

This Constitution Day, it's time to evict the constitutional squatters

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Posted by Rita Dunaway on September 17, 2015

There is only one way to deal with squatters.

As a law school student, I remember being outraged when I learned that if a landowner does not begin the legal eviction process within a prescribed period of time, a brazen trespasser can actually acquire title to the owner's land.

It's called "[adverse possession](#)

," and it's happening today in a context that is less tangible but far more alarming. Today in Washington, D.C., we have a Congress, president, Supreme Court, and a slew of administrative agencies acting as constitutional squatters.

They are brazen trespassers, having taken up residence in jurisdictions that belong to the states—openly claiming power to mandate state recognition of marriages that defy the states' constitutions, to regulate businesses out of existence, to dictate farming and conservation practices, and to bully state and local education departments into accepting federal programs.

They have even injected themselves into our personal business, mandating that we buy certain health insurance policies, for instance.

The American people have grown so accustomed to seeing the feds occupy this territory that many no longer bother to consult our pocket Constitutions in an effort to identify any source of authority for these actions. The Supreme Court [decisions](#) upholding them are so lengthy and contrived that most Americans have given up on understanding them, concluding that the Constitution must be too complex for us to ordinary people to comprehend.

While a simple reading of [Articles 1](#) and [2](#) appears to indicate that neither Congress nor the president has any legitimate power over education, health insurance, or the environment, we are jargoned and precedent-ed into submission by dense, complex judicial pronouncements interpreting federal laws like the [Affordable Care Act](#), which rival the works of Tolstoy in length and might as well have been written in his native tongue.

Regular, hard-working people raising families probably have no clue how the [Anti-Injunction Act](#) figures into their health insurance situation, but they know the upshot is that they must buy the insurance the feds want them to have, or be punished. Theirs not to reason why, theirs but to do and die...

As a young lawyer fresh out of school, I often failed to question the judgments of more seasoned attorneys, always assuming they knew something I didn't. I'm sure that was true enough plenty of the time. But as time went on, I came to understand that often, what seemed like a bad legal argument to me really was a bad legal argument. And it was my *duty* to point it out in the proper tone and forum.

Here's what I'm getting at: the average American isn't so ignorant, nor the average judge, congressman, president, or bureaucrat so brilliant, as we might think. The Constitution is for us, and it is not so complex

that we should despair of understanding it.

When our government's "interpretations" of the Constitution don't seem to square with what we read in black and white, it is usually because they *don't* square with the Constitution, and our president, Congress, courts, and countless busy bureaucrats are really acting without proper constitutional authority.

The feds have rudely pitched their tent on the front lawn of our liberty, and it's time we served them their eviction notice.

Just as landowners have the right and duty to invoke a legal process (eviction) to deal with squatters in property cases, the American people have the right and duty to invoke a particular constitutional process to restore the balance of power among the national government, the states, and the people. It's found in [Article Five](#) of the Constitution, and it's called a convention of the states for proposing amendments.

But here's the rub: just as legal property owners lose their title if they fail to act, so we will lose the protection of original constitutional boundaries if we fail to enforce them through Article Five.

You don't have to take my word for it. In a [law review article](#) published last year, Boston College Law School Assistant Professor Richard Albert explained:

"There are several other more flexible modes of constitutional change that do not rely on the mechanistic procedures of Article V in order to keep the constitutional regime current and reflective of the new social and political equilibria. They result in unwritten changes to the Constitution that may be as constraining as a formal amendment. That the United States Constitution is both written and unwritten is therefore now uncontroversial."

What Albert describes as the "unwritten" Constitution, achieved by "more flexible modes of constitutional change" is just like the "unwritten" legal title that squatters achieve when the rightful owner fails to defend his property. Ultimately, it comes to have the same force and effect as a written deed to the family farm.

Every student of American history knows that legitimate government depends upon the consent of the governed. The legal title to government is vested in us, and with it the right and duty to defend our title against trespassers.

I urge you to join with the [Convention of States Project](#) to evict the constitutional squatters.

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