The
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Volume II: Issue 1
A Structured Curriculum of Constitutional Study



Clauses Discussed:
- Article I, Section 4
- Article I, Section 5, Clause 1

Concepts Discussed:
- Elections
- Quorum
- Secession

Article I, Section 4 of the U.S. Constitution discusses the election of Senators and Representatives and the assembling of the States in a Congress. Clause 1 pronounces:

> "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

The individual States have primary responsibility to prescribe normal election parameters for United States Senators and Representatives, unless trumped by congressional action seeking uniformity.

Concerning the Time of holding elections for Representatives, the current day of choice for elections was established in 1872 (Volume XVII, United States Statutes at Large, Page 28). This legislation re-apportioned Representatives following the 1870 census; it also fixed and established the "Tuesday next after the first Monday in November" as the day for electing Representatives of the Forty-fifth Congress, and "in every second year thereafter" for later Congress'.

The 1872 Act followed the principle first established for electing Presidential Electors in 1845 (V, Statutes at Large, 721). In "An Act to establish a uniform time for holding elections for electors of President and Vice President in all the States of the Union", Congress provided that:

> "the electors of President and Vice President shall be appointed in each State on the Tuesday next after the first Monday in the month of November of the year in which they are to be appointed."

The Federal Election Commission details that November was chosen for elections in a society then driven primarily by agriculture. Harvest of most crops would be completed by November and the weather would usually not yet be too harsh for travel (to the county seat) for voting. Planting in the spring, harvest in the summer, and bad weather in the winter made these seasons impractical for the busy early farming communities.

Tuesday was chosen to allow time for people to make any necessary journey to the polls, hopefully without the necessity of travel on Sunday. The Tuesday after the first Monday was chosen to keep elections from being held on November 1st (All Saint's Day for Roman Catholics) and to give merchants time to finalize their October books.

Clause 1 allows for Congress to prescribe to the States the times and manner for the election of Senators and Representatives, but not ever the places for choosing Senators. This wording was added at the constitutional convention on September 14, 1787, as noted by Madison:

> "in order to exempt the seats of Government in the States from the power of Congress."

U.S. Senators were chosen by State Legislatures for the first 124 years of the republic (until ratification of the 17th Amendment). State Legislatures meet at the various seats of State government, the State Capitols, according to their own discretion.

If Congress had the ability to dictate the places of choosing U.S. Senators, the State Legislatures could have been convened at places of Congress' choosing. One of the grievances against the King of Great Britain listed in the Declaration of Independence details the problems associated with one political body being able to assemble another:

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"He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole Purpose of fatiguing them into compliance with his measures."

Representatives are not discussed in Article I, Section 4, Clause 2 with regards to places, for Representatives have always been chosen by the Citizen-electors themselves within districts in a State.

Article I, Section 4, Clause 2 states;

"The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day."

This clause helps one to understand the meaning of Congress: "the Congress shall assemble…and such Meeting shall be…in December (January)." The words Congress, assemble, and Meeting all have an equivalent meaning; that of sovereign States assembling together in a meeting of the States — a Congress of the States.

Section 4 details that Congress shall assemble at least once every year and also specifies that such first meeting day shall be the first Monday in December under ordinary circumstances.

The day picked for Congress to assemble each year does not necessarily equate with the legislative term for Senators and Representatives; when they are to begin and end their legislative authority.

Neither the convention delegates proposing the Constitution nor the States who ratified it would know when the Constitution would be ratified by the requisite nine States. Thus, they could not easily pick a starting date for the terms of members unless they were willing to delay the beginning of the new government to a specific time of the year (after they had authority to begin and could so schedule it); the legislative terms are thus not provided by the Constitution.

The First Congress under the Constitution began their first Legislative Session in the City of New York on Wednesday, March 4, 1789 in accordance with the Resolution passed Saturday, September 13, 1788 by Congress meeting under the Articles of Confederation:

"Resolved, That the first Wednesday in January next be the day for appointing Electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in february next be the day for the electors to assemble in their respective states and vote for a president; and that the first Wednesday in March next be the time and the present seat of Congress the place for commencing proceedings under the said constitution."

Since the first Congressional term under the Constitution began on the 4th of March under this plan of the Confederate Congress, subsequent Congressional terms followed this plan every second year (in accordance with Article I, Section 2, Clause 1).

Even though the Constitution mandated that Congress assemble every year on or about the first Monday in December, the legislative terms for Senators and Representatives began and ended on March 4th (of every odd-numbered year, since the first session began in an odd-numbered year — 1789).

Prior to 1872, elections for Representatives (Senators were yet elected by State Legislatures) occurred between August and November of every even-numbered year as mandated within each State (and in accordance with the time government began under the Constitution).

Though Congress would occasionally assemble on March 4th in a Special Session for a handful of days, they would normally begin their first session of Congress in December of the following (odd-numbered) year, some 13+ months after election.

Congress would generally have a long first session when they began in December. After adjournment in the spring, they would assemble the following (even-numbered) December, but not until after an election occurred by November. This second, short session would not last past the following March 4th, when the newly-elected members could then be sworn-in.

During the early era before telegraph and even more improved forms of communication were developed, no real problems were seen by this delayed period between voting and beginning of the next legislative term. However, as communication and transportation improved, members who were not re-elected would now know that they were not returning while they were still sitting in session.

Those members who were not returning to the next session often seemed to be more interested in providing legislation which improved their personal prospects for a better future than in passing legislation for the good of the country (those who were retiring would know this also, but when it was their decision to quit, they generally acted more nobly).

This circumstance, of Congress being in session between election day and the beginning of the next term is referred to as a Lame Duck session.

The Twentieth Article in Amendment (ratified in January of 1933) changed the first day which Congress was to assemble from the first Monday in December to the third day of January (at noon) of that same calendar year (i.e., 11 months sooner). This greatly reduced the Lame Duck phenomenon.

Congress has power under the 20th Amendment to appoint a different day to assemble if the day designated was undesirable (if, for instance, January 3rd fell on a Sunday).

The 20th Amendment also prescribed that the beginning and ending terms for Senators and Representatives would also begin on January 3rd (at noon) of the year which they would be normally elected. With the terms coinciding with the same day as the initial day to assemble (unless the day to assemble was varied by a few days), a great deal of inherent friction with regards to continuity of government was overcome.

Though Congress has a degree of discretion with regards to the length of their legislative session, they do not have discretion of whether or not to meet — they must assemble at least once in every year. When Congress adjourns "sine die" ("without day", i.e. without assigning another day to assemble) at the end of a legislative session, Congress will, under normal circumstances, assemble in a new session on January 3rd of the following year according to the commands of the 20th Amendment.

Should something eventful happen between the final adjournment of one session and the beginning of the next, the President has the specific authority under Article II, Section 3 to "convene both Houses, or either of them". Besides the "extraordinary Occasions" on which the President may convene them, in case of disagreement between the Senate and House with respect to the time of adjournment, the President "may adjourn them to such Time as he shall think proper".

House Judges

Article I, Section 5, Clause 1 states:

> "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide."

Section 5 makes each House responsible for its own affairs. Clause 1 makes each House the judge of the elections, returns and qualifications of its members.

If error, fraud, or other discrepancy occurred in the election of U.S. Representatives or Senators, the House or Senate are the proper venues for judging them. Just as the Senate is the (sole) judge of impeachments, the Senate and the House are the proper judges for determining whether any particular Senator or Representative is properly a member of those Houses (respectively).

The qualifications for Representatives are listed in Article I, Section 2, while the minimum qualifications for Senators are listed in Section 3. A challenge to a member's qualifications, election or election return (counting of the votes) would be settled in the respective House.

For example, Section 3 mandates that every Senator be at least 30 years of age — therefore no person under 30 years of age can be a Senator by express constitutional prohibition. It would take an amendment to lessen that requirement for any person under the age of 30 to be a Senator.

That said, the birth-date attributed today to John Eaton, of Tennessee, is June 18, 1790. When Eaton took his oath as Senator in the fall of 1818, he would have only been 28 years of age; two years less than the constitutional requirements. It is possible that Eaton did not know of his failure to properly qualify simply because he did not know, or did not know until later, his proper age. Of course, in an era of large families and poorly-kept birth records, the date attributed to Eaton may actually be incorrect. Poor birth records would help explain other Senators who also took their seats prior to their 30th birthday; Henry Clay, at 29 years of age in 1806, or Armistead Mason of Virginia in 1816 at 28.

No impropriety is noted in the Senate Journal that these Senators were not properly qualified. For example, the Journal (2nd Session, 9th Congress, page 116) reports, regarding Senator Clay, simply that:

> "The Honorable Henry Clay, appointed a Senator by the legislature of the state of Kentucky, in place of the Honorable John Adair, resigned, produced his credentials and took his seat in the Senate…and the oath was administered…as the law prescribes."

The credentials which Clay produced would declare that he was duly chosen by the qualified electors of his State for the remainder of the term. It would be signed by the Governor and attested to by the Secretary of State.

At any point before these Senator's 30th birthdays, if the Senate had found or was given evidence of their youthfulness, the Senate would have been compelled to investigate the matter. If the Senators could not prove they met the minimum qualifications to the Senate upon challenge, the Senate would have been obligated to decline their earlier acceptance of the Senators' credentials, at least until the member became of proper age .

That three Senators held their seats while (possibly) failing to meet the proper constitutional qualifications (assuming the dates attributed to their birth today are correct) shows the importance of proper challenges to unauthorized action. A certain degree of assumptions are bound to occur; unauthorized action which was not challenged will be legitimized through mere routine, as history cannot later be reversed.

Of course, one cannot know which actions are unauthorized until one knows which actions are authorized — which explains the importance of careful study of the Constitution.

Quorum

Clause 1 introduces the concept of the quorum and makes a simple majority able to legislate even when large numbers of Congressmen are absent.

Under the Articles, each State had one vote. Article V required at least two delegates (and no more than seven) from each State be present before the State was considered properly represented and could therefore vote. At least a majority of the (13) States (7 +) had to be present for the quorum requirement to be met.

The ability to establish a quorum was always a concern under the Articles. Information given within the Prefatory Notes (pp. v-x) of Volume XXXIV of the Journals of the Continental Congress summarizes the attendance records for the last five years of Congress meeting under the Articles of Confederation.

Number of States Present in Days in the Confederate Congress

Year	13	12	11	10	9	8	7	Total Quorum Days	< 6 Quorum	Quorum Absent
1783-4	0	0	31	21	14	16	31	113	27	19 %
1784-5	0	10	36	50	62	38	22	218	17	7 %
1785-6	0	31	17	30	26	36	69	209	48	18 %
1786-7	0	0	4	10	34	37	27	112	104	48 %
1787-8	8	18	19	14	16	29	28	132	57	30 %
Total	8	59	107	125	152	156	177	784	253	~ 32 %

From the above table, one can see that the failure to be able to meet a quorum reached significant proportions: that on almost one-half of the days which Congress attempted to meet in 1786/7, they were unable to reach a quorum!

A simple average of the five years shows that almost one-quarter of the attempts to reach a quorum of seven States ended in failure with the minority adjourning for the day (253 failures in a total of 1,037 attempts [24%]).

With such poor attendance results, the reason to switch to a different mechanism to reach a quorum under the Constitution is far more understandable. Under the Confederation, the concept that each State had equal voice with every other was true only in principle. In operation, history proved that at least one State had no voice 776 days out of 784 days of assembling (98.9% of the time). Three States had no voice 77% of the time; five States had no voice 42% of the time.

Article IX of the Articles specifically stated that the United States in Congress assembled, unless nine States assented to the same;

> "shall never engage in war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy."

Looking at the five last years of the confederation as a whole, the requisite quorum for matters of greater concern as mentioned, attendance of at least nine States being able to give their assent was found only in 451 legislative days out of 784; a mere 57.5 % of the time. With unanimous action of those States attending, such legislation could have been theoretically passed slightly more than only one-half of the time!

Figuring that complete unanimity of the States assembled in Congress on any given day is too great a burden, one must look to the number of days in which 10 States (or more) attended. 299 days of 10 or more States assembling together out of 784 amounts to a mere 38%.

Realistically, two-out-of-every-three legislative days, for five years, which the United States of America assembled in a Congress (and 4-out-of-5 where a quorum was found or attempted), Congress would not have been able to pass legislation of pressing importance!

Such information provides a compelling argument for lessening the requirements for a quorum, as inability to function equates with inevitable government dissolution.

Inability of government to function equates with inevitable government dissolution.

The problem of simply lessening the required numbers for purposes of a quorum is that a sub-majority level of action is viewed with near-universal scorn; the minority ruling over the absent majority does not, in principle, go over well in a democracy or a republic. An oligarchy or aristocracy cannot easily be said to be founded on the rights of man and will usually rely on some

principle of superiority (superior military might; divine right of kings, etc.). Simply lowering the number of States necessary to meet in a quorum was therefore politically unacceptable.

Many States under the Articles, even if they did not have the necessary two or more delegates to vote, often had one delegate attending. That one delegate could enter into discussion, but could not vote.

The answer seemed rather obvious; that the delegates be considered individually for quorum purposes and individually empowered to vote.

This answer, which was followed under the Constitution, diluted the primary power of the State in principle. By enabling the States to vote more often, through their Senators and Representatives, however, one could assert that the States had a greater voice under the Constitution than under the Articles in operation.

By enabling the States to vote more often, one could even assert that the States had a greater voice under the Constitution than under the Articles.

A quorum in the House of Representatives under the Constitution can occur with far fewer States represented than an actual majority. For example, with 435 Representatives today, a quorum consists of at least 218 members. If a few big States were well represented any particular day, the vast majority of small States could even be absent, yet legislation could be approved in this House and sent on to the next.

If California (with 53 votes, following the 2000 census and re-apportionment), Texas (with 32), New York (29), Florida (25), Pennsylvania and Illinois (with 19 each), Ohio (18), Michigan (15), and either Georgia, North Carolina, or New Jersey (13 each) voted together, they could theoretical approve legislation within this House by themselves. The eight most-populated States fully represented could form a quorum even if 42 other States were absent!

Even more alarming, if all Representatives from only California, Texas and New York (114 votes) voted together against every other State which happened to be present only to the degree to meet a minimum quorum (218 total votes), three States fully-represented could prevail over a sparsely-represented 47 States in any particular vote!

This potential, of States with large population numbers ruling over others with less population numbers, is precisely why legislative power was also divided into the Senate (which was expressly structured to give equal authority to every State).

With 100 Senators from 50 States, it takes at least 51 Senators voting to now make a quorum. In no way can a quorum be made in the Senate without at least 26 States being present (with at least one Senator) and having a voice. There is no ability for a few States to act against the many States in the Senate (and thus in Congress as a whole). The Senate is the legislative branch under the Constitution more closely related in structure to the earlier confederate government.

It is for this reason that the small States insisted upon equal suffrage in the Senate during the convention. It is also for the reason of equal voice that no amendment can be passed that would deny any State, without its consent, of its "equal suffrage in the Senate". This prohibition is the only item specifically indefinitely prevented from being modified by constitutional amendment by the "mere" three-fourths ratification procedures of Article V.

Had the States been able to keep delegates attending the legislative sessions under the Articles to sufficient degree to keep all the States voting most of the time, the Constitution would likely have resembled the Articles of Confederation to a greater degree.

The Senate, by giving each State two votes, independent of one another, greatly increased the likelihood of the State having a voice in the Senate on any given day while greatly increasing the ability to form a quorum.

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Clause 1 of Section 5 specifically allows a smaller number than a majority to continue from day-to-day and to compel the attendance of absent members under penalty.

The ability to adjourn from day-to-day gives, in essence, even to the single member, absolute authority of action for this one matter when a quorum cannot otherwise be achieved. The power to decide to adjourn to the next day is the only matter which a sub-quorum level of members have power to act with actual authority (or said alternatively, the quorum numbers for the action to postpone is but one member).

Secession

The importance of the principle of the minority being able to adjourn from day-to-day can be seen with regards to the first Congress assembling under the Constitution, as found in the Senate Journal.

Eight members from five of the 11 States which had then ratified the Constitution assembled together in the Senate on Wednesday, March 4, 1789. These members, being insufficient to constitute a quorum, adjourned from day-to-day, until Wednesday, March 11, 1789. On this day they sent letters requesting the immediate attendance of absent members. Another request was sent again on March 18th (no penalties were yet provided for failure to attend since Congress had not yet convened under the Constitution and could not yet thus make such rules). A quorum finally first occurred on Monday, April 6, 1789, when the business of counting the votes for President and Vice-President was performed.

The first Session of Congress showcases a lack of a quorum causing a delay in establishing government; another threat to government due to insufficient numbers is the difficulty in the continuation of it.

The United States assembled in Congress under the Articles of Confederation experienced a significant degree of difficulty meeting a quorum due to more stringent quorum requirements under the Articles. The United States assembled in Congress under the Constitution experienced the greatest threat to quorum requirements to continue government during the Civil War era.

In such a case, the continuity of government is mainly dependent on whether or not the ability for secession is formerly recognized.

With individual ability of a State to secede acknowledged, then the minimum numbers of Representatives and Senators would be based on the numbers of Representatives and Senators (States) remaining within the Union. In this case, the secession of some number of the member States of the Union would not threaten the whole who remained. Government would continue in the States remaining without serious incident.

If secession is not formally recognized, as is generally considered the case under the Constitution, then quorum numbers will continue to based upon those who are formally yet within the Union, even if no members are present from those States wanting no part in the government of the Union.

Under a system which does not formally recognize succession, government will continue only provided a quorum can be met in each House.

Just as found when voting, States with large population numbers also have a major influence when they do not vote. The lack of confidence in government evident in member-States able to vote but who do not attend sends a powerful message to that government.

States, as signatories to the Constitution, certainly have far more direct influence on the government operating under the Constitution than a Citizen. As such, the principle which was established when a few States refused to attend (and vote) even though they were competent to do so could have some applicability to the observed phenomenon of Citizens not voting today (even when they would otherwise be allowed).

While apathy is said today to be the primary reason large numbers of American Citizens do not exercise their right (many say duty) to vote, one should not discount the real reason why many may not vote — disgust! When half of the population which is entitled to vote does not, such numbers of Voter abstention give convincing evidence that the failure to vote may actually be a vote of "no confidence", just as when the Southern States refused to participate in the government of the United States.

While it can be quite easy for the House of Representatives to meet quorum numbers if the States with large population numbers remain (even if large numbers of States leave), the quorum numbers become much more difficult to meet if even a few of the States with large population numbers refuse to send their members (without secession being recognized).

No matter the size of the population of a State, greater strain is placed in the Senate as more and more States refuse to send Senators to meet in Congress.

If a few States with large population numbers fail to send their Representatives, or if a large number of States (even those with only a small population) fail to send their Senators, collapse of the whole through inability to function because a quorum cannot be met will eventually occur if secession is not recognized.

Secession can then be seen as a mechanism of self-preservation for the whole which is willing to sacrifice the parts less committed to the Union.

While each House has the ability to compel the absent members under penalty, their influence to compel States who desire to boycott Congress is far less direct.

The following chart gives the dates of "secession" of the Southern States and the number of Representatives under the Union each was allowed prior to those dates.

State	Date of "Secession"	Number of Representatives
South Carolina	December 20, 1860	4
Mississippi	January 9, 1861	5
Florida	January 10, 1861	1
Alabama	January 11, 1861	6
Georgia	January 19, 1861	7
Louisiana	January 26, 1861	5
Texas	February 1, 1861	4
Virginia	April 17, 1861	11
Tennessee	May 6, 1861	8
Arkansas	May 6, 1861	3
North Carolina	May 20, 1861	7
		61

The July 30, 1852 Act (X, Statutes at Large, 25) of Congress fixed the number of Representatives following the 1850 Census at 233 Representatives. The admissions of the States of California (2 Representatives), Minnesota (1), and Oregon (1) following the 1850 Census brought the total Representatives for the decade to 237. With 33 States, there were 66 Senators.

The March 4, 1862 Act (XII, Statutes at Large, 353) for re-apportioning Representatives following the 1860 census prescribed 241 members of the House of Representatives. This number (241) shows that the States which supposedly had previously seceded were still counted for purposes of representation (if they were not, the number would have been lessened by ~ 61 Representatives; or, if the number was to stay the same, then re-apportionment to the remaining States would have been necessary).

Thus, as far as the government of the United States was concerned, the Southern States did not "secede" from the Union and form alternative government; they were merely in rebellion against the authority of the government of the United States. The government was therefore quelling such insurrection to restore suspended government according to Congress' authority in Article I, Section 8, Clause 15:

> "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."

This position, of course, comes with a certain degree of potential risk, namely, the ability to form a quorum. The North was gambling that they could sustain sufficient numbers to meet in Congress to maintain government.

The 1862 Apportioning Act was to take effect with the 38th Congress convening March 4, 1863. With 241 members, 121 Representatives were necessary to make a quorum on any given day. With a total of 180 Representatives remaining in the Union, there were sufficient numbers (by about 1/3) to provide ample cushion even though many States refused to attend.

The Union consisted of 33 States by 1860. Kansas was added in 1861. West Virginia was admitted into the Union in 1863 and Nevada in 1864, bringing the count of States by the war's end to be 36. 72 Senators were thus possible to meet together in the Senate; a quorum was then 37 Senators.

11 States passed ordinances of secession, effectively removing 22 Senators from regular attendance (leaving 50 Senators).

The gamble the North took regarding maintaining a quorum was successful during the war years, though not necessarily with as much cushion as it may first appear (37 needed out of 50 for a cushion of 13).

Delaware and Maryland, though slave-States, stayed in the Union. Missouri and Kentucky, though they made attempts at secession, also stayed in the Union even though they too allowed slavery. The procedure of West Virginia's secession from Virginia and admission into the Union as a new State is held suspect by some.

If West Virginia hadn't split off, 35 States would have been in the Union. If the four other slave-States had also seceded, then 15 States would have effectively prevented their 30 Senators from assembling out of a pool of 70 Senators where 36 out of 40 were necessary for a quorum. A cushion of only 4 Senators would provide precious little room for purposes of constantly making a quorum, especially during war-time urgency.

Such a scenario could well have prevented a quorum; which would have likely resulted in the express acknowledgment of the authority of State to secede (so government could, in fact, continue in the remainder).

No mention is given within the Constitution with regards to secession. States that individually decide to join a Union do not necessarily have the ability to individually secede, though the principle of State sovereignty could quite possibly compel it.

Neither did the Articles of Confederation mention any procedure regarding the disintegration of that confederated Union. The only principle established in the Articles was that unanimity of every State legislature was required before any changes in authority could take effect. This principle, of course, would expressly allow for easy transition from one government to another because no transition would take place until every party agreed.

The establishment of the Constitution by the ninth ratification certainly meant demise of the Confederate Union with only four States remaining (consent of nine States was specifically required in specified areas of major impact — obviously four States could not meet this requirement).

In contrast to the Articles' requirement of unanimity to change authority, the principle for establishing new government under the Constitution by action of only nine States was one of political expedience only (and expressly destabilizing at that). This destabilizing factor proved to be an effective mechanism of establishing alternative government more quickly, while also providing a direct impetus to spur those left out of the new union to join in.

All 13 original States were not needed to join in the new union under the Constitution for the Constitution to take effect. Being that not all of the States were necessary for the Constitution to take effect, this would seem to indicate that the Constitution could continue unharmed even if some of the States left the Union.

The First Session of the First Congress, as shown both in the Senate and House Journals of March 4, 1789, referenced the United States "to wit" and "viz." as the eleven States then united under the Constitution (North Carolina and Rhode Island, as States not yet ratifying the Constitution, could no longer be considered united with these States, even though they were two of the thirteen United States of America under the Declaration and Articles).

Article I, Section 10, Clause 1 of the Constitution prevents any State from ever entering into "any Treaty, Alliance, or Confederation". If a State seceded from the Union, it would not, by definition, be restricted by the wording of the Constitution. Thus, the said clause has no real power from preventing any State from seceding the Union and then joining with other like-minded States if their intention is to remove themselves from under that authority.

This power in Section 10 is more restricted than the like power under the Articles, where States could not enter into any treaty, confederation, or alliance between themselves "without the consent of the United States in Congress assembled" (Article VI).

The Constitutional Convention, of course, had the express consent of the United States in Congress assembled under the Articles, though the delegates exceeded their stated authority to "revise the Articles of Confederation". Once the direction the convention to create a new constitution became obvious, the delegates should have rightly returned to the Congress for greater powers and reconvened under proper authority.

Even if one ignored an improper delegation of authority since it was ultimately sanctioned retroactively by all 13 States, the matter of the Constitution being established by the action of only nine State Legislatures is more significant, for it establishes the precedent for supporting secession.

History shows that in 1789, a mere (super) majority of all the States re-united under new constitutional authority and left a (super) minority under old confederate authority (or, more accurately, left to disintegrate).

This end result of this course of action (that some part of a former group would remain and some part of a former group would leave and form a new group under differing authority) is no different than if the few united under new authority (like the Confederate States of America during the Civil War in 1861); leaving the many united under the old authority (the Union under the Constitution).

If anything, the few leaving the many causes far less repercussions than the many leaving the few, for it is far easier to continue government (with any necessary modification), than to set up new government.

While the many leaving the few is a principle which is more difficult to stop due to the rule of the majority, it is no different of a principle. The principle of one group leaving and one group staying is the same whether the majority stays or leaves; it is only different in degree; the precedent of disunity is set.

The Constitution, to more convincingly oppose secession, should have better supported such unity by followed the terms of the earlier government, mandating establishment of the Constitution only upon the ratification of the thirteenth State convention.

The Constitution, to more convincingly oppose the principle of secession, should have better supported such unity by mandating that the Constitution would be established upon the ratification of the thirteenth State convention.

The express right of secession can be viewed from two primary viewpoints. First, to allow secession would only allow government to disintegrate at the first sign of disagreement, even over the most minute of problems (planning for failure will result in failure).

Alternatively, secession is the natural extension of State sovereignty and would directly limit federal authority. If government pushed too far and too hard, States would simply leave the Union. Happiness stems from liberty, not force and mandatory action (failing to plan for all possibilities is planning to fail).

Secession can only ultimately be quelled by resorting to superior force. Secession could be said to differ from mere insurrection by State authority remaining intact in the former, but being challenged in the latter (along with federal authority).

The use of force by the Union against member States was discussed briefly at the convention. Edmund Randolph, of Virginia, opened the main business of the constitutional convention by delivering 15 Resolutions on Tuesday, May 29, 1787. On May 31, the convention delegates discussed Resolution # 6. This resolution had a number of authoritarian principles, including the ability for Congress:

> "to legislate in all cases to which the separate States are incompetent;"
>
> "to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union;" and
>
> "to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof."

These proposals would have allowed omnipotent federal action. Thankfully, all three proposals were discarded as unduly oppressive and against the nature of the proper interrelationship between the States individually verses collectively.

James Madison, also of Virginia, with regards to the last-mentioned proposal which is pertinent in this current discussion regarding secession, stated:

> "The use of force against a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound."

Madison moved that the wording be postponed, which was agreed to by all the States without contradiction (never to be brought back up throughout the convention).

James Buchanan was President on December 3, 1860 when Congress convened in Washington for their Second Session of the 36th Congress. In his written message to Congress on the eve of the Civil War, as detailed in the House Journal, he denied that the States had the ability to secede except when justified as a "revolutionary resistance" when the government was "guilty of a deliberate, palpable, and dangerous exercise of powers not granted by the Constitution" (page 12).

Buchanan further declared that "the power to make war against a State is at variance with the whole spirit and intent of the Constitution" (page 20).

The framers of the Declaration, the Articles of Confederation, and the Constitution viewed the proper approach in promoting liberty was found by directly circumscribing the parameters of proper government action. When those parameters are breached on a regular basis, violent rebellion against such action is the last resort. In the words of the Declaration, it is then the right and duty of people to "throw off such Government, and to provide new Guards for their future Security".

To desire to seeede from the Union fundamentally amounts to declare the Constitution unfit to govern. If this is the premise of those who desire to leave the Union, American liberty allows them that opinion.

If, however, they hold the Constitution in high esteem, and only dislike the government which operates independently of it, then that is another matter. To secede from the government which is merely functioning improperly is to give up hope of that government functioning properly again to those who attempt to subvert it.

What many people really desire is to enforce the Constitution and uphold the Union under it, not destroy it. Their actions should thus remain consistent with that thought and uphold government, not oppose it.

To use violent rebellion against unauthorized government action is to give up the high road of moral action to the thugs who attempt to hi-jack government for their own purposes. Fighting the government with bullets rather than with knowledge of how the government has corrupted its foundation is to assume the role of a outlaw; to become a thug oneself.

The South made this mistake in seeking their course of action to maintain a limited federal government, along with their universal blunder for failing to acknowledge liberty for all people. The South was correct, however, in their assessment that the course of the United States was then at a crossroad.

The United States Government has operated since the War between the States in a manner diametrically opposed to the course of action prior to the war. The government under the United States today operates antithetically to most of the principles of the founding of the United States, supporting them in words only.

By failing to question the improper authority of those who pervert government away from its proper authority, one loses all chance to regain constitutional government effectively and honorably.

The war for independence was fought 200 years ago; there is no need to further fight (violently) for freedom. Limited government is the supreme Law of the Land. Our inalienable rights are expressly secured to us in our organic documents.

To reclaim our proper American heritage, we must learn how to protect ourselves from improper government activity. Before one can effectively fight improper government activity, one must learn what is proper government activity. One must study the Constitution to know what action government can lawfully take.

Most people today think that government must be completely re-invented to restore liberty and justice throughout the land. These people believe that one can

only regain limited government one vote at a time; one legislative Act at a time; one Legislator or President at a time; one judicial decree at a time. Therefore, every vote, Act, Legislator, President, Justice, or judicial ruling is of utmost importance to regain lost footing.

The course of action recommended by these people is said to begin by voting the "right" politician into "office" (even when that office is in fact a legislative seat). Therefore, a great deal of time, effort, and money is spent attempting to get that "right" person elected; as if our future course of liberty is dependent upon outcome of every election. Decade after decade after decade, this fight continues, but precious ground is lost. The tactics of the fight, unfortunately, have remained unchanged.

> The framers of America did not set up a government which allows us to be held hostage during every legislative session or after every election cycle.

One must realize that the system of government has been perverted; the people running it are basically inconsequential! The reason good people can't change government by electing the "right" legislator is because even the "right" legislator has been working within a system which has been skewed from its proper course.

If the supreme Law can be ignored with impunity, what good is it to elect "the right guy" who can only pass laws which are inferior to the superior Law? If the supreme Law is ignored, so too will be the inferior Law. The course of action to elect certain people to office when ignoring the fundamental premises and parameters of government is patently absurd.

Omnipotent government, which is another word for arbitrary government, essentially means that anything can be done to anybody at any time for any reason provided one can get some government official on one's side. Government becomes all-consuming; nothing is done without government approval (which is always uncertain).

Government-by-delegation, in contrary manner, builds upon simple principles of known parameters of authorized actions. Predictable behavior results from a direct cause-and-effect relationship. Known laws are understandable and consistent with one another. Honesty, integrity, morality are rewarded and passed on to subsequent generations, building a strong society.

A different course of action than what has been used in the past must be used if America is to regain her glory as the bright beacon of liberty in a world of oppression. To know what can be done, it is imperative to know more about the proper role of government. From learning well that role, one can have a better chance to learn how that role has been improperly subverted from its correct course.

If a robber breaks into a farmer's storehouse night after night and steals increasing portions of the farmer's stored crops, at some level of theft it becomes necessary for the farmer even to stop his production, if necessary, to learn the manner of his loss.

So too is it now necessary that the Citizen learn the exact manner of how the thugs in government have stolen rightful government from us so we can restore the freedom which is rightfully ours.

Continued careful study of the Constitution is a necessary precondition to provide one with the proper foundation for later investigative scrutiny of unauthorized government activity.

With a proper understanding of the Constitution it becomes possible to properly understand the mechanism by which government has been corrupted from its lawful authority. Thankfully, the vast majority of this corrupted government authority is by mere deception.

Truth is the enemy of deception and truth renders such deception completely powerless. To "pull back the curtain" to expose the Wizard for the fraud he is, is to regain lawful government completely. When one learns the mechanism of deception, one throws off the mountain of inconsequential regulations, codes, decrees, and that masquerading as law to expose the real law.

American liberty and justice is not able to be held hostage by according to who simply happens to be in what legislative seat and executive or judicial office. The powers of that seat or office are circumscribed by the many Articles, Sections, and Clauses of the Constitution which the people in those positions are powerless to expand except by deception over the ignorant.

The first rule in proper Republican government is that powers are limited to those granted and cannot be expanded except by a procedurally-proper manner.

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