

THE FORGOTTEN 11th AMENDMENT

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Few Americans will dispute the suggestion that as a general rule, Americans are woefully ignorant regarding the United States Constitution. Yet, there are many professionals who study and cite the Constitution. Professionals such as attorneys, journalists, politicians, educators, and media talking heads appear to have a much greater grasp upon the particulars of the Constitution than the general public. This does not mean that each individual holds a correct view of the Constitution nor do they agree with each other on Constitutional issues. While this group of enlightened Constitutional commentators will talk or write enthusiastically on the Constitution and especially on the First, Second, Fourth, and Tenth Amendments, the Eleventh Amendment is generally ignored. To the reader of this article, let me ask this question: When was the last time you considered or read the Eleventh Amendment to the Constitution? Don't be embarrassed to say never or very seldom, after all, that would be the answer provided by the vast majority of even the "enlighten" Constitutional commentators.

Why is very little information written or spoken about the Eleventh Amendment? The Eleventh Amendment was adopted in 1798, a mere seven years after the adoption of the Bill of Rights. Is this amendment just an old antiquated addition to the Constitution and therefore of no modern value? Or is there something about this amendment that is so dangerous to today's power elites that Americans must be kept in the dark about its history? No part of the Constitution, including any amendment, is time limited, otherwise freedom of speech, religion, and association can be said to "old fashioned" and therefore of no value. But there is a very good reason why the Eleventh

Amendment is little studied and discussed today. More than any other portion of the Constitution, the Eleventh Amendment completely invalidates and repudiates Lincoln and the Republican Party's reason for waging war upon the Confederate States of America.

In February of 1793, a mere five years after the adoption of the Constitution, the Federal Supreme Court handed down a decision in *Chisholm v. Georgia*.¹ This decision set the new nation in an uproar. A British creditor enlisted the aid of two South Carolina citizens to sue the State of Georgia to recover money owed to a British company. It must be noted that this was not a case where one State is suing another State but private citizens attempting to sue a State. The case went directly to the Supreme Court which, according to the Constitution, has original jurisdiction.² The State of Georgia *refused* to appear before the Court maintaining that a sovereign state cannot be compelled to appear anywhere it does not choose. The State of Georgia then nullified the Supreme Court decision and stated that any Federal agent that entered Georgia and attempted to enforce any portion of the Supreme Court decision, "shall be...declared to be guilty of felony, and shall suffer death, without benefit of clergy, by being hanged."³ Constitutional scholar, Dr. Forrest McDonald, noted that when the Supreme Court announced the *Chisholm* decision, "Waves of protest swept the country."⁴ At that time in American history, Americans understood that each State in the

¹ *Chisholm v. Georgia*, 2 Dallas 419 (1793).

² Article III, Section 2 United States Constitution.

³ Herman V. Ames, *State Documents on Federal Relations* (Northeastern University Press, Philadelphia: 1911), 10.

⁴ Forrest McDonald, *A Constitutional History of the United States* (Robert E. Krieger Publishing Co., Malabar FL: 1982), 50.

Union was a sovereign State and could not be compelled to act against its will. The key to understanding this conflict is understanding the nature of the term “sovereign.”

A noted nineteenth century legal scholar, Francis Lieber, defines sovereignty thusly, “Sovereignty is the ability to execute any thought or idea without limitation.”⁵ From a theological viewpoint we can be assured that only God is Sovereign but from a political viewpoint sovereignty resides in the agency of government. The 16th century French political scholar, Jean Bodin (1530-1596), explains sovereignty as the “absolute and perpetual power of the state, that is, the greatest power to command.”⁶ Bodin recognizes sovereignty as something that resides with a state due to its independent nature. According to Bodin, the state and the government are *not* the same. The government exists because a sovereign state calls it into existence. In America’s original Union, “we the people” created our state government. “We the people” compose a sovereign community (State) and the people of that community create their State government. Therefore, it is the people, en masse, of that community who are sovereign, not the State government. Sovereignty is the ability to exercise supreme political power over a particular territory (State).

The Swiss political philosopher and diplomat, Emmerich de Vattel, asserted that regardless of the form of government, “Every nation that governs itself...without any dependence on foreign powers, is a sovereign State. Its rights are naturally the same as those of any other State.”⁷ When looking at the history of the representation in the

⁵ Francis Lieber, *On Civil Liberty and Self Government* (J. B. Lippincott and Co., Philadelphia: 1853), 270.

⁶ Jean Bodin as cited in, William Ebenstein, ed., *Great Political Thinkers: Plato to the Present* Holt, Rinehart and Winston, NY: 1960), III, 349.

⁷ Emmerich de Vattel, *Laws of Nations* 6th ed. (1758, T. & J. W. Johnson, Law Booksellers, Philadelphia: 1844), I, 2.

Continental Congress and the act of voting for independence it is obvious that each State, regardless of size, population, or wealth, is treated with absolute equality. Every State had one vote, as Vattel notes, "Its rights are naturally the same as those of any other State." This is reflected in the Constitution's equal representation for each State in the Senate. When called upon to elect the president, the House of Representatives will vote by State, each State having only one vote. This equality of the States is a reflection of the sovereign nature of the States as recognized by America's Founding Fathers.

So now we come to the question of where does sovereignty reside in these United States? Does sovereignty reside with the politicians and judges of the Federal government, i.e., the Union, or does it reside with "we the people" of each sovereign State? If Americans are allowed to have a correct understanding of the history of the Eleventh Amendment, they may begin to question Lincoln and the Republican Party's destruction of the original Union and therefore, the Constitution. Lincoln's war upon the seceding Southern States was based upon two major points he announced in his March 1861 inaugural address and his July 4, 1861 message to Congress. It is important to remember that the death of almost one million Americans, soldiers and civilians and the intentional impoverishment of the formerly prosperous South was based upon Lincoln and the Republican Party's allegation that: (1) The States of the Union were never sovereign and therefore sovereignty resides with the Federal government; (2) the Union is older than the Constitution and the Union created the States and therefore was older than the States.

If sovereignty resides with the Union, i.e., the Federal government, then secession is *illegal* and tantamount to *treason*. But if sovereignty resides with “we the people” of each sovereign State, then secession is *legal* and the natural and logical pursuit of the American principle of “government by the consent of the governed.” The political upheaval caused by the *Chisolm* case demonstrates that Americans believed that the right of self-government, consent of the governed, and other attributes of sovereignty resided with “we the people” within their respective states. Alexander Hamilton in *The Federalist* No. 81, proclaimed, “It is inherent in the nature of sovereignty, not to be amenable to the suit of an individual *without its consent*...as one of the attributes of sovereignty, is now enjoyed by the government of every state in the union.”⁸ The uproar caused by the Supreme Court’s attack upon State sovereignty in 1793, crossed all geographic lines. The day after the *Chisolm v. Georgia* decision was announced, Massachusetts Representative, Theodore Sedgwick, introduced a resolution to amend the Constitution. His proposed amendment would prevent a sovereign state from being compelled *against its will* to appear before a Federal Court.

On the floor of the House of Representatives, Rep. Sedgwick stated: “Mr. Speaker. But yesterday a majority decision of a most alarming nature was handed down by the Supreme Court. Sir, I rise to protest in the name of Massachusetts against this decision. It gives a new and wrong construction of the character of this Government. It reduces free and independent sovereignties to the rank of mere provinces. It contradicts the Declaration of Independence, which solemnly declares,

⁸ Alexander Hamilton, as cited in, Carey and McClellan, *The Federalist* (Kendall/Hunt Publishing co., Dubuque, IA: 1990), 420-21.

‘That these united Colonies are, and of right ought to be, free and independent States.’ Nor can the United States lawfully rob them of their rights as sovereign States until the Tenth Amendment...is repealed.”⁹ Sedgwick’s resolution passed In the House of Representatives by a vote of 81 yes and 9 no votes (90%). In the Senate this resolution passed by 23 yes and 2 no votes (92%). For a Constitutional Amendment to pass Congress and be submitted to the States requires a 2/3s or 66% affirmative vote of both houses. As demonstrated, the Eleventh Amendment greatly surpassed that threshold. When submitted to the States, there being fifteen States in the Union at that time, thirteen States voted for the Amendment with *no* dissenting votes. “This amendment was designed to silence forever all doubts as to the sovereignty of the States.”¹⁰ Unfortunately for America, Lincoln and the Republicans were either ignorant of this history or willfully ignored this bold announcement of State sovereignty.

What then was Lincoln’s “enlightened” view of State or Federal sovereignty? Let us look at Lincoln’s own words as it relates to State and Federal sovereignty. In his July 4, 1861 address to Congress, Lincoln boldly proclaimed, “Much is said about the ‘sovereignty’ of the states, but the word even is not in the National Constitution, nor, as is believed, in any of the State constitutions.” Lincoln declares that since the word “sovereignty” cannot be found in the National Constitution, no State can be sovereign. Keeping with Lincoln’s logic, we are compelled to ask: “Since the *National* Constitution of the United States does not have the word “sovereignty” in it, does this mean that the United States is not a sovereign nation?” Lincoln’s own words demonstrates his

⁹ Theodore Sedgwick, as cited in, J. A. Richardson, *A Historical and Constitutional Defense of The South* (1914, Sprinkle Publication, Harrisonburg, VA: 2010), 266-67.

¹⁰ J. A. Richardson, *Ibid*, 267.

sophomoric understanding of the Constitution! The Constitution is not a cookbook of rights that the Federal government grants to Americans. The Constitution is a document from “we the people” of the States that delegates power from each State in order to *create* a Federal government and therefore, the Union. As is noted in the Tenth Amendment, “The powers not delegated...are reserved to the States respectively, or to the people.” Also, as noted in the Ninth Amendment, “The enumeration...of certain rights, shall not be construed to deny or disparage others retained by the people.” These two amendments speak with an honest and forceful voice that just because something is not in the Constitution that does not mean that “we the people” do not hold that right or power. For example, the word “marriage” does not occur in the Constitution but as we fully understand, Americans have the right to marry.

The positive response of the vast majority of Americans by ratifying the Eleventh Amendment in response to the Supreme Court’s *Chisolm* decision, proves that Americans were aggressively defending the principle of State sovereignty. Sixty-three years after the adoption of the Eleventh Amendment, Lincoln would declare that no State was ever sovereign. Upon that *false premise* Lincoln and the Republican Party would instigate America’s most bloody war—a genocidal war of conquest. If these facts surrounding the adoption of the Eleventh Amendment were the only evidence of State sovereignty, that alone would be enough to condemn Lincoln and the Republican Party as rabid war-criminals. But there is more, much more.

As previously noted, Lincoln asserted that the Union was older than the States and “the Union created the States.” This “fact” would have come as a great surprise to the people of each colony as they and they *alone* expelled all Royal (English) authority

from their colony and assumed full control of their colony. From 1609, the founding of Jamestown, Virginia, to 1774, the first meeting of the Continental Congress (165 yrs.) there was no union, government, or official association among the Thirteen North American Colonies. The only union that existed was the union between each separate colony and Great Britain.

Many nationalist scholars have proclaimed the First Continental Congress (1774) to be the first government of what was to become the United States. What these so-called scholars selectively choose to ignore is that the Continental Congress had *no* power to command nor enforce any of its resolutions. The Continental Congress was strictly a deliberative body that could recommend *anything* but conclude *nothing!* It was more akin to a social club than to a government. As Bodin pointed out, a sovereign has the power to command,¹¹ the Continental Congress did not command it *recommended*. The only government in America at that time which could command and enforce its command were the individual sovereign States of America. In reference to the Continental Congress, Judge Able Upshur noted, “that body was not a general or national government, nor a government of any kind...its acts were not in the form of laws but recommendation...it could command nothing.”¹² Each colony elected delegates to the Continental Congress but each colony had only one vote regardless of size or population, again pointing to the sovereign nature of each colony. Throwing off all Royal authority, appointing delegates to the Continental Congress, and empowering said delegates to vote for or against independence, was being performed by “we the

¹¹ Jean Bodin, *Op. Cit.* 3.

¹² Able Upshur, *The Federal Government: Its True Nature and Character* (Van Evrie, Horton & Co., NY: 1868), 50.

people” of each sovereign State without the aid or assistance of Mr. Lincoln’s mystical Union.

In 1775 the Continental Congress recommended that Continental Officers should take the following oath, “I do acknowledge that the Thirteen United States of America, namely [each individual State was then named] to be free independent and sovereign states....” Is it not shocking to note that Abraham Lincoln’s view of sovereign States runs counter to the oath taken by the brave men in 1775 who were fighting for America’s Rights? On July 4, 1776 the delegates who voted for independence did not do so upon their own desire but could only vote for or against independence if given that authority by their State. Throughout the Declaration of Independence when speaking of the Colonies or States, the plural noun or pronoun is used, whereas when speaking of Great Britain, the singular noun or pronoun is used. If these United States were “one nation indivisible” and under the guidance of Lincoln’s omnipotent and mystical Union, why speak of States in the plural? In 1783 the Treaty of Paris was signed in which King George recognized the independence of these United States. The treaty states, “His Britannic Majesty acknowledges the said United States, viz, [at this point he names *each* of the thirteen States] to be free sovereign and independent States, that he treats with them as such...”¹³ After the recognition of United States independence, the first real government, and therefore first Union, was established under the Articles of Confederation. Article II of said Articles clearly states, “Each state retains its sovereignty, freedom, and independence and every Power and Jurisdiction and right, which is not by this confederation expressly delegated to the United States.” So once

¹³ Treaty of Paris 1783, [Paris Peace Treaty Text \(varsitytutors.com\)](https://www.varsitytutors.com/paris-peace-treaty-text) accessed 2/7/21.

again it is clearly noted in the record of these United States that, regardless of Mr. Lincoln's fake history, real history proves that the States were and are sovereign. As explained in the Declaration of Independence, the people of each State had the American right to live in a government by the "consent of the governed" and to "alter or abolish it [government], and institute new Government" at their will.

Secession is the means by which the abolishing of bad government and the establishment of "new Government" is accomplished. Lincoln, the sixteenth president, said that since the States are not sovereign, attempting secession was an act of rebellion. Lincoln is only one president, what was the view of previous presidents on the issue of secession? Is Lincoln's view the only American view about secession?

During the War of 1812, a very unpopular war in New England, several New England States began discussing the need to secede from the Union. Thomas Jefferson's response to the news of New Englanders seeking the option of secession (1813-14) is very different from Lincoln's reaction in 1861. When faced with the possibility of some New England States seeking secession, Jefferson wrote that they should "call a convention of their State, and to require them to declare themselves members of the Union...or not members, and *let them go*. Put this question solemnly to their people, and their answer cannot be doubtful"¹⁴ [emphasis added]. Here Jefferson is recurring to the idea that the American people, via their sovereign State, have the right to "alter or abolish" their government. He rejects the idea of coercion or war to force people back into a union in which the people feel that they are being oppressed. If

¹⁴ Thomas Jefferson, as cited in, William B. Parker and Jonas Viles, eds., *Letters and Addresses of Thomas Jefferson* (National Jefferson Society, Buffalo, NY: 1903), 231.

forced back into such a union Jefferson warns that, “near friends falling out, never reunite cordially.”¹⁵ Lincoln’s use of force to “save the Union” is opposite from Jefferson’s view of the Union.

Jefferson, a Southerner, was joined in 1830 by the sixth president of the United States, John Q. Adams of Massachusetts, in advocating peaceful secession rather than the use of coercion and war to “save the Union.” The Union of States united by a “fraternal spirit” was so important to President John Q. Adams, that he advocated peaceful secession rather than war to keep states in a union of discontented members. Adams said, “If the day should ever come...when the affections of the people of the states shall be alienated from each other; when fraternal spirit shall give away to cold indifference...far better it be for the people of the disunited states, to part in friendship from each other, THAN TO BE HELD TOGETHER BY CONSTRAINT”¹⁶ [emphasis added]. Lincoln did not get that memo!

The belief in State sovereignty was so strong that when William Rawle of Philadelphia, Pennsylvania wrote his textbook on the Constitution (1825), he included a chapter on how and why a State could secede from the Union. Rawle’s textbook was reviewed by the well-respected journal ‘The North American Review’ of Boston, Massachusetts without one negative comment on Rawle’s view of the right of secession.¹⁷ Only 36 years after these Boston intellectuals gave a glowing review of

¹⁵ Ibid, 68.

¹⁶ John Q. Adams, cited in Joshua Horne, “John Quincy Adams on Secession,” *discerning History*, 27 July 2013, tinyurl.com/yywbqmok (accessed 7/4/2020).

¹⁷ *North American Review* (1826, AMs Press, Inc., NY: 1965), XXII, 446-51.

Rawle's textbook, they joined Lincoln and the Republican Party by insisting that the States were not sovereign and therefore, could not secede.

Other presidents also acknowledged the sovereignty of the States. John Tyler the 10th president became a member of the Confederate States Congress and defended the rights of the States against Lincoln's aggression. Franklin Pierce, of New Hampshire, the 14th president was a strong States' Rights man and close friend of Jefferson Davis. Pierce feared the concentration of power into a strong Federal government. Pierce stated, "The dangers of a concentration of all power in the general government...so vast as ours are too obvious to be disregarded.... The great scheme of our constitutional liberty rests upon a proper distribution of power between the State and Federal authorities."¹⁸ During the debates over adopting the Constitution two of America's most influential found fathers, James Madison (4th president) and Alexander Hamilton wrote in *The Federalist* that the States were indeed, sovereign States. Madison in *The Federalist* No. 39 clearly notes, "Each State in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its own voluntary act." Hamilton in *The Federalists* No. 85 declares the States to be, "thirteen independent states." These free, independent, and therefore sovereign, States have the American Right to "alter or abolish" their government at their will. Note that Madison in *The Federalists* No. 39 declares that each State is "bound by its own voluntary act." How much more proof is needed to establish that the States are

¹⁸ Franklin Pierce Inaugural Address, March 1853, as cited in [Franklin Pierce: Inaugural Address. U.S. Inaugural Addresses. 1989 \(bartleby.com\)](#) pulled 2-8-21.

sovereign and therefore have the right to withdraw its consent, i.e., secede, from any government?

These five presidents who preceded Lincoln (Jefferson, Madison, Pierce, Adams, and Tyler) dispute Lincoln's idea of Federal sovereignty and the Right of the Federal government to use force to "save the Union." If the Union cannot be maintained by force, how is it to be maintained? James Kent of New York answers that question for all Americans. Kent stated, "On the concurrence and good will of the parts [States], the stability of the whole [Union] depends."¹⁹

An immensely important question that most Americans refuse to consider is, "What *type* of union was "saved" by Lincoln and the Republican Party's use of bloody bayonets?" A reading of *The Federalists* and other documents relating to the adoption of the Constitution provides abundant evidence that the Union "saved" by being forcefully "reunited," is NOT the original Union established by America's Founding Fathers. Once the Federal government began treating sovereign States as conquered provinces, where rights and freedom are permitted or denied by an all-powerful and indivisible Union, the old Union died. Comparing the old Union of sovereign States, who in 1798 demanded that the Federal government recognize the sovereign nature of the States in passing the Eleventh Amendment, to the supreme, all-powerful, indivisible new Union of today reveals a sad truth. The sad truth is that the new Union, created by Lincoln and the Republican Party, has more in common with the Union of Soviet Socialists Republic (a supreme, all-powerful, and indivisible union) than the old Union

¹⁹ James Kent, *Commentaries on American Law* (1826, Da Capo Press, NY: 1871), I, 594.

composed of many sovereign States. The Soviet Union, like all empires, used force or the threat of force to keep conquered States within their Union—no different than Mr. Lincoln.

Is it any wonder that Communist China has repeatedly stated that when it determines to use force to regain control of Taiwan, it will only be following the lead of Lincoln and the Republican Party? The policy of Communist China using force to retake Taiwan was reported in an article in the 'Bloomberg News' titled 'China Invokes Abraham Lincoln in Justifying Push to Take Taiwan.'²⁰ This headline alone should give every American who loves liberty and freedom a reason to reconsider Lincoln and the Republican Party's invasion and conquest of the Confederate States of America.

A year after the defeat of the South, General Lee, in a letter to Lord Acton of Great Britain, warned that with the death of real States' Rights, the United States would become "aggressive abroad and despotic at home." Today, the United States has embraced General Lee's prophetic warning. The only way to reign in this imperial overgrown behemoth of an all-powerful big government is to *force* the Federal government to recognize the sovereign nature of "we the people" of each State. Standard business-as-usual politics will not get this job done. Recent history proves that standard politics, that is, electing more conservatives, putting more "good" judges on the Supreme Court, or electing a good man as president, cannot control the Deep State behemoth. The fraudulent election of 2020 demonstrates that our enemies are too strong and entrenched to be defeated by using an election process controlled by Deep State

²⁰ Bloomberg News, June 1, 2019 [China Invokes Abraham Lincoln in Justifying Push to Take Taiwan - Bloomberg](#) accessed 2-12-21.

operatives. We must develop a new and different method of political action in order to regain control of our Federal government. We must use our strength against their weakness—the very opposite of what “conservatives” have been doing for the past one hundred years. A new generation of conservatives must learn how to use *asymmetrical, i.e., irregular political warfare* to regain our Rights.

A good starting point for asymmetrical *political* warfare would be to organize something like the Tea Party but this time, we must organize a Tea Party with TEETH! This new effort must be responsible for forming provisional governments in each State that will act as a lobbying group from the local level to the State legislature. Not only will provisional governments lobby for real change but it must work locally to inform the public of the need to defeat RINOs and as the state’s Provisional government gets stronger, elect our people. The one main focus of these provisional governments is to push for our State Sovereignty Constitutional Amendment. This amendment will force the Federal government to recognize each State as sovereign and fully capable of exercising the rights of nullification and/or secession. The text of this Amendment can be found at www.kennedytwins.com the Kennedy Twins website.²¹ For a more complete description of irregular *political* warfare read, *Dixie Rising: Rules for Rebels*, 2nd edition.²² A quick review of *Dixie Rising*, will demonstrate that this effort is something never tried before and has great potential to, like the 1793 *Chisholm v Georgia* decision, “set the nation in an uproar.”

²¹ <http://www.kennedytwins.com/THE%20STATE%20SOVEREIGNTY%20AMENDMENT.pdf>

²² James R. Kennedy, *Dixie Rising: Rules for Rebels*, 2nd edition (Shotwell Publishing, Columbia, SC: 2021).

Just ten years after the adoption of the Constitution by the “separate and independent” action of “we the people” of sovereign States, the Eleventh Amendment underscored and re-proclaimed that these United States were a republic of *sovereign* States. As sovereign States they had the power to over-rule any Federal abuse and if necessary, recall their delegated power. In *The Federalist* No. 43, James Madison notes why secession or recalling delegated rights is necessary, “the safety and happiness of society are the objects at which all political institutions must be sacrificed.” The “Union” falls within Madison’s definition of “all political institutions.” While debating the adoption of the Constitution, Patrick Henry informs Americans which “institution,” government or liberty, is most important when he said, “The first thing I have at heart is American *liberty*, the second thing is American *union*.” These founding fathers and the patriots who ratified the Eleventh Amendment, understood that in a free society liberty always trumps government. Bold action today can re-establish that type of government for our children and grandchildren’s future.

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