The Constitution: Loved and Misunderstood[1]

The history of man does not present a more illustrious monument of human invention, sound political principles, and judicious combinations, than the constitution of the United States. [2]

The Constitution of the United States is so highly praised yet so little understood. The following questions need to be answered before any correct in-depth study of the Constitution can be made. First, why was the Constitution written; second, who authorized the writing of the Constitution; and third, who endowed the Constitution with the power it possesses?

Why was the Constitution written? The Constitution was written in the year 1787, eleven years after the states had declared their independence from Great Britain. At the time of the writing of the Constitution each of the thirteen states had its own state constitution that delineated the liberty to be exercised by its citizens and the scope of the power to be exercised by the state government. These constitutions were written and enforced by the people of each individual state. The drawing up of these state constitutions was performed by the people, a sovereign community, thus forming their own state government. In other words, it was the act of a people exercising original sovereignty. Unlike the English Constitution that was unwritten, these constitutions were written. There was a well-founded purpose in having a written constitution rather than an unwritten constitution. It was written so the people could easily understand what powers they had granted their state government and what rights they had retained for themselves. An unwritten constitution was the source of one of the problems the colonists had faced with the mother country. The colonists would demand their rights as protected under the English Constitution, and the mother country would change the law and declare that no such rights existed in the English Constitution. Therefore, the colonists demanded that their state constitutions be written. When they determined that a stronger central government was needed, it was natural the new constitution would also be a written constitution; thus, insuring this protection against abuse of their liberty by the central government.

Who authorized the writing of the Constitution? Unfortunately, most Americans seem to think the people of America in some form of a democratic mass got together and wrote and adopted the Constitution. Nothing could be further from the truth. In 1787 a convention of delegates, appointed by the legislature of each state, met in Philadelphia to consider reforming the government under the Articles of Confederation. Rather than reform the existing government under the Articles of Confederation, the delegates began deliberations that led to a new government under the Constitution. This document was then submitted to the states. The various state legislatures then appointed delegates to the State Constitutional Convention. Notice that all the action, which led to the adoption of the Constitution, was centered upon the

[1] The following is taken from portions of chapter I and II of: Walter D. Kennedy, *The Confederate Myth-Buster* (The Scuppernong Press, Wake Forest, NC: 2019).

[2] William Rawle, *A View of the Constitution* (1825, Old South Books, Simsboro, LA: 1993), 31.

free action of the people of each state. Notice also that the action of one state did not bind another state to any new government. Here we see the action of a sovereign community granting to an agent of its own creation portions of its sovereign power. This grant of power to the central government was done by the free and unfettered will of free men in sovereign states.

Who endowed the Constitution with its power? As William Rawle noted in his textbook on the United States Constitution, Article I, Section 1, clearly states that "all legislative powers herein granted," gives evidence of the formation of a limited, not general government. Also, it reminds us that the power of the Federal government does not originate with the Federal government but is a "grant" from some other power. The creation of the Federal government by the actions of sovereign states is an example of a government based upon secondary sovereignty. The central government of a federal republic cannot be sovereign because its existence is dependent upon the powers granted to it by the republics, i.e., states, which created the federal republic. The federal republic is "sovereign" only in those areas that the states have granted authority to the federal government. As we are instructed in the Ninth and Tenth Amendments, all power that is not granted to the Federal government by the Constitution is reserved to the people and the several states.

Constitutional Q & A

Q. Your faith in States' Rights is misplaced; after all, don't most states trample upon civil liberties as much as the Federal government?

A. Would you rather be stepped on by a midget or a giant? A fundamental concept among States' Rights advocates is that all governments tends toward tyranny. Simply put, the larger the government the greater the tyranny. Thus, States' Rights advocates see small government not as a panacea for the evils of government (we are not foolish socialist utopians) but as a bulwark to slow the advance of tyrannical government. The further government is removed from the eyes of the people, the more likely that government will insidiously encroach upon the liberty of the people. This does not mean that we of the States' Rights camp believe that government can be made perfect by placing it close to the people. Yes, it is easier for citizens to observe and control government at the local level, but even there the people must be vigilant in the defense of their liberty. Governmental perfection is not a reasonable goal; therefore, eternal vigilance is necessary if liberty is to be protected. As many have stated, "Eternal vigilance is the price of liberty."

Q. The supremacy clause of the Constitution states that the laws of the Federal government are supreme to that of the states. How can a state law to secede be supreme to the Federal law?

A. Every good States' Rights advocate from Thomas Jefferson to John C. Calhoun believed in the supremacy clause of the Constitution. The so-called supremacy clause is found in the second paragraph of Article VI: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to contrary

notwithstanding." As Article I, Section 1, states, all powers exercised by the Constitution are "granted" by some other source. This grant of power is clearly spelled out and delineated. Note also that in the Ninth and Tenth Amendments it is affirmed that all power that is not granted to the Federal government by the Constitution is reserved to the people of the several states. Yes indeed, in all areas where the states agreed to grant certain powers to the Federal government, the Federal government is supreme. Yet, this does not by any stretch of the imagination mean that in all areas of government the Federal government is supreme. If this is the case, what is the purpose of the Ninth and Tenth Amendments? Within the Constitution there are two areas in which the Federal government is rightfully denoted as supreme. The first area of Federal supremacy is derived from a specific grant given to the Federal government by the states—for example, the power to make treaties or build post roads. The second area of Federal supremacy is derived from an expressed negative to state action—for example, as seen in Article I, Section 10, in which the right to maintain a navy is denied to the states. Article I, Section 10, begins with the words, "No state shall…." Here the states mutually agreed that their Federal agent would be given an exclusive in particular areas. Therefore, in these areas the Federal government is supreme. Nevertheless, there are many more rights and privileges that are not granted to the Federal government or denied to the states. In all these "ungranted" areas the will of the people of the states is supreme. The supremacy clause states that the Constitution and the "laws made in pursuance" of the Constitution will be the law of the land. This word "**pursuance**" has great meaning in this discussion. Both Alexander Hamilton and James Madison in the Federalist Papers stated that in those actions in which the Federal government acted beyond (not in pursuance of) its constitutionally mandated powers, the Federal government's acts were void.[3] These founding fathers understood that not all actions of the Federal government would be lawful; only those acts that were pursuant to or "in line with" the Constitution would be binding upon the people of the states. Thus, is demonstrated the proper understanding of the so-called supremacy clause of the Constitution.

Q. Where in the U. S. Constitution is it written that a state has a right to secede?

A. Where in the U. S. Constitution is it written that a person has a right to marry? You see, there is no guarantee in the Constitution for the vast majority of rights we enjoy as citizens. If the right of secession is denied because it is not written in the Constitution, then most of the rights we Americans hold dear are subject to abuse. The Constitution was never intended to be an itemized list of constitutionally protected rights. But this leads to an obvious question: What does the Constitution do if it does not grant us our rights or otherwise protect our rights? Many noted constitutional authorities tell us that the Constitution is mostly a grant of authority to the Federal government, a limitation of power of the Federal government and a specific limitation on state powers. In 1787 when our founding fathers gathered in Philadelphia to draw up a new constitution, they already enjoyed the rights and liberties of free men. They did not need a new constitution to grant these rights; they already had their rights. Each state had its

[3] Alexander Hamilton, James Madison, *The Federalist Papers* No. 33 and 45, as cited in George W. Carey and James McCellan, eds, *The Federalist, Student Edition* (Kendall-Hunt Publishing Company, Dubuque, IA: 1990) 161, 237.

own constitution that was drawn up by the people of that state. The various state constitutions spelled out what rights the citizens of that state were free to enjoy and the limits on the state government that they found necessary for guaranteeing their civil liberties. What was done in Philadelphia was to create a central government by granting to it certain powers that theretofore had belonged to the several states. The main desire of the vast majority of the delegates was to create a Federal government which was stronger than the government they then had, that is, the United States government under the Articles of Confederation. This desire to establish a stronger government was balanced by the fear of an overly powerful central government. The founding fathers had just successfully concluded their war of independence with Great Britain and had no desire to create another central government that would not respect their rights. Therefore, they established a limited central government that could exercise only those powers that had been specifically granted to it by the people of the states.

Now as to your question, we must insist that you ask a "constitutionally correct" question. Since the Constitution does not provide a list of "rights" your question cannot be answered. The correct question to ask is, "Where in the U. S. Constitution is the right of secession forbidden to the people of the states?" In Article I, Section 10, of the Constitution we find those things which the states mutually agreed they would not perform as members of the new Union. For example, the states cannot maintain a navy, coin money, wage war, or enter into treaties with foreign nations. But nowhere will you find the people of the states surrendering the right to judge for themselves how they should be governed. After all, the people of the individual states had already removed the British authorities from their state, entered a union with the other states under the Articles of Confederation, and at the time were looking at withdrawing from that government and establishing a new government for themselves. Such a people were loath to adopt a constitution that would limit their right to withdraw from a government that did not meet their needs. Americans at that time, both in the North and in the South, understood that free men in free states had the right to govern themselves.

Summation

What good is it to stand and debate these issues when we know that the federal government has all the power to enforce its will upon Americans citizens? What is needed are tools in the hands of "we the people" of each sovereign state that would force the Federal government to abide by the Constitution. If the Federal government still persists in its odious act then "we the people" would be left with no other option than firing our agent (the Federal government) and establishing a government that will abide by our wishes. In a free society liberty should always trump government.

This is why REAL States' Rights was such an essential part of the formation of these United States. These United States as given to us by our founding fathers were a republic of republics, that is, a federal republic. The right to judge whether this arrangement is indeed mutually beneficial does not belong to the federal government but to the local republic, i.e., each sovereign state. The Constitution is an instrument for the protection of our liberty but it is

not the final judge of whether “we the people” are being governed well. Whether “we the people” are being governed well is the job of the people of each state acting for their own benefit and wellbeing.