

**Volume 17**

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**A House Divided: HD (58) Secession  
Constitutional? II**

**Lead: One hundred and fifty years ago the Republic was facing its greatest crisis. This continuing series examines the American Civil War. It is "A House Divided."**

**Intro.: *A Moment in Time* with Dan Roberts.**

**Content: When the South removed itself from the Union in 1860 and 1861, its partisans asserted that it was perfectly within its constitutional rights to exit from said compact, because states had freely joined the United States by ratifying the**

**constitution. States that had joined could unjoin, therefore any attempt to force them to remain in the Union was an illegitimate enterprise. Secession was clearly constitutional.**

**This was not the view of the majority of the Founders who clearly saw the Union as perpetual and rejected the alternative approach when they abandoned the Articles of Confederation and turned to the Constitution. Professor Akil Reed Amar has pointed out that the ‘permanence of the Union changed significantly when the Articles were dropped and Constitution adopted and ratified.’ This represented a ‘decisive break with the Articles’ regime of state sovereignty.’**

**He points out that none of the words used in the Articles to define itself, “league,” “confederacy,” “confederation,” or “compact among ‘sovereign states,’” were used in ‘the Preamble or any other operative part of the Constitution.’ This was a ‘fundamentally different legal framework.’**

**The anti-federalists knew what was coming. Patrick Henry of Virginia, perhaps the most perceptive of the opponents of ratification, nailed it when he said, “the fate of America may depend on this....Have they made a...compact between the states? If they had this would be a confederation. It is...most clearly a consolidated government. The question turns**

on...the expression, ‘We the *people*, instead of the *states*, of America.’” What Henry saw and feared was that the Federal government was a revolutionary construct whereby power was taken from the states and was invested in a mystical but powerful entity known as *the people of the United States*. States would remain a significant part of the compact and have a rich panoply of subordinate powers, but in any conflict the power of the people as a whole represented by the Federal government would trump the power of any state or confederation of states.

During the ratification process only two states even approached a discussion of independent authority

remaining with the states either to withdraw or to counter Federal supremacy. New York specifically rejected the motion to assert the “right to withdraw.” Virginia’s Convention passed a curious resolution that asserted its rights to abridge Federal power in matters where it felt injured, but it only advanced that supremacy in matters where the Constitution permitted such independent authority. There was nothing there about withdrawal or the end of the Union’s perpetuity. Next time: Nullification and *Texas v. White*.

In Richmond, Virginia this is Dan Roberts.

## Resources

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