

The Constitution of No Authority

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http://www.real-debt-elimination.com/real_freedom/Constitution_of_No_Authority/constitution_as_contract.html

Who is Bound by the Pretended "Constitution"?

The "constitution" (pretended) has no inherent authority or obligation. It has no authority or obligation at all, unless as a contract between man and man. And it does not so much as even purport to be a contract between persons now existing. It purports, at most, to be only a contract between persons living eighty years ago. [This essay was written in 1869.] And it can be supposed to have been a contract then only between persons who had already come to years of discretion, so as to be competent to make reasonable and obligatory contracts. Furthermore, we know, historically, that only a small portion even of the people then existing were consulted on the subject, or asked, or permitted to express either their consent or dissent in any formal manner. Those persons, if any, who did give their consent formally, are all dead now. Most of them have been dead forty, fifty, sixty, or seventy years. **And the pretended "constitution," so far as it was their contract, died with them.** They had no natural power or right to make it obligatory upon their children. It is plainly impossible, in the nature of things, that they **could** bind their posterity, but they did not even attempt to bind them. That is to say, the instrument [the pretended "constitution"] does not purport to be an agreement between anybody but "the people" **then existing**; nor does it, either expressly or impliedly, assert any right, power, or disposition, on their part, to bind anybody but themselves. Let us see. Its language is:

"We, the people of the United States [that is, the people **then existing** in the pretended "United States"], in order to form a more perfect union, insure domestic tranquility, provide for the common defense, 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."

It is plain, in the first place, that this language, **as an agreement**, purports to be only what it at most really was, viz., a contract between the people then existing; and, of necessity, binding, as a contract, only upon those then existing. In the second place, the language neither expresses nor implies that they had any intention or desire, nor that they imagined they had any right or power, to bind their posterity to live under it. It does not say that their posterity will, shall, or must live under it. It only says, in effect, that their hopes and motives in adopting it were that it might prove useful to their posterity, as well as to themselves, by promoting their union, safety, tranquility, liberty, etc.

Legally speaking, therefore, there is nothing in the pretended "constitution" that professes or attempts to bind the posterity of those who established it. If, then, those who established the pretended "constitution," had no power to bind, and did not attempt to bind their posterity, the question arises, whether their posterity have bound themselves. If they have done so, they can have done so in only one or both of these two ways, viz., by voting, and paying taxes.

Contracts Must Be Signed

The **pretended "constitution" not only binds nobody now, but it never did bind anybody**. It never bound anybody, because it was never agreed to by anybody in such a manner as to make it, on general principles of law and reason, binding upon him.

It is a general principle of law and reason, that **a written instrument binds no one until he has signed it**. This principle is so inflexible a one, that even if a man is unable to write his name, he must still "make his mark," before he is bound by any contract. This custom was established ages ago, when few men could write their names; when a clerk - that is, a man who could write - was so rare and valuable a person, that even if he were guilty of high crimes, he was entitled to pardon, on the ground that the public could not afford to lose his services. Even at that time, a written contract must be signed; and men who could not write, either "made their mark," or signed their contracts by stamping their seals upon wax affixed to the parchment on which their contracts were written. Hence the custom of affixing seals, that has continued to this time.

The laws holds, and reason declares, that if a written instrument is not signed, the presumption must be that the party to be bound by it, did not choose to sign it, or to bind himself by it. And law and reason both give him until the last moment, in which to decide whether he will sign it, or not. Just as with a written contract, a man must not be compelled to enter into any unwritten (verbal) contract. Besides a written contract providing evidence of there being a contract; until it is written, he may not know its precise legal meaning. And when it is written, and he has had the opportunity to satisfy himself of its precise legal meaning, he is then expected to decide, and not before, whether he will agree to it or not. And if he does not **then** sign it, his reason is supposed to be, that he does not choose to enter into such a contract. The fact that the instrument was written for him to sign, or with the hope that he would sign it, goes for nothing.

Where would be the end of fraud and litigation, if one party could bring into court a written instrument, without any signature, and claim to have it enforced, upon the ground that it was written for another man to sign? that this other man had promised to sign it? that he ought to have signed it? that he had had the opportunity to sign it, if he would? but that he had refused or neglected to do so? Yet that is the most that could ever be said of the pretended "constitution." The very men who drafted it, never signed it in any way to bind themselves by it, **as a contract**. And not one of them probably ever would have signed it in any way to bind himself by it, **as a contract**. The impostor "judges," who profess to derive all their supposed "authority" from the pretended "constitution" - from an instrument that nobody ever signed - would spurn any other instrument, not signed, that should be brought before them for adjudication.

Moreover, a written instrument must, in law and reason, not only be signed, but must also be delivered to the party (or to some one for him), in whose favor it is made, before it can bind the party making it. The signing is of no effect, unless the instrument be also delivered. And a party is at perfect liberty to refuse to deliver a written instrument, after he has signed it. (When a signed contract is not delivered, there is no communication from one party to the other that the contract has been agreed to and executed, and the other party has no proof to the contrary. It is as ineffectual as if it was never signed.) The pretended "constitution" was not only never signed by anybody, but it was never delivered by anybody, or to anybody's agent or attorney. It can therefore be of no more validity as a contract, than can any other instrument that was never signed or delivered.

AND In Writing

As further evidence of the general sense of mankind, as to the practical necessity there is that all men's **important** contracts, especially those of a permanent nature, should be both written and signed, the following facts are pertinent.

For nearly two hundred years - that is, since 1677 - there has been on the statute book of England, and the same, in substance, if not precisely in letter, has been re-enacted, and is now in force, in nearly or quite all the States of this Union, a statute, the general object of which is to declare that no action shall be brought to enforce contracts of the more important class, **unless they are put in writing, and signed by the parties to be held chargeable upon them.** [At this point there is a footnote listing 34 states whose statute books Spooner had examined, all of which had variations of this English statute; the footnote also quotes part of the Massachusetts statute.]

The principle of the statute, be it observed, is, not merely that written contracts shall be signed, but also that all contracts, except for those specially exempted - generally those that are for small amounts, and are to remain in force for but a short time - **shall be both written and signed.**

The reason of the statute, on this point, is, that it is now so easy a thing for men to put their contracts in writing, and sign them, and their failure to do so opens the door to so much doubt, fraud, and litigation, that men who neglect to have their contracts - of any considerable importance - written and signed, ought not to have the benefit of courts of justice to enforce them. And this reason is a wise one; and that experience has confirmed its wisdom and necessity, is demonstrated by the fact that it has been acted upon in England for nearly two hundred years, and has been so nearly universally adopted in this country, and that nobody thinks of repealing it.

We all know, too, how careful most men are to have their contracts written and signed, even when this statute does not require it. For example, most men, if they have money due them, of no larger amount than five or ten dollars, are careful to take a note for it. If they buy even a small bill of goods, paying for it at the time of delivery, they take a receipted bill for it. If they pay a small balance of a book account, or any other small debt previously contracted, they take a written receipt for it.

Furthermore, the law everywhere (probably) in our country, as well as in England, requires that a large class of contracts, such as wills, deeds, etc., shall not only be written and signed, but also sealed, witnessed, and acknowledged. And in the case of married women conveying their rights in real estate, the law, in many States, requires that the women shall be examined separate and apart from their husbands, and declare that they sign their contracts free of any fear or compulsion of their husbands.

Such are some of the precautions which the laws require, and which individuals - from the motives of common prudence, even in cases not required by law - take, to put their contracts in writing, and have them signed, and, to guard against all uncertainties and controversies in regard to their meaning and validity. And yet we have what purports, or professes, or is claimed, to be a contract - the pretended "constitution" - made eighty years ago, by men who are now all dead, and who never had any power to bind us, but which (it is claimed) has nevertheless bound three generations of men, consisting of many millions, and which (it is claimed) will be binding upon all the millions that are to come; but which nobody ever signed, sealed, delivered, witnessed, or acknowledged; and which few persons, compared with the whole number that are claimed to be bound by it, have ever read, or even seen, or ever will read, or see. And of those who ever have

read it, or ever will read it, scarcely any two, perhaps no two, have ever agreed, or ever will agree, as to what it means.

Moreover, this supposed "contract," which would not be received in any court of justice sitting under its supposed "authority," if offered to prove a debt of five dollars, is one by which - **as it is generally interpreted by those who pretend to "administer" it** - all men, women, and children throughout the country, and through all time, surrender not only their property, but also their liberties, and even their lives, into the hands of men who by this supposed "contract," **are expressly made wholly irresponsible** for their disposal of them. And we are so insane, or so wicked, as to destroy property and lives without limit, in fighting to compel men to fulfill a supposed "contract," which, inasmuch as it has never been signed by anybody, is, on general principles of law and reason, the merest waste paper, binding upon nobody, fit only to be thrown into the fire; or, if preserved, preserved only to serve as a witness and a warning of the folly and wickedness of mankind.

Pretended "Authority" of the Pretended "Constitution"

It is plain, then, that on general principles of law and reason - such principles as we all act upon in courts of justice and in common life - the pretended "constitution" is no contract; that it binds nobody, and never did bind anybody; and that all those who pretend to act by its "authority," are really acting without any legitimate authority at all; that on general principles of law and reason, they are mere usurpers, and that everybody not only has the right, but is morally bound to treat them as such.

If some people wish to establish and maintain such a "government," as the pretended "constitution" describes, there is no reason in the world why they should not sign the instrument itself, and thus make known their wishes in an open, authentic manner; in such manner as the common sense and experience of mankind have shown to be reasonable and necessary in such cases; and in such manner as to make themselves (as they ought to do) individually responsible for the acts of their pretended "government." But no one has ever been asked to sign it. And the only reason why they have never been asked to sign it, is that it is known that they never would sign it; that they were neither such fools nor knaves as they must needs be to be willing to sign it; that (at least as it has been practically interpreted) it is not what any sensible and honest man wants for himself; nor such as he has any right to impose upon others. It is, to all moral intents and purposes, as destitute of obligation as the compacts which thieves, robbers, and pirates enter into with each other, but never sign.

If any considerable number of people believe the pretended "constitution" to be good, why do they not sign it themselves, and make laws for, and administer them upon, each other, leaving all other persons (who do not interfere with them) in peace? Until they have tried the experiment for themselves, how can they have the gall to impose their pretended "constitution" upon, or even to recommend it to, others? Plainly the reason for such absurd and inconsistent conduct is that they want the pretended "constitution," not solely for any honest or legitimate use it can be to themselves or others, but for the dishonest and illegitimate power it gives them over the persons and properties of others. It is for this latter reason, that they eulogize the pretended "constitution," that they exhort the gullible to revere it, that they expend so much money and blood to sustain it.

The pretended "constitution" itself, then, being of no authority, on what authority does the pretended "government" practically rest? On what ground can those who pretend to "administer" it, claim the right to seize men's property, to restrain them of their natural liberty of action, industry, and trade, and to punish, or even kill, all who deny their supposed "authority" to dispose of men's properties, liberties, and lives at their pleasure or discretion?

The most they can say, in answer to this question, is, that some half, two-thirds, or three-fourths, of the male adults of the country have a **tacit understanding** that they will maintain a pretended "government" under the pretended "constitution"; that they will select, by ballot, the persons to administer it; and that those persons who may receive a majority, or a plurality, of their ballots, shall act as their representatives, and administer the pretended "constitution" in their name, and by their authority.

But this tacit understanding (admitting it to exist) cannot at all justify the conclusion drawn from it. A tacit understanding between A, B, and C, that they will, by ballot, depute D as their agent, to deprive me of my property, liberty, or life, cannot at all authorize D to do so. He is none the less a tyrant, robber, and murderer, because he claims to act as their agent, than he would be if he avowedly acted on his own responsibility alone.

Neither am I bound to recognize him as their agent, nor can he legitimately claim to be their agent, when he brings no **written** authority from them accrediting him as such. I am under no obligation to take his word as to who his principals may be, or whether he has any. Bringing no credentials, I have a right to say he has no such authority even as he claims to have, and that he is therefore intending to rob, enslave, or murder me on his own account.

This tacit understanding, therefore, among the voters of the country, amounts to nothing as an authority to their agents. Neither do the ballots by which they select their agents, avail any more than does their tacit understanding; for their ballots are given in secret, and therefore in a way to avoid any personal responsibility for the acts of their agents.

No body of men can be said to authorize a man to act as their agent, to the injury of a third person, unless they do it in so open and authentic a manner as to make themselves personally responsible for his acts. None of the voters in this country appoint their political agents in any open, authentic manner, or in any manner to make themselves responsible for their acts. Therefore these pretended agents cannot legitimately claim to be really agents. Somebody must be responsible for the acts of these pretended agents; and if they cannot show any open and authentic credentials from their principals, they cannot, in law or reason, be said to have any principals. The maxim applies here, that **what does not appear, does not exist**. If they can show no principal, they have none.

But even these pretended agents do not themselves know who their pretended principals are. These latter act in secret; for acting by secret ballot is acting in secret as much as if they were to meet in secret conclave in the darkness of the night. And they are personally as much unknown to the agents they select, as they are to others. No pretended agent therefore can ever know by whose ballots he is selected, or consequently who his real principals are. Not knowing who his principals are, he has no right to say that he has any. He can, at most, say only that he is the agent of a secret gang of tyrants, robbers, and murderers, who are bound by that faith which prevails among confederates in crime, to stand by him, if his acts, done in their name, shall be resisted.

Men honestly engaged in attempting to establish justice in the world, have no occasion thus to act in secret; or to appoint agents to do acts for which they (the principals) are not willing to be personally responsible.

The secret ballot makes a secret tyranny, **a secret gang of tyrants, robbers, and murderers.** Open despotism is better than this. The single despot stands out in the face of all men, and says: "I am the state; my will is law; I am your master; I take the responsibility of my acts; the only arbiter I acknowledge is the sword; if any one denies my right, let him try conclusions with me."

But a secret tyranny is little less than a tyranny of assassins. Under it, a man knows not who his tyrants are, until they have struck, and perhaps not then. He may **guess**, beforehand, as to some of his immediate neighbors. But he really knows nothing with certainty. The man to whom he would most naturally fly for protection, may prove an enemy, when the time of trial comes.

This is the kind of tyranny we have; and it is the only one we are likely to have, until men are ready to say: "We will consent to no constitution, except such an one as we are neither ashamed nor afraid to sign; and we will authorize no agents or representatives to do anything in our name which we are not willing to be personally responsible for."