In Search of the Supreme Flaw of the Land:

Perpetual Union

by

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caveat lector

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Prefatory Comments

> The intention of the parties is the pole-star of construction; but their intention must be found expressed in the contract and be consistent with rules of law. The court will not make a new contract for the parties, nor will words be forced from their real signification. —from *CONTRACT*
> *Bouvier's Law Dictionary*, 1889

Few people seem to have noticed that the U.S. constitution doesn't have a title. It begins immediately at what we call the Preamble. That Preamble, which itself doesn't have a title, refers to the document simply as "this Constitution for the United States of America". Grammatically, that doesn't exclude the possibility of other such constitutions. That is, grammatically, it doesn't refer to "this one and only Constitution...." It simply refers to "this Constitution...." That grammar might, theoretically, allow for the possible existence of other constitutions besides "this" one.

> ... when a written contract has been entered into, and the object is to prove what it was, it is requisite to produce the original writing, if it is to be attained; and in that case no copy or other inferior evidence will be received. —from *EVIDENCE*
> *Bouvier's Law Dictionary*, 1889

The U.S. constitution is a contract to which all of the rules of contracts apply. It begins immediately at the Preamble, without a title. The Preamble refers to the document as "this Constitution for the United States of America". That isn't a title. It's a description. The intended title isn't found in writing and, therefore, the original intentions of the writers are mere speculation. The only way that a specific title could have been added later is by amendment. Unless such an amendment can be discovered, any copy of the document that bears the title *The Constitution of the United States of America* is a falsification.

Why is that important? It's important because sources that are cited by title in any legal proceeding must be cited accurately and unambiguously. That's true of all legal proceedings, such as court cases, declarations of war or peace, the enactment of treaties and legislation, and so forth. So, what about all of those proceedings that formally refer to or inherently rely upon a document called "The Constitution of the United States of America"? There isn't any such document or, at least, the reference is ambiguous. It seems to me that any legal proceeding that cites or relies on a document that doesn't exist, or the identity of which is ambiguous, is of little or no legal effect. For this, and for various other reasons, I believe that there isn't any legal document, legal decision, or legal institution anywhere in the entire country that retains any validity.

To leave the founding document of the entire government without a title is typical of the incompetence and confusion that characterized the entire process at the time. That incompetence and confusion will become evident in this essay, and in the other essays in this collection. Whatever the case, in this essay, and in other of my writing, I refer to the alleged founding document of the United States simply as the U.S. constitution.

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Sovereignty

Sovereign States

The original thirteen English colonies in America were each separately established by charters from England. Except for the common bond of each being such a colony, they were not otherwise united. Prior to July, 1776, each of the colonies terminated its political ties with England and several adopted constitutions. That actual independence of the colonies was proclaimed in *The Declaration of Independence*.

The writers of *The Declaration of Independence* consistently referred to the colonies in the plural. Even the name given to the colonies in their united effort to confront a common enemy was plural. They were called the United States of America, not the United State of America. The writers concluded by asserting the independence of each separate colony, and not that of the union.

> We, therefore, the representatives of the United States of America, in General Congress, assembled ... solemnly publish and declare, that these united colonies are, and of right ought to be free and independent states....
>
> —from *The Declaration of Independence*

The legal effect was therefore to make each colony a separate and politically independent nation. That condition existed until the enactment of the *Articles of Confederation*.

Sovereignty and the *Articles of Confederation*

The writers of the *Articles of Confederation* addressed state sovereignty in 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.
>
> —Article II
> *Articles of Confederation*

Nevertheless, the extent and legal effect of state sovereignty remained a matter of debate. Its limitations were discussed with regard to the treaty with England in a letter from the Continental Congress to the states, issued on April 13, 1787.

> ... Let it be remembered that the thirteen Independent Sovereign States have by express delegation of power, formed and vested in us a general though limited Sovereignty for the general and national purposes specified in the Confederation. In this Sovereignty they cannot severally participate (except by their Delegates) nor with it have concurrent Jurisdiction, for the 9th Article of the confederation most expressly conveys to us the sole and exclusive right and power of determining on war and peace, and of entering into treaties and alliances &c. When therefore a treaty is constitutionally made ratified and published by us, it immediately becomes binding on the whole nation and superadded to the laws of the land, without the intervention of State Legislatures. Treaties derive their obligation from being compacts between the Sovereign of this, and the Sovereign of another Nation, whereas laws or statutes derive their force from being the Acts of a Legislature competent to the passing of them. Hence it is clear that Treaties must be implicitly received and observed by every Member of the Nation; for as State Legislatures are not competent to the making of such compacts or treaties, so neither are they competent in that capacity, authoritatively to decide on, or ascertain the construction and sense of them .... For as the Legislature only which constitutionally passes a law has power to revise and amend it, so the sovereigns only who are parties to the treaty have power, by mutual

> consent and posterior Articles to correct or explain it....
>
> —from Volume XXXII, pages 177-178
> *The Journals of the Continental Congress*

The Kentucky Resolutions of 1799 professed a different view of state sovereignty:

> Resolved, That .... if those who administer the general government be permitted to transgress the limits fixed by that compact [*the U. S. constitution*], by a total disregard to the special delegations of power therein contained, an annihilation of the state governments, and the creation upon their ruins of a general consolidated government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop not short of *despotism*—since the discretion of those who administer the government, and not the *Constitution,* would be the measure of their powers: That the several states who formed that instrument being sovereign and independent, have the unquestionable right to judge of the infraction; and, *That a nullification of those sovereignties, of all unauthorized acts done under color of that instrument is the rightful remedy*....
>
> —*THE KENTUCKY RESOLUTIONS OF 1799*
> February 22, 1799

Those are three statements among many. The sovereignty discussion has been long and heated. I advocate individual sovereignty, rather than state sovereignty. Nevertheless, the idea continues to be applied to governments. This essay necessarily deals with sovereignty in that sense. However, see my essay *Personal Sovereignty*. It's available under the heading *Essays About Liberty, Sovereignty, and Social Contract*, in *Pharos*.

Amid the long-standing disagreement, *Bouvier's Law Dictionary* provides a definition.

> The union and exercise of all human power possessed in a state: it is a combination of all power; it is the power to do everything in a state without accountability, —to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like....
>
> —from *SOVEREIGNTY*
> *Bouvier's Law Dictionary*, 1889

Given that definition, it's difficult to see how there can be partial sovereignty. Either a state is sovereign, or it shares powers and isn't sovereign. Even the exclusive exercise of certain powers (but not all powers) by a state doesn't prove sovereignty. It seems to me that any concession whatsoever of any ingredient of sovereignty causes its entire loss. Other powers may continue to be exercised, even exclusively, but a state that isn't free "to do everything without accountability" isn't sovereign, at least according to Bouvier's definition.

In a more relative sense, a state might delegate or share its powers and yet retain a kind of potential sovereignty if it retains the power to dissociate itself from alliances and again behave as a sovereign state. When sovereignty is viewed in that way, then the importance of the power of secession becomes evident. The ability to secede is a sovereignty of last resort that can be attempted when all else fails.

The power of secession is today generally conceded to be non-existent among the American states. A basis for that lack is suggested in *Bouvier's Law Dictionary*.

> The union of the states was never a purely artificial relation. By the articles or [*sic*] confederation the union was declared to be perpetual, and the constitution was ordained to form a more perfect union. —from *SECESSION*
> *Bouvier's Law Dictionary*, 1889

That comment is based on statements made in the Preamble and in Article 13 of the *Articles of Confederation*, and in the Preamble to the U.S. constitution. The states affirmed in the Preamble to the *Articles of Confederation*, and four times in Article 13, that the union was perpetual. They also agreed twice in Article 13 to inviolably observe every Article and to abide by the determinations of the Continental Congress. They agreed that no change in the alliance could occur until the Continental Congress agreed to it and the legislatures of every state confirmed it. Those agreements effectively eliminated the sovereignty of any particular state under the *Articles of Confederation*. The states did, however, retain the power to alter the *Articles of Confederation*. It might be presumed that, lacking any restriction to the contrary, the requirements of perpetual union and inviolable observance were among those provisions that could be altered. It might therefore be further presumed that the states retained the power to re-assert their sovereignty, if ever they felt the need to do so, by terminating the union. However, lacking such alteration, the states were not sovereign under the *Articles of Confederation*. Also, no state could unilaterally withdraw from the union. Any such change required the approval of the Continental Congress and of every other state.

The Convention of the States

On February 21, 1787, the delegates from Massachusetts made the following motion before the Continental Congress.

> Whereas there is provision in the Articles of Confederation and perpetual Union for making alterations therein by the Assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the states and particularly the state of New York by express instructions to their delegates in Congress have suggested a Convention for the purposes expressed in the following resolution and such Convention appearing to be the most probable mean of establishing in these states a firm national government.
>
> *Resolved* that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several States be held at Philadelphia **for the sole and express purpose of revising the Articles of Confederation** and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government and the preservation of the Union. —from Volume XXXII, pages 73-74
> *The Journals of the Continental Congress*
> <bold emphasis added>

The Convention of the States was thus established **for the sole and express purpose of revising the Articles of Confederation**. On September 20, 1787, the Convention reported back to the Continental Congress but not to the states, as was also required by the resolution. The proposal of the Convention was so different from what it had been convened to produce that the delegates to the Continental Congress

did not consider the Continental Congress to be competent to debate the proposed new constitution. That was discussed on September 27, 1787.

> *Resolved* That Congress after due attention to the Constitution under which this body exists and acts [*that is, the Articles of Confederation*] find that the said Constitution in the thirteenth Article thereof limits the power of Congress to the amendment of the present confederacy of thirteen states, but does not extend it to the erection of a new confederacy of nine states.... —from Volume XXXIII, pages 540-541
> *The Journals of the Continental Congress*

That resolution is shown in the Journals with the text stricken, which presumably means that it was superseded by some later action. I didn't find any such later action recorded in the Journals. The resolution was debated, but not passed, so it could not have been superseded anyway. The significance of the stricken text is therefore unclear. However, the concern at the time of the debate is quite clear. The proposed new constitution far exceeded, by any stretch, the amendment of the *Articles of Confederation*.

That difficulty of the proposed new constitution was again addressed by Mr. Nathan Dane, a delegate for Massachusetts.

> ... which constitution appears to be intended as an entire system in itself, and not as any part of, or alteration in the Articles of Confederation; to alterations in which Articles, the deliberations and powers of Congress are, in this Case, constitutionally confined, and whereas Congress cannot with propriety proceed to examine and alter the said Constitution proposed, unless it be with a view so essentially to change the principles and forms of it, as to make it an additional part in the said Confederation and the members of Congress not feeling themselves authorised by the forms of Government under which they are assembled, to express an opinion respecting a System of Government no way connected with those forms; but conceiving that the respect they owe their constituents and the importance of the subject require, that the report of the Convention should, with all convenient dispatch, be transmitted to the several States to be laid before the respective legislatures thereof....
> —from Volume XXXIII, pages 543-544
> *The Journals of the Continental Congress*

Thus the delegates to the Continental Congress recognized their incompetence to deal with the proposed new constitution and sent the proposal to the states, as the members of the Convention should originally have done.

By Article 7 of the proposed new constitution, its ratification by nine states was sufficient to establish it between the states so ratifying it. When, on July 2, 1788, the ratification by the ninth state was read to the Continental Congress, a committee was appointed by the Continental Congress to prepare an act for putting the new constitution into effect. On September 13, 1788, the Continental Congress determined the days for choosing electors, and the time and place for commencing government under the new constitution. On March 4, 1789, the new congress met, but lacking a quorum the house didn't organize until April 1st, nor the senate until April 6th. March 4th is acknowledged as the date when the new constitution became the law of the land.

Recall that the delegates to the Continental Congress acknowledged, on September 27, 1787, their incompetence to debate or judge the proposed new constitution. Also,

as is discussed later in this essay, they recognized, on July 3, 1788, their incompetence to admit Kentucky to the new union under the new constitution. Why, then, did they subsequently perform other acts under the new constitution? Apparently because the states, when ratifying the new constitution, sent ratifications to the Continental Congress, although sending delegates to the new Congress would have been sufficient. The interpretation of that action was debated on August 4, 1788.

> .... and whereas the ratifications of the several states are to be considered as containing virtual authority and instructions to their delegates in Congress ~~assembled~~ to make the preparatory arrangements recommended by the said convention to be made by Congress.... —from the *Journals of the Continental Congress* Volume XXXIV, page 392

That resolution was debated but not passed. However, lacking some such authorization, the delegates to the Continental Congress didn't have any legal authority to act under or with regard to the new constitution. They weren't members of the new government.

A further indication of the confusion as to proper authority is evident in the draft of a motion by Mr. Alexander Hamilton. It was debated on or about August 7, 1788. It's unclear in the Journals whether or not the motion was ever passed and, if so, with what exact wording.

> .... And whereas the united States in congress assembled having received the ratifications of the said constitution by eleven states have in conformity to the resolution aforesaid passed an ordinance for the purposes aforesaid. And whereas although the state of Rhode Island hath not ratified the said Constitution and it is not known that the state of North Carolina hath ratified the same, the Delegates of the two last mentioned states have thought fit to vote upon the said ordinance in virtue of the right of suffrage vested in them by the Articles of Confederation and perpetual Union therefore
>
> *Resolved* as the ~~opinion~~ sense of this Congress the conduct of the delegates of the said state of Rhode Island in voting concerning the said ordinance can in no wise be construed directly or indirectly to imply either on their part or on the part of the state they represent an approbation of the Constitution aforesaid or a relinquishment in any manner of obligation on the part of the said state touching the same or any relinquishment of any right heretofore enjoyed claimed or which may be claimed by the said state under the said Articles etc.
>
> or otherwise, but that ~~every~~ all and singular the rights of the said state remain continue and are in the same situation as if the said delegates had refrained from voting on any part of the said ordinance.... —from Volume XXXIV, page 403, footnote 2 *The Journals of the Continental Congress*

Lacking any instructions from their states, it isn't clear that the delegates from Rhode Island and North Carolina had any authority to vote concerning the new constitution. Perhaps their votes shouldn't have been counted. The entire situation with regard to the authority of the delegates to the Continental Congress to act under or concerning the new constitution is very unclear.

The new constitution didn't take effect until March 4, 1789, yet the Continental Congress acted as if under the authority of the new constitution as early as July 2, 1788, when it appointed the time and place at which the new Congress would meet. That power is delegated by the U.S. constitution (Article 1, Section 4, Clause 2) but not by

the *Articles of Confederation*. The Continental Congress also appointed the days for choosing electors, a power provided by the U.S. constitution (Article 2, Section 1, Clause 4), but not by the *Articles of Confederation*. All such things should have been done by delegates to the new government, not by members of the Continental Congress.

The Continental Congress didn't have any authority to act under or with regard to the new constitution. While the new Congress was being initiated under the new constitution, the Continental Congress and the alliance that it represented should have been formally terminated. In actual fact, the Continental Congress continued to exist and delegates continued to be sent to it, even as the new Congress was being organized.

> .... From this date [*Monday, November 3, 1788*] to March 2, 1789, delegates from the various states appeared and presented their credentials, so that it would have been possible at any time that seven states were present for the secretary to have read the credentials and for [*the Continental*] Congress to have begun its sessions. Because of the organization of the new Government under the Constitution, the Continental Congress for 1788-1789, never transacted any business....
>
> —from Volume XXXIV, page 604, footnote 1
> *The Journals of the Continental Congress*

Recall that no state could unilaterally abandon the union under the *Articles of Confederation*. Notice that during the 1788-1789 session, the Continental Congress did not conduct any business. It follows that neither the Continental Congress, the *Articles of Confederation*, nor the obligations pursuant thereto, were ever terminated.

The Operation of the Contracts

Two Contracts

It's a well established principle that any law or contract remains in effect as written until it's terminated, replaced, or modified. It's clear from the foregoing analysis that the U.S. constitution wasn't in any sense a modification of the *Articles of Confederation*, nor were the *Articles of Confederation* ever terminated. Also, there is in the U.S. constitution support for the idea that the U.S. constitution didn't replace the *Articles of Confederation*.

> All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. —Article 6, Section 1
> *U.S. constitution*

> The intention of the parties is the pole-star of construction; but their intention must be found expressed in the contract and be consistent with rules of law. The court will not make a new contract for the parties, nor will words be forced from their real signification.... Words are to be taken, if possible, in their comprehensive and common sense. —from CONTRACT
> *Bouvier's Law Dictionary*, 1889

Engagements can be properly construed (see Bouvier's article *CONTRACT*, in the glossary) to mean any agreement characterized by the exchange of mutual promises. Thus, Article 6, Section 1 makes the *Articles of Confederation* into an engagement of the United States under the U.S. constitution, by reference.

This interpretation is reinforced by Article 6, Section 2 of the U.S. constitution.

> 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.... —Article 6, Section 2
> *U.S. constitution*

When the *Articles of Confederation* were enacted, the states were politically independent, sovereign nations. Therefore, the *Articles of Confederation* can reasonably be regarded as a treaty to which the several states were parties. In order to be a part of the supreme law of the land, laws must be made in pursuance of the U. S. constitution. However, no such restriction of constitutionality applies to treaties. Any treaty, constitutional or not, and provided only that it exists under the authority of the United States, is a part of the supreme law of the land. The arrangement of grammar ("... all treaties made, or which shall be made....") indicated treaties already in existence at the time as well as future treaties. That reveals that the writers did not intend to terminate earlier treaties, whether or not they were in agreement with the new U.S. constitution.

There is other convincing evidence that the *Articles of Confederation* continue in effect. The most spectacular and tragic is the War Between the States. The *Articles of Confederation* established the union as perpetual. However, only once did the U.S. constitution address the expected duration of its union. That is in the Preamble.

> We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves **and our posterity,** do ordain and establish this Constitution for the United States of America.
>
> —the Preamble
> *U.S. constitution*
> <bold emphasis added>

Unlike the *Articles of Confederation*, the wording in the U.S. constitution doesn't compel membership. Yet, over 70 years after the *Articles of Confederation* were allegedly replaced, perpetual union was enforced by a union that, so we're told, didn't have any legal connection whatsoever with the *Articles of Confederation*. Either the northern states conducted an unjustified war of aggression or they were legally justified in compelling the southern states to remain in the union. If there was any legal justification, then it could have come only from the *Articles of Confederation* because there isn't any such justification in the U.S. constitution. The fact is that, for more than 150 years, the requirement of perpetual union has been tacitly accepted as part of the supreme law of the land. The authority for that requirement exists only in the *Articles of Confederation*.

Further evidence is provided by the post office, which is usually presumed to operate under authority provided by the U.S. constitution. However, the only wording in the entire U.S. constitution that deals with the post office is in Article 1.

> [The Congress shall have power] to establish post offices and post roads;
>
> —Article 1, Section 8, Clause 7
> *U.S. constitution*

That is a simple grant of a power, without wording that can be construed to make the power exclusive. Nevertheless, the post office exercises an exclusive power. The exclusive nature of the power comes from the *Articles of Confederation*.

> The United States in Congress assembled shall also have the **sole and exclusive right and power of** establishing and regulating post offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office....
>
> —from Article 9, Paragraph 4
> *Articles of Confederation*
> <bold emphasis added>

Notice also that the authorization to require postage on the mail is provided not by the U.S. constitution, but by the *Articles of Confederation*. If such powers were specifically granted in the *Articles of Confederation*, then it's unreasonable to suppose that they would be merely assumed in the U.S. constitution. If a power isn't specifically granted in a law or contract, then it cannot be assumed. Furthermore, when dealing with the U.S. constitution, a power not specifically granted is prohibited by the Tenth Amendment. The post office operates today under authority granted by the *Articles of Confederation*. The final irony of this particular example is that, even under the *Articles of Confederation*, the power to exact postage extends only to "papers." Presumably, postage cannot be legally required on things traveling through the mail if those things are not "papers."

A Government of Laws, and Not of Men

> See "Novanglus" [pseudonym of John Adams] papers, Boston Gazette [1774], no. 7. Incorporated [1780] in the Massachusetts Constitution [Article 30 of the Declaration of Rights].

The continuing exercise of powers granted only by the *Articles of Confederation* proves their continued authority. A government of laws cannot endure ambivalent law, yet it appears that two mutually exclusive and contradictory contracts exist. With which contract does the present United States comply?

The union is, in fact, in compliance with some provisions of the *Articles of Confederation*. For example, Article 9 provides that the United States shall have the sole and exclusive right and power of regulating the alloy and value of coins. The U.S. constitution provides for only gold or silver coins. Thus, the United States is in compliance with the *Articles of Confederation* but in violation of the U.S. constitution, when using coins of different alloys than gold or silver. However, the United States is also in violation of some provisions of the *Articles of Confederation*. For example, Article 10 requires that the Committee of the States shall be authorized to execute the powers of Continental Congress during its recess. The Continental Congress has been in recess for more than 230 years, and the Committee of the States hasn't been convened.

The United States is in compliance with some provisions of the U.S. constitution. For example, Article 2, Section 3 requires that the President shall, from time to time, give the Congress information regarding the state of the union, and that is done. No such requirement (indeed, no such president) exists under the *Articles of Confederation*. However, the United States is in violation of some portions of the U.S. constitution. Under Article 5, the states were guaranteed that none of them would be deprived, without their consent, of their equal representation in the Senate. In 1913, eleven states were deprived without their consent of such representation. This is discussed briefly, later in this essay. For a more complete discussion, see my essay *In Search of the Supreme Flaw of the Land: The Seventeenth Amendment*. It's available under the heading *The Supreme Flaw of the Land Essays*, in *Pharos*.

Whichever contract is presumed to be valid (either presumption being a rather bold one), examples can be found of powers presently exercised, and granted only by that contract. Whichever contract is presumed to be valid, a violation can be discovered. Generally, a contract is presumed to exist beside some disinterested authority wherein resides the power to compel compliance. However, when the contract is between a people and their government, or between governments, the burden of enforcement must fall to one or the other of the interested parties, for the only possible Authority over both never interferes. This has been long recognized.

> ... Contracts between Nations, like contracts between Individuals, should be faithfully executed even though the sword in the one case, and the law in the other did not compel it, honest nations like honest Men require no constraint to do Justice; and tho impunity and the necessity of Affairs may sometimes afford temptations to pare down contracts to the Measure of convenience, yet it is never done but at the expence of that esteem, and confidence, and credit which are of infinitely more worth than all the momentary advantages which such expedients can extort.

But although contracting Nations cannot like individuals avail themselves of Courts of Justice to compel performance of contracts, yet an appeal to Heaven and to Arms, is always in their power and often in their Inclination.

But it is their duty to take care that they never lead their people to make and support such Appeals, unless the sincerity and propriety of their conduct affords them good reason to rely with confidence on the justice and protection of Heaven....

—from a letter from the Continental Congress to the States
dated Friday, April 13, 1787
Volume XXXII, pages 177-178
The Journals of the Continental Congress

...Thus was established by compact between the States, a Government with defined objects and powers, limited to the express words of the grant.... We hold that the Government thus established is subject to the two great principles asserted in the Declaration of Independence; and we hold further, that the mode of its formation subjects it to a third fundamental principle, namely, the law of compact. We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that, where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.

—*SOUTH CAROLINA DECLARATION OF CAUSES OF SECESSION*
December 24, 1860

Remedy

Some Considerations

A legitimate government doesn't exist by it's own authority. It exists by the authority of a constitution. See my essay *The Long and Winding Doctrine: Social Contract*. It's available under the heading *Essays About Liberty, Sovereignty, and Social Contract*, in *Pharos*. The constitution, not the government, declares the government's powers, forms, and limits. The government isn't the source of the constitution. The constitution is the source of the government.

The idea that a government is a creature of its constitution, and that it doesn't exist independently of that constitution, has a practical consequence that isn't usually acknowledged. That consequence is that, when a constitution is terminated or superseded, and a new constitution is enacted in its place, then the government doesn't exist continuously through the transition. Rather, the previous government, under the previous constitution, is dissolved when its constitution is terminated or superseded. A new government, under the new constitution, is established in its place. The name of the new government might be the same as the name of the previous government. Some of the forms of the new government might be the same as some of the forms of the previous government. The territory occupied by the new government might be the same as the territory occupied by the previous government. Those things are all irrelevant. A culture might have continuity during a change in constitutions but a state, a government, is discontinuous when one constitution is replaced by another constitution. Thus, the State of Georgia, for example, isn't the same State of Georgia that previously existed on this continent. It's convenient to speak of it that way but it isn't accurate. The previous states named Georgia were completely different political entities. They're completely gone. So, there have been, on this continent, several completely different states named Georgia, each occupying (I suppose) the same territory as the present State of Georgia. They don't have any more connection to the present State of Georgia than the Massachusetts-bay Rhode Island and Providence Plantations has to the present Commonwealth of Massachusetts.

The flaws and irregularities in the creation of the present U.S. constitution rendered both that constitution and its government incompetent at the outset. Even if that initial incompetence is ignored, there nevertheless remains a dilemma. If the U.S. constitution superseded the *Articles of Confederation*, then there wasn't any basis for mandatory membership in the United States. If there wasn't any such constitutional basis for mandatory membership, then the secession of the southern states from the United States was legitimate. It was just as legitimate as was the declaration by the English colonies of their independence from England. The southern states were, therefore, legitimately constituted foreign powers, free "to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do", just like it says in *The Declaration of Independence*. In that case, the northern states engaged in an unjustified war of aggression. In order to justify the War Between the States, and thereby preserve the alleged legitimacy of the present U.S. government, there must be a constitutional basis by which manda-

tory membership in the United States was enforced. The only possible constitutional authority is found in the *Articles of Confederation* which must, therefore, be included in the constitutional pedigree of the present U.S. government.

I've already shown, in this essay, various evidence that the *Articles of Confederation* have, indeed, remained in effect over the past two hundred or so years. However, if the *Articles of Confederation* are presumed to have been continuously authoritative to the present time, then the United States, jointly and severally, are guilty of innumerable violations of the *Articles of Confederation*. Furthermore, the present U.S. government cannot possibly comply with the many differing and often conflicting provisions of the two simultaneously existing contracts. Thus, no matter how the constitutional pedigree of the present U.S. government is construed, that government cannot possibly have any constitutional legitimacy at all. The alliance is void from its inception, due to a previous contract, the *Articles of Confederation*, and the previous obligations attendant thereto. Therefore, the present United States doesn't even need to be abolished. It should just be ignored, and left to rot. Such legitimacy as exists, if there is any legitimacy at all, resides with the states. It is the states, then, that should provide or receive, as appropriate, any available remedy.

Georgia, North Carolina, South Carolina, and Virginia

Those states agreed to obligations under both the *Articles of Confederation* and the U.S. constitution. Alleged obligations under the U.S. constitution were void from their inceptions, due to the prior commitment to the *Articles of Confederation*. When those states seceded from the union, they repudiated the alleged obligations to which they had agreed under the U.S. constitution. As a result of the War Between the States, they were dissolved and new states, bearing the same names, were established in their places. Those new states bear the same names and occupy the same locations as the previous states, but they are not the previous states. In a subsequent paragraph, I've proposed what I believe to be the appropriate remedy regarding those new states.

Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island (some of the original thirteen states)

Those states agreed to obligations under both the *Articles of Confederation* and the U.S. constitution. The two contracts are contradictory. It isn't possible to simultaneously comply with both of them. Those states can legally avoid their perpetual obligations under the *Articles of Confederation* only by terminating them. Such terminations can be accomplished only by convening the Continental Congress, since the Congress under the U.S. constitution doesn't have authority to act with regard to the *Articles of Confederation*. However, four of the original thirteen states, Georgia, North Carolina, South Carolina, and Virginia, no longer exist. They've been replaced by other states, having the same names. Therefore, I don't know if it's possible for the states addressed in this paragraph to terminate their obligations under the *Articles of Confederation*. They should at least acknowledge their incompetence under the U.S. constitution by seceding from the United States. They should then resume their un-

ion under the *Articles of Confederation*. Their first order of business should be to determine how to continue, lacking the other, missing states.

Kentucky and West Virginia

Under the *Articles of Confederation*, Kentucky was part of the State of Virginia. It was designated the County of Kentucky with the County Seat at Harrodsburg. West Virginia was also part of the State of Virginia, and comprised numerous counties. There were at different times, and for different reasons, discussions of statehood for those two districts. The discussion with regard to Kentucky resulted in a resolution by the Continental Congress, on July 3, 1788.

> Whereas application has been lately made to Congress by the legislature of Virginia and the district of Kentucky for the admission of the said district into the federal Union as a separate member thereof.... And whereas Congress having fully considered the subject did on third day of June last resolve that it is expedient that the said district be erected into a sovereign and independent state and a separate member of the federal Union and appointed a committee to report an Act accordingly, which committee on the second instant was discharged, it appearing that nine states had adopted the constitution of the United States lately submitted to conventions of the people. And whereas a new Confederacy is formed among the ratifying States and there is reason to believe that the State of Virginia including the said district did on the 25 of June last become a member of the said Confederacy; And whereas An Act of Congress, in the present state of the government of the country, severing a part of the said state from the other parts thereof and admitting it into the confederacy formed by the articles of Confederation and perpetual Union as an independent member thereof may be attended with many inconveniences while it can have no effect to make the said district a separate member of the federal Union formed by the adoption of the said constitution and therefore it must be manifestly improper for Congress assembled under the said Articles of Confederation to adopt any other measures relative to the premisses than those which express their sense that the said district ought to be an independent member of the Union....
>
> —from Volume XXXIV, pages 292-293
> *The Journals of the Continental Congress*

That resolution acknowledged that the two unions were absolutely distinct. Membership in one did not in any way constitute membership in the other. The Continental Congress didn't establish either of those districts as states. At the time of the adoption of the U.S. constitution they both remained a part of Virginia. Kentucky was established as a state in 1792, three years after the adoption of the U.S. constitution. It wasn't until June 20, 1863 that West Virginia was established as a state.

The U.S. constitution requires that....

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislature of the States concerned as well as of the Congress.
>
> —from Article 4, Section 3, Clause 1
> *U.S. constitution*

The third provision of Article 4, Section 3, Clause 1, is conditional. The restriction can be set aside by the consent of the legislatures of the states concerned and the consent of the Congress. However, both grammar and punctuation set the third provision apart from the second provision, causing the second restriction to be unconditional.

Therefore, both Kentucky and West Virginia were established as states from within the jurisdiction of Virginia in violation of Article 4, Section 3, Clause 1 of the Constitution. Their status as independent states is therefore void from its inception. Since they were established before the destruction of the original Virginia, they are legally districts of that original state. In fact, they are all that remains of the original state of Virginia. That state, which those districts now entirely represent, should terminate its obligations under the U.S. constitution by seceding from the United States. The *Articles of Confederation* represent a prior and binding obligation, which prevents their valid participation in the United States, as established by the U.S. constitution. That state, the remnant of the original Virginia, should then join with those other remaining of the original thirteen states in the union under the *Articles of Confederation*. Their first order of business should be to determine how to continue, lacking the other missing states, Georgia, North Carolina, South Carolina.

Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia

Eleven states, including four of the original thirteen, concluded that the United States as established by the U.S. constitution was no longer beneficial to them. They variously declared their intentions to leave that union and, after legally doing so, they formed the Confederate States of America (CSA), a union that was more appropriate to their needs. They were subsequently invaded by the northern states. Many of the citizens and inhabitants of those states were killed or wounded. Their economies were disrupted, their cities and towns were damaged or destroyed, and their land was trampled. They were systematically dissolved and replaced by new states bearing the same names, and occupying the same locations, as the previous states that they replaced. The constitutions of those new states were imposed by coercion or force and were foreign to the interests of the people of the previous states. The present governments of those states are not legitimate governments but are, instead, descended from the illegitimate governments imposed by the conquering northern states. The incompetence of the present governments is so pervasive, and of such long duration, that it's difficult to imagine any adequate remedy. I believe that the people of those states (not the governments, but the people) should convene constitutional conventions, create new governments from scratch, dissolve the present governments, and establish their states as independent nations.

Delaware, Kentucky, Maryland, Rhode Island, and Utah (some of the states that, without their consent, lost their representation in the Senate)

The Constitution originally specified that representatives would be chosen by the people of the several states and that senators would be chosen by the legislatures of each state. That gave the people suffrage in the House of Representatives. It gave the states, as individuals, suffrage in the Senate. That tended to preserve the powers of the states by providing that each state could vote in its own interest in the Senate. Article 5 of the U.S. constitution specified amendments to the U.S. constitution to be valid provided (among other things) that no state was deprived, without its consent, of its equal suffrage in the Senate. That means that any amendment that deprived the

states of such suffrage required ratification by all of the states, not just three-fourths of them. The Seventeenth Amendment was such an amendment. See my essay *In Search of the Supreme Flaw of the Land: the Seventeenth Amendment*. It's available under the heading *The Supreme Flaw of the Land Essays*, in *Pharos*.

When the Seventeenth Amendment was submitted for ratification, 48 states existed. The Amendment was ratified by 37 of them. Two states rejected the amendment and nine states didn't take action. That means that, when the Seventeenth Amendment was enacted, eleven states lost their equal suffrage in the Senate without their consent. Of those eleven states, six (Alabama, Florida, Georgia, Mississippi, South Carolina, and Virginia) were the descendants of illegitimate governments established at the end of the War Between the States. They don't deserve any sympathy and they don't have a cause of action. The other five states are entitled to a restoration of their equal representation in the Senate and to some appropriate compensation for the loss of that representation after the unconstitutional enactment of the Seventeenth Amendment.

> We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that, where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.
>
> —*SOUTH CAROLINA DECLARATION OF CAUSES OF SECESSION*
> December 24, 1860

If, upon application of any of those states, the United States fails to provide such remedy, then any such state will be released from any and all obligations under the U.S. constitution and will be legitimately a free and independent nation.

Illinois, Indiana, Michigan, Ohio, and Wisconsin (the Northwest Territory)

Those states were bound perpetually into the union under the *Articles of Confederation* by an act of the Continental Congress, titled "An ordinance for the government of the territory of the United States North West of the River Ohio," passed on Friday, July 13, 1787. That ordinance contains in its fourth article the following provision.

> The said territory, and the States which may be formed therein shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all Acts and Ordinances of the United States in Congress assembled, conformable thereto....
>
> —from Volume XXXII, pages 334-343
> *The Journals of the Continental Congress,*

The U.S. constitution was not a constitutionally made alteration of the *Articles of Confederation*. Also, the two unions were absolutely distinct. Membership in one did not in any way constitute membership in the other. Therefore, the states eventually formed from the Northwest Territory were bound by the *Articles of Confederation*. The legal effect of that ordinance has been variously judged by the courts. See Bouvier's article *OHIO* in the glossary. Those states were obligated, prior to their actual establishment, to a union that was abandoned, but not terminated, before they were able to join it. They were established as states into a union that took the place of the one to which they were obligated but to which they did not have a prior obligation.

One possible course of action for those states to follow would be to leave the union under the U.S. constitution and join those remaining of the original thirteen states in a union under the *Articles of Confederation*. However, their alleged obligation to do so might well be viewed in light of certain portions of the law of contracts that deals with fetuses and infants. There are parallels that I believe are apropos.

> ... For many important purposes, however, the law concedes to physiology the fact that life commences at conception.... Thus, it may receive a legacy, have a guardian assigned to it, and an estate limited to its use.... It is thus considered as alive for all beneficial purposes....
>
> —from *LIFE*
> *Bouvier's Law Dictionary*, 1889

and

> ...To the rule that the contract must be obligatory on both parties there are some exceptions: as the case of an infant, who may sue, though he cannot be sued, on his contract....
>
> —from *CONTRACT*
> *Bouvier's Law Dictionary*, 1889

When you realize that

> ...a corporation may, within the limits of its charter or act of incorporation express or implied, lawfully do all acts and enter into all contracts that a natural person may do or enter into....
>
> —from *CORPORATION*
> *Bouvier's Law Dictionary*, 1889

then you might reasonably suppose that those states, "conceived" under the *Articles of Confederation* but "born" under the U.S. constitution, don't have an enforceable obligation under the *Articles of Confederation*. They might remain in the union under the U.S. constitution. However, there's reason to doubt the validity of that union. Those states, situated as they are adjacent to navigable water and with a variety of resources, might do well to secede.

Alaska and Hawaii

Since the Seventeenth Amendment was adopted in violation of Article 5 of the U.S. constitution, all Senates beginning with the sixty-fourth Congress in March of 1915 have been illegally elected. An unconstitutional Senate cannot act with constitutional validity. As a consequence, much that has happened since 1915 is unenforceable, including the admissions of states to the union. It follows that Alaska and Hawaii are not states and must be acknowledged as free and independent nations, without any obligation to the United States, as established by the U.S. constitution.

The Remaining States and the State of the Union

The foregoing leaves the United States on a rather shaky footing. With that in mind, the remaining states might be well advised to consider the potential advantages of secession. They might consider the formation of new, more legitimate, and more responsive unions. See *Treaty for an Alliance of American States*. It's available under the heading *Contracts of Nations*, in *Pharos*. Perhaps a few of those states would be better advised to retain their independent status. That's particularly true for the states on the west coast, which can control access to the Pacific Ocean and its markets, and which don't have any particular need for the states east of the Rocky Mountains except, maybe, as trading partners.

What was the legitimate purpose of the union? The Continental Congress asserted on July 4, 1776 that governments are instituted among men to secure the rights of the people, and that whenever any form of government becomes destructive of those ends it is the right of the people to alter it or to abolish it. The Continental Congress further noted that "mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." After more than 200 years, the U.S. government isn't securing anybody's rights and it has become an insufferable evil. How much more evil does it have to get before we can abolish it?

> ... no cause is left but the most ancient of all, the one, in fact, that from the beginning of our history has determined the very existence of politics, the cause of freedom versus tyranny. —*On Revolution* [1963], *introduction* by Hannah Arendt (1906-1975)

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Appendix 1: Significant Groupings of States

The Original Thirteen States		The War Between the States		States Deprived of Representation Without their Consent	The Northwest Territory
Union	Confederate	Union	Confederate		
			Alabama	Alabama	
			Arkansas		
		California			
Connecticut		Connecticut			
Delaware		Delaware		Delaware	
			Florida	Florida	
	Georgia		Georgia	Georgia	
		Illinois			Illinois
		Indiana			Indiana
		Iowa			
		Kansas			
		Kentucky	Kentucky	Kentucky	
			Louisiana		
		Maine			
Maryland		Maryland		Maryland	
Massachusetts		Massachusetts			
		Michigan			Michigan
		Minnesota			
			Mississippi	Mississippi	
		Missouri			
New Hampshire		New Hampshire			
New Jersey		New Jersey			
New York		New York			
	North Carolina		North Carolina		
		Ohio			Ohio
		Oregon			
Pennsylvania		Pennsylvania			
Rhode Island		Rhode Island		Rhode Island	
	South Carolina		South Carolina	South Carolina	
			Tennessee		
			Texas		
		Vermont			
				Utah	
	Virginia		Virginia	Virginia	
		West Virginia			
		Wisconsin			Wisconsin

Kentucky tried to stay neutral in the War Between the States, but was actually not so much neutral as indecisive. The state supplied 90,000 troops to the Union Army and 40,000 to the Confederacy. Throughout the war, it remained a slave state, and its slaves were freed only after the adoption of the 13th Amendment in 1865.

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Appendix 2: Selections from the Articles of Confederation

[the Preamble]

To all to whom these presents shall come, we the undersigned delegates of the states affixed to our names, send greeting:

WHEREAS the delegates of the United States of America in Congress assembled, did, on the fifteenth day of November in the year of our Lord seventeen seventy-seven, and in the second year of the Independence of America, agree to Certain Articles of Confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia in the words following viz.:

Articles of Confederation and Perpetual Union Between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia

ARTICLE XIII

Every state shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every state, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every state.

AND WHEREAS it hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the Union shall be perpetual.

IN WITNESS WHEREOF we have hereunto set our hands in Congress Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

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Appendix 3: The Little Note Nor Long Remember Department

(See *The Constitution* (etc.), CALIFORNIA LEGISLATURE, ASSEMBLY, 1985, listed in the References Section.)

The political process during and after the Revolutionary War contained a certain element of confusion. For example, the delegates to the Continental Congress claimed emphatically in Article 13 of the *Articles of Confederation* that they were authorized by their states to ratify the Articles on behalf of the states. Nevertheless, the states themselves conducted separate ratifications that were presumably redundant. Those delegates, in the Preamble, specified November 15, 1777 as the date on which they agreed to the *Articles of Confederation*, on behalf of the states. However, in the closing paragraph they claimed to have witnessed their signatures on July 9, 1778. There are seven other dates associated with delegate signatures and none of those dates is the same as either of the dates mentioned in the *Articles of Confederation*. The states each ratified the *Articles of Confederation* on a different date and none of those dates corresponds to either of the dates mentioned in the *Articles of Confederation* or to any of the dates associated with delegate signatures. Over half of the state ratifications occurred before the date in the closing paragraph, on which date the contract was presumably finalized. Over half of the states ratified *the Articles of Confederation* before the earliest date affixed by the delegates, who were presumably creating the document for the states. The union, such as it was, operated under the *Articles of Confederation* beginning in 1777 but the *Articles of Confederation* were not "officially" ratified until March 1, 1778. It's little wonder that things only got worse.

> The conclusion which I am warranted in drawing from these observations is that a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.
>
> —James Madison
> in *The Federalist Papers,* No. 48

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Glossary

Breach. The breaking or violating of a law, right, obligation, engagement, or duty, either by commission or omission. Exists where one party to contract fails to carry out term, promise, or condition of the contract. —*Black's Law Dictionary*, 1979's

Breach of contract. Failure, without legal excuse, to perform any promise which forms the whole or part of a contract. Prevention or hindrance by party to contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge of a duty by him. Unequivocal, distinct and absolute refusal to perform agreement....

—*Black's Law Dictionary*, 1979's

CAUSE OF ACTION... When a wrong has been committed, or a breach of duty has occurred, the cause of action has accrued, although the claimant may be ignorant of it; 3 B. & Ald. 288, 626; 5 B. & C. 259; 4 C. & P. 127. A cause of action does not accrue until the existence of such a state of things as will enable a person having the proper relations to the property or persons concerned to bring an action; 5 B. & C. 360; 4 D. & R. 346; 4 Bingh. 686.

—*Bouvier's Law Dictionary*, 1889

Competent. Duly qualified; answering all requirements; having sufficient ability or authority; possessing the requisite natural or legal qualifications; able; adequate; suitable; sufficient; capable; legally fit. A testator may be said to be "competent" if he or she understands (1) the general nature and extent of his property; (2) his relationship to the people named in the will and to any people he disinherits; (3) what a will is; and (4) the transaction of simple business affairs. See also **Capacity; Competency; Incompetency.**

—*Black's Law Dictionary*, 1979's

CONTRACT...An agreement between two or more parties to do or not to do a particular thing. Taney, C. J., 11 Pet. 420, 572. An agreement in which a party undertakes to do or not to do a particular thing. Marshall, C. J., 4 Wheat. 197. An agreement between two or more parties for the doing or not doing of some specified thing. 1 Pars. Com. 5.

It has been variously defined, as follows: A compact between two or more parties. 6 Cranch, 87, 136. An agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises. Encyc. Amer.; Webster. A contract or agreement is where a promise is made on one side and assented to on the other; or where two or more persons enter into an engagement with each other by a promise on either side. 2 Steph. Com. 108, 109.

An agreement upon sufficient consideration to do or not to do a particular thing. 2 Bla. Com. 446; 2 Kent, 449.

A covenant or agreement between two parties with a lawful consideration or cause. West, Symbol, Lib. 1, § 10; Cowel: Blount.

A deliberate engagement between competent parties upon a legal consideration to do or to abstain from doing some act. Story, Contr. § 1.

A mutual promise upon lawful consideration or cause which binds the parties to a performance. The writing which contains the agreement of parties with the terms and conditions, and which serves as a proof of the obligation. The last is a distinct signification. 2 Hill, N. Y. 551.

A voluntary and lawful agreement by competent parties, for a good consideration, to do or not to do a specified thing. 9 Cal. 83.

An agreement enforceable at law, made between two or more persons, by which rights are acquired by one or both to acts or forbearances on the part of the other. Anson, Contr. 9....

...An act of legislature may be a contract; so may a legislative grant with exemption from taxes. 5 Ohio St. 361. So a charter is a contract between a state and a corporation within the meaning of the constitution of the United States, art. 1, § 10, clause 1. 27 Miss. 417. See IMPAIRING THE OBLIGATION OF CONTRACTS....

Qualities of. Every agreement should be so complete as to give either party his action upon it; both parties must assent to all its terms; Peak. 227; 3 Term, 653; 1 B. & Ald. 681; 1 Pick. 278. To the rule that the contract must be obligatory on both parties

there are some exceptions: as the case of an infant, who may sue, though he cannot be sued, on his contract; Stra. 937. See other instances, 6 East, 307; 3 Taunt. 169; 5 *id*. 788; 3 B. & C. 232. There must be a good and valid consideration (*q.v.*), which must be proved though the contract be in writing; 7 Term, 350, note (a); 2 Bla. Com. 444; Fonb. Eq. 335, n. (a); Chitty, Bills, 68. There is an exception to this rule in the case of bills and notes, which are of themselves *primâ facie* evidence of consideration. And in other contracts (written) when consideration is acknowledged, it is *primâ facie* evidence thereof, but open to contradiction by parol testimony. There must be a thing to be done which is not forbidden by law, or one to be omitted which is not enjoined by law. Fraudulent, immoral, or forbidden contracts are void. A contract is also void if against public policy or the statutes, even though the statute be not prohibitory but merely affixes a penalty. Chitty, Com. L. 215, 217, 222, 228, 250; 1 Binn. 110, 118; 4 Dall. 269, 298; 4 Yeates, 24, 84; 28 Ala. 514; 7 Ind. 132; 4 Minn. 278; 30 N.H. 540; 2 Sandf. 146. But see 5 Ala. 250. As to contracts which cannot be enforced from non-compliance with the statute of frauds, see FRAUDS, STATUTE OF.

Construction and interpretation in reference to contracts. The intention of the parties is the pole-star of construction; but their intention must be found expressed in the contract and be consistent with rules of law. The court will not make a new contract for the parties, nor will words be forced from their real signification.

The subject-matter of the contract and the situation of the parties are to be fully considered with regard to the sense in which language is used.
The legality of the contract is presumed and is favored by construction.

Words are to be taken, if possible, in their comprehensive and common sense.

The whole contract is to be considered with relation to the meaning of any of its parts.

The contract will be supported rather than defeated: *ut res magis valeat quam pereat* .

All parts will be construed, if possible, so as to have effect.

Construction is generally against the grantor - *contra proferentem* - except in the case of the sovereign.

This rule of construction is not of great importance, except in the analogous case of penal statutes; for the law favors and supposes innocence.

Construction is against claims or contracts which are in themselves against common right or common law.

Neither false English nor bad Latin invalidates a contract ("which perhaps a classical critic may think no unnecessary caution"). 2 Bla. Com. 379; 6 Co. 59.

Parties. There is no contract unless the *parties* assent thereto; and where such assent is impossible from the want, immaturity, or incapacity of mind of one of the parties, there can be no perfect contract. See PARTIES.

Remedy. The foundation of the common law of contracts may be said to be the giving of damages for the breach of contracts. When the thing to be done is the payment of money, damages paid in money are entirely adequate. When, however, the contract is for any thing else than the payment of money, the common law knows no other than a money remedy: it has no power to enforce a specific performance of the contract.

The injustice of measuring all rights and wrongs by a money standard, which as a remedy is often inadequate, led to the establishment of the equity power of decreeing specific performance when the remedy has failed at law. For example: contracts for the sale of real estate will be specifically enforced in equity; performance will be decreed, and conveyances compelled....

—*Bouvier's Law Dictionary*, 1889

Debt...A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future. In a still more general sense, that which is due from one person to another, whether money, goods, or services. In a broad sense, any duty to respond to another in money, labor, or service; it may even mean a moral or honorary obligation, unenforceable by legal action. Also, sometimes an aggregate of separate debts, or the total sum of the existing claims against a person

or company. Thus we speak of the "national debt", the "bonded debt" of a corporation, etc.... —*Black's Law Dictionary*, 1979's

Engagement. A contract or agreement characterized by exchange of mutual promises; *e.g.* engagement to marry.

—*Black's Law Dictionary*, 1979's

Observe. To perform that which has been prescribed by some law or usage. To adhere to or abide by.

—*Black's Law Dictionary*, 1979's

OHIO... The conflicting titles of the states having been extinguished, congress, on July 13, 1787, passed the celebrated ordinance for the government of the territory northwest of the river Ohio. 1 Curwen's Revised Statutes of Ohio, 86. It provided for the equal distribution of the estates of intestates among their children, gave the widow dower as at common law, regulated the execution of wills and deeds, secured perfect religious toleration, and the right of trial by jury, judicial proceedings according to the course of the common law, the benefits of the writ of habeas corpus, security against cruel and unusual punishments, the right of reasonable bail, the inviolability of contracts and of private property, and declared that "there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted."

These provisions have been, in substance, incorporated into the constitution and laws of Ohio, as well as of the other states which have since been formed within "the territory." The legal effect of the ordinance has been much discussed, and the supreme court of Ohio and the circuit court of the United States for the seventh circuit, on the one hand, and the supreme court of the United States, on the other, have arrived at directly opposite conclusions in respect to it. By the former it was considered a compact not incompatible with state sovereignty, and as binding on the state of Ohio as her own constitution; while the latter treated it as a mere temporary statute, which was abrogated by the adoption of the constitution of the United States. 5 Ohio, 410; 7 *id.* 416; 17 *id.* 425; 1 McLean, 336; 3 *id.* 226; 3 How. 212, 589; 10 *id.* 82; s. c., 8 West. L. J., 232.... —*Bouvier's Law Dictionary*, 1889

Remedy. The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated. Long Leaf Lumber, Inc. v. Svolos, La.App., 258 So.2d 121, 124. The means employed to enforce a right or redress an injury, as distinguished from right, which is a well founded or acknowledged claim. Chelentis v. Luckenbach S. S. Co., 247 U.S. 372, 38 S.Ct. 501, 503, 62 L.Ed. 1171.

The rights given to a party by law or by contract which that party may exercise upon a default by the other contracting party, or upon the commission of a wrong (a tort) by another party.

Remedy means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal. "Rights" includes remedies. U.C.C. § 1-201....

—*Black's Law Dictionary*, 1979

SOVEREIGNTY. The union and exercise of all human power possessed in a state: it is a combination of all power; it is the power to do everything in a state without accountability, - to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like. Story, Const. § 207....

—*Bouvier's Law Dictionary*, 1889

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