

The Supremacy Clause **EXPLAINED**

Most people think the Supremacy Clause in the U.S. Constitution means federal law always trumps state law. This short story about Tom, Dick, and Harry illustrates why they're wrong.

Airplanes are expensive, so it's not uncommon for two or more pilots to enter into a joint ownership contract. Let's say Tom and Dick do just that. They buy a Cessna 182 together and agree to split its use, as well as the fixed ownership costs, 50/50. Tom is to get the use of the plane on even numbered days, and Dick gets to use it on the odd days.

Although they're good friends they wisely agree that, together, they will hire Harry to arbitrate any disagreements they might have arising from the contract and agree to abide by his decrees pertaining to the same. They also agree to abide by any rules Harry makes for the use and maintenance of the airplane.

One day Harry presents Tom with a decree saying that he gets to use Tom's pickup truck any time he wants. Obviously, Tom cries foul.

Dick sides with Harry, however, and points to the contract, saying that Harry's decrees are the "supreme law of the land," and they can use his pickup, his boat, his house, his wife – anything that Harry decrees.

No reasonable person would agree that a time-sharing contract for an airplane gives the arbitrator the right to take or use the other property belonging to the parties to the contract. And no one would fault Tom for putting his foot down and claiming his rights and protecting his family – regardless of what Harry, the arbitrator says!

Now let's add one more dimension. Suppose the contract between Tom and Dick also had an **explicit prohibition of decrees affecting the use of pickup trucks.**

It reads:

"Reliable ground transportation, being necessary to the livelihoods of the parties to this contract, the right of Tom and Dick to the exclusive use of their own pickup trucks, shall not be infringed."

And another blanket protection of Tom and Dick's property

*"The enumeration in this Contract, of certain rights, shall **not be construed to deny or disparage** the use or ownership of property belonging to the Parties."*

And yet another clause that limits Harry's powers:

"The powers not delegated to Harry, the arbitrator, by this Contract, are reserved to the Parties of the Contract."

If there was any doubt about Tom's right to **object to the commandeering** of his pickup truck, it should be gone now.

Of course, those three clauses are analogous to the 2nd, 9th, and 10th Amendments to the U.S. Constitution. If there was any doubt that the states have the right – and duty – to interpose and protect the rights of their People to keep and bear arms from federal infringement, this analogy

should extinguish that doubt.

THE U.S. CONSTITUTION – A CONTRACT BETWEEN THE STATES

The relationship between the several states comprising the United States is much like that of Tom and Dick. Harry is like the federal government which the states have "hired" as a mutual agent to administer the contract or compact *between* the states. <more>



“That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.” James Madison, Virginia Resolution of 1798

Article VII of the US Constitution, the “Ratification Clause”, *supports the Tom, Dick and Harry analogy:*

“The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.” (Emphasis added,) (US Constitution, Art. VII)

Notice two things. First, only the states ratifying the proposed Constitution would be part of the new Compact – even a vote of $\frac{3}{4}$ (nine states) would not obligate the other states to the Compact. That's because they retained their sovereignty.

The second and most important thing to notice is that the Compact, or Constitution, is *between the states*, not between the states and the federal government the Constitution was creating.

Again, the states are like Tom and Dick, and the federal government is the “agent” they “hired”, Harry.

As with the contract between Tom and Dick, the Compact between the several states is *limited to what's enumerated in that Compact*. When the federal government claims powers never granted it by the states, the individual states are at liberty to unilaterally declare such illegitimate powers null and void *within their own borders*.

That's particularly plain when there is also a specific prohibition of the regulation of something not in the contract, just as the Second Amendment precludes the federal government from infringing on the right to keep and bear arms.

THAT'S A BOLD CLAIM, BUT HOW DOES IT STACK UP TO A PLAIN READING OF THE CONSTITUTION?

If the drafters of the Constitution intended for the Supremacy Clause to mean federal laws *always, without exception*, supersede rights claimed by the People and laws adopted by their state legislatures, it would have read something like this:

“This Constitution, Laws and Treaties of the United States shall be the supreme Law of the Land”

But there's more to it. The drafters included, and the People adopted, *qualifiers* to the types of laws and treaties they would agree to be “supreme”. In other words, the People of the original 13 sovereign states agreed that the U.S. Constitution would be supreme, but only agreed to live under federal laws that were “in pursuance” of that Constitution. And they agreed to abide by treaties, but only the ones the United States had “authority” to enter into.

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” (emphasis added) (U.S. Constitution, Article VI)

Alexander Hamilton explained the Supremacy Clause this way:

“I maintain that the word supreme imports no more than this — that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government... but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding” (emphasis added) (Alexander Hamilton, at New York's ratifying convention).

The plain words of the Supremacy Clause, and Hamilton's testimony, leave no doubt that a state law actually trumps a federal law if the federal law was not made “in pursuance” of the Constitution.

Like Tom, states should assert themselves when the Compact is violated. In fact, they have a DUTY to interpose and protect the rights of the People.