The Constitution of the United States

As it was Understood by Those Who Wrote and Ratified it

1. Is Government Necessary?

People will generally agree that government is necessary, but what do we mean by that? Thomas Paine in the 18th century famously asserted that at best government is a necessary evil. However, there are quite a few people in the United States and Europe who think that government as a locus of coercive power is not necessary and is in fact positively harmful. We might reflect for a moment, as the Americans of our founding generation did, that if we create a locus of coercive power, in time it will be in the hands of people whose only interest is to use the power to enrich themselves and their friends. Their plunder, by the way, is always sold as "serving the interests of the People." So we have among us people who argue that law and even security and defense can be produced by free markets without need of a government. These ideas have been around for a long time. In 1849, the Belgian economist Gustave de Molinari published a long essay title "The Production of Security" in which he makes a brilliant case for a people's capacity to defend their society through private security forces. This way of thinking is very interesting and is attracting ever more adherents. However, most Americans have never heard of this and would struggle to understand it. We can say that whether we continue to have government as we presently understand it or not, we will have law, for law exists prior to legislation because it is the law of our nature and it emerges into the open between and among people as they work through their disagreements. So while government as we presently know it is not necessary, and arguably it is harmful, there will be law and so we might consider how Americans in the 18th century thought about this by examining the Constitution of the United States as the people who ratified it understood it.

What, then, is the purpose of government, and what are its proper responsibilities? If we can identify the purposes of government, we have also identified the means to spot government overreaches of power which are always illegal. Happily, our ancestors have left us an excellent answer to this question in the Declaration of Independence. It is important to understand that American political theory, and American government before 1861, were very different from political thought and practice in Europe. In European national states, sovereignty, the authority to govern without the permission of another, is lodged in the

national government of each country. In the United States, sovereignty is lodged in the people of each state, and not in a government. Thus the people of Virginia, for example, are sovereign in Virginia, and so if they decide to abolish the state government in Richmond and fashion a new arrangement in Virginia, that is their right. Since the war of 1861-65, Americans have been taught that the central government in Washington, D.C. is the sovereign government of America and any attempt to break from it or abolish it and remake it is treason worthy of death. But this is simply false, as we will see as we proceed.

The Declaration of Independence begins this way. "When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another…." This is a declaration of secession from the British Empire. This was not a foreign idea among Americans. On May 31, 1775, the people of Mecklenburg County, North Carolina adopted the Mecklenburg Resolves in response to the British attack on Americans at Lexington in Massachusetts. In the Resolves, the patriots in Mecklenburg declare their independence from Britain, and overtly strip every British official in the county of all authority, privileges, and immunities. Secession is simply withdrawal. It can be social, as when someone decides to leave a cocktail party and go home. It can be legal, as when someone sells his house, thereby withdrawing for ownership of the house. It can be political, as when one people, like those in Mecklenburg County and also in Virginia before the Declaration of July 4, 1776, withdrew from the British Empire. Political secession is the cornerstone of political self-determination, it is the most natural expression of government of the people, by the people, and for the people when a people decide that their current political arrangements no longer serve their interests. Why did Americans in the 18th century think they had the authority to establish, disestablish, or remake governments as they chose?

We human beings possess rights that exist before any government is established, and we have them from our human nature. Human nature is moral and intellectual, and developing the capacities of our nature is foundational to a happy life. We are made in the image and likeness of God for communion with Him, and for this reason no human being has a natural proprietary interest in anyone else. Because this is so, our political arrangements have to be voluntary, since we have rights from our nature, and each person is morally obliged to keep from violating the rights of others. In order to ensure this, "governments are instituted among men, deriving their just powers from the consent of the governed, and when any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it and to institute new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness." Americans had this right in 1776, and Americans have this right today. Government exists to protect the lives, liberties, and property rights of

individuals. We should be clear that in the theory of liberty, especially as it is found in American history, the very ground, or foundation, of liberty is property, and this is why property rights must be inviolable for if government is empowered to take our property, freedom is only a word. So, how did our Constitution come about, and what kind of political arrangement does it establish?

2. The Articles of Confederation and Perpetual Union

The Articles of Confederation and Perpetual Union is our first constitution, going into effect in 1781. Almost immediately, prominent people in the United States began complaining about it saying the government the Articles established is not properly "energetic." As we proceed, we will consider what in the Articles pleased many and angered others. The document begins by naming each state individually, unlike the Preamble to the Constitution which will be explained later, and this is done for the reason to be stated in Article III which is to establish a "firm league of friendship" among the states. Our country receives its name in Article I: "The stile of this Confederacy shall be 'The United States of America'." Note that the name "the United States" is the name of a confederacy, and not the name of a nation. This is clear from Article II. "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled." This article expresses the principle of federalism, which is the central governing principle of the American political tradition. Its purpose is to ensure that power is decentralized and held as locally as possible (subsidiarity). No institution of society should encroach on the responsibilities of any other institution for this is the path of "consolidation," which is the centralization of power and the end of liberty and property rights. The confederal government, Congress, has only those powers "expressly delegated" to it in the Articles of Confederation. Thus, any act whatsoever taken by Congress, the authority for which is not clearly expressed in the Articles, is a usurpation, null, void, and no law at all.

Article III begins this way: "The said States hereby enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever." A league is an alliance of individuals or states for common and agreed-upon purposes. Thus it is clear that

the Articles did not create a nation, but a “league of friendship” among sovereign states bound together for mutual assistance in matters of defense and trade among themselves.

The Articles of Confederation established a Congress with a single house of delegates. There was no executive, and no court. This is because Americans at the time saw in a president an elected monarch, and in a confederal court the surest engine of corruption of the law by artful and dishonest “interpretations” of the Articles of Confederation. The delegates to the Congress were chosen each year by the legislatures of the states, and each state legislature retained the right to withdraw a delegate at its discretion and to replace him with another. In this way, delegates who contributed to attempts to expand the power of Congress could easily be put out of business. Moreover, and importantly, by giving to the legislatures the power to appoint and withdraw delegates to Congress, those delegates, unlike today’s federal politicians, could not hold themselves in power by offering bribes to voters.

3. **Limits on Power:** Under the Articles of Confederation, Congress was forbidden to declare war, issue letters of marque or reprisal in times of peace, enter into treaties, coin money, borrow money, determine the number of naval vessels to be acquired and maintained or the number of land forces to be raised, or to appoint a commander-in-chief of the army or navy unless nine states consent. Here again, the states controlled the federal government and its budget. The states agree to abide by the decisions of Congress on questions that the states submit to it, and no alteration can be made to the Articles of Confederation unless agreed to by Congress and confirmed by every state.

4. The Constitution of the United States

Background: One might wonder why a Constitution was thought necessary in 1787 when the United States already had one. The two dominant political factions at the time were nationalists, who wanted the United States to become a national state like Britain, and federalists, who wanted a union for the purposes of security and trade only, with all other powers left to the states. The federalists tended to be happy with the Articles of Confederation because it protected their desired form of government. The nationalists disliked the Articles because the government it established was restrained such that the nationalists couldn’t expand its power into a national state.

The nationalists were led by James Madison and Alexander Hamilton, and they maneuvered repeatedly for a convention of states to write a new constitution. They finally achieved their goal with a convention in Philadelphia in the hot summer of 1787 at which the delegates were to discuss amendments to the Articles of Confederation for the states to consider. But this was not likely to succeed to the nationalists' satisfaction because the Articles could not be amended unless every state agreed to it, and so amendments that were vague and thus manipulable, or amendments that plainly expanded the power of the federal government at the expense of the states were highly unlikely to succeed. So the nationalists determined to "go for broke" and write a new constitution to craft a government to their liking. However, the federalists knew what the nationalists were attempting, and although they did not like it, they were willing to negotiate with the nationalists (who included George Washington) because they knew just as the nationalists knew that the states had to be in union. First, and most importantly, the states were not the sole occupants of the continent. Three powerful national states also were present: Spain, France, and Britain. The fear among Americans was that unless they were united in a pact of mutual defense, any of these other powers could pick off the states one at a time, reducing them to colonies of the greater powers. Second, they wanted union in order to ensure that the states would be a free-trade zone among them, and could manage trade and diplomacy with foreign countries.

5. **Background Continued:** In the time before the convention began, the nationalists, in a fit of propaganda maneuvering, began calling themselves "federalists," since the idea of federalism was exceedingly popular, and the federalists they began to call "anti-federalists," thus hoping to generate opposition to their cause. When the convention began on May 25, 1787, the delegates did two curious things: they closed the windows in the room where they met, even though it was hot, so that people outside couldn't hear them, and they swore themselves to secrecy. (James Madison regarded his oath of sufficient weight that he went to his death in 1836 having never permitted his notes on the Philadelphia Convention to be published.) The nationalists led with their big-ticket desires. James Madison's Virginia Plan would have established a national government with an absolute veto over all state legislation. Alexander Hamilton wanted a president for life, and there was entertained (briefly) the idea that the president should appoint the governors of the states. Those ambitions went down in flames. For the next several months, the delegates on either side negotiated for as much as they could get without endangering the general commitment to union. In the end (and there is some controversy about this), what came out of the convention was a constitution that fashioned a federation of sovereign states

rather than a nation, but with innovations on the Articles of Confederation, like a chief executive and a supreme court, that set down a track upon which the federal government could grow into the government of a national state. In our examination, we will focus on the aspects of the Constitution that establish a federation of sovereign states, and the aspects of it that tend toward a national state.

6. **Preamble:** It comes as a great surprise to most Americans that our Constitution does not establish a nation, but rather a federation of sovereign states, or what John C. Calhoun called "an assemblage of nations." At the time of the ratification of the Constitution, people did not call themselves Americans, but rather there were New Yorkers, Marylanders, Virginians, and so on. Indeed, it was thought that the term "American" identified no one in particular since Canadians and Mexicans also are American.

In response to this, one will find appeals to the preamble of the Constitution and the words "We the People of the United States…" to serve as evidence that the Constitution does indeed establish a nation. However, this way of introducing the Constitution was explained by James Madison in his notes on the debates in the Federal Convention, and also by the Virginia jurist, secretary of the Navy, and secretary of state Abel Upshur in his celebrated book *A Brief Enquiry into the True Nature and Character of our Federal Government: Being a Review of Judge Story's Commentaries on the Constitution of the United States* in 1840. The Articles of Confederation name each state individually, and earlier drafts of the Constitution did the same. When the delegates at Philadelphia concluded their business having unanimously agreed upon the Constitution, they appointed a committee on style to render the language of the document clear and elegant. When the committee finished its work, the Constitution went back to the full convention for review to ensure that the committee on style hadn't inadvertently altered the substance of the Constitution. When reviewing Article VII of the Constitution, the delegates spotted an incoherence. This article declares that the Constitution will go into effect when nine states have ratified it, and it will be in effect for those states only. So if nine states ratify and four do not, it would be most awkward for those states to be named in the preamble to a Constitution they rejected. The delegates chose instead to use a phrase that everyone knew and many used: We the people of the United States. So the assertion that this opening line of the Constitution announces us to be a single national people is mistaken.

7. **Compact among Sovereign States:** The Constitution of the United States is a compact among the states that ratified it. In this compact, the states created a general government for limited and specified purposes. The central political idea expressed in the Constitution is the principle of federalism which is concisely declared in the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." So, the federal government has only the powers delegated to it in the Constitution, and no others. The states have all powers not expressly surrendered in the Constitution. Let's take two examples, one at the origin of the Constitution, and one more recent.

The powers of Congress are listed in Article I, section 8 of the Constitution. The few powers of the president are in Article II, and the Supreme Court and its restricted jurisdiction are found in Article III. The powers that states agree to surrender upon adopting the Constitution are in Article I, section 10. We often hear people say that when the southern states seceded from the union in 1860/61, they committed treason. However, treason against the United States is defined in Article III, section 3 of the Constitution. It was defined, and strictly defined, because accusations of treason and the executions to follow were among the favorite means of English monarchs to rid themselves of inconvenient people. The Constitution defines treason as follows: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort." The southern states did neither of these things, and so clearly did not commit treason. Does this mean that there is a constitutional right of states to secede from the union? The Declaration of Independence begins with these words: "When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another,…" This is a declaration of secession, and so we might wonder how it could be that a country that began in an act of secession could be one in which secession is a capital crime. Article I, section 10 of the Constitution does not deny to the states the right to secede. Article I, section 8 of the Constitution does not give to Congress authority to suppress secession of a state. Neither is this power granted to the president or the Court. Thus according to the Tenth Amendment, the states that consented to join the union retained the authority to leave it. Indeed, Virginia, New York, and Rhode Island wrote in their ratification statements that they reserved the right to leave the union if their interests indicated it, and South Carolina wrote in its ratification

statement that the state reserves the right to nullify within its borders unconstitutional federal laws. This is difficult for Americans to grasp because we've been taught from childhood that secession is treason, but the Constitution of the United States simply does not support this claim (Texas v. White).

More recently, we saw a fair amount of angst over the decision of the Supreme Court to overturn Roe v. Wade. The Court simply returned the question of what to do about abortion to the states where it belongs. In other words, Roe v. Wade was a serious constitutional error, and the Dobbs decision simply corrected the error. On this point, the Constitution is plain. There was significant debate in the late 18th century over whether the Constitution should include a bill of rights. James Madison opposed a bill of rights arguing in part that there will be efforts by power-hungry people to insist that the rights named in a bill of rights are the only rights held by people in the face of the government. Thomas Jefferson argued that a bill of rights would give people a common language in which to discuss their rights, and so would facilitate and assist public discussion of this important question. When it became clear that several states would not ratify a constitution without a bill of rights, Madison agreed to draft one. Here we must understand, contrary to what most of us have been taught, that the Bill of Rights is not intended to protect the rights of individuals from federal violation. Rather, the Bill of Rights is intended to protect state legislatures from federal intrusion and usurpation. The understanding was that the people of each state are sovereign within their respective states, and so questions concerning, for example, which rights to protect and which claims of rights not to protect are to be determined by the people of each state and enacted through their legislatures. The Ninth Amendments reads as follows: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In other words, the fact that certain rights are listed in the Bill of Rights is not to be taken to mean that these are the only rights we have. We must then ask, who has the authority to identify and protect those rights? Again, the meaning of the Constitution turns on the Tenth Amendment's declaration of the federalism holding that powers not delegated to the United States in the Constitution, nor prohibited by it to the states, are reserved to the states and to the people thereof. The Constitution does not give to the federal government authority to identify and protect rights not enumerated in the Constitution and neither does it deny this authority to the states. Therefore, identifying and protecting unenumerated rights is a power of the states and not of the federal government. Thus when the Supreme Court identified the right to abortion as an unenumerated right and acted to protect this supposed right, it acted illegally because unconstitutionally. In the recent

Dobbs decision, the Court corrected its error and returned the regulation of abortion to the states where the Constitution places it.

8. **Congress:** Congress and its powers are found in Article I of the Constitution. The opening line of this Article reads this way: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Note that *all* legislative power granted by the Constitution resides in Congress. This means by deduction that neither the president nor the Supreme Court has any legislative power. Thus whenever the president or any agent of the executive branch, or any federal court, issues legislative decrees, their acts are illegal because unconstitutional, and this is unambiguous because the Constitution vests all federal legislative power in the Congress. It would be too long and too tedious to go through all of the delegated powers and to explain what key words meant to the people who wrote and ratified the Constitution, but a few issues in Article I, section 8 deserve attention. First is the "**general welfare**" clause. Section 8 begins: "The Congress shall have Power To Lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and excises shall be uniform throughout the United States." This is one of the parts of the Constitution, put there deliberately by nationalists, that is sufficiently vague that it can be argued to mean practically anything. What does "general welfare" mean? There was much debate about this, especially from the patriots called "anti-federalists," who insisted that the phrase was too vague to admit of definition, and therefore should not be used. We see dispute on the issue with this phrase framed in the definitions offered by James Madison and Alexander Hamilton. The general welfare clause was often called the "spending power clause," and Madison insisted that it means only that Congress has authority to spend money to carry out the rest of the powers granted it in Article I, section 8, and nothing more. If Madison's interpretation here is not correct, then the Tenth Amendment becomes meaningless. Alexander Hamilton argued, but only after the Constitution was ratified, that the general welfare clause gives Congress authority to spend without limit for any purpose it deems in the general welfare of the country. Of course, this interpretation destroys the Tenth Amendment and with it, the sovereignty and power of the states. Americans in the 18th century would reach for their muskets if they were told they will have a general government with authority to enter states as it pleases to build roads, bridges, hospitals, or whatever else it declared to be in the general welfare of the supposed nation.

9. **Congress Continued, Commerce Clause:** Congress is delegated power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes." (Wickard v. Filburn).

10. **Congress Continued, Necessary and Proper Clause:** In the last paragraph of Article I, section 8 we read in part: "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution…." This is known as the "necessary and proper" clause, and it has been used by nationalists from the beginning of government under the Constitution to expand federal powers beyond those delegated in the Constitution. There was much debate about this at the state ratifying conventions. People who were alarmed by the vagueness of this clause argued that it established in the Constitution powers that are implied, and to the extent the federal government arrogates to itself the authority to determine what the implied powers are, it becomes a government endowed with authority to determine the limits of its own powers. This was not to be tolerated, and so we see a kind of politics at work that for us is all-too familiar. At the New York ratification convention in Poughkeepsie in 1788, there was much discussion of implied powers in the Constitution. Alexander Hamilton insisted that there are no implied powers in the Constitution, agreeing that this would create an impermissible authority of the federal government to decide the limits of its powers. After the Constitution was ratified and the new general government seated, Alexander Hamilton joined President Washington's cabinet as secretary of the treasury. Thomas Jefferson joined the cabinet as secretary of state. Right away, Hamilton began urging the president to establish a national bank. This had been discussed and rejected both at the Philadelphia Convention and in the state ratification conventions as a power not delegated called "chartering corporations." Jefferson objected to a national bank insisting that there is no power delegated in the Constitution for chartering corporations. Hamilton counter-argued insisting that Article I, section 8 contains implied powers including the power to charter a bank because it is in the interest of the general welfare. In short, when seeking ratification of the Constitution, Hamilton told delegates at the New York Convention that the Constitution had no implied powers, but as secretary of the treasury, he assured President Washington that there were indeed implied powers in the Constitution, and he, as an officer of the general government, could determine what they were. Washington agreed, and Jefferson resigned from the cabinet in protest, going into opposition.

Section 9 says that writs of Habeas Corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it, and importantly forbids the abolition of the transatlantic slave trade before 1808 (discuss).

11. **The President:** We should recall that the Articles of Confederation and Perpetual Union did not establish the office of a president because the people then, and during the ratification debates for our present Constitution, feared that a chief executive would become an elected monarch. Bear in mind that the administrative state began in Europe and the monarch was simply the chief executive officer presiding over the administrative machinery of the state. So for early Americans, if you remove a king and replace him with a president, nothing has changed. The important thing is to establish only such government as is needed for security and trade, and for the rest, impose restrictions on power so that administrative machinery cannot develop. As it happened, the Americans who were called "Anti-federalists" were right to be concerned about establishing a president for the general government of the United States. As long ago as 1965, political philosopher James Burnham, in a book titled *Congress and the American Tradition,* traced the events that resulted over time in ever more congressional authority flowing out of the legislature and into the executive branch. Nearly sixty years later, we see that the vast array of executive branch agencies, each endowed with the authority to make and enforce laws they barely conceal by calling them "regulations," has rendered the president nothing if not an elected monarch. But the language of the Constitution regarding the office of the president scarcely hints that such development is possible.

The structure of government in the Constitution is federal, and it cannot properly be understood without understanding the crucial role of the states in this governing structure. Recall that the states, too, have constitutions and those constitutions are older than the Constitution of the United States. State constitutions are superseded by the federal only with regard to the powers the states agree to give up in Article I, section 10 of the federal Constitution. One can wonder at length how it might happen that the people of thirteen free, sovereign, and independent states would write and adopt a constitution for a general government that would render their state constitutions of little to no further

authority, and their descendants subject forever to a governing order to which they did not consent. The House of Representatives is something of a democratic body since it is elected by people of the states each in his or her congressional district. The Senate represents the state legislatures, and, prior to the adoption of the Seventeenth Amendment in 1913, senators were chosen by the legislatures of the states and not by the people of a state. This makes sense, while the way senators are presently elected is curious at best. The people of each state are represented in Congress by their representatives in the House. What then is contributed by having those same people represented again by two senators? When senators were chosen by state legislatures, the states had a check on unconstitutional or harmful legislation coming out of the House. For instance, all bills for raising revenue must originate in the House. So a worrisome bill that reaches the Senate from the House may likely result in instructions from the home legislatures to senators to modify or spike the bill. The Seventeenth Amendment was intended to reduce the power of states relative to the federal government by removing this control over federal legislation.

The president is the only truly federal officer since the House represents the people, the Senate represents the states, and the president is not a representative but rather the federal executive who sees to the conduct of the business of the general government, and is chosen by the states. This is the purpose of the electoral college. And if there is a tie in the electoral college, as happened in 1800, the election for president goes into the House of Representatives where each state gets one vote. There are no national elections in the United States because the Constitution does not create a nation, but rather a federation of sovereign states. Each state has a number of electors equal to the number of senators and the number of representatives a state has in the House. So, Wyoming, with one representative and two senators, has three electoral votes, while California, with fifty-three representatives and two senators, has fifty-five electoral votes. Electors are chosen by the legislatures of each state by whatever method a legislature chooses. Today, each state chooses electors by popular vote of the citizens of the state. The fact that all state elections for electors take place on the same day in November creates the illusion of a national election, but it is not a national election, but rather fifty separate state elections taking place on the same day. So when a voter pulls a lever next to the name of a candidate, the voter is actually voting for the electors of that candidate's party. The actual election for president occurs in December in the various state capitols. However, if state legislatures simply decided to award electors

by votes taken within their legislative chambers, with no votes taken from citizens, this would be perfectly constitutional.

12. **Presidential Powers:** Upon entering office, a president takes the following oath: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States." Note that a president swears to preserve, protect, and defend the Constitution. Would this not mean that a president has a sworn duty to veto every bill that reaches his desk for which there is no authority in the Constitution? It is worth pondering that when historians undertake to rank presidents from best to worst, their selection criteria almost never include the question of which presidents most faithfully executed their oaths of office.

    The president is commander-in-chief of the army and navy, and of the militias in the states when they are called to service of the United States. The president has power to grant pardons and reprieves for offenses against the United States except in cases of impeachment. The president has power, with the consent of two-thirds of the Senate, to make treaties with foreign governments. He appoints ambassadors and other public ministers and consuls, federal judges, and others that Congress may establish. He may fill vacancies during a recess of the Senate whose commissions expire at the end of the next session of the Senate. The president conducts the foreign affairs of the United States.

13. **Supreme Court:** The Supreme Court is the only court established in the Constitution, although Congress has authority to create and abolish lower federal courts as it chooses Justices of the Supreme Court, and judges of inferior courts, hold their offices "during good Behavior." Who determines that? The House of Representatives, which has full power over impeachments of federal officers, while the Senate has power to try impeachment cases. Congress also has authority to restrict the appellate jurisdiction of the Court. Essentially, this is the jurisdiction of the Supreme Court: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority;…" It is important to see that the Constitution does not give to the Supreme Court authority to tell the country what the Constitution means, and neither

does it give to the Court authority to strike down state laws. Both practices of the Court are unconstitutional (Wickard v. Filburn).

14. **Articles IV-VII**

Article IV includes the fugitive slave clause that was superseded by the 13th Amendment, promulgated in December of 1865, and which abolishes slavery and involuntary servitude in the United States and any territory under their jurisdiction. Section 3 describes the admission of new states, and forbids the formation of a state from another state without the approval of the mother state's legislature (West Virginia). Section 4 guarantees to every state a republican form of government, and pledges the federal government to protect each state against invasion.

Article V presents the methods for amending the Constitution. Congress may propose changes to the Constitution when two-thirds of both houses agree or when two-thirds of state legislatures call for a convention to change the Constitution. Amendments will be adopted when ratified by either three-fourths of state legislatures or by conventions in three-fourths of the states (note the power of states).

Article VI contains the often-misunderstood Supremacy Clause which reads as follows: "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;…" This clause is often asserted to establish federal law as supreme over state law. This error is the consequence of ignoring the words "in Pursuance thereof." The only acts of Congress that are lawful are those made in accord with, or in pursuance of, the Constitution. Thus an act of Congress that is grounded on no power delegated in the Constitution is not a law but a usurpation, and an illegal act which by definition is null and void, carrying no obligation of obedience.

Article VII provides for the following: “The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.” In other words, nine states had authority to dissolve the union established in the Articles of Confederation.

15. **Bill of Rights:** There was controversy over whether to have a bill of rights, but several states, including North Carolina, refused to ratify the Constitution without a guarantee of a bill of rights. James Madison opposed a bill of rights, but agreed finally to draft one.

We will consider each one in turn.

1. Religion, speech, press.
2. Right to keep and bear arms.
3. Quartering soldiers in private homes.
4. No searches without a warrant based on probable cause.
5. Due process of law.
6. Right to trial by impartial jury, and the right to compel witnesses to appear in court, and the right to confront one’s accusers.
7. Right to jury trial in all suits exceeding twenty dollars.
8. No cruel and unusual punishments.
9. There are more rights than those enumerated here.
10. Principle of federalism.