

Some Critical Considerations on the US Constitution

Guest post by Carl Watner. Originally published in The Voluntaryist, February 1988.

The Constitution is one of the most revered symbols of the United States. Over the years, it has taken on all the trappings of sovereignty, commanding the loyalty of almost every American. The Constitution is “America’s uncrowned king,” because “it is above party, a common object of veneration, a living symbol of national unity.”

We should examine the Constitution closely, since it has such a pervasive influence over our lives. Does it meet the requirements of commonly accepted legal principles and reason, or do we judge it by a double standard? Did the Constitution have a legal birth, or did it unlawfully encroach on the Articles of Confederation? In other words, is the Constitution constitutional, and does it have any inherent authority?

Did the Constitution Originate in a Constitutional Manner?

Constitutional conventions are characteristically an American institution and had their origins during the American Revolution, when individual state conventions were convened. In 1787, the Congress of the Articles of Confederation, called for a new convention in Philadelphia for the “sole and express purpose of *revising* the Articles,” (emphasis added). The forty-two delegates, who gathered there, ignored their instructions, instead creating an entirely new framework of government – the Constitution. Regardless of their justification, the members of the convention had no authority to do anything but revise the Articles of Confederation. In violating their “commission,” they committed a serious breach of trust.

In setting out the instructions for ratification of the new constitution, the convention also exceeded the power it had been delegated. It sanctioned a ratification process which looked to specially elected conventions, rather than being dependent upon Congress and the existing state legislatures. The new constitution was to supercede the Articles of Confederation, after it had been approved by conventions of 9 out of the 13 states. The procedure for amending the Articles of Confederation provided that amendments be originated in Congress and approved by all 13 state legislatures. The fact that the Articles were still the fundamental law was simply ignored by the members of the Constitutional Convention. There is no question that they resorted to an illegal process to create a new government.

Many questionable legal maneuvers were employed during the struggle for ratification of the Constitution. In Pennsylvania, the call for a convention was adopted without a quorum. In South Carolina, the anti-federalists tried to block the call for a convention, on the grounds that the Philadelphia convention had exceeded its lawful authority. Patrick Henry,

in Virginia, launched a critical attack on the Constitution and alleged that the delegates in Philadelphia were engaged in a criminal conspiracy.

In many states, ratification was achieved by narrow margins, but nowhere was the new constitution put to a popular vote. Women, Negroes and Indians did not vote for convention delegates in any of the states. White male suffrage was generally restricted to those who held land, or property of a certain value. The question of ratification was greeted with apathy and indifference by many. It is quite likely that the Constitution would have been rejected if it had been submitted to a referendum vote of the people. Its adoption was clearly pushed by the politically powerful and men of wealth. "Probably not more than three percent of the male population actually balloted upon the choice of delegates to the various state conventions." Clearly the new constitution was adopted by an unrepresentative process.

On General Principles of Law and Reason, Is the Constitution Constitutional?

Even before the passage of the English Statute of Frauds in 1677, it was a generally accepted legal principle that a contract could not be enforced unless it was put in writing and signed and delivered by the parties. Who signed the U.S. Constitution and to whom was it delivered? Thirty-nine men (out of several million Americans) signed the document, but not in a manner that made them personally responsible. Today's judges, who profess to derive their authority from the Constitution, would spurn any other written document which did not contain all the signatures of the parties bound to the agreement. On what grounds can it be asserted that the people of the thirteen North American states ever obliged themselves to obey the Constitution?

Did those who voted for the convention delegates bind themselves to accept the Constitution? The anti-federalists opposed the Constitution and could not be said to be honor bound to accept it, even though they voted for delegates to the ratifying conventions. Their opposition was widely known. No delegate held a power of attorney from anyone who voted for him. By what authority could a delegate legally speak for anyone but himself?

Furthermore, to whom does the Constitution legally apply today? Few people consented to the Constitution in any meaningful way. Those persons, even if they gave *their* formal consent, are dead. If the Constitution was their contract, it died with them. "They had no natural power or right to make it obligatory upon their children" or posterity.

Is the Constitution Constitutional?

History and logic provide evidence for the conclusion that the Constitution is unconstitutional. It did not legally supercede the Articles of Confederation. How can a document the adoption of which violated the laws of due process purport to be the

foundation of our government? Time does not heal violations of “due process.” Furthermore, the Constitution was neither signed nor delivered, and its obligation, if it ever had any, attaches to no one now. The Constitution was an illegal usurper at the time of its inception. The government which it spawned has been an ongoing criminal conspiracy that has used the document to legitimize its activities.

Since the Constitution is Unconstitutional, What Do We Do?

There are two essential things each one of us can do. One is positive, the other, negative. First, we must assume self government and take on the responsibility of caring for ourselves, and our own. If each of us can fill the prescription for the good life, we probably don't need a constitution anyhow. And if we can't, a constitution won't do us much good. A society is only as healthy as the individuals who compose it. Our emphasis must be on creating strong-willed, self-governing, principled individuals.

Second, we must not sanction the Constitution in any way. Voting, holding political office, a government job, or pledging allegiance to the Constitution, all sanction the system. We should avoid using tax-supported services to the greatest extent possible. If circumstances make it difficult not to use such services (roads, post office, government money), we should speak out and make it plain that we call for an end to such services.

In a sense, our first mission – of providing for ourselves – encompasses the second directive of not sanctioning the government. If we concentrate on becoming better people and building stronger families, we will, of necessity, avoid relying on government. Depending on the government diminishes our self-respect and self responsibility.

Constitutions are signs of mental laziness. The surest sanctuary of freedom for a people is not in constitutions or bills of rights, but rather in the minds of the people and in their attitudes towards those who encroach on their rights. Many nations have been tyrannized by governments that ruled according to constitutions (Nazi Germany and Soviet Russia). If people reject the legitimacy of those who would trample on their rights, they are on the road to being safe and free. If they do not reject such attempts, no constitution in the world will save them from tyranny.

It is clear that Americans should stop supporting the Constitution. Today's controversies surrounding the Constitution are directly traceable to the fact that it is a cover for an illegitimate government. Isn't it time to reject the Constitution and all forms of political government? Isn't it time each one of us assumed self government over the only person we can rightly govern – our own selves?

References:

Warren E. Burger, “Birth of a True Nation,” *Reader's Digest*, September 1987, pp. 33-35.

Marc Eric Ely-Chaitlin, "Constitution Paper #2" (Privately circulated, 1986)

Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development*, New York: W. W. Norton and Company, 1948. See pp. 146, 158, 161, 163, and 166.

Lysander Spooner, *No Treason, No. VI. The Constitution of No Authority* (1870).