

# The U.S. Census: Rule of Law or Rule of Men?

By Publius Huldah

1. The American People have forgotten the most important Principle of our Founding: The distinction between the “Rule of Law” and the “Rule of Men”. This distinction was illustrated in a discussion about the census questions between Megyn Kelly (Fox News) and Congresswoman Michele Bachmann (R. Minnesota) on **June 25, 2009**. Ms. Kelly illustrated the Rule of Men; Rep. Bachmann, the Rule of Law.

2. What is the “Rule of Law”? The Rule of Law prevails when the civil authorities act in accordance with a body of Law *which is established by a higher authority*. The Preamble to The Constitution of the United States says it is ordained and established by WE THE PEOPLE of the United States. Thus, WE THE PEOPLE are the highest political authority in our Land. It is OUR Constitution – WE ordained it – WE created the federal government; and the federal government has only those powers WE granted to it in The Constitution.[i]

Alexander Hamilton recognized in **Federalist No. 33** (6th para), that the federal government is our “*creature*”, and WE are to judge the acts of the federal government using the “standard [we] have formed” – the Constitution. When the federal government departs from this standard, WE are to “take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify”.

Noah Webster’s American Dictionary of the English Language (1828), says under the entry for “Constitution”:

“...In free states, the constitution is paramount to the statutes or laws enacted by the legislature, limiting and controlling its power; and in the United States, the legislature is created, and its powers designated, by the constitution.”

Do you see? The Constitution is superior to Congress, and *the Constitution limits and controls Congress’ powers!* In **Federalist No. 33** (last two paras), Hamilton said that acts of the federal government “which are *not pursuant* to its constitutional powers” are “merely acts of usurpation, and will deserve to be treated as such”; that only “laws made *pursuant to the Constitution*” will become part of the Supreme law of the land; and that laws which are not made pursuant to the Constitution “would not be the supreme law of the land, but a usurpation of power not granted by the Constitution.”

Our Founders were emphatic that ours is a Constitution of enumerated powers only. In **Federalist No.**

45 (9<sup>th</sup> para), James Madison said:

*“The powers delegated by the proposed Constitution to the **federal government are few and defined**. Those which are to remain in the State governments are numerous and indefinite. The former **will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce**; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people...”*[italics added] [ii]

So! ***The Rule of Law prevails when the people in the federal government obey The Constitution***. When they act outside the enumerated powers, they abandon the Rule of Law – the Constitution – and embrace the Rule of Men. And *they* are “the Men”.

3. Now let us see what the Constitution says about the census. Art. I, Sec. 2, clause 3, provides that an enumeration of the people shall be taken every 10 years for the purposes of apportionment of (1) direct Taxes and (2) Representatives to the House.

In **Federalist No. 54**, last para, James Madison explains the “salutary effect” of having a “common measure” [the number of people] for determining both the number of Representatives for each State and the amount of the direct taxes each State is to pay: As the accuracy of the census depends on the cooperation of the States, the “common measure” discourages States from overstating *or* understating the numbers of their population.

The Constitution is clear, and Madison confirms it: The purpose of the census is (1) to determine the number of Representatives for each State, and (2) to determine each State’s share of the direct taxes. To these ends, we gave the federal government authority to ask us *only* the number of persons living in our homes (and whether any of us are Indians).

4. Now let us look at some of the questions on the 2010 census (short form) at [2010.census.gov](http://2010.census.gov). The questions are asked of every person who lives in your home:

In #3, they demand to know whether you own your home subject to a mortgage, whether you own it free & clear, whether you pay rent, or whether you live rent free. The justification they give for asking is that the information is “used to administer housing programs and to inform planning decisions”.

In #s 4 & 5, they demand to know everybody’s full name and telephone number!

In #6, they demand to know everybody's sex. They say they ask because “many federal programs must differentiate between males and females for funding, implementing and evaluating their programs...”

In #7, they demand to know your age and date of birth. They say they “...need data about age to interpret most social and economic characteristics, such as forecasting the number of people eligible for social security or Medicare benefits. The data are widely used in planning and evaluating government programs and policies that provide funds or services for children, working age adults, women of childbearing age, or the older population”.

In #8, they demand to know whether anyone in your home is of Hispanic, Latino, or Spanish origin.

In #9, they demand to know the race of everyone in your household. The reasons they give for asking include, “to monitor racial disparities in characteristics such as health and education and to plan and obtain funds for public services.”

Housing programs? Planning decisions? Federal programs which differentiate between males & females? Social Security? Medicare? Other government programs for children, adults, childbearing women, or old people? *What's this?* Can *anybody* point to where these are among the enumerated powers of Congress? No! These are powers which Congress has usurped.

5. Megyn Kelly and Michelle Bachmann both expressed disapproval of the intrusiveness of questions on the census [they may have been looking at the long form], and of ACORN's involvement in gathering the information. But Ms. Kelly brought up that a spokesperson for the Census Bureau said that “the US code says anyone over eighteen who refuses to answer *any* of the questions on the census can be fined up to \$5000 dollars”. Ms. Kelly asked Rep. Bachmann:

...so how do you respond to those who say, “...The law is what the law is and you as a lawmaker should know better than to break it.”

Rep. Bachmann answered:

“...I'm saying for myself and for my family, our comfort level is we will comply with the Constitution. Article one section two: we will give the number of the people in our home. And that's where we're going to draw the line.”

Ms. Kelly then said:

“But Congresswoman, and let me just press you on this because that's what the Constitution says,

OK, you've got to give the number of people in your home. But as you know in this country we don't live just by the Constitution; we have laws that people like you passed – and the US code – and I have it – says and the Census Bureau has got a point - it says that anybody whoever over 18 years of age who refuses or willfully neglects to answer any of the questions on the schedule submitted to him in connection with the census shall be fined not more than \$5000 dollars. So that's a law on the books. So why don't you try to change the law as opposed to defying the one that already out there?"

So! Do you see? The federal government demands answers to questions which the Constitution does not permit them to ask, in order to administer programs which the Constitution does not authorize them to administer; and then they threaten you with a \$5,000. fine if you don't submit to their unconstitutional acts! *That* is the Rule of Men.

Under the Rule of Law – The Constitution – they may ask no more than the number of persons who reside in your home. That is all WE THE PEOPLE authorized them to ask at Art. I, Sec. 2, clause 3; hence, that is all that they may *lawfully* ask. When they exceed the powers granted to them in The Constitution, they usurp powers and act lawlessly.

Alexander Hamilton understood that *the People* [that's *us*] are the “natural guardians of the Constitution”, and he expected *us* to be “enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority” (**The Federalist No. 16**, 10th para).

Hamilton also said that acts of the federal government which are *not pursuant* to its constitutional powers are “merely acts of usurpation, and will deserve to be treated as such.” (**The Federalist No. 33**, 7th para). *This* is what it means to stand up for the Rule of Law! Shall we defend our Constitution? Many of us are already sworn *by Oath* to do so: Art. VI., clause 3. Or will we cooperate with the lawless and bullying federal government in subverting it?

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[i] This reflects the Biblical model where the king is under the Law of God. The king is *never* the source of Law! See, e.g., Deut 17:18-20; 2 Kings 22:8-13, 23:1-3; and the passages where the prophets rebuked the kings). See also the classic work on political philosophy, *Lex, Rex, or The Law And The Prince*, by Samuel Rutherford (1644). For the covenantal nature of civil government, see citations at footnote 5 at <http://publiushuldah.wordpress.com/2009/06/29/us-criminal-code/>

[ii] See also **Federalist No. 39** (3rd para from end) “...the proposed government cannot be deemed a national one; *since its jurisdiction extends to certain enumerated objects only*, and leaves to the several States a residuary and inviolable sovereignty over all other objects...”; **Federalist No. 14** (8th para) “...the general [federal] government is not to be charged with the whole power of making and administering laws. *Its jurisdiction is limited to certain enumerated objects...*” & **Federalist No. 27** (last para) “...It merits particular attention in this place, that the laws of the Confederacy [the federal government], as to the ENUMERATED and LEGITIMATE objects of its jurisdiction, will become the SUPREME LAW of the land...Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government AS FAR AS ITS JUST AND CONSTITUTIONAL AUTHORITY EXTENDS...” [italics added; caps in original]



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