

America's Original Constitutionally Limited Federal Government¹

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No article, section or single word of the U.S. Constitution is self-enforcing! Without a means to enforce the limitations imposed upon the Federal government by the Constitution, it (the Constitution) becomes—as Jefferson described it—a mere paper barricade. But originally, “we the people” of the sovereign states had a means to enforce Constitutional limits on the Federal government. Most Americans and, even sadder, most conservatives are shocked the first time they hear traditional Southern conservatives insist that “we the people” have the right, through our sovereign state, to be the final judge of questions regarding the constitutionality of Federal acts. The assertion of this vital right, reserved by all sovereign states, would not have shocked our founding fathers. The fact that few conservatives have even heard this reserved right proclaimed is evidence of how successful the Federal supremacists have been in their efforts to transform the original Republic of Sovereign States into a centralized, supreme, Federal Empire.

It is a fallacy that (1) the Constitution, (2) the separation of powers at the Federal level, and (3) voting in democratic elections are the only constitutional means “we the people” have to protect and preserve our rights, liberties, and property. Scholarly works by men such as Vice-President and Senator John C. Calhoun (1782-1850) and Dr. M. E. Bradford (1934-1993) have demonstrated the fact that our founding fathers did not create a centralized, supreme (Federal) government but did in fact create a Republic of

¹ Chapter 6, *Nullification: Why and How* (Scuppernon Press, Wake Forest, NC:2014), 23. Free download available at: http://www.kennedytwins.com/Nullification_Book_2012.pdf

Sovereign States.² A short review here will be sufficient to establish the presumption of the right reserved under the Original Constitution of “we the people” to nullify any act of our agent, the Federal government, that is not “pursuant” to the Original Constitution or is harmful to the people of a sovereign state.

The Constitution, as originally established by the Sovereign States, is a contract between sovereign states in which “we the people” within our specific state agreed to create an agent of the states to do those things that the state acting alone could not do. The majority of the language of the Constitution is used to define what the agent of the states—the Federal government—could not do! The states, acting on the

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directions of their citizens, were very concerned that this new Federal government might morph into a centralized tyranny similar to the one in London from which they had recently seceded. The founding fathers were determined not to create an all-powerful government that would once again threaten the liberties of “we the people.” When the proposed constitution was submitted to the individual states for their independent acceptance or rejection, those in favor of maintaining the States as “free, sovereign and independent”³ states were in a majority in most states. The writing of the *Federalist*

² Calhoun, John C., *A Discourse on the Constitution and Government of the United States* in *The Works of John C. Calhoun*, Vol I. (Appleton & Co., New York, 1851); Bradford, Mel, *Original Intentions: On the making and ratification of the United States Constitution* (The University of Georgia Press, Athens, GA: 1993; & Bradford, Mel, *Founding Fathers*, 2nd ed., (University Press of Kansas: 1994).

³ See Article II of the Articles of Confederation. These Articles (same as a constitution) formed the Federal government that the states were operating under at the time when the Constitution was drafted at the 1787 Constitutional Convention, submitted to the Sovereign States and eventually ratified by Sovereign States. At no time did any state renounce its status as a “free, sovereign, and independent” state. “State” at the time, and in most places internationally today, is the same as “nation.”

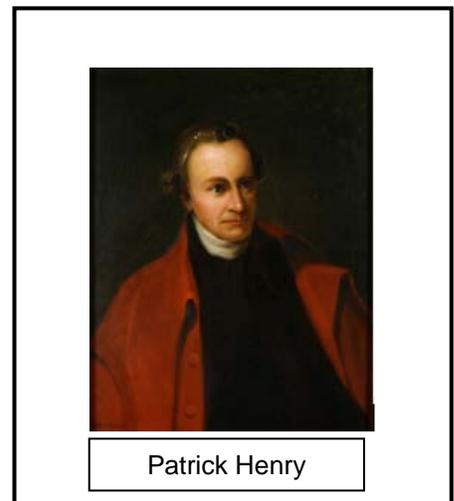
Papers was an effort of the Federalists (folks who favored the adoption of the proposed Constitution) to allay the fears of the Anti-Federalist (folks who foresaw that the Federal government created by the proposed Constitution would one day become an oppressive and supreme government of the United States). To obtain sufficient votes in favor of ratification within nine state legislatures, thereby securing adoption of the constitution “between the States so ratifying,”⁴ the Federalists were forced to pledge the immediate adoption of the first ten amendments which further limited the power of the Federal government. But note that even when nine states voted to adopt the new constitution, the new constitution would be binding only upon those nine states adopting the new constitution. Each sovereign state was free and independent and therefore could not be compelled by the other states to accept a government that did not have the consent of the governed within that sovereign state (see Article VII of the United States Constitution). This is the founding generation’s ultimate recognition that each state entered into the Union formed via the Constitution as a “sovereign, free, and independent state (see Article II, Articles of Confederation). No where in the Constitution, the Constitutional Convention, the Federalist Papers, or the minutes of each state legislature when debating the ratification of the Constitution can there be found even a hint that they intended to renounce any portion of their Sovereignty.

State sovereignty is the ultimate bulwark against Federal tyranny. Our founding fathers understood this truth and accepted it as a “given.” Today we live in the era of Federal supremacy and find it difficult to conceive of an American political society in which “we the people” acting through our sovereign state would be the final judge as to

⁴ Article VII U.S. Constitution.

whether the Federal government has the Constitutional authority to encroach upon our rights, liberties, or property. But, from 1776 to 1861, such a society did exist. It existed because the founding fathers and the generations immediately following them understood the history of American liberty.

Political sovereignty in America is original only to the states—the Federal government has no original sovereignty! Great Britain recognized the freedom and independence of the Original Thirteen Colonies in the Treaty of Paris (1783). This freedom and independence (sovereignty) was not granted to the United States of America as a single national entity but to each individual sovereign state, each being named in the treaty. The sovereign states preceded the formation of the United States of America despite what Abraham Lincoln asserted in his First Inaugural Address. In the Articles of Confederation, which formed the Federal government prior to the adoption of the Constitution, each state maintained (reserved) its “freedom and independence” so recently won from Great Britain. When the Constitution was offered to the states in 1787, the Anti-Federalists⁵ were determined that the powers delegated—as opposed to surrendered—to the Federal government would be specifically limited, thereby, it was hoped, preventing the Federal government from abusing its conditional grant of power.



⁵ Anti-Federalists were those who were afraid that the Federal government proposed under the Constitution would morph into a supreme, centralized, tyrannical government that would destroy the rights of the Sovereign States and oppress the people.

Patrick Henry was a leading Anti-Federalist of his day. He could not be convinced that the new Federal government would be controlled by the mere parchment barricade of the Constitution. He warned that it would be foolish to believe that the new power to tax would not eventually be used by the commercial majority to the detriment of the agricultural minority. History has proven Patrick Henry to be a better prophet than his Federalist counterparts. Even James Madison, who was a Federalist during the ratification debates, recognized the probability that such power, if not defended against, would be used to exploit some for the benefit of those in power, Madison noted: “Where there is power, and will to use it, wrong will be done.” The Anti-Federalists understood that the Federal government could not be counted on to always appropriately discipline itself—they looked to the sovereign state as the final arbiter of Federal authority, the final defense of personal liberty.

President Thomas Jefferson extolled the vital function of the sovereign state as the ultimate defender of liberty in his first inaugural address. He described the essential principles of the American government as “the support of state governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies.”⁶ President Thomas Jefferson recognized and denounced the efforts of Alexander Hamilton and Federal Supreme Court Chief Justice John Marshal to turn the Federal government into “a single and splendid government.” Jefferson understood that such a government would be controlled by political, commercial, and financial elites to extort money from farmers and small business owners for the benefit of special interest groups. These commercial and

⁶ Kennedy & Kennedy, *Was Jefferson Davis Right?* (Pelican Publishing, Co, Gretna, LA: 1998), 229.

financial elites had close connections with the ruling elite of the day—elites who were determined to control the Federal government for the benefit of the elites.

One of the strongest proofs of the original and continuing sovereignty of states in the American Union can be found in the language used by New York and Virginia when they independently ratified the Constitution. As sovereign states they conditionally adopted the new Constitution. The condition of their adoption was that they reserved the right to withdraw (secede) from the Union if the powers delegated to the Federal government via the Constitution

It is the duty of Constitutionalists to reclaim liberty by fundamentally changing the political status quo.

Nullification is the only fundamental change that will restore limited federalism via real State's Rights.

should ever be used to the detriment of the people within their sovereign states! A reading of Virginia's ratification is all that is necessary to convince honest folks:

We, the delegates of the people of Virginia, duly elected,...in behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them, when-so-ever the same shall be perverted to their injury or oppression; and that every power not granted thereby, remains with them and at their will: that, therefore, no right, of any denomination, can be canceled, abridged, restrained or modified.⁷

New York's ratification language was very similar. Not every state was so cautious, because at that time it was a "given" that each state had the right to withdraw (secede) from a union into which it had voluntarily joined (acceded). The general acceptance of these states' conditional ratification is evidence that all states understood that the Constitution created a voluntary union of free, independent, and sovereign

⁷ As cited in, Kennedy & Kennedy, *The South Was Right!* (Pelican Publishing Co, Gretna, LA: 1994), 162.

states, each state having the sovereign power to enter into an agreement with co-equal states if such agreement benefited the state or to leave the agreement if the agreement, or Union created thereby, became a detriment to the state.

The Original Constitution created a limited Federal government. The sovereign states through a compact we refer to as the Constitution of the United States, created an agent—the Federal government—to serve the will of “we the people” within our respective sovereign states. The Federal government created by the separate acts of sovereign states was not intended to be a centralized, all-powerful, supreme, national government. The Sovereign States did not commit suicide when they acted in their “free, independent, and sovereign” capacity to ratify the Constitution. They did not convert themselves from sovereign states into provinces of a supreme, centralized, national government. The government created by the sovereign states when they ratified the Constitution was a limited Republic of Sovereign States called the United States of America.

To the nations of the world the United States of America is one nation but as to our domestic concerns we were a Republic of Sovereign States.⁸ Each sovereign state maintained every possible right that any sovereign nation may exercise with the only exceptions being those rights it freely delegated—as opposed to surrendered—to the Federal government via specific language in the Constitution. As Constitutionalists we support the Jeffersonian tradition that “we the people” of sovereign states have a

⁸ Note the use of the past tense phrase “were a Republic of Sovereign States.” The idea of real states’ rights died with the election of Lincoln and his initiation of an aggressive war of invasion against a democratically elected, sovereign nation, the Confederate States of America, in 1861. See, Kennedy & Kennedy, *Yankee Empire: Aggressive Abroad and Despotism at Home* (Shotwell Publishing Co., Columbia, SC: 2018), 147-9.

constitutional right to a “frugal” Federal government that does “not take from the mouth of labor the bread it has earned.”⁹ Real States’ Rights is the only way to guarantee that “we the people” enjoy such a government. Real States’ Rights¹⁰ is the only means available to “we the people” to enforce the limitations imposed by the Constitution upon the Federal government. The Constitution, after all, is not self-enforcing! Nor should a free people expect the agent that is encroaching upon the rights reserved to the people to be the very agent to enforce the limitations of the Constitution *upon itself*. That would be tantamount to allowing the criminal to judge for himself whether he broke the law! The founding fathers were not so foolish.

⁹ President Thomas Jefferson as cited in, Kennedy & Kennedy, *Was Jefferson Davis Right?* (Pelican Publishing Co., Gretna, LA: 1998), 229-30.

¹⁰ Real States’ Rights includes the right of nullification and secession. See, Kennedy & Kennedy, *Yankee Empire: Aggressive Abroad and Despotic at Home* (Shotwell Publishing Co., Columbia, SC: 2018), 66, 332, 351.