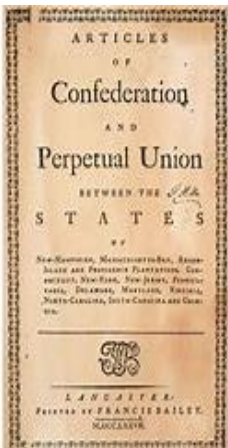


## Forming the Country *by Carl Jones*



The first Union of American States was formed by the Continental Congress on November 15, 1777, and was in effect from March 1, 1781, until 1789, when the present-day US Constitution officially replaced it. There were both similarities and differences between the two documents. Among these was that a Congress existed in the Articles of Confederation but had no legislative authority. There was a President, but he had no executive power. Essentially, the Congress under the Articles could pass resolutions, but the States decided whether or not to abide by them. Some, but

by no means all, believed that this Union was too weak and sought to replace the Articles with a constitution that would give greater power to a central government.



A convention was ultimately called for to be held in Philadelphia in 1787. The premise given to the States was that they were to "discuss amendments to the Articles of Confederation." The people of the various States elected delegates to represent them at this convention. Many were surprised that, rather than discussing "amendments," an entirely new constitution was brought forward for discussion. This Constitution was initially called "The Virginia Plan," it called for a far more robust central government with powers that most delegates would not find tolerable. Among these were protective tariffs, a perpetual presidency, a federal veto over state laws, and even the appointment of the State governors by the new "central" government.

This plan was widely rejected in convention, and a new constitution was hammered out over the next three months. Whereas the Articles of Confederation established a "perpetual Union"- perpetual not meaning "permanent," but simply that no end date would be set -the new Constitution would put into place "a more perfect Union." However, the Union would remain voluntary. As James Madison would explain in Federalist 39, *"each State, in ratifying the Constitution, is considered a sovereign body, independent of all others, and only to be bound by its own voluntary act."* The states would retain their sovereignty but would "delegate" (which does not mean surrender) certain specific powers, dealing primarily with trade and mutual defense, to a new "general" government.

As Thomas Jefferson would explain in 1798 in his "Kentucky Resolution,"-

*"the several states composing the United States of America, are not united on the principle of unlimited submission to their General Government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a General Government for special purposes, delegated to that government certain definite powers, reserving each state to itself, the residuary mass of right to their own self Government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force."*

The "general" government only had jurisdiction regarding the powers delegated to the legislative body under Article 1, Section 8, and those "prohibited to the States" under Article 1, Section 10. Jefferson would go on to explain- *to this compact each state acceded as a state, and is an iginal party, its co-states forming as to itself, the other party: integral party, its co-states forming as to itself, the other party: That the Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that as in all other cases of compact among parties having*

*no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.*

A "state" in the vernacular of the time was, in fact, a "nation" or a "sovereignty." We see this in the final paragraph of the Declaration of Independence, wherein the founders compared the "free and independent" American "States" to the "State" of Great Britain. Thus, a "Union" of States was formed by the Constitution, not a singular, monolithic "nation" with all powers stemming from the central government.

While the founders put great stock in the English system and its recognition of individual liberty, the problem as they saw it was that the English Constitution was a system of "common laws" as determined by the courts and was not in written form. This potentially gave limitless power to the British government. A written constitution would allow for a "general" government to exist, but with distinct limitations on its powers, authority, and jurisdiction. Keeping self-government within the respective member states was the only means of having a Union, as George Mason put it, made up of peoples "so different in their manners, habits, and customs."

Without the guarantee of State sovereignty, not a single State would have ratified the document, and the zeal for the protection of States Rights was far from being uniquely "Southern." The northern states such as New York, Rhode Island, and Massachusetts were some of the most insistent on placing "further restrictions" on the general government through a "Bill of Rights." As that document was being considered among the recommendations from the States, the most requested was what ultimately became the 10th 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.*"

In other words, any power not explicitly delegated to the general government by the Constitution remains solely and exclusively within the jurisdiction of the respective States. Thomas Jefferson would call this doctrine the cornerstone of our Constitution and write that-

*"I believe the states can best govern our home concerns, the general government our foreign ones. I wish, therefore, to see maintained that wholesome distribution of powers established by the Constitution for the limitation of both: & never to see all offices transferred to Washington, where further withdrawn from the eyes of the people, they may more secretly be bought and sold as at market."*

Many modern scholars point to the "Supremacy Clause" of Article VI to supposedly assert that "Federal Law is superior in all concerns to state law." This is an incomplete view of that clause which reads that "this Constitution and the laws "made in pursuance thereof" shall be the supreme law of the land. Both Alexander Hamilton and James Madison explained in convention that this clause restrained the general government to a "specific sphere" of authority that "sphere" being the powers specifically delegated- all other powers, as the 10<sup>th</sup> Amendment clearly states, are to remain with the states for their own self-government. Where no power is delegated, as Pennsylvania James Wilson explained in his famous "Statehouse Yard Speech", none exists and the federal edict is not only "supreme", but it is in fact not even "law" according to the proponents of the constitution.

One of the most common misunderstandings of the Constitution is the question of who ratified the document- the "people", or the States. Article VII clears this up where it says that-

*"the ratification of the convention of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same."*

This clause clearly establishes that the States, not one monolithic American “people” ratified the document, giving it authority. But, in Federalist 39 James Madison likewise went into more detail on this topic. He asserted that-

*“On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a national, but a federal act.”*

That the Constitution created a general government with specific powers was how every ratifying State would understand that document and the Union itself. The voluntary nature of the Union was likewise not questioned. Three states (Virginia, Rhode Island, and New York) would place in their ratification documents "resumption clauses," which stated that their ratification was premised on the condition that they could "reassume" all delegated powers "should the new government become perverted to their injury or oppression."

Between 1788 and 1861, this was how the US government would work. The Congress, President, and Supreme Court were limited to the powers delegated to them via the Constitution, and all others remained under the auspices of the various States. This is how our founding generation understood "States Rights," which is merely another way of saying "self-government" within a voluntary union.