Secession as an American Right, by Dr. Boyd Cathey

There are several excellent, in depth scholarly studies that undercut the arguments against secession from some hyper-unionists: the most recent, by Prof. Barry Alan Shain (Cornell Univ),T*he Declaration of Independence in Historical Context: American State Papers, Petitions, Proclamations, and Letters of the Delegates to the First National Congresses* (2013), dispels the myth that the Declaration somehow "created a nation" and based it on equality. Shain's extensive research is totally convincing. And per the US Constitution, the late Prof. M. E. Bradford's *ORIGINAL INTENTIONS: On the Making and Ratification of the United States Constitution* (1993), demonstrates conclusively, through a thorough investigation of the discussions and debates, and the voluminous correspondence that survives surrounding the adoption of the Constitution, that secession for cause was never forbidden. If so, the document would never have been ratified.

One of the better, shorter summaries of the prevalent Constitutional theory *at that time* has been made by black scholar, professor, and prolific author Dr. Walter Williams. Here is what he writes in one his columns:

"During the 1787 Constitutional Convention, a proposal was made that would allow the federal government to suppress a seceding state. James Madison rejected it, saying, 'A union of the states containing such an ingredient seemed to provide for its own destruction. The use of force against a state would look more like a declaration of war than an infliction of punishment and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound.'

"In fact, the ratification documents of Virginia, New York and Rhode Island ***explicitly*** *said they held the right to resume powers delegated should the federal government become abusive of those powers. The Constitution never would have been ratified if states thought they could not regain their sovereignty — in a word, secede.*
"On March 2, 1861, after seven states seceded and two days before Abraham Lincoln's inauguration, Sen. James R. Doolittle of Wisconsin proposed a constitutional amendment that read, "No state or any part thereof, heretofore admitted or hereafter admitted into the union, shall have the power to withdraw from the jurisdiction of the United States."

"Several months earlier, Reps. Daniel E. Sickles of New York, Thomas B. Florence of Pennsylvania and Otis S. Ferry of Connecticut proposed a constitutional amendment to prohibit secession. Here's a question for the reader: ***Would there have been any point to offering these amendments if secession were already unconstitutional?"*** [emphasis added]

Anti-slavery zealot and staunch unionist President John Quincy Adams advocated secession over the annexation of Texas, and in his April 30, 1839, speech "The Jubilee of the Constitution," commemorating the 50th anniversary of George Washington's inauguration as the first American president, he affirmed:

"... if the day should ever come, (may Heaven avert it) when the affections of the people of these states shall be alienated from each other; when the fraternal spirit shall give away to cold indifference, or collisions of interest shall fester into hatred, the bands of political association will not long hold together the parties no longer attracted by the magnetism of conciliated interests and kindly sympathies; and far better will it be for the people of the disunited states, to part in friendship from each other, than to be held together by constraint."

More, during the antebellum period William Rawle's pro-secession text on Constitutional law, *A View of the Constitution of the United States* (1825,) was used at West Point as the standard text on the US Constitution. And on several occasions the Supreme Court, itself, affirmed this view. In *The Bank of Augusta v. Earl* (1839), the Court wrote in an 8-1 decision:

"The States are distinct separate sovereignties, except so far as they have parted with some of the attributes of sovereignty by the Constitution. They continue to be nations, with all their rights, and under all their national obligations, and with all the rights of nations in every particular; except in the surrender by each to the common purposes and object of the Union, under the Constitution. The rights of each State, when not so yielded up, remain absolute."

A review of the Northern press at the time of the Secession conventions finds, perhaps surprisingly to those who wish to read back into the past their own statist ideas, a similar view. As historian William Marvel explains in his volume, *Mr. Lincoln Goes to War* (Houghton Mifflin Harcourt Publishers, 2006, pp. 19-20), very few Northern newspapers took the position that the Federal government had the constitutional right to invade and suppress states who had decided to secede. Indeed, this non-interventionist view was the view of Presidents Buchanan, Pierce, and according to their previous opinions, a majority of those on the Supreme Court in 1861.

Congressionally a majority of members of Congress expressed a view which favored peaceful separation and that such separation, although regrettable, was constitutional. Indeed, were it not the New England states in 1814-1815 who made the first serious effort at secession during the War of 1812, to the point that they gathered in Hartford to discuss actively pursuing it? To read transcripts of their discussions is to see that not just Southerners but most Americans understood during the pre-war period that states had the right to abrogate their original adhesion to the American union.

One last comment regarding the accusation of "treason." After the conclusion of the War, the Southern states were put under military authority, their civil governments dissolved, and each state had to be re-admitted to the Union. But, logically, a state could not be "re-admitted" to the Union unless it had been out of it. And if it were out of it, legally and constitutionally, as the Southern states maintained (and some Northern writers acknowledged), then it could not be in any way guilty of "treason." Robert E. Lee formally resigned his commission from the US Army, and then reverted to civilian status. When Virginia seceded, which its state constitution gave it every legal right to do (and according to a majority Constitutional view of the time), he was called back into service

by his state (which was then out of the union). There is no way that ex post facto argumentation can construe this as treason.

Dr. Cathey's book, *The Land We Love: The South and Its Heritage,* was published in November 2018 (Scuppernong Press).

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