



Lesson 6: Applying Contract Law to Understand the Compact Theory of the Constitution

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Introduction

To fully grasp the compact theory of the Constitution, it's helpful to compare it to concepts in contract law. This analogy can make the principles more accessible and understandable, particularly for those who may not be familiar with the historical and legal nuances of early American governance.

Key Concepts:

The Constitution as a Compact Among States:

- The Constitution is not a contract between the states *and* the federal government. Rather, it is a compact among the states *themselves*.
- Through this compact, the states created a federal government as a separate, subordinate entity to serve their collective interests.
- This understanding is critical because it shapes how we interpret the rights and responsibilities laid out in the Constitution.

Contractual Remedies: Nullification and Secession:

- **Nullification:**
 - In contract law, if one party breaches the agreement, the other party can demand that the breaching party correct its behavior to align with the contract's terms. This is analogous to nullification.
 - States, as parties to the constitutional compact, can demand that the federal government (the breaching party) adhere to the agreed-upon limits of its power.
 - Despite the reasonableness of this remedy, states have been reluctant to use nullification to push back against federal overreach.
- **Secession:**
 - If breaches of the contract are severe or continuous, a party may seek rescission, or the cancellation of the contract, returning all parties to their pre-contractual status. This is comparable to secession.
 - States have the right to secede from the union if they believe that the federal government has consistently violated the terms of the constitutional compact.

Principal-Agent Relationship:

- In contract law, a principal can grant an agent the authority to act on its behalf, but the agent's power is limited to what the principal has authorized.
- In the context of the Constitution, the states are the principals, and the federal government is the agent.
- The federal government only has the powers that the states, as principals, have delegated to it. Any action beyond these powers is unauthorized and void.
- Just as a principal can revoke an agent's authority if the agent oversteps its bounds, states can reclaim their authority if the federal government exceeds its constitutional limits.

Legal Analogies to Illustrate Nullification:

- Consider a contract between a homebuilder and a future homeowner. If the builder starts constructing something not agreed upon, like a pool, the homeowner is not obligated to pay for it. The homeowner can

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point to the original contract to enforce compliance.

- Similarly, states can refer to the Constitution to insist that the federal government stick to its agreed-upon powers and refuse to comply with unauthorized actions.

The Federal Government as a Rogue Agent:

- Imagine hiring a bodyguard to protect you, but instead of protecting you, the bodyguard starts attacking you. Would you continue paying this bodyguard?
- This is analogous to the federal government today, which often acts against the interests of the states that created it. States should not tolerate this rogue behavior and should assert their rights under the Constitution.

Understanding and Asserting State Rights:

- Many state legislators and citizens have been misled to believe that the federal government is supreme and that states must comply with all federal laws, regardless of constitutionality.
- This misconception is reinforced by federal grants and aid that incentivize compliance with federal mandates.
- However, the Constitution clearly limits federal power, and any power not granted to the federal government remains with the states. States have the legal right to nullify unconstitutional federal actions and, if necessary, secede from the union.

Conclusion

The compact theory, supported by principles of contract and agency law, provides a strong legal foundation for state sovereignty. The states created the federal government and retain the right to nullify unconstitutional federal actions or even secede from the union if necessary. Understanding this relationship empowers states to assert their rights and protect their sovereignty against federal overreach. The Constitution is, after all, a contract — one that the states are fully within their rights to enforce.