

## The Law

### ***The Constitution of the United States of America and the Civil War.***

Over 170 years ago the United States fought a civil war in which 600,000 combatants died. More dead than all other wars the United States had participated in up to and including Vietnam.

The reasons for that war are to be found in the compromises that had to be made to draft and execute the Constitution of the fledgling United States. Would Federal Law, law from the political center or individual State laws prevail? The status of non-whites enslaved or Native. Those compromises divided and still divide America. How the constitution came to be written and by whom is not part of this essay. We shall concentrate on how the constitution, a truly remarkable 500,000 words, and its various amendments were germane to the outbreak of the war

The “Constitution” consists of three parts. The declaration of cessation from the United Kingdom, which is a letter of complaint to George III, stating the reasons for the American colonise becoming a sovereign nation. The phrase much quoted by supporters of the constitution and others wishing to show how a nation state should be organized appears here. Not in the declaration.

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness”.*

The writers of the constitution were very clear on what they didn’t want. They didn’t want any sort of system which put the destiny of the colonize in the hands of one man or group. As intelligent, well educated, in the most part statesmen, rather than politicians they wrote with precision and those writings were peer reviewed. They did, however require people such as themselves to be in charge. Those that drafted the constitution, like all self-serving elites did not want the common man to be involved. You and I were considered to be much too irrational. James Madison, (1751-1836) a future president, stated that the American constitution he helped to write would mean

*“the total exclusion of the people, in their collective capacity, from any share [in the government]”.*

David Runciman writing in the Guardian in January '21 said that the founders were keen on unity and truth, but they thought too much democracy would put them at risk.

*'They viewed the voting public as notoriously fractious and prone to believe all sorts of nonsense. The point of establishing a republic rather than a democracy was to ensure there were safeguards against populism in all its forms.'*

The founding Fathers created a power balance, separate and equal, between the executive (the President) the legislature (Congress, the senate and the house of representatives) and the courts (the supreme court). The executive and the legislature were to be elected with rules and regulations on who was suitable to stand. The president however, to ensure that an appropriate figure was elected, were elected by State nominated persons in the respective states, the electoral college. The votes of the electoral colleges had to be counted in front of the Congress while it was in session.

The third part of the constitution is the 'Bill of Rights' those unalienable rights mentioned in the Declaration of Independence. There is no Constitutional process, or Executive order which can take away these rights. They are given to the American people by God, not by politicians and define what Americans are. Should any of these rights be taken away Ronald Goulden writes

*'people become less than people, they become chattels.*

Slaves and Native Americans did not have these rights and were therefore considered chattels.

The Constitution Article 1.1 - only Congress can make laws, no Executive Order yet!

2.2 A ten-year census which will determine the number of representatives for each state. The census does not include slaves or native Americans.

Article 4.3. New States may be admitted by Congress... but states must not make new states within existing states without the permission of congress.

### ***The Bill of Rights.***

Amendment 10. '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'.

This confirms that the Federal government only has the powers granted by the Constitution, anything else belongs to the State and as such States have the right to nullify Federal Laws.

Recently the president of the United States has to plead with state governors to make mask wearing compulsory. Neither he, nor Congress can alter the Bill of rights.

The South argued that just as each state had decided to join the Union, a state had the right to secede—leave the Union—at any time. Northerners (including President Buchanan) rejected that notion as opposed to the will of the [Founding Fathers](#), who said they were setting up a perpetual union. Historian James McPherson writes concerning states' rights and other non-slavery explanations:

*While [one or more of these interpretations](#) remain popular among the [Sons of Confederate Veterans](#) and other Southern heritage groups, few professional historians now subscribe to them. Of all these interpretations, the states'-rights argument is perhaps the weakest. It fails to ask the question, states' rights for what purpose? States' rights, or sovereignty, was always more a means than an end, an instrument to achieve a certain goal more than a principle.-*

[Kenneth M. Stamp](#) writes that States' rights was an issue in the 19th century for those who felt that the federal government was superseded by the authority of the individual states and was in violation of the role intended for it by the [Founding Fathers of the United States](#). He notes that

*each section used states' rights arguments when convenient and shifted positions when convenient. For example, the Fugitive Slave Act of 1850 was enacted by southern representatives to use federal authority to suppress northern states' rights. The constitution gave federal protection to slave property rights, and slaveholders demanded that this federal power should be strengthened and take precedence over northern state laws. Anti-slavery forces in northern legislatures had resisted this constitutional right in the form of state personal liberty laws that placed state laws above the federal mandate.*

### **Sources.**

Goulden, R, N. MBA. The American Constitution. Kindle Edition 2013.

McPherson, J. Stamp, K, M. Origins of the American Civil War. Wikipedia April 2021.

Runciman, D. The Guardian, UK. January 21<sup>st</sup>, 2021.