-nobility clause to support his objections to a set-aside provision in the Public Works Employment Act.[57] His understanding of the Clauses supports a broad application. He recognized the colonist's antipathy to the concept of using government to endow benefits.[58] The anti-nobility clauses, Stewart states, were part of the colonist's effort to establish a government "that recognized no distinctions" among people.[59]

Justice Stevens also dissented in Fullilove, and spoke unfavorably of government

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[53] Zobel v. Williams, 457 U.S. 55, 56-57 (1982). The dividend disbursement scheme was an unequal distribution of benefits. Id. at 60. Alaska could not show any valid state interest that would be rationally served by its discriminatory actions. Id. at 65.

[54] Id. at 69 n.3 (Brennan, J., concurring).

[55] Id. The Court linked the anti-nobility clauses with the Virginia Declaration of Rights (1776). Id. at 69 n.3. The Virginia Declaration of Rights supports the proposition that government discrimination should not exist - even if it benefits the recipient. 7 Thorpe, supra note 31 at 3813.

[56] 448 U.S. 448 (1980).

[57] Fullilove v. Klutznick, 448 U.S. 448, 531 n.13 (1980) (Stewart and Rehnquist, JJ., dissenting).

[58] Id.

[59] Id.

endowed privileges.[60] Government endowed privileges lead from animosity, to discontent, to anarchy, he stated.[61] It was his view that the colonists used the anti-nobility clause as one of many provisions to ensure that government was impartial.[62]

In State v. Boren,[63] the Washington Supreme Court held laws preventing the unlicensed practice of dentistry to be a valid exercise of police power.[64] Justice Mallery, in dissent, condemned the use of the governmental mechanism for economic engineering.[65] He said that the use of government to promote economic privileges is akin to slavery and as objectionable as a title of nobility.[66]

In Morey v. Doud,[67] Illinois established a licensing and regulation scheme for the

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[60] 448 U.S. at 532-33 (Stevens, J., dissenting).

[61] Id.

[62] Id.

[63] 219 P.2d 566 (Wash. 1950).

[64] State v. Boren, 219 P.2d 566 (Wash. 1950). A number of individuals had been involved in the unlicensed practice of dentistry or had aided and abetted the practice of dentistry by unlicensed individuals. Id. at 567. The statute prohibiting the unlicensed practice of dentistry was a reasonable exercise of police power. Id. at 572.

[65] Id. at 573 (Mallery, J., dissenting).

[66] Id. Justice Mallery condemned governmental classification. Id. He said it would lead to a caste system that would destroy constitutional government. Id. Justice Mallery argued that when governmental power is used "as an economic device to promote special privileges for individuals . . . it becomes an instrument of regimentation. Titles of Nobility could be no more objectionable." Id. at 574.

[67] 354 U.S. 457 (1957), overruled, New Orleans v. Dukes, 427 U.S. 297, 306 (1976) (per curiam). Morey was overruled only on the basis of changed notions of Equal Protection. Id. An analysis of the Title of Nobility Clauses did not appear in Dukes.

money order business. However, American Express was exempted by name.[68] Other money order businesses challenged the law and the Court invalidated it, in part, because it had created government supported economic advantages for a certain class.[69]

The executive branch has relied upon the Clauses as authority in support of its actions. Andrew Jackson, the seventh President of the United States, weighed in on this issue in one of "[t]he most widely read and discussed presidential vetoes in our annals."[70] Jackson vetoed legislation from Congress that was meant to extend the charter of the Second Bank of the United States.[71] The veto was based on the premise that such a charter was unconstitutional and a constant threat to the American future.[72]

He warned of the dangers of using the government to give one person advantage one over another person.[73] He insisted that governmental titles, distinctions, gratuities and privileges are in violation of the Constitution.[74] To allow governmental power to be exercised in a discretionary manner is unjust, leads to factions and threatens the

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[68] Morey v. Doud, 354 U.S. 457, 458 (1957).

[69] Id. at 469.

[70] **Marquis James, Andrew Jackson: Portrait of a President** 302 (1937).

[71] Id.

[72] **Burke Davis, Old Hickory: A life of Andrew Jackson** 306 (1977). Jackson's veto is authoritative because the acts of an officer of the government, previously sworn to uphold the Constitution, are given the presumption of constitutionality. Illinois v. Krull, 480 U.S. 340, 350-51 (1987). The veto deserves additional weight because it was upheld by Congress. Davis, supra note 72 at 308.

[73] **Jackson versus Biddle: The Struggle over the Second Bank of the United States** 19-20 (George Rogers Taylor ed. 1949) [hereinafter Taylor].

[74] Id.

foundation of government, he argued.[75] According to Jackson, there are no necessary evils in government.[76]

Legislation in association with the Clauses is nearly non-existent. Only one federal statute addresses titles of nobility. It requires a person becoming a United States citizen to renounce any previously acquired title or order of nobility.[77]

Jackson's application of the Clauses most closely defines their underlying intent. As a participant in the American Revolution and a contemporary of the people of that era, he, more than anyone else, knew the will of the people. Necessary evils in the name of "police power" or "general welfare" simply were not part of the constitutional grant of authority to the government and are in violation of the will of the people.

III. DEFINING THE TITLE OF NOBILITY CLAUSES: AN EARLY AMERICAN PERSPECTIVE

The United States Supreme Court has yet to explicitly define the anti-nobility clauses and decide a case based upon them. The anti-nobility clauses, however, can be defined by examining the kinds of governmental activity the colonist's intended to prohibit.

The colonist's revulsion of monarchy, indeed, the entire system of aristocracy,

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[75] Id. Davis, supra note 72 at 306.

[76] Id.

[77] Hereditary Titles and Orders of Nobility, 8 U.S.C. s. 1448 (b) (1952) (56 Fed. Reg. 50475, 50499 codified at 8 C.F.R. s. 337.1). An exhaustive search has not turned up any state statutes which directly reference Titles of Nobility.

was pervasive.[78] So were the kinds of activity the anti-nobility clauses were intended to prohibit. The colonist's remarks about nobility cut across the varied but interrelated concepts of government, economics and the military and give insight into the intent behind Article I, sections 9 and 10.

A. ARISTOCRACY AND THE MILITARY

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.[79] One led to the other and a "system of Despotism" was the inevitable result, he argued.[80] The will of the few was ennobled over the many because it could be implemented by force.[81]

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."[82] He said a characteristic of European despotism was that they

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[78] Berger, supra note 21 at 876. **The Federalist** No. 43, at 274-75 (remarks of James Madison) (speaking of colonist's aversion of even aristocratic innovations).

[79] 2 Farrand, supra note 17 at 385.

[80] Id. States that existed during the colonial era implemented the principle into their constitutions. See e.g., **N.C. Const.** Art. 1, s. 30. "Standing armies in the time of peace are dangerous to liberty. Id.

[81] **Elbridge Gerry, Observations on the New Constitution and on the Federal and State Conventions** 10-11 (1788), reprinted in Roy G. Weatherup, Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment, **Hastings Const. L. Q.** 961, 987-88 (1975).

[82] 1 Farrand, supra note 17 at 465. Commenting on the danger of a standing Army, Madison said,

> 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.

were "afraid to trust the people with arms."[83] An aristocracy cannot last without a standing army.[84] The reason it cannot last is because the people will eliminate an aristocratic government by force if they have the opportunity.[85]

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

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Id. The right to revolution against tyrants, supported by Sydney and Locke, is derived from a universally acknowledged personal right to defend oneself against robbery or enslavement. Don B. Kates, Jr., Handgun Prohibition and the Original Meaning of the Second Amendment, 82 **Mich. L. Rev.** 230 n.110 (1983). The equation between personal self-protection and resistance to tyranny occurs again and again, particularly in the debates over the Constitution. Id.

[83] **The Federalist** No. 46, at 299-300.

[84] **Ralph Ketcham, James Madison: A Biography** 64, 640 (1971). Kates, supra note 82 at 228. Madison included an enslaved press and a disarmed populace as additional elements of repression by the aristocracy,

> [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.

Id. **The Federalist** No. 46.

[85] 3 **John Adams, A Defence of the Constitutions of Government of the United States of America** 471-72 (London, 1787-88), reprinted in Stephen P. Halbrook, To Keep and bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791, 10 **N. Ky. L. Rev.** 13, 14 (1982). **Webster, An Examination into the Leading Principles of the Federal Constitution in Pamphlets on the Constitution of the United States** 51, 56 (Paul Ford ed. 1888) (emphasis in the original), reprinted in Halbrook, supra at 48, 51-52 (1982). 1 **St. George Tucker, Blackstone's Commentaries with Notes of Reference to the Constitution and Law of the Federal Government** 143 n.40, 300, reprinted in Kates,

and the most effectual way to enslave them."[86] 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.[87]

Even indirect support of the military establishment during peacetime is prohibited by the Clauses.[88] The colonists knew a title of nobility when they saw it – even if it was disguised.[89] 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.[90]

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supra note 82 at 241-42. Robert Dowlut, The Right to Arms: Does the Constitution or the Predilection of Judges Reign?, 36 **Okla. L. Rev.** 84 (1983).

[86] 3 **Jonathan Elliot, Debates in the Several State Conventions on the Adoption of the Constitution** 380 (2d ed. Philadelphia, 1836) [hereinafter State Conventions], reprinted in Halbrook, supra note 85 at 25. See generally Shalhope, The Ideological Origins of the Second Amendment, 69 **J. Am. Hist.** 606-13 (1982), in Kates, supra note 82 at 226 (stating the Federalist and Antifederalist arguments based on the individual rights to arms). Both Federalists and Antifederalists supported individual right to arms. The only debate was on how to guarantee it. Kates, supra note 82 at 223.

[87] Elaine Scarry, War and the Social Contract: Nuclear Policy, Distribution, and the Right to Bear Arms, 139 **U. Pa. L. Rev.** 1257, 1284 (1991).

[88] Heldt, supra note 10 at 1179-87.

[89] Id.

[90] Id. The Resolutions of the Town Meeting of Torrington, Connecticut are considered representative of the public mood:

> The five years pay every body knows is not a charge of the war . . . . Congress have the same power, and can, with as much justice, at the expiration of the present five years, grant another five years pay, and then, perhaps, half-pay during life. And is it likely, the evil will stop here! Is it not highly probable that Congress, at present, are feasting their imaginations on the prospects of future

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.[91] The organization aroused suspicions that the officers proposed to become an aristocracy as well as a group of pensioners.[92]

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.[93] It was thought that the Clauses were the best way to prevent an aristocracy from reforming.[94]

The officers had already been paid for their services. There wasn't a need for an army, and therefore there wasn't a need for officers, because they were at peace. The Clauses didn't prohibit the formation of the Cincinnati *per se*. The Clauses only prohibited the goal of the Cincinnati - the award of governmental payments based merely on status. In a phrase, the Clauses were intended to prohibit the exercise of governmental

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> pensions? It is the unanimous opinion of this town, that no power was ever delegated to Congress, by confederation, to grant half pay, etc. and that those resolves are unconstitutional, unjust and oppressive.

Appearing in the **Connecticut Courant** , July 29, 1783. Quoted in id. at 43, noted in Heldt, supra note 10 at n.117.

[91] Scarry, supra note 87 at 1316.

[92] Heldt, supra note 10 at n.116.

[93] 3 **The Documentary History of the Ratification of the Constitution** 373, 379, 390-91 (Merrill Jensen ed. 1978) [hereinafter Jensen].

[94] Id. Without the enforcement of the Title of Nobility Clauses, an aristocracy would inevitably be reformed. Id. at 390. Our government was to be one that prevented every kind of royal honor. Id. at 391.

power in favor of those of a certain status.

Institutionalized military status is intertwined in the concept of nobility. The classic feudal system rested on the military services provided by the vassal in exchange for the protection and maintenance afforded by his lord.[95] The colonists were completely against the establishment of a standing army.[96] The militia was the colonist's army[97] and the colonists believed a militia to be adequate for national defense.[98]

Government has reestablished the standing army during peacetime. Today, we have a standing military force during peacetime, and its soldiers receive government support during their participation, promise of payment after participation and various after-military preferences in public employment.[99] Thus, just like under feudalism, contemporary military employment has guaranteed its participants with a permanent

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[95] Geoffrey C. Hazard, Jr., The Future of Legal Ethics, 100 **Yale L. J.** 1239, 1272 (1991). De Tocqueville said the army was one of the constituents of the core "aristocratic element" in the European *Ancien Regime*. Id. Mayer, supra note 16 at 80-81, 244. Military rank is closely related titles of nobility**. Alexis de Tocqueville, Democracy in America** 594, 622 (J.P. Mayer and Max Lerner eds. 1966). De Tocqueville opined that peacetime service in the military is aristocratic. Id. at 627.

[96] 1 Annals of Cong. 750 (1789). Gerry, supra note 81 at 10-11, reprinted in Weatherup, supra note 81 at 987-88.

[97] **The Federalist** No. 29 at 185 (A. Hamilton) (stating that the militia was not only sufficient for defense but the best possible security against a standing army). 3 State Conventions, supra note 86 at 378.

[98] **Pennsylvania Herald**, Oct. 17, 1787, in Jensen, supra note 93 at 196-97, reprinted in Halbrook, supra note 85 at 19 (remarks of a "Democratic Federalist**"). The Debates on the Adoption of the Constitution** 659 (Jonathan Elliot ed. 1836) [hereinafter Elliot] (remarks of George Mason).

[99] Heldt, supra note 10 at 1184.

superior status.[100]

The primary authority for invalidating such schemes is the Title of Nobility Clauses themselves.[101] The creation of special benefits for military personnel creates a classification which triggers application of the Clauses. Horst and Zobel are in support of this premise.[102] Analogous to Horst, military personnel have been bestowed privileges, honors and emoluments unique to their group.[103] Similar to Jama, titles have been attached to their names titles consistent with a title of nobility.[104] Consistent with Zobel, a scheme has been developed which bestows quasi property rights on military personnel based on their length of "residency."[105] In a situation nearly parallel to the Society of the

[100] Heldt, supra note 10 at nn.4, 68-88.

[101] See supra notes 9-28, 79-98.

[102] Horst, 48 Ala. at 142. Zobel, 457 U.S. at 69 n.3.

[103] Horst, 48 Ala. at 142. Justice Saffold found that granting of special privileges to a unique group violated the state's title of nobility clause which is identical to the one found in the Constitution. Id. Under Justice Saffold's reasoning in Horst, keeping a standing army would thus be violate the nobility clause because they receive privileges from the government that are unique to their group. Id. See supra notes 99, 100 (stating that military personnel receive benefits not accorded to the rest of the population).

[104] Jama, 272 N.Y.S.2d at 678. Judge Maurice Wahl determined that even the act of using government powers to merely bestow upon an individual what might be considered an ennobled name to be un-American and to cut at the very heart of the principles of this nation. Id. Under the reasoning in Jama, any act by the government to bestow upon any individual a title or anything that might be considered an ennobled status, no matter how slight, is in contravention of the Clauses. Id. at 678. See supra notes 99, 100 (stating that military personnel receive benefits not accorded to the rest of the population).

[105] Zobel, 457 U.S. at 69 n.3 (Brennan, Marshall, Blackman and Powell, JJ., concurring). The four concurring judges in Zobel found that the use of government to grant degrees-of-citizenship establishes a latter-day nobility. Id. Under the reasoning of the concurring judges' opinion in Zobel, the bestowing of

Cincinnati episode and analogous to Fullilove, military personnel have been accorded special privileges and a status superior to the people.[106] Similar to Morey, a economically advantaged closed class has been developed[107] and consistent with Boren, governmental powers are being used to promote economic privileges.[108]

Analogous to Justice Steven's reasoning in Eskra and Mathews, non-military persons have been ignobled because the power of government has been used to reduce

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special treatment upon former or current military personnel reestablishes a nobility in contravention of the Clauses. Id. See supra notes 99, 100 (stating that military personnel receive benefits not accorded to the rest of the population).

[106] Fullilove, 448 U.S. 531 n.13. Justice Stewart's dissent in Fullilove found that government endowed benefits are antithetical to the colonists effort to establish a government that did not recognize distinctions between people. Id. (Stewart and Rehnquist, JJ., dissenting). Justice Stevens' dissent in Fullilove found that government endowed privileges are in violation of the principle that government is to be administered impartially. Id. at 532-33 (Stevens, J., dissenting). Under the reasoning in the dissenting opinions in Fullilove, to accord special privileges to former or present military personnel is to violate the inherent principles upon which this government was founded. Id. at 531 n.13, 532,33. See supra notes 99, 100 (stating that military personnel receive benefits not accorded to the rest of the population).

[107] Morey, 354 U.S. at 469. The Morey court found that to create government supported economic advantages for a certain class is impermissible. Id. Under the reasoning in Morey, to grant former and current military personnel special economic advantages is impermissible. Id. See supra notes 99, 100 (stating that military personnel receive benefits not accorded to the rest of the population).

[108] Boren, 219 P.2d 573, 74. Justice Mallery's dissent in Boren found that, to use government for economic privilege is as objectionable as a title of nobility. Id. Under the reasoning of Justice Mallery's dissenting opinion in Boren, the economic privileges accorded to former and current military personnel are akin to the grant of a title of nobility and are impermissible. Id. See supra notes 99, 100 (stating that military personnel receive benefits not accorded to the rest of the population).

them to an inferior status.[109] The people have been enslaved by the presence of the standing army because they no longer have the option of successfully asserting their will by force as was originally intended by the colonists.

The Clauses specifically disallow the application of any rationale to sanitize the government's activity. The implicit intent of the Clauses is superior to and cannot be redefined by case law. Any case law inconsistent with the implicit intent of the Clauses must give way. The Clauses prohibit every exercise of governmental power in favor of those of a certain status.[110] This is consistent with what Andrew Jackson asserted in his Bank of the United States veto.[111] Therefore, the government's endowment of special benefits upon military personnel must be invalidated.

Because the very existence of a military in peacetime is the recreation of a nobility, governmental support of a peacetime army is also a violation of the Title of Nobility Clauses. Because the people are able to provide for their own defense and a peacetime standing army is inseparable from aristocracy, inevitably leads to despotism,

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[109] Eskra, 524 F.2d at 13 n.8. Mathews, 427 U.S. at 520 n.3 (Stevens, J., dissenting). Justice Stevens' arguments in Eskra and Mathews asserted that government distinctions that disadvantage some in relation to others affixes a title of ignobility which is impermissible. Id. Under the reasoning of Justice Steven's arguments in Eskra and Mathews, bestowing a special status upon former or current military personnel ignobles the rest the people and the effect of a standing army reduces the people to the ignobled state of slavery. Id. See supra note 88 (stating the effect of a centralized army enslaves the people); supra note 99, 100 (stating that military personnel receive benefits not accorded to the rest of the population).

[110] **U.S. Const.** art. I, ss. 9, 10 ("[n]o Title of Nobility shall be granted by the United States" and "[n]o State shall . . . grant any Title of Nobility . . .") (emphasis added).

[111] See supra notes 70-76 (stating that the use of government to advantage some over others is unconstitutional and threatens the foundation of government).

and enslaves the people, the only form of an army that can be allowed to exist is the populace cooperatively engaged in their own defense against direct foreign aggression.[112]

B. ARISTOCRACY AND DEMOCRACY

In the Federalist No. 39, James Madison linked the titles of nobility Clauses and the republican form of government.[113] The prohibition of a government supported nobility was thought to ensure a democratic government. According to Madison, "A government resting on a minority is an aristocracy, not a Republic."[114] Popular elections did not ensure democracy. He said, "One hundred and seventy-three despots would surely be as oppressive as one . . . . An elective despotism was not the government we fought for . . . ."[115] These views were supported by Alexander Hamilton.[116]

Author Gordon Wood has noted, "[r]epublicanism meant more for Americans than simply the elimination of a king and the institution of an elective system. It added a

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[112] See supra notes 79-98 (stating that the people are able to provide for their own defense and a peacetime standing army is inseparable from aristocracy, inevitably leads to despotism, and enslaves the people).

[113] **The Federalist** No. 39, at 242 (J. Madison). Madison stated, "Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the Federal and State Governments . . . ." Id.

[114] Quoted in Ketcham, supra note 84 at 64, 640.

[115] **The Federalist** No. 48, at 311 (quoting **Thomas Jefferson, Notes on the State of Virginia** (London 1787)).

[116] **The Federalist** No. 84, at 512 (A. Hamilton). See **The Federalist** No. 71, at 433 (A. Hamilton) (recognizing that the tyrannical tendencies of governmental officials is directly proportional to their length of time in office).

moral dimension . . . a depth that involved the very character of society."[117] To ensure freedom and prevent tyranny, the colonists implemented extensive limitations on the governmental mechanism to prevent governmental intervention in their lives and the lives of their posterity.[118]

A prominent reason for creating a representative government was the deep-seated fear of a self-perpetuating aristocratic legislature.[119] James Madison stated at the Constitutional Convention, "the legislature . . . can by degrees subvert the Constitution . . . [and a] Republic may be converted into an aristocracy or oligarchy."[120] This fear

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[117] **Gordon Wood, The Creation of the American Republic**, 1776-1787 47 (1969). See De Tocqueville, supra note 95 at 64 (noting the absence of what we would call government, or administration in America). From de Tocqueville's reference, the bureaucracy was one of the constituents of the core "aristocratic element" in the European *Ancien Regime*. Hazard, supra note 95 at 1272. See **Arno J. Mayer, The Persistence of the Old Regime** 80-81, 244 (1981) (noting the persistence of aristocratic elements in today's society); **J. Pfiffner and R. Presthus, Public Administration** 61 (5th ed. 1967) (stating that "the technical character of government forces the amateur legislator to lean upon the expert official"); **Boyer, Policy Making by Governmental Agencies, in Public Administration** 46 (R. Golembiewski, F. Gibson and G. Cornog eds. 1966); (stating that "Administrative policies have an impact on practically every human endeavor") Id. noted in Heldt, supra note 10 at n.109. De Tocqueville equated bureaucracy with tyranny, not democracy. De Tocqueville, supra note 95 at 241.

[118] **The Federalist** No. 85, at 521-22 (A. Hamilton).

[119] Adam Kurland, The Guarantee Clause as a Basis for Federal Prosecutions of State and Local Officials, 62 **S. Cal. L. Rev.** 367, 427-28 (1989).

[120] 2 Elliot, supra note 98 at 257, quoted in Jennifer A. Covell et al., Mr. Smith went to Washington and Never Came Home: A Defense of Colorado's Term Limitation Amendment, 1 **J.L. & Pol'y** 47, 51 (1993). Madison assumed that "new members. . .would always form a large proportion" of the House. 5 Elliot,

permeated the thoughts of both Federalists and anti-Federalists during the ratification debates.[121] The anti-Federalist writer, Federal Farmer, observed that "the overriding concern of the founder, . . . and the alert citizen, should be the danger of insidious usurpation by the few, . . . and ever active aristocracy."[122] The possibility of legislative self-aggrandizement was not an imaginary fear. History and experience positively demonstrated the ability of the legislature to usurp power that had not been delegated to it.[123]

The colonist's antipathy toward aristocratic tendencies as articulated in the Constitution's prohibition against the granting of any Title of Nobility by the United States or any State has application to elected officials. In the Federalist No. 43, Madison spoke about the ability of the Constitution to reach not only blatant aristocracy but also "aristocratic or monarchial innovations."[124] Alexander Hamilton' s comments support

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supra note 98 at 255, in Neil Gorsuch and Michael Guzman, Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations, 20 **Hofstra L. Rev.** 341, 349 (1991).

[121] 2 Elliot, supra note 98 at 257. Although The Federalists and anti-Federalists have been construed to be at each end of the spectrum of government, they really weren't. They agreed on most concepts and only disagreed on how they should be implemented. Covell, supra note 120 at 51 n.24.

[122] **Herbert J. Storing, What the Anti-Federalists Were For** 48-52 (1981).

[123] Covell, supra note 120 at 51. **James Madison, Notes of Debates in the Federal Convention of 1787** 428 (1966) [hereinafter Notes of Debates] (remarks of James Madison) (noting that the abuses of the British Parliament were lessons worthy of attention).

[124] **The Federalist** No. 43, at 274-75 (J. Madison). Republican government concerned more than merely preventing the executive from becoming a monarch but also the envisioned the honest, tyranny-free functioning of government in general and in all society. **The Federalist** No. 39 (J. Madison).

this view.[125] He indicated that the concept of a 'republican government' was not to be interpreted in a vacuum so as to mean some type of accepted 'form,' regardless of the substance.[126] The type of despotism Hamilton condemned in the Federalist No. 85 would most certainly cover the ascension to power of de facto tyrants, regardless of whether the constitutional form of government remained in name only.[127]

The analogy between long term incumbency and the granting of Titles of Nobility is demonstrated by the over ninety percent return rate of incumbents to Congress, the effects of seniority and other 'perks.'[128] The influence of this modern day aristocracy is

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[125] **The Federalist** No. 85, at 521-22 (A. Hamilton).

[126] Id.

[127] Id. See Cong Globe, 38th Cong., 2d Sess. 142 (1865) (remarks of Rep. Godlove Orth) (stating that government had become a "system of fraud, of injustice, of crime, and of tyranny. In the comprehensive language of an eminent divine, it is the "sum of all villainies." It tramples upon every moral precept, sets at defiance every divine law, and destroys every natural right of man").

[128] Covell, supra note 120 at 51 n.30. The establishment of standing committees in the 1860's made seniority more important and was the primary reason for deserting the custom of high turnover in Congress. Gorsuch and Guzman, supra note 120 at 352-353. Dennis W. Arrow, Representative Government and Popular Distrust: The Obstruction/Facilitation Conundrum Regarding State Constitutional Amendment by Initiative Petition, 17 **Okla. City U. L. Rev.** 3, 17-19 (1992). Fixing of parking tickets, use of "royalties" to evade a statutorily-imposed cap on honoraria, self-granted pay raises and running up of a $360,000 bill at the House restaurant are some of the Congressional "perks." Id. Donald J. Boudreaux & A.C. Pritchard, Rewriting the Constitution: An Economic Analysis of the Constitutional Amendment Process, 62 **Fordham L. Rev.** 111, 157 (1993). These "servants" have endowed themselves with a status superior to that of their masters. Unlimited terms in conjunction with the seniority system has created a form of property rights for members of Congress. Id. at 157. Political power was considered personal property of the nobility, too. Jeanne Schroeder, Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary

clearly seen in the power of the leadership structure and committee chairmanships in Congress.[129] Long term incumbency, particularly experienced during the late twentieth century, is analogous to the granting of Titles of Nobility because long term incumbency bestows special advantages based on status and allows the few to force their views on the many.[130]

A continual rotation of people would allow for a continual change of views which

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Jurisprudence, **75 Iowa L. Rev.** 1135, 1217 n.167 (1990). Consider the special treatment and titles that the Speaker of the House, majority and minority leaders and Whips receive. W. John Moore, So Long, Mr. Smith, 24 **Nat. J.** 2052 (1992). Even those closely associated with them receive a special status. Id. Congresspersons lobby federal agencies on behalf of big campaign contributors. Id.

[129] Covell, supra note 120 at 51 n.30. **The House in Transition: Partisanship and Opposition, in Congress Reconsidered** 48-49 (Lawrence C. Dodd & Bruce I. Oppenheimer 3d ed. 1985) (noting the immense power of subcommittees and their chairpersons over legislation). Boudreaux & Pritchard, supra note 128 at 131. Boudreaux and Pritchard stated, "Congress uses committee systems, rules of order, and seniority systems to maximize the control exercised by its most senior members, who consequently have substantial control of Congress' legislative agenda." Id.

[130] Covell, supra note 120 at 51. James M. Demarco, Note, Lobbying the Legislature in the Republic: Why Lobby Reform is Unimportant, 8 **Notre Dame J.L. Ethics & Pub. Pol'y** 599, 601 (1994). Demarco recognized:

> The Framers of the Constitution probably never envisioned a House of Representatives so given to incumbency and seniority, and to the benefits of being a Congressman. The power of incumbents and senior members leads to a feudalistic legislature wherein many of the most important decisions concerning the public are made by a handful of senior representatives.

Id. at 627 (emphasis mine).

would more likely represent the population at-large.[131] Hamilton noted that, "[t]he natural cure for an ill-administration in a popular or representative constitution is a change of men."[132] Thomas Jefferson, however, recognized that the electoral process, by itself, was not enough to secure a republican form of government.[133] He noted that a feature he strongly disliked (about the Constitution) was "the abandonment, in every instant, of the principles of rotations."[134]

The Constitutional form of government the colonist's implemented remains in form only. We have an elected monarchical despotism where an aristocratic legislature

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[131] Demarco, supra note 130 at 627. Assuming that government would no longer "enliven" artificial entities, which tend to instill their views into each member, the few people in control of these entities would lose their power and the people's voice could then be heard.

[132] **The Federalist** No. 21, at 140 (A. Hamilton). But electoral process theory did not anticipate or address the mechanisms that have developed to frustrate the citizenry's ability to assert their will. See Erik H. Corwin, Limits on Legislative Terms: Legal and Policy Implications, 28 **Harv. J. on Legis.** 569, 608 n.29 (1991) (stating that Congressmen have structural advantages to reelection such as franking privileges and free travel). **C.W. Mills, The Power Elite** (1956) (indicating that wealthy and powerful groups may exert disproportionate influence on government); **Childs, Pressure Groups and Propaganda, in The American Political Scene** 205 (E. Logan ed. 1936); Wright, Politics and the Constitution: Is Money Speech?, 85 **Yale L. J.** 1001 (1976) (indicating that wealthy and powerful groups may exert disproportionate influence on government); Now is the Time for All Good Men . . . ., **Time**, Jan. 5, 1968, at 44, noted in Delgado, supra note 14 at n.123.

[133] **Thomas Jefferson**, 2 **The Writings of Thomas Jefferson** 330 (H.A. Washington ed. 1853) quoted in Covell, supra note 120 at 52 n.36.

[134] Id.

of defacto tyrants uses aristocratic innovations to aggrandize themselves.[135] The "servants" have ennobled themselves by using the power of government to centralize power in themselves though the federal government and in government generally.[136] They have centralized power in their role in government;[137] they have centralized power in a select few in their group;[138] they have centralized power in a select few in other governmental groups.[139]

Since the Constitution reaches aristocratic innovations, just as Madison intimated, the Clauses support the people's attempt to address this situation with amendments to their state constitutions.[140] The amendments require a continual change of persons in government.[141] Such amendments might help to thwart the mechanisms which have been developed to prevent the citizenry from asserting their will.

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[135] See supra notes 128-132 (identifying the abuse of governmental power governmental officials for personal gain).

[136] Id.

[137] Id.

[138] Id.

[139] Id.

[140] **The Federalist** No. 43, at 274-75 (J. Madison) (speaking of the ability of the Constitution to reach aristocratic innovations. Don J. DeBenedictis, Voters Limit Politicians' Terms, **A.B.A. J.**, Jan. 1993 at 26. In 1992, 20 million people in 14 states voted to impose limitations on the number of consecutive terms their federal congressional representatives and senators may serve. Id. The fourteen states are Arizona, Arkansas, California, Florida, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Washington and Wyoming. Susan B. Glasser, After Their Impressive Victories in 14 States, Term-Limit Backers Plan Next Steps on Hill, **Roll Call**, Jan. 18, 1993, noted in Covell, supra note 120 at 47, n.1.

The Clauses, by themselves, provide authority for judicial intervention into the activity of the legislature.[142] Analogous to Horst, the "servants" have bestowed upon themselves privileges, honors and emoluments unique to themselves.[143] Similar to Jama, they have attached to their names titles equivalent to title of nobility.[144] Consistent with Zobel, they have created a scheme whereby they have bestowed upon themselves quasi property rights based on their length of "residency."[145] Analogous to Fullilove, the

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[141] Id.

[142] See supra notes 113-127 (stating the principles behind the clauses as they relate to representative government). Horst, 48 Ala. at 142 (invalidating an act of the legislature). Zobel, 457 U.S. at 69 n.3 (invalidating an act of Congress).

[143] Horst, 48 Ala. at 142. Justice Saffold found that granting of special privileges to a unique group was violative of the state's title of nobility clause which is identical to the one found in the Constitution. Id. Under Justice Saffold's reasoning in Horst, congressional benefits are impermissible because government benefits are bestowed upon a unique group. Id. See supra notes 128-132 (stating that government officials receive benefits not accorded to the rest of the population).

[144] Jama, 272 N.Y.S.2d at 678. Judge Maurice Wahl determined that even the act of using government powers to merely bestow upon an individual what might be considered an ennobled name to be un-American and to cut at the very heart of the principles of this nation. Id. Under the reasoning in Jama, any act by the government to bestow titles or title like benefits upon any individual, no matter how slight, is in contravention of the clauses. Id. at 678. See supra notes 128-132 (stating that government officials receive benefits not accorded to the rest of the population).

[145] Zobel, 457 U.S. at 69 n.3 (Brennan, Marshall, Blackman and Powell, JJ., concurring). The four concurring judges in Zobel found that the use of government to grant degrees-of-citizenship establishes a latter-day nobility. Id. Under the reasoning of the concurring judges' opinion in Zobel, the bestowing of special treatment upon governmental officials reestablishes a nobility in contravention of the Clauses. Id.

"servants" have granted themselves special privileges and have in nearly all respects endowed themselves with a status superior to the people.[146]

Analogous to the positions asserted in Eskra and Mathews, the people have been ignobled because the power of government has been used to reduce them to an inferior status.[147] Previously, the people had the power to use their resources as they saw fit.[148]

See supra notes 128-132 (stating that government officials receive benefits not accorded to the rest of the population).

[146] Fullilove, 448 U.S. 531 n.13. Justice Stewart's dissent in Fullilove found that government endowed benefits are antithetical to the colonists effort to establish a government that did not recognize distinctions between people. Id. (Stewart and Rehnquist, JJ., dissenting). Justice Stevens' dissent in Fullilove found that government endowed privileges are in violation of the principle that government is to be administered impartially. Id. at 532-33 (Stevens, J., dissenting). Under the reasoning in the dissenting opinions in Fullilove, to accord special privileges to government officials is to violate the inherent principles upon which this government was founded. Id. at 531 n.13, 532,33. See supra notes 128-132 (stating that government officials receive benefits not accorded to the rest of the population).

[147] Eskra, 524 F.2d at 13 n.8. Mathews, 427 U.S. at 520 n.3 (Stevens, J., dissenting). Justice Stevens' arguments in Eskra and Mathews asserted that government distinctions that disadvantage some in relation to others affixes a title of ignobility which is impermissible. Id. Under the reasoning of Justice Steven's arguments in Eskra and Mathews, bestowing a special status upon governmental officials ignobles the rest the people and allowing them to force their "ennobled" views on others ignobles the views of the people. Id. See supra notes 128-132 (stating that government officials receive benefits not accorded to the rest of the population); infra notes 247-281 (stating that the people are the masters and the servants need to acquiesce to their views).

[148] See Federal Gazette, Jan. 5, 1790, at 2, col. 3. "A bill of rights for freemen appears to be a contradiction of terms . . . [I]n a free country, every right of human nature . . . are as numerous as sands upon the sea shore . . ." Id. Federal Gazette, Jan. 15, 1790, at 3, col. 3. "The absurdity of attempting by a bill of rights to secure to freemen what they never parted with, must be self-evident. No enumeration of rights can

The "servants" have ennobled their views and extract the "master's" resources to use them as the "servants" see fit.[149] Previously, the people, individually, had the power to do or not do what they deemed to be good.[150] Now the "servants" determine what is good or not good and force their "masters" into compliance.[151]

Consistent with intent of the Clauses[152] and Andrew Jackson's assertions,[153] every exercise of governmental power in favor of those of a certain status is prohibited. The Clauses specifically disallow the application of any rationale to sanitize the government's activity.[154]

C. ARISTOCRACY, MONOPOLIES AND PRIVATE ENTERPRISE

Alexander Hamilton indicated that the concept of a 'republican government' was not to be interpreted in a vacuum so as to mean some type of accepted 'form,' regardless of the substance.[155] Rather, it was inexorably related to economic liberty as well.[156] The

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secure to the people all their privileges . . . ." Id. Noted in Stephen P. Halbrook, To Keep and bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791, 10 **N. Ky. L. Rev.** 13, n.94 (1982).

[149] See supra notes 113-132, 203-224, 237-306 (outlining the abuses of government).

[150] See supra note 148.

[151] See supra notes 113-127, 207-228, 241-311 (outlining the abuses of government).

[152] See supra notes 8-28, 113-130, 241-311 (arguing for the empowerment of the people and limiting the power of government).

[153] See supra notes 70-76 (stating that the use of government to advantage some people over other people is unconstitutional and threatens the foundation of government).

[154] **U.S. Const.** art. I, ss. 9, 10 ("[n]o Title of Nobility shall be granted by the United States" and "[n]o State shall . . . grant any Title of Nobility . . .") (emphasis added).

[155] **The Federalist** No. 85, at 521-22 (A. Hamilton).

elimination of aristocracy and aristocratic forms through the Title of Nobility Clauses were thought to ensure economic freedom.[157]

In his first letter to Madison commenting on the proposed constitution,[158] Jefferson attached as much importance to immunity from grants of monopoly as he did to those privileges and immunities which eventually appeared in the First Amendment.[159] The colonists believed that all men were created equal and government was not to be used to advantage one person over another person.[160] Numerous provisions in the

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[156] Kurland, supra note 119 at 427.

[157] **The Federalist** No. 85, at 521-22 (A. Hamilton). Hamilton spoke of the ability of the Constitution, through the Title of Nobility Clauses, to prevent the rise of "powerful individuals . . . who may acquire credit and influence enough, from leaders and favorites, to become despots of the people." Id. He also said the Constitution prevents the establishment of "extensive military establishments." Id.

[158] Letter from Jefferson to Madison (Dec. 20, 1787), reprinted in 12 **The Papers of Thomas Jefferson** 438, 440 (Julian Boyd ed. 1955). Letter from Jefferson to Madison (July 31, 1788), reprinted in 13 id. at 440, 442.

[159] Id.

[160] Michael Conant, Antimonopoly Tradition Under the Ninth and Fourteenth Amendments: Slaughter-House Cases Re-Examined, 31 **Emory L. J.** 800 (1982). Actually, the Privileges and Immunities Clause was initially understood to prohibit private monopolies such as corporations. Id. The Clause assured economic freedom and freedom from artificial entities. Id. The weight of history and logic demands that the Privileges and Immunities Clause be interpreted to mean that government should not advantage one person over another. Id. at 813-814. See **Louis Lusky, By What Right?** 191 (1975) (supporting the elimination of government supported favoritism in commerce). See, Saenz v. Roe, 526 U.S. 489, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999) (Thomas, joined by Rehnquist, dissenting) (speculating that the development of the Privileges and Immunities Clause was prematurely stifled by the *Slaughter-House Cases).*

Constitution confirm the belief that "all are equals in government."[161] No class of person is to be privileged.[162] The government's granting of "exclusive advantages of commerce" to particular merchants or companies was considered anathematic before, at and after the government's founding.[163] This was a direct contradiction of the premise upon which the government of Great Britain operated.[164] The Clauses were thought a "valuable safeguard against the possible ascendancy of powerful and ambitious families."[165] These "powerful and ambitious families" were largely the European nobility which had

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[161] Mark G. Yudof, Equal Protection, Class Legislation, and Sex Discrimination: One Small Cheer for Mr. Herbert Spencer's Social Statistics, 88 **Mich. L. Rev.** 1366, 1374 (1990). Montesquieu said government-induced inequality is an indicator of aristocracy or monarchy. 1 **Charles Montesquieu, Spirit of the Laws** 127 (Nugent trans., Colonial Press 1900).

[162] Id.

[163] Conant, supra note 160 at 800-01. Yudof, supra note 161 at 1374. **Or. Const.** art. 1, s. 20. "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens." Id.

[164] The Case of Mines, 75 Eng. Rep. 472, 479 (Ex. 1567), reprinted in Michelle Andrea Wenzel, The Model Surface Use and Mineral Development Accommodation Act: Easy Easements for Mining Interests, 42 **Am. U. L. Rev.** 607, 681 (1993). This case illustrates *noblesse obligee* in British government:

> [T]he common law, which is founded upon reason, appropriates every thing to the persons whom it bests suits, as common and trivial things to the common people, things worth more to persons in a higher and superior class, and the things most excellent to those persons who excel all other; and because gold and silver are the most excellent things which the soil contains, the law has appointed them (as in reason it ought) to the person most excellent, and that is the King.

Id.

[165] **Henry Black, Handbook of American Constitutional Law** 272 (1927).

frequently abused their great economic power.[166]

The colonists looked for, and found, support for their vision of economic freedom for all. Madison and Hamilton consulted the works of Montesquieu, a prominent political philosopher of the time.[167] In The Federalist Papers, both cited Montesquieu's Spirit of the Laws.[168] In the Spirit of the Laws, Montesquieu said, "In a republic, the sudden rise of a private citizen to exorbitant power produces monarchy, or something more than monarchy."[169] Corporations are private citizens.[170] They have relatively recently arisen to exorbitant power.[171]

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[166] Id.

[167] Wood, supra note 117 at 152.

[168] **The Federalist** Nos. 9, 43, 47, 78 (A. Hamilton) (J. Madison). In **The Federalist** No. 47, Montesquieu is described as "celebrated" and as an "oracle who is always consulted." Id. at 301. The Continental Congress similarly praised him as "the immortal Montesquieu." Wood, supra note 117 at 152.

[169] 1 Montesquieu, supra note 161 at 15-16. Montesquieu envisioned a situation where an abuse of power may pervert republican principles without necessarily developing into a monarchy. Id. The republican form of government would still be lost. Id.

[170] Santa Clara County v. S. Pac. R.R., 118 U.S. 394, 396 (1886).

[171] **Adolf A. Berle, Jr. & Gardiner C. Means, The Modern Corporation and Private Property** 1-3 (1934). Berle and Means stated,

> Spectacular as its rise has been, every indication seems to be that the system will move forward to proportions which would stagger the imagination today; just as the corporate system of today was beyond the imagination of most statesmen and business men at the opening of the present century.

Id. at 1. **Andrew Hacker, Corporate America in The Corporation Take-Over** 1 (Andrew Hacker ed. 1964) (stating that over two-thirds of the nations assets are owned by corporations). Ketcham, supra note 84 at 64, 640. The monopolization of communications by the corporate "person" is another sign of aristocracy. Id. See Thomas Linzey, Killing Goliath: Defending our Sovereignty and Environmental

A prohibition against governmental distinctions and preferences can be found in the Virginia Declaration of Rights of 1776 which said, "no man or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services."[172] Some states did not adopt explicit prohibitions against corporations because the people thought freedom from corporate entities was an inherent right protected by the Constitution.[173]

The ennobling and ignobling effect prohibited by the Clauses finds its ultimate expression in slavery. Slavery can encompass more than physical bondage. It can be economic, too. Before the Revolutionary War, the people of this country were effectively being reduced to slaves by corporate "persons" and the aristocracy which spawned and

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Sustainability through Corporate Charter Revocation in Pennsylvania and Delaware, 6 Dick. J. Envtl. L. & Pol'y 31 (1997).

[172] 7 Thorpe, supra note 31 at 3813. Other states had similar provisions. The Maryland Constitution of November 3, 1776, contained the following clause: "XXXIX. That monopolies are odious, contrary to the spirit of free government, and the principles of commerce; and ought not to be suffered." 3 id. at 1690. The similar clause of the Constitution of North Carolina of December 14, 1776, stated: "XXIII. That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed." 5 id. at 2788. Tennessee adopted the same provision. 6 id., at 3423. Taylor, supra note 73 at 19. Each of the provisions is still current. **Va. Const.** Art. 1, s. 4; **Md. Const. Decl. of Rights** Art. 41; **N.C. Const.** Art. 1, s. 34; **Tenn. Const.** Art. 1, s. 22.

[173] Conant, supra note 160 at 798-99, 806. Corporations are a subset of what the colonists referred to as monopolies. Id. The Constitutional protections of Englishmen included the prohibition against corporations in the Statute of Monopolies and the antecedent common law. 2 Farrand, supra note 17 at 582, 587-88 (rev. ed. 1937); 3 id. at 143, 44, 161-62, in Conant, supra note 160 at 802. Some felt that the civil rights of Englishmen against government, which they argued were theirs, did not need enumeration. Id.

directed them.[174] The people were reduced to a state of slavery through economic bondage instituted through the British government and its artificially created entities - corporations.[175]

The abuse of governmental power enabled corporations to have an economic choke hold on the colonies.[176] The machinery of government was used to make them subservient to England - directly through the law and indirectly though the economics of the corporation.[177] Colonial industry was crushed under the weight of Britain's corporations.[178] Greed was passed off as patriotism.[179] Although many reasons are

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[174] Hosmer, supra note 16 at 27-30, 131. Letter from G. Washington to George William Fairfax (June 10, 1774), in 3 **Writings** 223-24, quoted in **L. Baker, John Marshall; A Life in Law** 19 (1974), noted in James G. Wilson, Justice Diffused: A Comparison of Edmund Burke's Conservativism with the Views of Five Conservative, Academic Judges, 40 **U. Mia. L. Rev.** 913, n.224 (1986). George Washington stated, "[T]hose from whom we have a right to seek protection are endeavoring by every piece of art and despotism to fix the shackles of slavery upon us." Id.

[175] Id. at 131. The concept of economic slavery is a reoccurring threat. Standard Oil Co. v. United States, 221 U.S. 1, 83 (1911) (Harlan, J., concurring and dissenting). Harlan stated that, "[T]he conviction was universal that the country was in real danger from another kind of slavery sought to be fastened on the American people." Id.

[176] Conant, supra note 160 at 798-99. **John C. Miller, Sam Adams: Pioneer in Propaganda** 124 (1936). England prevented the colonists from manufacturing iron "much beyond the making a horse shoe or hobnail." Id. England had swaddled inter-colonial commerce so tightly that the provinces were "scarcely permitted to vend egg shells beyond their boundaries." Id.

[177] Id. **Robert A. Burt, The Constitution in Conflict** 39 (1992).

[178] Hosmer, supra note 16 at 27, 28. See Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) (condemning the discriminatory use of government to make economic distinctions). Justice Matthews stated,

> the very idea that one man many be compelled to hold his life, or the means of living, or any

proposed for the cause of the Revolutionary War, the freedom the colonists sought was essentially economic.[180]

Slavery meant more than chattel slavery during the Revolutionary War and it meant more than chattel slavery during the Civil War, too.[181] Just like slavery, the corporate form has perverted the concept of freedom the colonists sought to implement.[182]

Civil War era reformers believed that the law should not be used to advantage one person over another person just as it should not be used to legitimize and support chattel slavery.[183] Civil War era Representative John Holman of Indiana said: "Mere exemption from servitude is a miserable idea of freedom."[184] According to Civil War era Representative Thomas Shannon, to make the many subject to the few and make the

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> material right essential to the enjoyment of life, at the mere will of another, seems intolerable in any country where freedom prevails, as being the essence of slavery itself.

Id.

[179] Hosmer, supra note 16 at 29, 30. Burt, supra note 177 at 39.

[180] Hosmer, supra note 16 at 29. See **Judith N. Shklar, American Citizenship: The Quest for Inclusion** 79-81 (1991) (stating that Americans have long viewed slavery in economic terms and cited, as an example, the corporation's institution of "wage slavery").

[181] Lea S. VanderVelde, The Labor Vision of the Thirteenth Amendment, 138 **U. Pa. L. Rev.** 437, 443 (1989). See Berle & Means, supra note 171 at 352, 357 (stating that the corporation has assumed a life of its own and through sheer economic power has supplanted the Constitution).

[182] Cong. Globe, 38th Cong., 2d Sess. 142 (1865) (remarks of Rep. Godlove Orth) (speaking of the slave state).

[183] Cong. Globe, 38th Cong., 1st Sess. 2948 (1864). A variety of employment customs were labeled as "perpetuations of slavery." VanderVelde, supra note 181 at 448, 452, 453.

laborer the tool of the capitalist centralizes the power of the nation and reduces the people to a state of slavery.[185]

The Thirteenth Amendment was intended to provide an unobstructed sky of opportunities for the economic advancement of all.[186] As Senator Charles Sumner said, "[s]lavery must be abolished not in form only, but in substance . . . ."[187] When the South lost the battle over chattel slavery, they instituted the North's economic practices to

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[184] Cong. Globe, 38th Cong., 1st Sess. 2962 (1864).

[185] Cong. Globe, 38th Cong., 1st Sess. 2948 (1864). Lawrence E. Blades, Employment At Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power, 67 **Colum. L. Rev.** 1404 (1967) (the effect of the corporation has placed the substance of life is in another man's hands).

[186] **J. Gardiner, An Oration, Delivered July 4, 1785, at the Request of the Inhabitants of the Town of Boston, in Celebration of the Anniversary of American Independence** 13 (Boston 1785); See Norton, supra note 5 at 89 (stating that the Clauses prevent government supported favoritism); **Merrill Peterson, Thomas Jefferson and the New Nation** 113-14 (1970); 1 **K. Rowland, The Life of Charles Carroll of Carrollton** 247 (1898); Wood, supra note 117 at 73, noted in VanderVelde, supra note 181 at 495. See Delgado, supra note 14 at 116 (using the Title of Nobility Clauses to support his version of equal protection).

[187] Cong. Globe, 39th Cong., 1st Sess. 91 (1865). Cong. Globe, 38th Cong., 1st Sess. 1324 (1864). **Eric Foner, Politics and Ideology in the Age of the Civil War** 73 (1980) (defining the concept of freedom inherit in the Thirteenth Amendment to rest on economic independence rather than mere self ownership). Cf. Kevin D. DeBre, Patents on People and the U.S. Constitution: Creating Slaves or Enslaving Science, 16 **Hastings Const. L. Q.** 221, 246-247 (1989) (arguing that genetics can be used to establish a form of slavery).

recover what vestiges they could of it.[188] Just as the badges and incidents of slavery were not eliminated in 1864, neither were all of its forms.

Although not a governmental mechanism *per se*, the government is so intertwined with the corporation that it is by its very nature a continued form of state action.[189] The government endows corporations with the ability to "live" forever.[190] This form allows

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[188] VanderVelde, supra note 181 at 486-487. The resources of the South were still concentrated in a relatively few persons and the people were forced to acquiesce to their terms. Id. The sharecropper's situation is a good illustration. Id.

[189] The Supreme Court has found state action when corporations perform governmental functions, see, e.g., Marsh v. Alabama, 326 U.S. 501, 506-09 (corporation performing necessary municipal functions in a company-owned town); Smith v. Allwright, 321 U.S. 649, 633 (1944) (political party that determines the participants in a primary election considered an agency of the state); Evans v. Newton, 382 U.S. 296 (1966) (finding that there is state participation if a private concern is impregnated with governmental character); accord Pennsylvania v. Brown, 392 F.2d 120 (3rd Cir. 1968); cf. Bank of Delaware v. Buckson, 255 A.2d 710 (Del. 1969) (finding that state action exists wherever there is state participation through any arrangement); accord In re Estate of Wilson, 59 N.Y.2d 461 (1983). Corporations are state actors because they exercise powerful economic dominion over individuals in a quasi-public manner. See **Roberto Unger, Law in Modern Society: Toward a Criticism of Social Theory** 201-02 (1976); Wolfgang Friedmann, Corporate Power, Government by Private Groups, and the Law, 57 **Colum.L.Rev.** 155 (1957); Adolf Berle, Constitutional Limitations on Corporate Activity--Protection of Personal Rights from Invasion through Economic Power, 100 **U.Pa.L.Rev.** 933 (1952); Larry E. Ribstein, The Constitutional Conception of the Corporation, 4 **Supreme Court Economic Rev.** 95 (1995) (stating that the substitution of an "artificial legal entity for the underlying individuals implies pervasive government power to regulate corporations.") But see Jackson v. Metropolitan Edison Co., 419 U.S. 353 (1974) (mere state acquiescence to private action is not tantamount to state action); Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978) (no state action when goods were sold privately under Uniform Commercial Code provisions).

[190] 18 **Am.Jur.2d** Corporations s. 1 (1985).

them to accumulate wealth and power to an extent incapable by other persons.[191] They benefit from special laws and tax consequences and other privileges that natural persons do not and cannot receive.[192]

Corporations have received a Title of Nobility because, although unelected, they are effectively involved in governance.[193] These groups of persons are not only in violation of the Titles of Nobility Clauses but also the Republican Form of Government

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[191] **The Monopoly Makers** xi (Mark J. Green ed. 1973).

[192] Id. at v-xi. Furthermore, a natural person's economic mobility is, but should not be, impeded by artificial government distinctions given to others. Eugenic Artificial Insemination: A cure for Mediocrity?, 94 **Harv. L. Rev.** 1850, 1858-61 (1981) [hereinafter Eugenics].

> Of course, a republic born of the misrule of a monarchy should not grant titles of nobility. The institution called nobility had . . . by prestige and by the favoritism of the government of which it was so large a part it had gained a greater share of the lands and other wealth of England . . . .

Norton, supra note 5 at 89 (stating that the Clauses prevent government supported favoritism). The 200 largest industrial corporations in the United States account for one-half of the profits earned. 5 **Encyclopaedia Britannica**, supra at note 131 at 182, 185 (15th ed. 1984). Two-thirds of private property is owned by the corporation. Hacker, supra note 172 at 1. See www.porkwatch.com.

[193] Spence, supra note 18 at 205, 206. **Robert C. Fellmeth, With Justice for Some: an Indictment of the Law by Young Advocates** 244 (Bruce Wasserstein and Mark J. Green eds. 1970). See generally **Arthur Selwyn Miller, The Modern Corporate State: Private Governments and the American Constitution** (1976) (speaking about the subrogation of representative government by the corporation). Berle & Means, supra note 171 at 352, 357 (stating that the corporation has assumed a life of its own and through sheer economic power has supplanted the Constitution). Cf. Insurance Co. of North America v. Kueckelhan, 425 P.2d 669 (Wa. 1967) (placing "police power" in a corporate entity's hands). "[P]olice power is an attribute of sovereignty possessed by every state of the Union." Id. at 682 (Hale, Hill, Rosellini, and Hunter, JJ.,

Clause[194] because state legislatures have provided the mechanism for creation of a de facto monarchy that has essentially subjugated the States' republican form of government.[195]

Analogous to Horst, state governments have bestowed upon the corporate "person" privileges, honors and emoluments unique to them.[196] Consistent with Zobel, they have created a scheme whereby the corporate "person" benefits from its government enforced status.[197] Analogous to Fullilove, government power has been used to grant

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dissenting). The government shouldn't "clothe private persons with the power of government in a self-governing democracy." Id.

[194] **U.S. Const.** art. IV, s. 4. "The United States shall guarantee to every State in this Union a Republican Form of Government . . . ."

[195] Miller, supra note 156 at xvi. **The Federalist** No. 39, at 242 (J. Madison). The colonists thought these clauses were interrelated. Id. Ketcham, supra note 84 at 64, 640. Although there is not a similar provision for the federal government, the same prohibition might be applicable to the federal government through the Due Process Clause of the Fifth Amendment. See e.g., Bolling v. Sharpe, 347 U.S. 497 (1954). **Ronald D. Rotunda et al, Constitutional Law** 523-525 (West Publ., 3d ed. 1986). Nevertheless, the Nobility Clause singularly prohibits this activity because their governmental influence makes them an unelected nobility. Heldt, supra note 10 at 1170-71.

[196] Horst, 48 Ala. at 142. Justice Saffold found that granting of special privileges to a unique group was violative of the state's title of nobility clause which is identical to the one found in the Constitution. Id. Under Justice Saffold's reasoning in Horst, the intrinsic and explicit benefits conferred upon the corporate entity are impermissible because government benefits may not be bestowed upon a unique group. Id. See supra notes 155-195 (arguing that the intrinsic and explicit benefits the government confers upon the corporate form robs the people of economic and governmental freedom protected by the Constitution).

[197] Zobel, 457 U.S. at 69 n.3 (Brennan, Marshall, Blackman and Powell, JJ., concurring). The four concurring judges in Zobel found that the use of government to grant degrees-of-citizenship establishes a

special privileges to the corporate person.[198] Analogous to the positions asserted in Eskra and Mathews, the people have been ignobled because the power of government has been used to reduce them to an inferior status economically.[199] A Title of Ignobility[200]

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latter-day nobility. Id. Under the reasoning of the concurring judges' opinion in Zobel, government's bestowing of intrinsic and explicit benefits upon the corporate entity is impermissible because it reestablishes a nobility in contravention of the Clauses. Id. See supra notes 155-195 (arguing that the intrinsic and explicit benefits the government confers upon the corporate form robs the people of economic and governmental freedom protected by the Constitution).

[198] Fullilove, 448 U.S. 531 n.13. Justice Stewart's dissent in Fullilove found that government endowed benefits are antithetical to the colonists effort to establish a government that did not recognize distinctions between people. Id. (Stewart and Rehnquist, JJ., dissenting). Justice Stevens' dissent in Fullilove found that government endowed privileges are in violation of the principle that government is to be administered impartially. Id. at 532-33 (Stevens, J., dissenting). Under the reasoning in the dissenting opinions in Fullilove, government's bestowing of intrinsic and explicit benefits upon artificial "persons" violates the inherent principles upon which this government was founded. Id. at 531 n.13, 532,33. See supra notes 155-195 (arguing that the intrinsic and explicit benefits the government confers upon the corporate form robs the people of economic and governmental freedom protected by the Constitution).

[199] Eskra, 524 F.2d at 13 n.8. Mathews, 427 U.S. at 520 n.3 (Stevens, J., dissenting). Justice Stevens' arguments in Eskra and Mathews asserted that government distinctions that disadvantage some in relation to others affixes a title of ignobility which is impermissible. Id. Under the reasoning of Justice Steven's arguments in Eskra and Mathews, government's bestowing of intrinsic and explicit benefits upon artificial "persons" allows for the empowerment of the artificial "person" which eventually reduces the natural person to the status of a slave. Id. See supra notes 155-195 (arguing that the intrinsic and explicit benefits the government confers upon the corporate form robs the people of economic and governmental freedom protected by the Constitution).

[200] 448 U.S. at 535 n.1 (stating that the Clauses also prevent government induced ignobility); 427 U.S. at 521 n.3 (stating that the Clauses also prevent government induced ignobility).

is effectively conferred on unincorporated persons because they are indirectly burdened by particularized state action that is not directly related to any culpable conduct.[201]

Consistent with the intent of the Clauses[202] and directly applicable to Andrew Jackson's assertions,[203] every exercise of governmental power in favor of those of a certain status is prohibited - particularly artificial entities. The Clauses specifically disallow the application of any rationale to sanitize the government's activity. It is not relevant that anyone can incorporate. The government cannot confer one Title of Nobility on one person and cannot confer Titles of Nobility on a number of persons or only on persons who request it. The Clauses explicitly prohibit the conferral of any benefit upon anyone by the government.[204]

IV. FURTHER APPLICATION OF THE TITLE OF NOBILITY CLAUSES

Although not extensively addressed in the writings of the colonials, two modern phenomena are at odds with the Clauses. The colonists did not speak specifically about the application of the Clauses to a welfare state. A welfare state probably wasn't anticipated because it did not exist prior to that time. The concept was foreign to colonial

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[201] Cf. 448 U.S. at 535 n.1 (stating that the Clauses also prevent government induced ignobility); 427 U.S. at 521 n.3 (stating that the Clauses also prevent government induced ignobility).

[202] See supra notes 8-28, 155-195 (arguing that the corporate form robs the people of economic and governmental freedom protected by the Constitution).

[203] See supra notes 70-76 (stating that the use of government to advantage some over others is unconstitutional and threatens the foundation of government).

[204] **U.S. Const.** art. I, ss. 9, 10 ("[n]o Title of Nobility shall be granted by the United States" and "[n]o State shall . . . grant any Title of Nobility . . .") (emphasis added).

thought because the principles by which they lived were completely against it.[205] Furthermore, government enforcement of professional monopolies is contrary to the colonial mindset as well.[206]

A. ELIMINATION OF THE WELFARE STATE

The welfare state undercuts notions of equality enshrined in the prohibitions against titles of nobility.[207] The Clauses were intended to ensure that governmental status or governmental classification would not bestow gifts on some or impede others.[208] To coerce resources from one to give or redistribute to another is an impediment to one and a gift to the other. Certain individuals in a feudal society received benefits merely because of their status; these benefits were derived from resources extracted from others by the government.[209] Likewise, welfare recipients receive benefits from the government merely because of their status.[210] The Virginia Declaration of Rights of 1776, from

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[205] 7 Thorpe, supra note 31 at 3813.

[206] Id.

[207] John B. Attanasio, The Constitutionality of Regulating Human Genetic Engineering: Where Procreative Liberty and Equal Opportunity Collide, 53 **U. Chi. L. Rev.** 1274, 1308 (1986).

[208] Attanasio, supra note 207 at 1311. See Eugenics, supra note 192 at 1858-61(stating that government involvement in genetic engineering might confer an ennobled status on some).

[209] Heldt, supra note 10 at 171.

[210] Cong. Globe, 34th Cong., 3d Sess. app. at 140 (1857) (stating that the proper scope of government "defends the inborn rights of each against the combined power of all; . . . rewards labor and protects property." James Madison stated that "the protection of . . . property" is "the first object of government"). **The Federalist** No. 10, at 78. Charles Pickney said, "we must necessarily establish checks, lest one rank of

which we principally derived the Bill of Rights, speaks directly to the concept of government entitlements. It says "no man or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services."[211]

A welfare state leads to factions and the formation of interest groups.[212] The Federalist No. 10 offers as forcible a condemnation of government-induced factions and interest-group legislation as one might hope to find.[213] Madison recognized that factions will inevitably destroy popular government.[214] Even if interest groups represent a majority of the people, governmental power must not be used to violate the rights of the minority in the interests of the majority.[215]

The people simply did not give a grant of authority to the government to establish a welfare state. The Federalist No. 44[216] pursues the same theme by stressing that one of

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people should usurp the right of another." Secret Proceedings and Debates of the Convention 162 (Albany 1821), reprinted in Eugenics, supra note 192 at 1861.

[211] 7 Thorpe, supra note 31 at 3813.

[212] **The Federalist** No. 10, at 79-84 (J. Madison). Richard A. Epstein, Toward a Revitalization of the Contract Clause, 51 **U. Chi. L. Rev.** 703, 714 (1984). Cong. Globe, 38th Cong., 1st Sess. 2948 (1864) (remarks of Rep. Thomas Shannon) (stating that people are essentially slaves when they are made subject to the few, when they are made tools of the capitalist and the power of the nation is centralized).

[213] **The Federalist** No. 10, at 79-84 (J. Madison). See Carol M. Rose, The Ancient Constitution vs. The Federalist Empire: Anti-Federalism from the Attack on "Monarchism" to Modern Localism, **84 NW. U. L. Rev.** 74, 79 (1990) (identifying some of the factions which arise from aristocratic government).

[214] **The Federalist** No. 10, at 79-84 (J. Madison).

[215] Id.

[216] **The Federalist** No. 44, at 280-88 (J. Madison).

the purposes of the Constitution was to limit government to only enumerated powers.[217] Only deciding how these powers were to be implemented was left to construction or implication - not the scope of government.[218] Madison stated that the intent of the Constitution was to prevent endless legislative battles aimed at redistribution of opportunities and wealth between factions.[219]

The proper scope of government "defends the inborn rights of each against the

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[217] Id.

[218] Id. The statements made in The Federalist No. 44 can only be understood in light of the principle stated in The Federalist No. 45--that the powers of the federal government are few and defined. **The Federalist** No. 45, at 289, 292-93 (J. Madison). The enumerated provisions may have carried with them implicit power but the Necessary and Proper Clause was inserted for clarity. **The Federalist** No. 44, at 285. Madison stated, "No axiom is more clearly established in law, or in reason, than that wherever a general power to do a thing is given, every particular power necessary for doing it is included." Id. Madison said the Clause only explicitly empowers the federal government to carry out its enumerated powers - nothing more. Madison stated, "Without the substance of this power, the whole Constitution would be a dead letter." Id. at 284.

> If it be asked what is to be the consequence, in case the Congress shall misconstrue this part of the Constitution and exercise powers not warranted by its true meaning, I answer the same as if they should misconstrue or enlarge any other power vested in them.

Id. at 285. See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176 (1803) (the powers of government are defined and limited). See 1 **The Debates and Proceedings in the Congress of the United States** 436 (Joseph Gales ed. 1834). James Madison stated, ". . . it may not be thought necessary to provide limits for the legislative power in that country [Britain], yet a different opinion prevails in the United States . . . . The people of many States have thought it necessary to raise barriers against power in all forms and departments of the Government . . . ." Id.

[219] Epstein, supra note 212 at 714.

combined power of all; . . . rewards labor and protects property."[220] Redistribution of property is completely at odds with proper government.[221] One of the major issues underlying the Civil War was that each person should be able to retain the fruits of their own labor rather than another receiving it.[222]

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[220] Cong. Globe, 34th Cong., 3d Sess. app. at 140 (1857) (remarks of Ohio Rep. John Bingham).

[221] Id. Freedom through private enterprise should not be discouraged and destroyed through taxation. **Robert Nozick, Anarchy, State and Utopia** 26-53 (1974). There is no moral justification for some individuals to use force and coercion to seize and consume the economic output of others, even through the political, democratic process. See generally **Richard A. Epstein, Takings** (1985) (stating that the Takings Clause already constitutionally prohibits the forced seizure of the output of some for the consumption of others). The Constitution prohibits redistributitive welfare 'entitlements' and grant all citizens the right to be free from the forced seizure of their economic output for the consumption of others. Peter J. Ferrara, Comment On: Making the Case for a Constitutional Right to Minimum Entitlements, 44 **Mercer L. Rev.** 567, 577 n.45. (1992). See also **The Federalist** No. 45, at 289, 292-93 (J. Madison) (stating that the happiness of the people is not to be sacrificed to the views of political institutions and that the powers of government do not include "objects which, in the ordinary course of affairs, concern the lives, liberties, and prosperities of the people . . . ."). See also Imwinkelried, supra note 2 at 287-88 (stating that liberty can exist only with the absence of government).

[222] See e.g., Cong. Globe, 39th Cong., 1st Sess. 499 (1866) (remarks of Sen. Trumbull) ("the fruit of their own labor"); Cong. Globe, 39th Cong., 1st Sess. 504 (1866) (remarks of Sen. Howard) ("the fruits of his toil"); Cong. Globe, 39th Cong., 1st Sess. 41-42 (1865) (remarks of Sen. Sherman) ("the fruits of their own labor"); Cong. Globe, 38th Cong., 2d Sess. 200 (1865) (remarks of Rep. Farnsworth) ("the fruits of his own industry"); Cong. Globe, 38th Cong., 1st Sess. app. at 113 (remarks of Sen. Howe) ("the fruits of their own toil"); Cong. Globe, 38th Cong., 1st Sess. 2990 (1864) (remarks of Sen. Ingersoll) ("rewards of his own labor"); Cong. Globe, 38th Cong., 1st Sess. 2979 (1864) (remarks of Rep. Farnsworth) ("the fruits of his own toil"); Cong. Globe, 38th Cong., 1st Sess. 572 (1864) (remarks of Rep. Eliot) ("the proceeds of his own labor"). VanderVelde, supra note 181 at 473, n.152.

Many of the arguments used to justify the welfare state were also used to justify slavery.[223] Ohio Representative John Bingham linked this philosophy of governmental non-involvement with self-actualization.[224] He said that the anti-nobility clauses prohibited the endowment of governmental benefits.[225] He said people should generate benefits from their own merit and effort independent of governmental intervention.[226]

The welfare state also has an ignobling effect. It may even be intentional. Gouverneur Morris' said "the vassalage of the poor has ever been the favorite offspring of the Aristocracy."[227] America's welfare system is creating vassalage in certain Americans. The handouts have tended to create a perpetual condition of dependency among their recipients.[228]

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[223] Cong. Globe, 35th Cong., 1st Sess. 962 (1858) (remarks by Sen. Hammond) (stating that slavery was preferable to poverty and because of the Southerners compassion the slaves were well compensated and because of slavery there was no begging, no starvation). Cong. Globe, 38th Cong., 1st Sess. 1320 (1864) (speech by Sen. Henry Wilson) (excoriating the notion that government coerced "compassion" was a positive good and was a necessary part of the advancement of civilization).

[224] Cong. Globe, 34th Cong., 2d Sess. app. at 140 (1857).

[225] Id.

[226] Id.

[227] 2 Farrand, supra note 17 at 222 (comparing slavery with the vassalage associated with aristocracy). See Cong. Globe, 38th Cong., 1st Sess. 1320 (1864) (aristocracy produces slavery). In one form or another, slavery will be the product of aristocracy. Cong. Globe, 35th Cong., 1st Sess. 1282-83 (1858) (remarks of Rep. Francis Blair).

[228] Ferrara, supra note 221 at 574. Dependency on welfare is passed on from generation to generation. See The Changing Face of America--How will Demographic Trends Affect the Courts?, 72 **Judicature** 125, 131 (1988) (stating that in some cases, welfare dependency has already reached five generations); Jason DeParle, Why Marginal Changes Don't Rescue the Welfare System, **N.Y. Times**, Mar. 1, 1992, at D3 (". . .

Analogous to Horst, governmental power has been used to bestow upon certain persons privileges, honors and emoluments unique to their status.[229] Consistent with Zobel, schemes have been devised whereby certain persons receive benefits due to their status.[230] Analogous to Fullilove, government power has been used to grant special privileges to persons of a certain status.[231] Analogous to the positions asserted in Eskra

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long term recipients make up about 56 percent of the [welfare] roles at any given time"); **President George Bush, State of the Union Address** (Jan. 28, 1992), reprinted in **N.Y. Times**, Jan. 29, 1992, at A16, A17 (stating that welfare has become a habit, lifestyle and like a legacy). Similar comments have been made by President Bill Clinton. David S. Broder, Clinton Portrays GOP as Divisive; Democrat Courts Black and Jewish Voters, Touts Welfare Revisions, **Wash. Post**, Sept. 10, 1992, at A12.

[229] Horst, 48 Ala. at 142. Justice Saffold found that granting of special privileges to a unique group was in violation of the state's title of nobility clause which is identical to the one found in the Constitution. Id. Under Justice Saffold's reasoning in Horst, the benefits conferred upon welfare recipients are impermissible because government benefits may not be bestowed upon a unique group. Id. See supra notes 207-228 (arguing that the conferral of welfare benefits is an unconstitutional exercise of governmental power).

[230] Zobel, 457 U.S. at 69 n.3 (Brennan, Marshall, Blackman and Powell, JJ., concurring). The four concurring judges in Zobel found that the use of government to grant degrees-of-citizenship establishes a latter-day nobility. Id. Under the reasoning of the concurring judges' opinion in Zobel, government's bestowing of welfare "benefits" upon certain persons is impermissible because it reestablishes a nobility and a vassalage in contravention of the Clauses. Id. See supra notes 207-228 (arguing that conferring welfare benefits are an unconstitutional exercise of governmental power).

[231] Fullilove, 448 U.S. 531 n.13. Justice Stewart's dissent in Fullilove found that government endowed benefits are antithetical to the colonists effort to establish a government that did not recognize distinctions between people. Id. (Stewart and Rehnquist, JJ., dissenting). Justice Stevens' dissent in Fullilove found that government endowed privileges are in violation of the principle that government is to be administered impartially. Id. at 532-33 (Stevens, J., dissenting). Under the reasoning in the dissenting opinions in Fullilove, government's bestowing of welfare "benefits" upon certain individuals violates the inherent

and Mathews, the people have been ignobled because the power of government has been used to reduce welfare recipients to a state similar to a slave and others to a state of slaves and vassals.[232] A Title of Ignobility[233] is effectively conferred on the people because they are indirectly burdened by particularized state action that is not directly related to any culpable conduct.[234]

Consistent with the intent of the Clauses[235] and Andrew Jackson's assertions, every exercise of governmental power in favor of those of a certain status is prohibited.[236] Since there is not any grant of authority to establish a welfare state, the

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principles upon which this government was founded. Id. at 531 n.13, 532,33. See supra notes 207-228 (arguing that the conferral of welfare benefits is an unconstitutional exercise of governmental power).

[232] Eskra, 524 F.2d at 13 n.8. Mathews, 427 U.S. at 520 n.3 (Stevens, J., dissenting). Justice Stevens' arguments in Eskra and Mathews asserted that government distinctions that disadvantage some in relation to others affixes a title of ignobility which is impermissible. Id. Under the reasoning of Justice Steven's arguments in Eskra and Mathews, government's bestowing of welfare "benefits" ignobles the recipient and the those forced to support the scheme. Id. See supra notes 207-228 (arguing that conferring welfare benefits is an unconstitutional exercise of governmental power because welfare benefits have the effect of either ennobling or ignobling welfare recipients and persons forced to contribute to such a scheme are ignobled).

[233] 448 U.S. at 535 n.1 (stating that the Clauses also prevent government induced ignobility); 427 U.S. at 521 n.3 (stating that the Clauses also prevent government induced ignobility).

[234] Cf. 448 U.S. at 535 n.1 (stating that the Clauses also prevent government induced ignobility); 427 U.S. at 521 n.3 (stating that the Clauses also prevent government induced ignobility).

[235] See supra notes 8-28, 207-228 (arguing that the conferral of welfare benefits is an unconstitutional exercise of governmental power).

[236] See supra notes 70-76 (stating that the use of government to advantage some over others is unconstitutional and threatens the foundation of government).

Clauses specifically disallow the application of any rationale to sanitize the government's activity.[237]

The United States Supreme Court has held that no one has a constitutional right to welfare.[238] Furthermore, the overall anti-statist philosophy of the Constitution and the original purpose of the Equal Protection Clause of the Fourteenth Amendment was to prevent governmental favoritism[239] - whether that favoritism was based on race, creed, status or rank.[240]

B. ELIMINATION OF THE 'PROFESSIONAL' STATUS

Public educational institutions violate the Titles of Nobility Clauses. The Clauses prohibit the use of governmental power to make distinctions between people.[241] As

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[237] **U.S. Const.** art. I, ss. 9, 10 ("[n]o Title of Nobility shall be granted by the United States" and "[n]o State shall . . . grant any Title of Nobility . . .") (emphasis added).

[238] Dandridge v. Williams, 397 U.S. 471, 485 (1970). A Maryland Department of Public Welfare regulation placed a $250.00 per month absolute limit on a certain kind of welfare benefit. Id. at 472. The United States Supreme Court held that the regulation was not impermissible because the state has the power to decide how to appropriate benefits and it was not unconstitutional because no one has a constitutional right to welfare. Id. at 485.

[239] Joseph Tussmen and Jacobus tenBroek, The Equal Protection of the Laws, 37 **Calif. L. Rev.** 341 (1949).

[240] Imwinkelried, supra note 2 at 287-88.

[241] Cf. George Anastaplo, A Review of the Constitution of 1787: A Commentary, 84 **NW. U. L. Rev.** 711, 728. George Anastaplo stated, "Article I's prohibition of Titles of Nobility and Article III's prohibition against hereditary punishment likewise militate against a hierarchical society" Id. Cf. Brian Mikulak, Classism and Equal Opportunity: A Proposal for Affirmative Action in Education Based on Social Class, 33 **How. L. J.** 113, 116 (1990) (stating that government induced social and economic stratification

Professor and author Paul Fussel stated, ". . . colleges and universities are the current equivalent of salons and levees . . . . If no other institution here confers the Titles of Nobility forbidden in the Constitution, they do. Or something very like it."[242]

George Bernard Shaw said, "All professions are conspiracies against the laity."[243] Nearly all professions are established by degreed status whereby the government is directly or indirectly involved. Most trades and certainly the legal profession are based upon a government enforced degreed status.[244]

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produces real and festering injustice in America). On an even broader scope, the Court has held that people do not have a constitutional right to a particular level of education. San Antonio School District v. Rodriguez, 411 U.S. 1, 22-23 (1973). An argument could also be made against ex-con labels because they tend to ignoble a person even though the individual has given what was due. See Trop v. Dulles, 356 U.S. 86 111 (1958) (Brennan, J., concurring) (recognizing the extra-correctional burdens ex-convicts bear).

[242] **Paul Fussel, Class: A Guide through the American Status System** 141 (1983).

[243] Quoted in **Mark J. Green, Verdicts on Lawyers** 1 (Ralph Nader and Mark J. Green eds. 1976).

[244] See N.D. Cent. Code s. 27-11-01 (1993) (prohibiting the unauthorized practice of law). This structure may be in violation of the Constitution which prevents even the slightest hindrance to justice. **U.S. Const.** Amend. I. "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." Id. (emphasis added). Though not directly applicable to the states, this prohibition is incorporated through the Fourteenth Amendment's Due Process Clause because of its fundamental importance. John E. Nowak et al., **Constitutional Law** 316-17 (3d ed. 1986). For all practical purposes, the people can no longer access the dispute resolution system due to the artificially created technicalities which have been built into its structure. **Fred Rodell, Woe Unto You Lawyers** 126 (A Berkley Book 1980) (1939). Therefore, access is based largely on a petitioner's ability to pay and the market value of a lawyer's time and this rarely justifies pursuing or defending lawsuits in the low five-figure range. Charles Thensted, Litigation and Less: The Negotiation Alternative, 59 **Tul. L. Rev.** 76, 79 (1984).

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 . . . ."[245] Although his comments were phrased in such a way not to denigrate the American legal aristocracy (because of his predisposition to aristocracy),[246] De Tocqueville did say that it is at the bar or the bench that the American aristocracy is found.[247]

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.[248] However, judges have ordained themselves as the ultimate interpreters of the law and the constitution.[249] United

[245] De Tocqueville, supra note 95 at 245. See Ferrara, supra note 221 at 568.

[246] De Tocqueville, supra note 95 at xxxvi-xxxvii. Hazard, supra note 95 at 1271. Not only does the legal profession have a monopoly (through statutes prohibiting the unauthorized practice of law) but lawyers are de facto unelected law makers. **Roger S. Haydock, et al., Fundamentals of Pretrial Litigation** 8 (3d ed. 1994). They are the unelected 4th arm of the government. James W. Hurst, Lawyers in American Society, 50 **Marq. L. Rev.** 594, 598 (1966).

[247] De Tocqueville, supra note 95 at 247. R. Kent Newmyer, Daniel Webster as Tocqueville's Lawyer: The Dartmouth College Case Again, 11 **Am. J. of Legal Hist.** 127, 128 (1967).

[248] David M. Ebel, Why and to Whom Do Constitutional Meta-Theorists Write?--A Response to Professor Levinson, 63 **U. Colo. L. Rev.** 409, 411 (1992).

[249] Rodell, supra note 244 at 16, 18. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177-180 (1803). The declaration by the Supreme Court that the Supreme Court is the final arbiter of the Constitution is self-serving and fails to recognize that that the people never gave the Supreme Court this kind of authority and that the people should be able to exercise this power through the jury. Akhil Reed Amar, The Bill of Rights as a Constitution, 100 **Yale L. J.** 1131, 1188-89 (1991). Contra Sparf v. U.S., 156 U.S. 51, 72 (1895) (holding that the jury may not be instructed that they the power of nullification).

States Supreme Court Chief Justice Charles Evans Hughes said, "we are under a Constitution, but the Constitution is what the judges say it is."[250] Because the Supreme Court has ultimate control over the whole legal system, five people can exert their will over hundreds of millions of people.[251]

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"[252] 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.[253] 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.[254] But the United States Supreme Court could plunge a nation into anarchy or civil war.[255] De Tocqueville's words were prophetic.[256]

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[250] Quoted in Rodell, supra note 244 at 41.

[251] Ronald J. Bacigal, Putting People Back into the Fourth Amendment, **62 Geo. Wash. L. Rev.** 359, 384 (1994).

[252] 2 Farrand, supra note 17 at 224. See Cong. Globe, 34th Cong., 3d Sess. app at 140 (1857) (remarks by Rep. Bingham) (linking the government of a few over many with slavery).

[253] Phil C. Neal, De Tocqueville and the Role of the Lawyer in Society, 50 **Marq. L. Rev.** 607, 608 (1966).

[254] Id.

[255] Id.

[256] See Dred Scott v. Sanford, 60 U.S. 393, 451 (1856). A civil war followed not long after the Supreme Court's declaration that people with black skin color are not actually people, and hence are not attributed the rights of people, so they may be reduced to property. Id. People have effectively been reduced to property through the government's establishment and development of the corporation. Great unrest among the populace was caused by the injustices perpetrated through the empowerment of the corporation. Live-

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."[257]

The fundamental tool of tyranny used by judicial aristocrats is the doctrine of stare decisis - "to abide by, or adhere to, decided cases."[258] Everyone must abide by the decisions of the few at the top.[259] This doctrine sprang from the same tyrannical aristocratic atmosphere from which the colonists fought to free themselves.[260] Even though this is not just, the Court knows that it must appear to be so.[261] They substitute consistency for justice.

Although, technically, stare decisis is only a "principle of policy, not a

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stock Dealers' & Butchers' Ass'n v. Crescent City Live-stock Landing & Slaughter-House Co., 15 F. Cas. 649 (D. La. 1870) (Slaughter-House Cases). See, Saenz v. Roe, 526 U.S. 489, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999) (Thomas, joined by Rehnquist, dissenting) (speculating that the development of the Privileges and Immunities Clause was prematurely stifled by the *Slaughter-House Cases).*

[257] Quoted in **Hans Trefousse, The Radical Republicans** 56 (1969).

[258] **Black's Law Dictionary**, supra note 8 at 1406.

[259] Maurice Kelman, The Force of Precedent in the Lower Courts, 14 **Wayne L. Rev.** 3, 4 (1967).

[260] James C. Renquist, The Power that Shall be Vested in a Precedent: Stare Decisis, the Constitution and the Supreme Court, 66 **B.U. L. Rev.** 345, 348 (1986). One of the key elements of a government ruled by the people is a jury where they judge both law and fact. Amar, supra note 249 at 1187-95. This is one of the things the colonists fought for. Hosmer, supra note 16 at 191.

[261] Charles H. Nalls and Paul R. Bardos, Stare Decisis and the U.S. Court of International Trade: Two Case Studies of a Perennial Issue, 14 **Fordham Int. L. J.** 139, 142 (1990).

mechanical formula,"[262] it has been treated like a rule of law.[263] Practically speaking, rarely can a "lower" court decide a case differently than a similarly decided case by a "higher" court.[264] 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."[265]

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.[266] If the Constitution needs changing, the people have provided the mechanism for its change -

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[262] Patterson v. Mclean Credit Union, 485 U.S. 617, 618-619 (1988). Supposedly, it is a doctrine of convenience. Charles J. Cooper, Stare Decisis: Precedent and Principle in Constitutional Adjudication, 73 **Cornell L. Rev.** 401, 402-403, 410 (1988). In reality, there is no stare decisis at all. Leading Cases, 105 **Harv. L. Rev.** 177, 187 (1991). Frank H. Easterbrook, Ways of Criticizing the Court, 95 **Harv. L. Rev.** 802, 818 n.39 (1982) (stating that stare decisis really is little more than a mirage invented by judges in an effort to have us, as well as other judges, believe they are constrained).

[263] Kelman, supra at note 259 at 4.

[264] See Id. (stating that there is an absolute duty to apply the law as last pronounced by superior judicial authority). The persuasive value of an opinion should be an adequate substitute for reliance on stare decisis. **Peter Wesley-Smith, Theories of Adjudication and the Status of Stare Decisis**, reprinted in **Precedent in Law** 73-87 (Laurence Goldstein ed. 1987). **Erik G. Light, Legal Theory and Philosophy** 1705, 1706 (1989).

[265] Burnett v. Coronado Oil & Gas Co., 285 U.S. 393, 406 (1931) (Brandeis, J., dissenting).

[266] Mayer, supra note 16 at 298. Even with "consent," government cannot legitimately be used beyond its intended scope regardless of its "representativeness." Cong. Globe, 34th Cong., 3d Sess. app. at 140 (1858) (remarks of Ohio Rep. John Bingham).

Constitutional amendments.[267] If there isn't sufficient impetus among the populace to change the Constitution, it shouldn't be changed.[268]

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.[269] They were essentially a mini-governmental

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[267] **U.S. Const.** art. V.

[268] **John Marshall's Defense of McCulloch v. Maryland** 130-31 (Gerald Gunther ed. 1969). The people are supreme. The Constitution is subordinate to the people and those people at the reins of government subordinate to the Constitution. Id. Amar, supra note 2 at 1463 n.163. "[A]s far as the sovereignty of the States cannot be reconciled to the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter." **The Federalist** No. 45, at 289 (J. Madison). Governmental supremacy through discretionary power is a British theory and was anathema to the colonists. Amar, supra note 2 at 1480. In America ". . . the people, without exaggeration, may be said to be entirely the masters of their own fate." **The Federalist** No. 28, at 180-81 (A. Hamilton). People at the reins of government are to be subordinate to the Constitution, not redefine it or make implicit assumptions about it. The colonists were aware of the folly of "representatives" thinking they were the people and their views were representative of the people. **The Antifederalist Papers** 19. Representatives commonly "betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter . . . ." Id. **The Federalist** No. 71, at 433 (A. Hamilton). Government officials are only "representatives," "agents," "delegates," "deputies," and "servants" and are not considered the people and have only ministerial, not discretionary, powers. Amar, supra note 2 at 1436.

[269] Georgia v. Brailsford, 3 U.S. (3 Dall.) 1, 4 (1794). United States v. The William, 28 F. Cas. 614 (D. Mass. 1808) (allowing the jury to decide questions of law). Sparf v. U.S., 156 U.S. 51, 156 (1895) (Gray &

body with veto power.[270] 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.[271] The judiciary has since made the jury little more than their rubber stamp.[272]

When the Constitution was established, the people were adamant about having ultimate control of the law.[273] They established themselves as the final arbiter of the law

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Shiras, JJ., dissenting) (arguing that the jury had the power of nullification). Amar, supra note 249 at 1187-95.

[270] Amar, supra note 249 at 1187-95. Bacigal, supra note 251 at 366-69, 407. John Adams said, "the common people, should have as complete a control, as decisive a negative, in every judgment of a court of judicature" as they have with regard to other decisions of government. 2 **John Adams, The Works of John Adams** 253 (Charles C. Little & James Brown eds. 1850). Vox populi, vox dei. The voice of the people is the voice of God. An Interview with Tom Foley, **C-SPAN**, 6:30 p.m., 12-23-94.

[271] Amar, supra note 249 at 1183, 1187-95. Bacigal, supra note 251 at 368. The judge's role is merely to give an opinion and to provide some guidance to a jury which "clearly means by way of advice and instruction only, and not by way of order or command." Sparf, 156 U.S. at 135 (Gray and Shiras, JJ., dissenting).

[272] Spence, supra note 18 at 87-91. Today the jury can't be instructed that they have ultimate say on what the law is. Sparf, 156 U.S. 51; United States v. Dougherty, 473 F.2d 1113 (1972) (refusing an instruction of jury nullification). Mark D. Howe, Juries as Judges of Criminal Law, 52 **Harv. L. Rev.** 582 (1939) (tracing the decline of the jury's ability to determine law). See generally Note, The Changing of the Jury in the Nineteenth Century, 74 **Yale L. J.** 170 (1964) (documenting the decline of the power of the jury). Bacigal, supra note 251 at 378.

[273] Hosmer, supra note 16 at 191. Bacigal, supra note 251 at 369-70. Ronald Bacigal noted, "Alexander Hamilton successfully asserted that jurors 'have the right beyond all dispute to determine both law and fact'." Id. at 369. Amar, supra note 249 at 1133. Thomas Jefferson stated, "It is in the power, therefore to

by establishing a jury in which they had the power to determine both law and fact.[274]

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.[275] Their rights under the Magna Charta of having "judgment of his peers on the law of the land" was being taken away from them.[276] 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.[277] In fact, they were a mini-governmental body for each case.[278] 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."[279]

The jury's protective role was praised as a "safeguard against the arbitrary

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the juries, . . . to take on themselves to judge the law as well as the fact." Letter from Thomas Jefferson to James Madison (Mar. 15, 1789), in 3 **The Writings of Thomas Jefferson** 82 (H.A. Washington ed. 1853) Quoted in Bacigal, supra note 251 at 388.

[274] Hosmer, supra note 16 at 191. Bacigal, supra note 251 at 370-71. Sparf, 156 U.S. at 165 (Gray & Shiras, JJ., dissenting).

[275] Hosmer, supra note 16 at 191. Bacigal, supra note 251 at 374-78.

[276] Hosmer, supra note 16 at 191. Bacigal, supra note 251 at 374-75.

[277] Amar, supra note 249 at 1187-95.

[278] Id. 1 Tocqueville, supra note 95 at 293. De Tocqueville stated, "The jury is, above all, a political institution . . . ." Id. According to Alexander Hamilton, the jury had the power to determine the law "for reasons of a political and peculiar nature, for the security of life and liberty." 7 **Hamilton's Works** 335-36 (1886).

[279] Quoted in Spence, supra note 18 at 87. De Tocqueville, supra note 95 at 254.

exercise of power by the government. . . ."[280] 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.[281] Thomas Jefferson said, "I know of no safer depository of the ultimate powers of the society but the people themselves."[282]

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

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[280] Carmen A. Frattaroli, The Jury: Is it Viable, 6 **Suffolk U. L Rev.** 897, 898 (1971). Paul Hoffman, Double Jeopardy Wars, The Case for a Civil Rights "Exception", 41 **UCLA L. Rev.** 649, 668 (1993) (stating that jury nullification is a safeguard against governmental oppression). Sparf, 156 U.S. at 149 (Gray and Shiras, JJ., dissenting). See also Duncan v. Louisiana, 391 U.S. 145, 156 (1968) (extolling the jury as an "inestimable safeguard against the compliant, biased or eccentric judge").

[281] **Anne Strick, Injustice for All** 185 (1977). To the colonist, common sense was superior to "great legal science." Paul D. Carrington, Law and Chivalry: An Exhortation from the Spirit of the Hon. Hugh Henry Brackenridge of Pittsburgh (1748-1816), 53 **Pitt. L. Rev.** 705 (1992). A judge's main function was to "see that the parties has a fair chance with the jury." Howe, supra note 272 at 591. It is the height of arrogance and spurious for a "servant" to foist his views upon his "master" through notions of "police power" or "general welfare." Cf. Halbrook, supra note 85 at n.94 (stating that the people retained the right to conduct themselves in a manner they wish and that government officials are not their overseers). Cf. Amar, supra note 2 at 1434, 1440 (stating that government officials only have the power that the people explicitly gave them).

[282] Strick, supra note 281 at 226. Ronald Bacigal stated, "The jury serves a limited term and can never grow into a dangerous system." Bacigal, supra note 251 at 412 n.328.

that people stand when a judge enters into or leaves the courtroom.[283] 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.[284] Congress attempted to bestow titles such as "His Excellency" and "His Highness, the President of the United States and Protector of their Liberties."[285] The issue generated controversy in Congress and among the people.[286] Some felt an exalted title was necessary to elicit respect from foreign leaders.[287] Others said an exalted title would violate the principles for which the people fought.[288] The latter carried the day.[289]

The concept of honor presupposes a society in which individuals are accorded

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[283] In re Chase 468 F.2d 128 (7th Cir. 1972) (holding that persons must rise upon command when the judge enters and leaves the courtroom); Ex Parte Krupps, 712 S.W.2d 144 (Tex. Crim. App. 1986) (holding that persons must rise upon command when the judge enters and leaves the courtroom). Contra, U.S. v. Snider, 502 F.2d 645 (4th Cir. 1974) (stating that respect for the judiciary is earned, not commanded); Commonwealth v. Cameron, 462 A.2d 649 (Pa. 1983) (holding that contempt requires disruption of the proceedings, not merely failure to rise upon command).

[284] **Sol Bloom, History of the Formation of the Union under the Constitution** 373-82 (1935).

[285] Id. at 375-76.

[286] Id.

[287] Id.

[288] Id. at 377-78. Some colonial leaders even urged George Washington to be a king. Delgado, supra note 14 at n.86. Some people referred to Patrick Henry as "Son Allesse Royale" and "His Excellency" when he was governor of Virginia but the people thought this sort of deference was unbecoming, pompous cant. Mayer, supra note 16 at 318-19.

status, and therefore deference, within a hierarchically arranged social order.[290] The colonists sought to eliminate this kind of society.[291] It is inconsistent with the egalitarian principles of American democracy.[292] Special veneration is not due to those who are at the reins of government.[293]

According to Montesquieu, honor is the primary "spring" of aristocracy.[294] "[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."[295]

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.[296] To compel honor is to establish a system of stratification and to prescribe appropriate

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[289] Bloom, supra note 284 at 377-78.

[290] De Tocqueville, supra note 95 at 593-94, 96, 601-02. Robert C. Post, The Social Foundations of Defamation Law: Reputation and the Constitution, 74 **Calif. L. Rev.** 691, 702 (1986).

[291] Id.

[292] Id.

[293] Post, supra note 290 at 722-23.

[294] Id.

[295] Post, supra note 290 at 700. 1 Montesquieu, supra note 161 at 28. **The Federalist** Nos. 9, 43, 47, 78 (A. Hamilton) (J. Madison). In **The Federalist** No. 47, Montesquieu is described as "celebrated" and as an "oracle who is always consulted." Id. at 301. The Continental Congress similarly praised him as "the immortal Montesquieu." Wood, supra note 117 at 152.

[296] Post, supra note 290 at 700. **Pitt-Rivers, Honour and Social Status, in Honour and Shame: The Values of the Mediterranean** 21-22, 35 (J.G. Peristiany ed. 1966). **J.K. Campbell, Honour and the Devil**, in id. at 149.

behavior for people at the various points in the hierarchy; it entails acceptance of superordination and subordination.[297] 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.[298]

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.[299] 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.[300] Officials, however, can be viewed as agents or servants and therefore, in their position, inferior to the people.[301] From this perspective, the character, wisdom and mission of the people is considered superior to that of the official.[302] The official should be deferential to and subject to the criticism of his master because it this is within the proper scope of

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[297] **John Davis, People in the Mediterranean: An Essay in Comparative Social Anthropology** 98 (1977).

[298] Post, supra note 290 at 700.

[299] Id. note 290 at 722.

[300] Id.

[301] Id.

[302] Id.

their relationship.[303]

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.[304] In New York Times Co. v. Sullivan,[305] the Court said that in America, government officials are "public servants," and the people are their masters.[306] Masters have status and rightly demand veneration; servants do not.[307] 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."[308] In this country, government officials are not "the superior of the subject."[309] The unarticulated implication of Sullivan is that compelling or vindicating official honor is not a constitutionally legitimate function.[310]

Certainly, the people should not be compelled to rise at the command of their "servants." But the Clauses address much more than that. Any government-enforced

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[303] **J.F. Stephen, A History of the Criminal Law of England** 299-300 (1883). The Preamble of the Constitution declares; "[w]e the people of the United States . . . do ordain and establish this Constitution for the United States of America." **U.S. Const. Preamble**. "We the people" deliberately identifies the people as the masters and the ones who are due deference rather than the "state," or as in England, the King. Post, supra note 290 at 722.

[304] Post, supra note 290 at 706 n.95.

[305] 376 U.S. 254 (1964).

[306] New York Times Co. v. Sullivan, 376 U.S. 254, 282 (1964).

[307] Id.

[308] Id.

[309] Id.

[310] Post, supra note 290 at 724.

professional status is unconstitutional.[311] The primary authority for invalidating such schemes is the Title of Nobility Clauses themselves.[312] The creation of special benefits through government for a special group creates a classification which triggers application of the Clauses. Horst and Zobel are in support of this premise.[313] Analogous to Horst, persons of professional status have been bestowed privileges, honors and emoluments unique to their group.[314] Similar to Jama, titles have been attached to their names titles consistent with a title of nobility.[315] Consistent with Zobel, a scheme has been developed

[311] See supra notes 3-28, 241-44 (stating the underlying principles of the Clauses). Jensen, supra note 93 at 391. The Constitution prohibits a government enforced ennobled status. Id.

[312] See supra notes 3-28, 241-44 (stating the underlying principles of the Clauses).

[313] Horst, 48 Ala. at 142. Zobel, 457 U.S. at 69 n.3.

[314] Horst, 48 Ala. at 142. Justice Saffold found that granting of special privileges to a unique group violated the state's title of nobility clause which is identical to the one found in the Constitution. Id. Under Justice Saffold's reasoning in Horst, governmental establishment of a professional status violates the Clauses because persons of professional status receive privileges unique to their group. Any government official, including judges, should stand when non-governmental persons enter the room because they are the masters not the governmental official. Id. See supra notes 9-28, 237-243, 279-306 (stating the principles underlying the Clauses).

[315] Jama, 272 N.Y.S.2d at 678. Judge Maurice Wahl determined that even the act of using government powers to merely bestow upon an individual what might be considered an ennobled name to be un-American and to cut at the very heart of the principles of this nation. Id. Under the reasoning in Jama, any act by the government to bestow upon any individual a title or anything that might be considered an ennobled status, no matter how slight, is in contravention of the clauses. Id. at 678. See supra notes 9-28, 237-243, 279-306 (stating the principles underlying the Clauses).

which bestows quasi property rights on professional persons based on their status.[316] In a situation nearly parallel to the Society of the Cincinnati episode and analogous to Fullilove, persons of professional status have been accorded special privileges and a status superior to the people.[317] Similar to Morey, a economically advantaged closed class has been developed[318] and consistent with Boren, governmental powers are being used to promote economic privileges.[319] Analogous to Justice Steven's reasoning in

[316] Zobel, 457 U.S. at 69 n.3 (Brennan, Marshall, Blackman and Powell, JJ., concurring). The four concurring judges in Zobel found that the use of government to grant degrees-of-citizenship establishes a latter-day nobility. Id. Under the reasoning of the concurring judges' opinion in Zobel, the bestowing of special treatment upon unique group reestablishes a nobility in contravention of the Clauses. Id. See supra notes 9-28, 237-243, 279-306 (stating the principles underlying the Clauses).

[317] Fullilove, 448 U.S. 531 n.13. Justice Stewart's dissent in Fullilove found that government endowed benefits are antithetical to the colonists effort to establish a government that did not recognize distinctions between people. Id. (Stewart and Rehnquist, JJ., dissenting). Justice Stevens' dissent in Fullilove found that government endowed privileges are in violation of the principle that government is to be administered impartially. Id. at 532-33 (Stevens, J., dissenting). Under the reasoning in the dissenting opinions in Fullilove, to accord special privileges to persons of a governmental enforced professional status is to violate the inherent principles upon which this government was founded. Id. at 531 n.13, 532,33. See supra notes 9-28, 237-243 (stating the principles underlying the Clauses).

[318] Morey, 354 U.S. at 469. The Morey court found that to create government supported economic advantages for a certain class is impermissible. Id. Under the reasoning in Morey, to grant persons of professional status special government enforced economic advantages is impermissible. Id. See supra notes 9-28, 237-243 (stating the principles underlying the Clauses).

[319] Boren, 219 P.2d 573, 74. Justice Mallery's dissent in Boren found that to use government for economic privilege is as objectionable as a title of nobility. Id. Under the reasoning of Justice Mallery's dissenting opinion in Boren, the economic privileges accorded to persons of professional status are akin to the grant of

Eskra and Mathews, non-professional persons have been ignobled because the power of government has been used to reduce them to an inferior status.[320]

Consistent with the intent of the Clauses[321] and Andrew Jackson's assertions,[322] every exercise of governmental power in favor of those of a certain status is prohibited. The Clauses specifically disallow the application of any rationale to sanitize the government's activity.[323]

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a title of nobility and are impermissible. Id. See supra notes 9-28, 237-243 (stating the principles underlying the Clauses).

[320] Eskra, 524 F.2d at 13 n.8. Mathews, 427 U.S. at 520 n.3 (Stevens, J., dissenting). Justice Stevens' arguments in Eskra and Mathews asserted that government distinctions that disadvantage some in relation to others affixes a title of ignobility which is impermissible. Id. Under the reasoning of Justice Stevens' arguments in Eskra and Mathews, bestowing a government enforced professional status on some ignobles the rest of the people. Furthermore, government, including the judiciary, must yield to the voice of the people through the jury. The courts must not only allow instructions to the jury as to their power to determine law and fact but must give such instructions to the jury. Any government official, including judges, should stand when non-governmental persons enter the room because they are the masters not the governmental official. Id. See supra notes 9-28, 237-306 (stating the principles underlying the Clauses and that the people are the masters, exercise their will in many ways including through determination of both law and fact through the jury, and are the ones to be honored).

[321] See supra notes 9-28, 237-306 (stating the principles underlying the Clauses).

[322] See supra notes 70-76 (stating that the use of government to advantage some over others is unconstitutional and threatens the foundation of government).

[323] **U.S. Const.** art. I, ss. 9, 10 ("[n]o Title of Nobility shall be granted by the United States" and "[n]o State shall . . . grant any Title of Nobility . . .") (emphasis added).

V. 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."[324] 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,

[324] 2 Farrand, supra note 17 at 224. See Cong. Globe, 34th Cong., 3d Sess. app at 140 (1857) (remarks by Rep. Bingham) (linking the government of a few over many with slavery).

over time, would entrench themselves in government.[325] 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."[326]

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.[327]

[325] Mayer, supra note 16 at 379. R.H. Lee warned the friends of "civil liberty" that a "coalition of Monarchy men, Military Men, Aristocrats, and Drones whose noise, impudence & zeal exceeds all belief . . . ." and an "elective despotism" would arise - just as it has. Id.

[326] Quoted in Cong. Globe, 38th Cong., 1st Sess. 1202 (1864) (speech by Sen. Henry Wilson). This parallels the message given during the Revolution. "Be not afraid, nor yet dismayed, by reason of this great multitude; for the battle is not yours, but God's." Mayer, supra note 16 at 295.

[327] Habakkuk 1: 4-5. David Wilkerson's expectations of God's intervention are similarly apocalyptic, "Behold, I will do a thing . . . at which both the ears of every one that heareth it will shall tingle." **Times Square Church Pulpit Series**, June 13, 1994 (quoting 1 Samuel 3:11).