
appropriation define The Neo-Con(servative) Assault on the Constitution

Posted by Pat Hines - 2009/10/04 08:57

now. It's clear from reading the founders, reading the leading legal scholars of the late 17th and early-mid 18th century that secession was considered legal. Let me reemphasize the fact that the states had seceded from Great Britain which firmly establishing secession as a legal tool available to the states as the ultimate enforcement tool against a rogue federal government, the type of federal government we have today. Pat Hines Pat, you should try convincing your head to secede from ass! Patrick LaSalle

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Posted by Cash - 2009/10/04 08:57

40 that the Constitution regards the States as distinct and independent sovereigns.

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Posted by Pat Hines - 2009/10/04 08:57

Unilateral state secession is simply a nullity: it accomplishes nothing and has no legal efficacy in regard to federal jurisdiction and law. Only at gun point, under the law of nations and the laws of the United States no state or group of states may attack another for seceding from the Union compact. It was a grotesque unconstitutional act in 1861 for the Union Army to invade the Confederate States, and would be so today. Pat Hines

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Posted by Patrick LaSalle - 2009/10/04 08:57

Only at gun point, under the law of nations and the laws of the United States no state or group of states may attack another for seceding from the Union compact. It was a grotesque unconstitutional act in 1861 for the Union Army to invade the Confederate States, and would be so today. May I remind you that the Union did not invade the Confederate States until after those Confederate States took it upon themselves to wage war on the Union (i.e. Fort Sumter) Patrick LaSalle

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Posted by Steven Witmer - 2009/10/04 08:57

The Constitution's Supremacy Clause asserts the supremacy of federal law only in limited and enumerated cases as

set forth by the Tenth Amendment. So? Linda failed to respond to my previous post, so this seems a good time to bring this up again. Yes, the 10th states federal law is limited to those specifically enumerated powers. But where exactly does the 10th give the states the power to take away those specifically enumerated powers? The Supremacy Clause give the Fed certain specific spheres in which its power is Supreme, yes? Do you dispute this? If so, why? Do you agree that secession takes away that supremacy? If it does, then therefore the only type of secession that could be Constitutional would be a secession that leaves the specifically enumerated federal power intact within the seceding state. In that case, what, exactly, would the point of secession be? Steven Witmer My dear Brigadier, a straight line may be the shortest distance between two points, but it is by no means the most interesting! -Doctor Who

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Posted by Patrick LaSalle - 2009/10/04 08:57

of secession be? Or secession specifically granted by the federal government after such a petition is introduced.

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Posted by Hugh Lawson - 2009/10/04 08:57

Yes, the 10th states federal law is limited to those specifically enumerated powers. But where exactly does the 10th give the states the power to take away those specifically enumerated powers? The Supremacy Clause give the Fed certain specific spheres in which its power is Supreme, yes? Do you dispute this? If so, why? Do you agree that secession takes away that supremacy? If it does, then therefore the only type of secession that could be Constitutional would be a secession that leaves the specifically enumerated federal power intact within the seceding state. In that case, what, exactly, would the point of secession be? I think Steve is on the right track here. The power of a state to secede has nothing to do with the powers allocated to Congress which is quite a separate question. The tenth A. changes IMHO the supremacy clause not at all. I'll give my argument. Referring to State powers, the 10th says that powers _not_ denied to the States (and not granted Congress) are reserved to the States. If a power is denied States, then the 10th affected it not at all. Now the whole point of Charbonneau's argument is that the Supremacy clause makes any act of secession legally null under US law. A State is denied the power to undo the supremacy of US law. So a State can call a convention, and the convention can vote on secession, but under US law this changes nothing. If somebody tries to block the enforcement of US laws, then the US can do what any government does: compel obedience. That's the Charbonneau argument, and I think it's a good one. I think it blocks the use of the literal text of the C by secessionists, just taking the text itself, as it is. What they have to do is what the main-body real secessionists tried: to persuade people that there is some over-riding principle of State sovereignty that empowers single-state secession, something logically prior to the Constitutional text. I'm staying out of this part for now.

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Posted by rmk - 2009/10/04 08:57

The way to do it is to hold that each State entering the Union retained the right to leave it. On this line, the supremacy clause applies to States in the Union, but seceded States are no longer in it. This is a drastic compression of a long argument. Both historical and speculative arguments were given for this position by secessionists. The flaw I have always seen is this argument is that the Union you have described cannot exist because its very existance is at the whim of any minority that threatens secession if its desires are not met. If NH does not approve a an election then NH withdraws; leaving twelve states. Then SC opposes a tax and withdraws; leaving eleven. Next MA opposes the way the folks in NC speak and they withdraw. By no measure is such a coaliton a union. It's a mere rowdy house. I don't know if you mean to argue with me. In my para above, I was not arguing for this, but merely showing how such an argument might proceed. So, I don't have a substantive reply. Naw, not arguing. Just making an early mark against an obvious flaw lest it be forgot somewhere down the pike. ...rmk

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Posted by rmk - 2009/10/04 08:57

the Articles of Confederation, or even eliminate the Constitution; it's quite obvious that the federal government is not supreme to the states in any area outside the narrow limits set forth in the Constitution as amended.

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Posted by rmk - 2009/10/04 08:57

: Linda Teasley <l...@panix.com writes: : Gary Charbonneau has made an interesting and to me persuasive argument : on this point. First, let's look at the supremacy clause: : This Constitution, and the Laws of the United States which shall be : made in pursuance thereof; and all Treaties made, or which shall be : made, under the Authority of the United States, shall be the supreme : Law of the Land; and the Judges of every State shall be bound thereby, : any Thing in the Constitution or Laws of any State to the Contrary : notwithstanding. : Now let me review my understanding of Gary's argument: : 1. An act of secession by some State would nullify the C, etc., as the : supreme law of the land, for that State. : 2. But, nothing in the Constitution or Laws of any State can nullify : the the supremacy of the laws of the United State. Yes, given the restricted and enumerated powers of the U.S. laws that the Constitution has laid out as theirs, such as Treaties mentioned in the Supremacy Clause. Secession is not mentioned as a power of the states, nor is secession prohibited by any law of the U.S. It is a silent issue; therefore, arguments about secession are always derivative, depending on interpretation. <deletia Linda T. The phrase and the laws of the United States which shall be made in pursuance thereof appears rather inclusive to me, Linda. Secession certainly contravenes innumerable laws of the US. No, secession contravenes no laws of the US since the party that secedes removes itself from the application of those laws. I am aware that your position on this is firmly fixed but I really cannot see any way around that little clause unless your claim is that laws made in pursuance of are not members of the set of Supreme Law of the Land. Moreover, any demonstrations that secession contravenes at least one member of the set of Supreme Law of the Land is adequate to prove that it violates the supremacy clause. The Supremacy Clause affects laws written under the powers granted to the Congress, it in no way is a grant of power of and in itself. The all that is not forbidden is permitted argument seems rife with tripwires and logical timebombs. Indeed, all that is not permitted to the federal government, is forbidden to the federal government is the method by which the states limited the federal government, strengthened by the 10th Amendment. We are all familiar with the argument that declaration of secession instantaneously extracts a state from membership in the union as we are with the counter-argument that conspiracy to secede must precede secession ergo secession cannot be instantaneous. ...rmk Your last statement is based on a logical fallacy, ergo it fails. Using your logic, one could say that a state legislature or a state constitutional congress debating a Constitutional Amendment to abolish the Constitution would constitute a conspiracy to overthrow the federal government, an absurdity on its' face. Pat Hines And that logical fallacy is what? An undistributed middle? Have I left a straw man lurking in there. I thought that I had demonstrated a _fallacy_, i.e. contradiction, in the argument of Instantaneous Secession. Is it your claim that secession _was_ instantaneous? That any actions taken prior to the actual declarations of secession had no relationship to the act of secession itself? I have examined my text very, very closely. Nowhere in that text can I find the phrase a conspiracy to overthrow the federal government. My exact words were a conspiracy to secede. If, on the other hand, it is your claim that the much lauded secession _was_ 'an attempt to overthrow the federal government' then, I believe, that at least some actions taken prior to the act of overthrowing the federal government, i.e. secession, would constitute a conspiracy. But this is a legal question and not my forte. I'm a counter puncher by nature ...rmk

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Posted by Scribe7716 - 2009/10/04 08:57

Yes, the 10th states federal law is limited to those specifically enumerated powers. No, damnit it doesn't state that. Madison was very careful and worked hard to make that it didn't limit the federal government to sepcifically enumerated powers. The 10th comes to us clearly stamped with an original intent of recognizing that the federal government also had implied powers.

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Posted by Steven Witmer - 2009/10/04 08:57

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government to specifically enumerated powers. The 10th comes to us clearly stamped with an original intent of recognizing that the federal government also had implied powers. Oops, my bad. You're right. Implied power must exist in order for the Fed to be able to carry out its specific powers. Mea culpa. Still, my overall point I was making stands. WRT the 10th amendment secession means nothing because secession would take away specifically enumerated powers given to the federal gov. Therefore, secession cannot be a power given the states via the 10th. True, secession is not a power specifically named as prohibited to states, but the fact that the action of secession directly affects powers that are specifically prohibited to states or reserved to the fed gov. means that no state secession can be effective unless it leaves those prohibited and/or reserved powers alone. Which means secession has no practical effect on the world except a bit of feel-good chest-thumping. Steven Witmer My dear Brigadier, a straight line may be the shortest distance between two points, but it is by no means the most interesting! -Doctor Who

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Posted by "Linda Teasley" - 2009/10/04 08:57

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Posted by Scribe7716 - 2009/10/04 08:57

Madison was very careful and worked hard to make that it didn't limit the federal government to specifically enumerated powers. The 10th comes to us clearly stamped with an original intent of recognizing that the federal government also had implied powers. Oops, my bad. You're right. Implied power must exist in order for the Fed to be able to carry out its specific powers. Mea culpa. No problem. It's just that Madison worked so hard and so carefully to craft the first 10 in such a way that they made no change in the Constitution as written that I get upset for him when people don't recognize his efforts and just how canny a practical politician he was.

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Posted by Patrick LaSalle - 2009/10/04 08:57

just how canny a practical politician he was. Oh I'd pay it no nevermind, Scribe. People like Pat Hines and Linda Teasley have taken up the mantle of the Lost Cause, and will fight for it till the day they die. Kind of funny really. The soldiers who fought for it stopped fighting right after the war. After the wounds healed and the feelings subsided, they grew to see how silly it all was to begin with. Very few remained to carry on the torch, and even they didn't carry it for much longer. The soldiers stopped fighting the war long ago, and yet people like Pat and Linda take up the torch and carry it in memory of them. I think that they were to go back and talk to the soldiers, they'd get a response much like this: America has no north, no south, no east, no west; the sun rises over the hills and sets over the mountains, the compass just points up and down, and we can laugh now at the absurd notion of there being a north and a south.... We are one and undivided.

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Posted by Scribe7716 - 2009/10/04 08:57

James Madison stated that there were NO implied powers of any kind in the Constitution. Sorry, you're wrong there. James Madison, during debate on what would become the 10th Amendment: It impossible to Confine a Government to the exercise of express powers; there must necessarily be admitted powers by implication, unless the Constitution descended to recount every minutiae. The Congress and the ratifying states accepted Madison's view and the 10th

came to us complete with an original intent stamp of implied powers.

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Posted by reb4life - 2009/10/04 08:57

Unilateral state secession is simply a nullity: it accomplishes nothing and has no legal efficacy in regard to federal jurisdiction and law. That would be the federal position, now wouldn't it? Has been so far, as far as I know. Historically, not everyone has agreed with that position. a.s.

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Posted by William G. Davis - 2009/10/04 08:57

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Posted by James F. Epperson - 2009/10/04 08:57

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Posted by Cash - 2009/10/04 08:57

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Posted by Scribe7716 - 2009/10/04 08:57

People like Pat Hines and Linda Teasley have taken up the mantle of the Lost Cause, and will fight for it till the day they die. I get the impression that rather than being neo-Confederates fighting the Lost Cause some of them are capital L Libertarian-Confederates celebrating the Confederacy because they hate the federal government, and blame Lincoln and the war for the growth of big government. There's a lot of that going around.

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exercise of express powers; there must necessarily be admitted powers by implication, unless the Constitution descended to recount every minutiae. The Congress and the ratifying states accepted Madison's view and the 10th came to us complete with an original intent stamp of implied powers. Scribe, I hope you don't mind, but I posted this to alt.thought.southern, since otherwise Brother Hines would not see it. Okay with me, Jim, but any drug over from alt.thought.southern by the post are your responsibility. You have to feed 'em and clean up after 'em.

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Posted by Patrick LaSalle - 2009/10/04 08:57

: certain specific spheres in which its power is Supreme, yes? Do you dispute : this? If so, why? Do you agree that secession takes away that supremacy? If : it does, then therefore the only type of secession that could be Constitutional : would be a secession that leaves the specifically enumerated federal power : intact within the seceding state. In that case, what, exactly, would the point : of secession be? In the case of secession, the Tenth Amendment and the Supremacy Clause would be moot points, no? The federal compact would no long exist.

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