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The Preamble of the Constitution of the United States

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THE PREAMBLE OF THE CONSTITUTION OF THE UNITED STATES.

The people of the United States have always been divided into two great political parties on the subject of the proper construction of the national Constitution. One of these parties from the beginning viewed the instrument as establishing a strong central government, converting the former Confederation into a Nation. The other considered that in effect it merely perfected the articles of Confederation, with the result that the states were only voluntarily in the Union, retaining the right to withdraw at any time their interest seemed to them to warrant this very radical step.

We shall not dwell minutely upon the various phases of popular opinion on this subject; for our purposes this rough classification is sufficient. The National Sovereignty party maintained that the Constitution emanated from the people in their aggregate or collective capacity. The State Sovereignty party contended that it emanated from the people in their state corporate capacity; and these two views of the fundamental law of the United States constituted the basic difference of the two great parties.

The National Sovereignty party based their construction largely upon the word "people" as used in the preamble of the instrument, and this leads us to the point of this article—what is the meaning of the word "people" as it appears in the preamble of the Constitution? The preamble is as follows:

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, 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."

Among the leaders under whose great names the respective parties have sheltered since the promulgation of the Constitution are Alexander Hamilton, Daniel Webster, Joseph Story, and the great German publicist Von Holst, for the National theory; and Thomas Jefferson, James Madison, John C. Calhoun and Joseph Randolph Tucker, for the State Sovereignty theory.

We shall not go back to the Constitution itself in our examination of the question. It was conceded by all that the Articles of Confederation recognized by the States as independent sovereignties bound together under a league of friendship and perpetual union; each state retaining all of its sovereignty except that *expressly* delegated to the Confederate government.

The question which arose was, what effect did the Constitution have in establishing a *new* government? Did it establish an improved Confederacy, or did it establish a National government? Back of this question was another—was the new government a grant of sovereign states or did it originate from the people, who, out of the plentitude of their power, ordained a government, not for a Confederacy, but a Nation? The National party said from the people direct—the State Sovereignty party said from the states in their corporate capacity. The first drew the conclusion that, being a government instituted by the people, it bound the states in an indissoluble Union—the second asserted that the new government, being a compact between sovereign states, each of these constituent elements could judge for itself of the expediency of withdrawing from the compact when this course seemed to be necessary for the safety of its institutions or the happiness of its people.

Mr. Justice Story, in the case of *Martin vs. Hunters lessee* 1 Wheaton 324, states his position on the question under consideration as follows:

"The Constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the Constitution declares by 'the people of the United States.'"

In his Commentaries on the Constitution the learned author says:

"It (the Constitution) is not a compact; on the contrary, the preamble emphatically speaks of it as a solemn ordinance and establishment of government. The language is 'We, the people of

the United States, do ordain and establish this Constitution for the United States of America.' The people do ordain and establish (not contract) and stipulate with each other. The people of the United States, not the distinct people of a particular state, with the people of the other states. The people do ordain and establish a Constitution, not a Confederation."—Storey's Com. Vol. 1. 319, Sec. 352.

The doctrine, then, that the states are parties, is a gratuitous assumption. In the language of a most distinguished statesman, the Constitution itself, in its very front, refutes that:

"It declares that it is ordained by the people of the United States. So far from saying that it is established by the governments of the several states, it does not even say it is established by the people of the several states; but it pronounces that it is established by the people of the United States in the aggregate. Doubtless, the people of the several states, taken collectively, constitute the people of the United States. But it is in this, their collective capacity; it is as all the people of the United States, that they establish the Constitution."

These quotations fully state the position of the National Sovereignty party. The State Sovereignty held just the opposite view—that the National Government was established by a grant of the States in their sovereign capacity, and, as said before, they drew political deductions from this premise, which ultimately led to nullification and secession. The question then came to this: Did the people or the states establish the Constitution? As said before, the National Sovereignty party relied upon the declaration in the preamble to establish their position; they said: "the people of the United States are all the citizens within the geographical boundary of the newly established government and therefore the preamble itself declares who made the Constitution—who established the new government.

This view begged the whole question; it assumed that the term United States was the name of a single political corporation to which the pronoun "it" could be applied, and not an aggregation of sovereignties for which the pronoun "they" would be properly used. The truth was there were no "people of the United States" in the sense that the National Sovereignty party used the expression. It was conceded that the states were only united in a league under the articles of Confederation and retained all the sovereignty except what was expressly granted to the general government, and the first of the Articles of Confederation provides, "The style of this Confederacy shall be the United States of America."

Now, when a word or phrase has acquired a definite and well known

meaning in an instrument or series of instruments relating to the same subject matter, its subsequent use is to be understood as being in accord with the meaning already attached to it, unless a different intent is clearly expressed. Hence, the phrase "United States of America" having been used by the framers of the Articles of Confederation as the equal of "States United," we must give the same meaning to the phrase when we find it used, without accompanying words indicating a different meaning in the Constitution superseding the Articles of Confederation. Indeed, the words "we, the people of the United States" presupposes a people already in existence in a political capacity; they were the people who were then politically organized under the Articles of Confederacy, who were to vote as members of the Confederation on the new Constitution. In other words, who ever were the "people of the United States" under the Confederation, were the people who voted to establish the new government. The new government did not come into existence until after the ratification of the work of the Constitution, by nine states. If only eight states had ratified the proposed Constitution, it would have failed, and the "people of the United States" would have continued under the Articles of Confederation as before. If then, the "people of the United States" under the Confederacy voted to ratify the Constitution, it was done in their State Sovereign capacity and not in their collective capacity as citizens of a single nation.

The Constitution was drafted by representatives or delegates from the states, who were appointed by the legislatures of the respective states, and when the work was done, it was first of all ratified or endorsed by the states present. The precise language of the instrument is "Done in Convention by the *unanimous consent of the states present* * * * * *. In witness whereof we have hereunto subscribed our names." Then follows the names of the respective states present, showing conclusively that the instrument was the work of the states through their representatives, the delegates. It is true, the Constitution as drafted was a merely tentative instrument and was to be submitted to another power for ratification; but this other power was the people of the respective states, not the people of the proposed general government.

The position that the Constitution was to be ratified by the people of the states as states and not in their collective capacity, is strengthened by the following language from Article 8 of the instrument:

"The ratification of the convention of nine states shall be sufficient for the establishment of the Constitution between the states so ratifying the same."

Observe the force of the language used—"convention of *states* ratifying * * * between the *states so ratifying*." There is nothing in this

looking to a ratification by the people of the United States as one Nation. On the contrary, it is the people as states who were to ratify the proposed Constitution.

Now, let us examine the proceedings of the Conventions which ratified the work of the framers of the Constitution and see what they understood as to the capacity in which they acted. We shall not quote from them all, but select a few as substantial samples of the language of all. First, the Convention of Delaware—"We, the deputies of the people of Delaware State in convention met, etc." Pennsylvania—"In the name of the people of Pennsylvania, be it known to all men, that we, the delegates of the people of the Commonwealth of Pennsylvania, in General Convention assembled, have assented to and ratified, etc." Connecticut—"In the name of the people of the State of Connecticut, we, the delegates of the people of said state, etc." Virginia—"We, the delegates of the people of Virginia, etc."

The above declarations were substantially used by every State Convention, and they show that the delegates held themselves out as representing only the people of the state in which the convention was held. There is not a suggestion that anybody thought the people at large were ratifying the Constitution. The people of the states in their sovereign capacity were in convention assembled. If the people of the United states as a compounded whole ratified the Constitution, they certainly effaced themselves ever after; there is not a function of the new government in which they take part. The President and Vice-President, the two officers who would most naturally represent the people at large, are elected by the States, and not infrequently by a minority of the people voting as citizens of the several states. In other words, a majority of the electors may represent a minority of the people at large, and this could not be if the election were by the people at large. If candidate A receives only one majority in Indiana, and candidate B receives a hundred thousand majority in Kentucky, the one majority is as efficient for candidate A as the one hundred thousand is for candidate B. A gets the electoral vote of Indiana by his one majority, and B gets the electoral vote of Kentucky by his one hundred thousand majority. The election is by states, not by the people at large.

All of the National party placed great stress upon the fact that although the Constitution was formulated by delegates appointed by the legislatures of the various states, it was necessary that it be ratified by the people. Undoubtedly, it was expedient and wise to submit the first draft of the Constitution to the people of the several states; they being the source of all political power, it was well that they should, in an active and direct way, express their approval of the new government; but it was not absolutely necessary that this should be done; Congress could

have referred the ratification to the legislatures of the states, and had this been done, the Constitution so ratified would have been just as valid and binding as that ratified by the people of the states. Amendments to the Constitution are not required to be ratified by the people. Article 5 provides "The Congress, when over two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of *the legislature of two-thirds of the several states*, shall call a convention for proposing amendments, which, in either case, shall be valid in all intents and purposes as a part of this Constitution, *when ratified by the legislatures of three-fourths of the several states*, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress * * *." So far as amendments are concerned they may be ratified by either the State Legislatures or by Conventions at the option of Congress, one mode being as valid and binding as the other.

It is difficult to see the overwhelming importance of having the original Constitution ratified by the people as against ratification by the legislature when amendments may be afterwards ratified by the legislature which alter and amend the original on the most vital points; all of the sixteen amendments to the Constitution were ratified by the legislatures of the several states. There is no doubt that an amendment dissolving the Union would be valid although ratified only by the legislatures of three-fourths of the states. This shows conclusively that there was no vital merit in the ratification by the people over the ratification by the legislatures. It is difficult to see the difference in the agency of those delegates meeting in convention and those legislators meeting at a lawfully appointed time—both were representatives or agents of the same people, one set being special agents, the other, general agents.

But if the National party were wrong historically, they were right logically. It does not follow because the Constitution was ratified by the people in their capacity of sovereign states, that the right was reserved to secede from the Union or to nullify the laws when any state or states thought such a course necessary or wise. Although the powers of the new constitution were a grant from the sovereign states, it was a National government they established, indissoluble in its structure and supremely sovereign within the sphere of its jurisdiction. The framers of the Constitution, in their wisdom, originated a new and entirely unique form of government. Its counterpart had never been known to exist in the history of government; there had been leagues and confederations and governmental councils, but nothing similar to our Constitution had ever been known. Throwing aside the chop logic of the politicians or the so called statesmen, they divided the sovereignty of the states into two

parts—National and Local. The National sovereignty of the thirteen states they welded into one great National political corporation called the United States of America. Within its sphere it is as imperious and supreme as Imperial Rome in the days of her greatest glory; out of that sphere it has no power at all; for all other purposes and ends except National, the states retained complete sovereignty. These two systems of government are entirely harmonious; they cannot legally conflict or collide; whenever this happens, one or the other system has gotten out of its proper jurisdiction and trespassed upon the jurisdiction of the other. To hold the balance of power justly between them the Supreme Court is established, which may decide all questions of conflict. It has been sneeringly said that our fathers sought to imitate the miracle of the Trinity—three in one. With all proper respect that was exactly what was done—thirteen in one; one in all National needs or concerns—thirteen in all matters of state or local sovereignty. They performed a political miracle which foreigners have never understood and probably will never understand. The foreigner comes in contact with the National side of our government and it is hard for him to understand in what way the separate states can be sovereign. But we know that the states are absolutely sovereign in all matters of home rule or local government. We know that if a common law or state statutory crime is committed in Kentucky, that it does in no way offend against the peace and dignity of the United States, but that it offends against the peace and dignity of the Commonwealth of Kentucky. We know that if property is forfeited or the title fails for any cause, it reverts to the Commonwealth of Kentucky. We know that, except in their Federal relations, the states are foreign governments to each other; that a bill of exchange drawn in Indiana is a foreign bill of exchange in Kentucky. These illustrations demonstrate the sovereignty of the states and enable us to realize the different spheres of political jurisdiction between the National and State governments.

The conclusion we reach then is that the Constitution was a grant by the sovereign states, but the government it established is legally indestructible and indissoluble, except in the way pointed out by the Constitution—an Amendment ratified by three-fourths of all the states.

COVERING THE CASE.

Judge Gundy, of Atchison, tells this lawyer story: An Irish lawyer was attorney for a man charged with murder. "Your Honor, I shall first absolutely prove to the jury that the prisoner could not have committed the crime with which he is charged. If that does not convince the jury, I shall show that he was insane when he committed it. If that fails I shall prove an alibi."—Kansas City Journal.