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A Federal Republic: Lincoln's First Inaugural and the Nature of the Union

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Abstract

The Constitution establishes a federated republic in which government sovereignty is divided between federal and state institutions. From the outset, this division introduced into American politics an element of ambiguity over the proper relation between the federal and state governments. To properly understand the nature of our republic, we turn for guidance to President Abraham Lincoln's defense of liberty and Union in his First Inaugural Address. Lincoln vindicated the Constitution by proving secession to be lawless rebellion and affirmed the two central principles of the Union: divided sovereignty and equal citizenship based on the natural rights of individuals. Based on the principles of the nation's political tradition, the Civil War and Reconstruction were a fulfillment and completion of the Constitution, not a revolution against it.

Changes in culture and society surely affect political life, but the more important issue in considering the political health of a people concerns the constitutive principles, forms, and ends by which they choose to be governed. America is exceptional in the sense that the

constitutional order established at the nation's Founding has, on the whole, proved remarkably sound, stable, and enduring. The Constitution has served the purposes for which it was originally intended very well, and the principal reason has been the republican character of its governing principles and institutional forms.

Looking at our Founding, two revolutionary innovations stood out. The first was to form one nation and one people out of the people of 13 separate and distinct states. The second was to write a republican constitution for the nation as a whole that depended in part on written constitutions adopted by the people in the states.

The paramount authority of the people of America was organized in a federal government with power to regulate matters of concern to the whole country and in state governments with power to regulate matters of local concern. Government sovereignty was divided and exercised in federal and state republican institutions, respectively.

In this way, the people governed themselves as one for national purposes and with substantial autonomy according to local needs and interests in their respective states. The people were not insulated from each other in a condition of independent sovereignty. Exercise of states' powers in the Union under

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the paramount authority of the Constitution was the norm, and a claim to absolute state sovereignty was disunionist in nature.

The division of government sovereignty introduced into American politics an element of ambiguity beyond that which naturally exists in political life. The people as individuals and the states as distinct entities are constituent parts of the nation as a political whole. They are not centralized or consolidated in one mass, but retain significant individual and local liberties.

Republican values define American nationality, notwithstanding distinctive local and regional differences. Federal and state governments stand on and are intended to protect the people's natural rights to life, liberty, and the pursuit of happiness. In addition to reasonable differences of opinion concerning the meaning of specific rights claims, ambiguity arises in determining which government, federal or state, is properly authorized to protect the rights of individuals under a given set of circumstances.

Rightly understood, the federal system of concurrent republican governments provides a double security for the rights of the individual. There is a point, however, at which radical disagreement over the meaning and application of fundamental constitutional principles is subversive of republican self-government and national union.

In the American Revolution, coercive and hierarchical imperial rule provoked the overthrow of British authority. In the 19th century, the threat of a slaveholding aristocracy to subvert republican self-government and nationalize slave property led to secession and civil war, and it is by no means inconceivable that in our own time, the determination

of egalitarian-minded progressives to transform America into a socialist welfare state under the rule of an elite bureaucratic class will provoke a still deeper crisis of republican self-government and constitutional government in the United States.

To understand the nature of our country, Americans would do well to turn for guidance to President Abraham Lincoln's defense of republican liberty and Union. Lincoln's teaching on the nature and significance of American first principles is especially instructive in meeting the present threat to constitutional government.

RIGHTLY UNDERSTOOD, THE FEDERAL SYSTEM OF CONCURRENT REPUBLICAN GOVERNMENTS PROVIDES A DOUBLE SECURITY FOR THE RIGHTS OF THE INDIVIDUAL. THERE IS A POINT, HOWEVER, AT WHICH RADICAL DISAGREEMENT OVER THE MEANING AND APPLICATION OF FUNDAMENTAL CONSTITUTIONAL PRINCIPLES IS SUBVERSIVE OF REPUBLICAN SELF-GOVERNMENT AND NATIONAL UNION.

Lincoln takes his place with the Founders for resisting the anti-republican revolution of the slaveholding southern aristocracy. He established constitutional government on a more comprehensive republican basis by fulfilling the principles of the Declaration of Independence. When the time came for Lincoln as Chief Executive to preserve and protect the Constitution, his great and essential contribution was to make moral and philosophical distinctions concerning the meaning of liberty, equality, and

republican government that restored the authority of the Founding.

Ratification of the Constitution inaugurated a national system of two-party political competition for control of the federal government. Political parties originated in Congress as a means of organizing and representing public opinion.

From the outset, constitutional arguments about the nature and extent of federal government powers relative to state powers figured prominently in legislative policymaking. The majority party in Congress had an incentive to construe federal power broadly, and the minority party had an incentive to oppose broad construction in deference to state powers. National-minded lawmakers warned against anarchic state sovereignty, and self-styled "states' rights" lawmakers warned against consolidation of power in the federal government.

Ultimately, party competition aimed at determining the permanent and aggregate interests of the nation. It served a constructive nationalizing purpose and could go on indefinitely with one caveat: that politicians avoid introducing issues that so divided public sentiment as to make compromise impossible, threatening disruption of the Union.

The relationship between slavery and republican government proved to be such an issue. Lincoln's election as President in 1860 was a sign that slavery's day of reckoning was nigh.

The controversy over the nature of the Union that led to the Civil War ultimately involved the question of political obligation. When 11 southern states seceded from the Union in 1860–1861, citizens were forced to consider the problem of dual and conflicting allegiance. How could a citizen remain loyal to two governments, each of which demanded

exclusive allegiance? Putting themselves into a moral and legal dilemma of this nature was not what the American people intended when they organized a national union to defend their rights and liberties in the American Revolution.¹

Failure of the Articles of Confederation

Americans traced the origin of national union to the war for independence from Great Britain. The English colonies in North America were too varied and extensive to be ruled by a single sovereign government in the nature of a centralized or unitary empire. When Britain, in the middle of the 18th century, attempted to impose such a government on them, the people of the colonies recognized their common political principles and formed a nation. They did not separate into 13 sovereign and independent states, but what was the right arrangement of political institutions in a permanent national union competent to defend American liberty?

This was the challenge of American statesmanship, the political question of paramount importance that required constitutional and legal determination. The Declaration of Independence announced the existence of the United States of America as an independent nation. Renouncing monarchy, the colonies formed a Continental Congress in 1774 to defend American liberty and

concurrently wrote state constitutions for their internal government. Subsequently, Congress adopted and the state legislatures ratified (between 1777 and 1781) Articles of Confederation to provide a government for the Union as a whole.

The Articles of Confederation (1781–1789) were an interstate compact in the nature of a treaty alliance between sovereign states. Congress was at best a putative national government: It lacked lawmaking authority and functioned largely in an advisory capacity. Its resolutions and recommendations were subject to veto by state legislatures.

THE FAILURE OF THE ARTICLES OF CONFEDERATION TO DELEGATE LEGALLY COERCIVE POWERS TO CONGRESS PREVENTED THE DEVELOPMENT OF STABLE AND EFFECTIVE GOVERNMENT FOR THE COUNTRY AS A WHOLE.

The failure of the Articles of Confederation to delegate legally coercive powers to Congress prevented the development of stable and effective government for the country as a whole. In effect, the national government depended for its existence on the states. Little could be done to rectify the problem because amending the Articles required unanimous approval by the state legislatures. This rule rendered the Articles of Confederation practicably

unamendable, effectively instituting government by the minority as a permanent arrangement.

The Articles' flawed design reflected a failure to recognize the principle of direct popular representation and majority rule. The states were equally represented in Congress, with each entitled to one vote. The people as individuals were not represented in Congress. Nevertheless, Americans thought of themselves as a national people destined to enjoy a propitious future.

The idea of permanent nationality was expressed in the provision stating that the Articles "shall be inviolably observed by every State, and that the Union shall be perpetual" (Article XIII). Lacking a constitutional basis in the paramount authority of the people, however, the Confederation was incapable of supporting republican self-government in the nation as a whole.

Although many provisions of the Articles of Confederation were incorporated into the Constitution of 1787, the document was not truly a national constitution. Despite a short life span, or perhaps because of it, the Articles have acquired an appeal for political dreamers. Throughout American history, critics of the national government have invoked the Articles as a valid constitutional alternative, one that has never been given a fair opportunity to prove its worthiness as a system of government for the nation. Contemporary anarcho-libertarians, for example,

1. With the wisdom of hindsight, Civil War partisans saw in the Founders' attempt to divide sovereignty a disaster waiting to happen. Charles Francis Adams, a Unionist, wrote: "Taking refuge in metaphysics, they proposed a contradiction in terms,—a divided sovereignty." "The immediate result was a nation founded on a metaphysical abstraction,—a condition of unstable equilibrium. It could not endure.... No man can serve two masters." Charles Francis Adams, *The Constitutional Ethics of Secession and "War Is Hell"* (Boston: Houghton, Mifflin & Company, 1903), pp. 10–11. Bernard Sage, a defender of the Confederacy analyzing the problem of conflicting allegiance, summarized: "Delightful country to live in! where one authority can hang you for doing, what another authority can hang you for not doing!" [P.C. Centz (pseud.)], *Davis and Lee: A Vindication of the Southern States, Citizens, and Rights* (New York: Van Evrie, Horton & Company, 1866), p. 17.

are fond of claiming a right of secession in the spirit of the Articles of Confederation.

In the world of international relations, the design of the Confederation was especially inadequate to the needs of the country. The logic and reason of the Articles of Confederation were decentralizing and disintegrative to the point where dissolution of governmental authority would provoke both internal dissension and external predation by foreign nations.²

The Constitution: Federal Republicanism Based on Divided Sovereignty

Instability in the state governments and the impossibility of amending the Articles of Confederation persuaded Congress to approve a proposal for a convention to be held in Philadelphia in 1787. The object of the convention was to report such alterations in the Articles of Confederation as would “render the federal constitution adequate to the exigencies of Government and the preservation of the Union.” The Federal Convention determined that it was necessary to form a properly constituted federal republican government for the nation.

The new idea to emerge from the convention was to combine elements of a republic of individual citizens and a confederation of states. Members of the House of Representatives would be apportioned among the several states according to their respective numbers by citizens of the states. The Senate would consist of two Senators from each state, chosen by the state legislature.

The principle of state equality in the Articles of Confederation was thus maintained in part, and the principle of representation of individuals, previously confined to the state governments, was applied to the government of the Union. National authority was further defined and strengthened by creating distinct departments of government—legislative, executive, and judicial—to exercise the powers of the government of the Union.

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In the postwar period, state republican governments were criticized for tending toward majority tyranny and democratic instability. Congress was faulted for a want of power that rendered it subordinate to the states. The solution was twofold: (1) extend the sphere of republican self-government by transforming Congress into a representative government based on the constituent authority and suffrages of the people of the United States and (2) curtail democratic legislative excesses by limiting certain powers of the state governments and conferring on the federal government power to act directly on individual citizens in the states.

Summarizing the principle of the extended or compound republic,

James Madison wrote in *Federalist* No. 10:

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans ought to be our zeal in cherishing the spirit and supporting the character of federalists.

Historically, the federal idea referred to a compact between sovereign and independent states. On the American model, federalism would henceforth refer to a division of sovereignty between a central government to regulate matters concerning the nation as a whole and state governments to regulate local matters. The sovereignty of the people assumed the form of dual citizenship, the people acting as the constituent authority both of the government of the Union and of the state in which they resided.

The “more perfect Union” formed by the Constitution unified the new nation without turning it into a hierarchical imperial system. In *Federalist* No. 39, referring to the origin and structure of the new government, Madison observed: “The proposed Constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal Constitution, but a composition of both...partly federal, and partly national.”

Constitutional limitations were intended to prevent the state and national governments from

2. For a comprehensive overview of all that was wrong with the Articles of Confederation, see *Federalist* Nos. 15–22.

aggrandizing power at each other's expense. Whether the new system would successfully divide government sovereignty depended in part on how Americans thought and acted politically in relation to the right of revolution, on which the movement for national independence depended.

The Declaration of Independence asserted "the right of the people to alter or abolish [government] and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." The right to revolution was the ultimate sanction for keeping government within constitutional limits.

Whether or how this right should be taken into account in the constitutional order was a matter of speculation. Madison, in *Federalist* No. 46, predicted that if the government of the Union should attempt to exceed the limits of its powers, "signals of general alarm" would be sounded. "Every Government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole." The states would coordinate their efforts as they did in opposing Great Britain, "and unless the projected innovations should be voluntarily renounced, the same appeal to a trial by force would be made in the one case, as was made in the other."

The Constitution did not recognize a right of revolution. To do so would be absurd and suicidal. Yet the supra-constitutional *natural* right to resist unjust and abusive government was not expunged. The states' concern to limit the military

power of the federal government was reason for guaranteeing the right of the people to keep and bear arms. One might say that while the Second Amendment did not legalize rebellion, it legalized the instruments necessary for rebellion.³

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At the same time, it was clearly the purpose of the Constitution to integrate republican self-government into a coherent whole. This can be seen in the Guarantee of Republican Government Clause of the Constitution (Article IV, section 4), which declares:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

The 10 amendments to the Constitution adopted by Congress and ratified by the states in 1791 were intended as a bill of rights limiting the power of the federal government. As noted above, political parties were formed and the Constitution was invoked in political debate to guide and justify public law and policy. A system of "constitutional politics"

emerged that promoted reasoned deliberation for the common good of the nation. At the same time, party competition, if carried to extremes, could undermine constitutional fidelity and tear the country apart.

Early Threats to the Union: Nullification and Secession

The nature of the Union was the central issue in early constitutional politics. How could it not be in an increasingly pluralistic society where the line dividing sovereignty between the federal and state governments was often vague or indistinct? Party conflict was often inconclusive because the minority or dissenting party, claiming to support the Constitution, was free to question any given governmental act or determination as wrongly decided, illegitimate, or unlawful. In this sense, right-to-revolution thinking persisted as an ambiguous, if not quasi-constitutional, practice that was a source of political instability.

The practice of divided-sovereignty federalism in the early 19th century gave rise to a rule of constitutional fidelity that preserved the Union against both anarchic disintegration and imperial consolidation. The rule held that neither the national government nor any state government could rightfully reduce the other to itself or otherwise destroy it. This was not a positive legal rule written into the Constitution, but an unwritten rule of constitutional practical reason intended to maintain the federal republican ground of American nationality.

The paramount objective in federal-system politics was control of the national government. Assertion of the states' rightful powers—in

3. Daniel H. Deudney, *Bounding Power: Republican Security Theory from the Polis to the Global Village* (Princeton, N.J.: Princeton University Press, 2007), p. 168.

the vernacular of politics, “states’ rights”—was a default strategy adopted by the electoral minority. States had an incentive to devise means of protesting measures that arguably consolidated power in the federal government in violation of the Constitution. The federal government had motive to enforce national laws against acts of individuals and state officials that arguably violated the Constitution to the point of disunion.

In each case, the constitutional construction in question—state interposition against federal usurpation of state power and national intervention against state usurpation of federal power—could be justified as intended to maintain the Constitution and the Union. Depending on the means employed, however, constructions of state and federal power could be viewed as an abuse of constitutional authority and disunionist in nature.

Madison and Interposition.

States’ rights opposition to national consolidation was a more constant theme than nationalist alarm over assertions of state sovereignty. The seminal document asserting a constitutional state right of protest against federal usurpation was the Virginia Resolutions of 1798. Written by James Madison, the resolutions introduced the forceful and suggestive idea of “interposition.” Madison asserted:

[I]n case of a deliberate, palpable, and dangerous exercise of other powers not granted by the 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, grants, and liberties appertaining to them.

MADISON MADE CLEAR HIS BELIEF THAT INTERPOSITION WAS INTENDED FOR THE EXPRESSION OF OPINION, DELIBERATION, AND DEBATE OVER THE CORRECT MEANING OF THE CONSTITUTION. HE OBJECTED VIGOROUSLY TO THE VIEW THAT THE CLAIM OF A RIGHT OF INTERPOSITION WAS WARRANT FOR A STATE TO DISOBEY OR NULLIFY FEDERAL LAW.

Interposition was a term of indefinite meaning that lent itself to construction. Madison viewed it as the act of a state government interjecting itself between the federal government and citizens of the state in order to limit the federal government to its delegated powers and protect the liberty of its citizens. What actions a state might take remained unspecified, but in subsequent commentary, Madison made clear his belief that interposition was intended for the expression of opinion, deliberation, and debate over the correct meaning of the Constitution. He objected vigorously to the view that the claim of a right of interposition was warrant for a state to disobey or nullify federal law.⁴

Calhoun and Nullification. In the 19th century, territorial expansion and economic development produced a coherent nationalist

construction of the Constitution. Nationalist interpretation provoked a vigorous reaction from the states that was intended to preserve the Union by preventing the consolidation of legislative power in the federal government.

State-sovereignty thinking was not confined to one section of the country. Nevertheless, it took root and reached its logical conclusion in the South rather than the North. This was because southerners, determined to protect slavery and vulnerable to moral criticism in relation to national republican values, had a more powerful motive to claim absolute state sovereignty than northerners did.

The decisive step in the transformation of state powers into absolute state sovereignty occurred when South Carolina protested against the federal tariff on imports by asserting the doctrine of nullification or state veto. In 1828, the South Carolina legislature issued an Exposition and Protest, written by Vice President John C. Calhoun, declaring the tariff to be an unconstitutional exercise of the taxing power for the protection of domestic manufacturing interests, an object reserved to the states. Unilateral nullification of the unconstitutional national law by South Carolina was proposed as the proper constitutional remedy.

Nullification was premised on the theory that the Union was a compact among sovereign states in which the federal government was limited to the exercise of delegated powers as the common agent of the states. Calhoun argued that an essential element of state sovereignty was the right to decide on infractions of state

4. For more on Madison and interposition, see Christian G. Fritz, “Interposition and the Heresy of Nullification: James Madison and the Exercise of Sovereign Constitutional Powers,” Heritage Foundation *First Principles Report* No. 41, February 21, 2012, <http://www.heritage.org/research/reports/2012/02/interposition-and-heresy-of-nullification-james-madison-exercise-of-sovereign-constitutional-powers>.

powers and to determine the proper remedy for their correction.

The state's right of judging, Calhoun said, "implies a veto or control, within its limits, on the action of the General Government, on contested points of authority." The veto was the remedy provided by the Constitution to prevent the encroachments of the general government on the reserved rights of the states and to protect the minority against oppression by the majority. To confine the power of making constitutional determinations to the federal government alone, Calhoun said, was to convert the system into "a great consolidated government, with unlimited powers, and to divest the States, in reality, of all their rights."⁵

The doctrine of nullification was intended as a construction of Article V, requiring approval of three-fourths of the states to amend the Constitution. Calhoun proposed to turn the constitutional provision upside down by using it to nullify federal legislation. As envisioned by Calhoun, a state convention nullifies a federal statute; the nullified statute is submitted to the states in the form of a proposal to amend the Constitution; approval by three-fourths of the states converts the disputed power into an expressly granted power, thereby overturning the state nullification. Disapproval by one-fourth of the states confirms the state nullification.

Calhoun said that if Article V was not construed to recognize the doctrine of state nullification, the amending power would become obsolete. The federal government did not need Article V because it could amend the Constitution by construction, and individual states would

not utilize the amendment process because of the difficulty of obtaining a three-fourths majority. Without the state veto, the minority would be subjected to permanent subordination by the majority in a consolidated government. Calhoun wanted to put minority rule on a constitutional footing superior to that of a federal republican majority.

IN DANIEL WEBSTER'S VIEW, THE GOVERNMENT OF THE UNION WAS THE AGENT NOT OF SOVEREIGN STATES, BUT OF THE PEOPLE OF THE UNITED STATES WHO ORDAINED AND ESTABLISHED THE CONSTITUTION.

In 1832, a South Carolina state convention adopted an Ordinance of Nullification declaring the tariff acts of Congress to be "null, void, and no law, nor binding upon this State, its officers, or citizens." Procedures were specified and sanctions imposed to prevent collection of customs duties. The legislature was directed to adopt acts enforcing the ordinance, including prohibition of appeal to the U.S. Supreme Court of state court decisions that might question the authority of the ordinance. State officers were required to subscribe an oath to obey and execute the ordinance.

If Congress should attempt to coerce the state into obedience, its measures would be regarded as "inconsistent with the longer continuance of South Carolina in the Union." The people of the state would "hold themselves absolved from all further obligation to maintain or preserve their political connection with the people of the other States, and will

henceforth proceed to organize a separate Government, and do all other acts and things which sovereign and independent States may of right do."

Webster's Critique of Nullification. Whig Senator Daniel Webster of Massachusetts was the leading congressional critic of nullification. Webster admitted to defending "the consolidation of the Union," which he said was the object of the Framers and the end of the Constitution.

In Webster's view, the government of the Union was the agent not of sovereign states, but of the people of the United States who ordained and established the Constitution. Both the national and state governments were agents of the constituent sovereignty of the people. The powers of the federal government were delegated in the Constitution, and powers not delegated were reserved to the state governments or the people. State sovereignty was subject to control by the Constitution, the supreme law of the land.

Webster declared: "The great question is, *whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws?*" The states had no constitutional right to interfere and annul the law of Congress in case of a supposed violation of the Constitution. "I cannot conceive," Webster argued, "that there can be a middle course between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution, or rebellion, on the other."

Webster acknowledged an ultimate violent remedy "above the Constitution, and in defiance of the

5. Ross M. Lence, ed., "Exposition and Protest," in *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis: Liberty Fund, 1992), p. 348.

Constitution,” based on the unalienable right of man to resist oppression when a revolution is to be justified. “But,” he insisted, “I do not admit that, under the Constitution, and in conformity with it, there is any mode in which a State Government, as a member of the Union, can interfere and stop the progress of the General Government, by force of her own laws, under any circumstances whatever.”⁶

**President Jackson’s
Condemnation of Nullification.**

Faced with the threat of disunion, President Andrew Jackson, a Democrat, issued a proclamation to the people of South Carolina condemning nullification as unconstitutional. A state could not retain its place in the Union and yet be bound only by laws it chose to consider constitutional. Jackson declared, “Our Constitution does not contain the absurdity of giving power to make laws and another to resist them.” The doctrine of nullification was “incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed.”⁷

Most important, Jackson condemned the claim of a right of state secession. Earlier conflicts between state and national authority focused on the right to resist an unconstitutional federal act, placing the burden of proof to justify the act on the national government. Disunion might result from the conflict of authority without purposeful intent.

South Carolina took a different approach. Treating nullification and secession as equivalent terms, it claimed the right to break up the Union as an exercise of state sovereignty.

Jackson, a national-minded states’ rights Democrat, repudiated the secessionist challenge. He noted that the South Carolina ordinance was not based on the right to revolution or the right to resist acts that are plainly unconstitutional and too oppressive to be endured. Rather, the state claimed that the right to secede was deduced from the nature of the Constitution as a compact among sovereign states. In this view, states acknowledging no superior authority could break the compact when, in their opinion, other states departed from it.

Jackson rejected the claim of state sovereignty. While acknowledging that the people of the United States acted in state conventions to ratify the Constitution, he argued that the Union was “a Government in which the people of all the States, collectively, are represented” and that when the government acts for national purposes, the people of the states constitute “one people.” The states retained all the power they did not grant, but “each State, having expressly parted with so many powers as to constitute, jointly with the other States, a single nation, can not, from that period, possess any right to secede, because such secession does not break a league, but destroys the unity of a nation.” “To say that any State may at pleasure secede from the Union,” he argued,

“is to say the United States are not a nation, because it would be a solecism to contend that any part of a nation might dissolve its connection with the other parts, to their injury or ruin, without committing any offense.”

**THE DOCTRINE OF NULLIFICATION
WAS “INCOMPATIBLE WITH
THE EXISTENCE OF THE UNION,
CONTRADICTED EXPRESSLY BY THE
LETTER OF THE CONSTITUTION,
UNAUTHORIZED BY ITS SPIRIT,
INCONSISTENT WITH EVERY
PRINCIPLE ON WHICH IT WAS
FOUNDED, AND DESTRUCTIVE OF THE
GREAT OBJECT FOR WHICH IT WAS
FORMED.”**

Jackson asserted that secession was revolution. Like any other revolutionary act, it might be “morally justified by the extremity of oppression; but to call it a constitutional right is confounding the meaning of terms, and can only be done through gross error or to deceive those who are willing to assert a right but would pause before they made a revolution or incur the penalties consequent on a failure.”⁸

The idea that nullification could be a means of preserving the Union was counterintuitive and unbelievable. It was an argument for minority rule that was supported by no other state. The real meaning of nullification was revolutionary secession. Moreover, the notion of a right of peaceable secession was highly

6. Herman Belz, ed., *The Webster-Hayne Debate on the Nature of the Union: Selected Documents* (Indianapolis: Liberty Fund, 2000), p. 125.

7. James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents 1780-1908*, Vol. 2 (Washington, D.C.: U.S. Government Printing Office, 1909), pp. 648-649.

8. *Ibid.*, p. 649.

implausible. The credibility of nullification depended on the threat of secession. Nullification was an exercise of state sovereignty brigaded with the threat of violent disunion.

The Tariff Enforcement Act of 1833 recognized this reality, authorizing the President to use military means to prevent the taking of any U.S. ship or cargo by force or violence. The crisis subsided when Congress adopted a compromise tariff act and South Carolina rescinded the nullification ordinance.

The Election of 1860: The Crisis of Federal Republicanism

The Kansas-Nebraska Act of 1854 repealed the geographical dividing line between freedom and slavery in Louisiana Purchase territory that Congress had adopted in the Missouri Compromise of 1820. The act provoked a furious reaction in the North that led to the formation of the Republican Party. As applied in the settlement of Kansas territory, the act incited political violence amounting to a small-scale civil war between southern slaveholders and northern free-soilers. Congress's decision to admit Kansas as a free state split the Democratic Party, giving the Republican Party the political opportunity it needed to compete favorably for control of the federal government.

In the election of 1860, the American people divided into four parties: northern Democrat, southern Democrat, Republican, and Constitutional Union. The outcome produced alarm and grave uncertainty, but not in a procedural sense.

Southerners acknowledged that the election of the Republican candidate, Abraham Lincoln, was carried out in a constitutionally correct manner. Lincoln's election was

questioned in the substantive sense that it would transfer national executive authority to a political party that the South regarded as illegal and unconstitutional because of its opposition to slavery. The election failed to reenact, as every presidential election since the beginning of the government had reenacted, the original agreement between slave and free states that slavery should be recognized and protected under the U.S. Constitution.

With Lincoln's election, the probability of secession became a near certainty. It had always been recognized that disunion could occur as a contingent or unintended consequence of factional struggle. To make disruption of the Union the goal of policy, however, was to propound what most northerners regarded as constitutional perversion and absurdity. Whether the Constitution and the Union could tolerate absurdity on this order of magnitude was the question facing the nation in 1860.

The secession movement produced a crisis of constitutional fidelity and operational integrity involving three issues:

- Did a state as a member of the Union, consistent with its obligations to the other states, have a right to withdraw from the Union?
- Did the federal government have constitutional authority to preserve its existence by commanding the allegiance and obligation of all individuals in the United States, including state government officers?
- Did the Constitution expressly affirm the right to hold property in slaves as an essential element of American nationality?

Underlying these questions was the deeper issue of the nature of republican self-government in the United States.

Buchanan's Abdication Before the Threat of Secession. Until the inauguration of Lincoln, the fate of the Union lay in the hands of President James Buchanan. In his fourth annual message to Congress, on December 3, 1860, Buchanan offered his construction of the nature of the Union and the political crisis facing the country.

Buchanan sympathized with the South's desire to immunize itself against antislavery agitation and intermeddling. He denied, however, that secession was the constitutionally correct way to protect its domestic institutions. Sounding like Andrew Jackson, Buchanan said the Union was sovereign in its sphere of authority and was intended to exist in perpetuity. The Constitution never conceived of the Union as "a mere voluntary association of States, to be dissolved at pleasure by any one of the contracting parties." The Framers "never intended to implant in its bosom the seeds of its own destruction, nor were they guilty of the absurdity of providing for its own dissolution."

Buchanan, however, denied that the federal government had any power to prevent a state from seceding. Congress might be "called upon to decide the momentous question whether you possess the power by force of arms to compel a State to remain in the Union." To say that it did was to say Congress had the power to declare and make war against a state. Buchanan denied it. Coercion and war would destroy the Union and make future reconciliation between the States impossible. He concluded:

The fact is that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. If it can not live in the affections of the people, it must one day perish. Congress possesses many means of preserving it by conciliation, but the sword was not placed in their hand to preserve it by force.

The Southern Defense of Secession. Following the secession of South Carolina in December, southern lawmakers intensified efforts to promote secession and form a southern confederacy. Senator Jefferson Davis of Mississippi, in a notable speech on January 10, 1861, advanced the theory of secession as a constitutional right. Davis said the creation of a political party hostile to slavery was a “declaration of war upon our institutions.” It was immaterial “whether that war be made by armies marching for invasion, or whether it be by proclamation, or whether it be by indirect and covert process.”

The very existence of the Republican Party, Davis contended, altered the nature and purpose of the Union. Lincoln’s election in effect amended the Constitution and released the South from any obligation to support the federal government.

Davis said secession was not a constitutional right in the sense of being expressly conferred in the text of the Constitution. It rested on a deeper political basis, “in the rights of the people over and above everything else,” in the original sovereignty of the states that was

left unimpaired by ratification of the Constitution. The inference to be drawn was that the Union was always contingent and indeterminate, subject to the will of sovereign states and people.

JEFFERSON DAVIS HELD THAT THE RIGHT OF PEACEABLE SECESSION IMPOSED A DUTY ON OTHERS NOT TO INTERFERE WITH THE ACTS OF SECEDING STATES AND PEOPLE. SECESSION WAS THE RIGHT TO REVOLUTION IN ITS PROGRESSIVE MODERN FORM.

Davis held that the right of peaceable secession imposed a duty on others not to interfere with the acts of seceding states and people. Secession was the right to revolution in its progressive modern form. Davis observed: “[W]e are confusing language very much. Men speak of revolution; and when they say revolution, they mean blood. Our Fathers meant nothing of the sort. When they spoke of revolution, they spoke of an inalienable right.” The right of revolution was the power of the people to abrogate or modify their government whenever it failed to answer the needs for which it was established. In effect, the South proposed a new law of nature in the form of a right, privilege, and immunity of the people to alter or abolish government by seceding from the Union.⁹

To claim a right of secession—to transform the right of resistance to unjust government into a legal immunity to destroy government at will—was philosophically ambitious.

It was also politically risky. Few political observers believed that discontented states could actually divorce themselves from the authority of the United States without bloodshed. Southerners nevertheless believed that swift exercise of the right of secession would give them the strategic advantage. It would place northern state governments in the moral wrong, disarming and immobilizing opposition.

Earlier threats of disunion by northern states gave southerners confidence that a strategy of immediate secession, executed while Buchanan was still President, would succeed. Citing these examples as precedent, Jefferson Davis later wrote: “The only practical difference was that the North threatened [to secede] and the South acted.”¹⁰

Lincoln’s Defense of Federal Republican Union

To understand why the strategy failed, we need to consider Lincoln’s pre-1860 views on republican government, the nature of the Union, and the right of revolution.

With unwavering resolve, Lincoln affirmed the will of the people expressed through constitutionally prescribed forms of electoral representation. The consent of the people properly transmitted in constitutional public opinion imposed moral and political obligation on government officials.

Lincoln recognized limits on the influence of public opinion and the sovereignty of the people. Popular sovereignty did not obviate the prudential judgments and constitutional determinations of

9. Jefferson Davis, “Remarks on the Special Message on Affairs in South Carolina. Jan. 10, 1861,” in Jon L. Wakelyn, ed., *Southern Pamphlets on Secession November 1860–April 1861* (Chapel Hill and London: University of North Carolina Press, 1996), p. 129.

10. Jefferson Davis, *The Rise and Fall of the Confederate Government, Vol. 1* (New York: D. Appleton & Company, 1881), p. 76.

government officials entrusted with public authority. In the secession crisis, Lincoln demonstrated superior statesmanship by preserving the Constitution, defending the federal republican Union, and determining the meaning of government by the consent of the governed.

Far from suffering a long train of abuses and usurpations such as justified colonial Americans' resistance to Great Britain in 1776, southerners in the 1850s aggressively sought to nationalize the right to slave property. Events convinced Lincoln that the political power of the slave system, which he had long opposed as a denial of republican liberty, threatened the existence of the Union. He conceived it his duty and responsibility to preserve liberty and Union under the Constitution.

In the controversy over slavery extension, the question was: With respect to national territories, where did the authority of popular self-government reside? In Lincoln's view, the disposition of this question was the test of federal republican Union and constitutional popular sovereignty.

The Challenge of Popular Sovereignty. Lincoln's Peoria speech of 1854 opposing the Kansas-Nebraska Act laid the premises for his construction of the nature of the Union in the secession crisis. Senator Stephen A. Douglas of Illinois, author of the act, claimed Congress could not legislate on slavery in the territories, but the people of a territory could. This definition of popular sovereignty was embodied in the Utah and New Mexico territorial acts of 1850.

Lincoln regarded Douglas's doctrine of popular sovereignty as a threat to national authority. Contending that Congress had authority to legislate for individuals

in new communities on the public domain, he asked: "Is not Nebraska, while a territory, part of us? Do we not own the country? And if we surrender the control of it, do we not surrender the right of self-government?" The Nebraska territory "is part of ourselves," Lincoln argued. "If you say we shall not control it because it is ONLY part, the same is true of every other part; and when all the parts are gone, what has become of the whole? What is then left of us? What use for the general government, when there is nothing left for it [to] govern?"

IN THE SECESSION CRISIS, LINCOLN DEMONSTRATED SUPERIOR STATESMANSHIP BY PRESERVING THE CONSTITUTION, DEFENDING THE FEDERAL REPUBLICAN UNION, AND DETERMINING THE MEANING OF GOVERNMENT BY THE CONSENT OF THE GOVERNED.

In Lincoln's view, Douglas's doctrine of popular sovereignty threatened to corrupt republican self-government by reducing policymaking to a matter of individual choice. The premise of the Kansas-Nebraska Act was that the people of the territory had a particular interest in the question. Lincoln said, "If this be the rule, you must leave it to each individual to say for himself whether he will have slaves."

But "What better moral right," he asked, "have thirty-one citizens of Nebraska to say, that the thirty-second shall not hold slaves, than the people of the thirty-one States have to say that slavery shall not go into the thirty-second State at all?" Moreover, by the same logic, if the people had a sacred right to take and hold slaves in Nebraska, it was

"equally their sacred right to buy them where they can get them cheapest; and that undoubtedly will be on the coast of Africa," thereby reopening the trans-Atlantic slave trade that had been abolished in 1808.

Lincoln went to the root of the question of constitutional power over slavery by asking whether the Democratic Party's principle of popular sovereignty was "intrinsicly right." The South claimed that taking slave property into the territories was the moral equivalent of the North's taking its property. Lincoln said, "This is perfectly logical, if there is no difference between hogs and Negroes." He insisted there was a difference. "The doctrine of self-government is right—absolutely and eternally right—but it has no justification as here attempted."

Whether that doctrine was justly applied in the Kansas-Nebraska Act depended on whether the Negro was a man. Lincoln said, "If he is *not* a man, why in that case, he who *is* a man may, as a matter of self-government, do just as he pleases with him. But if the negro is a man, is it not to that extent, a total destruction of self-government, to say that he too shall not govern *himself*?" He declared: "If the negro is a *man*, why then my ancient faith teaches me that 'all men are created equal,' and that there can be no moral right in connection with one man's making a slave of another." "[N]o man is good enough to govern another man, *without that other's consent*. I say this is the leading principle—the sheet anchor of American republicanism."

Lincoln did not ignore the corrupting effect that slavery had on republican government in the free states. The Three-Fifths Clause of the Constitution gave the South an advantage "in the control of the government."¹¹ Lincoln said it was "an

absolute truth, without an exception, that there is no voter in any slave State, but who has more legal power in the government, than any voter in any free State. There is no instance of exact equality.”

The three-fifths rule was in the Constitution and had to be accepted. “But when I am told that I must leave it altogether to OTHER PEOPLE to say whether new partners are to be bred up and brought into the firm, on the same degrading terms against me,” Lincoln objected, “I insist, that whether I shall be a whole man, or only, the half of one, in comparison with others, is a question...which no other man can have a sacred right of deciding for me.”

“THIS GOVERNMENT WOULD BE VERY WEAK, INDEED, IF A MAJORITY, WITH A DISCIPLINED ARMY AND NAVY, AND A WELL-FILLED TREASURY, COULD NOT PRESERVE ITSELF, WHEN ATTACKED BY AN UNARMED, UNDISCIPLINED, AND UNORGANIZED MINORITY.”

The Republican Party’s antislavery policy and northern constituency made it vulnerable to the charge of disunionism. Observing that this was “Practically...the most difficult objection we have to meet,” Lincoln refuted it. He said, for example, that if the judicial department should attempt to settle the question of territorial slavery, the Republican Party would submit to whatever decision the Supreme Court might hand down. “We, the majority,” he declared, “would not strive to dissolve the

Union; and if any attempt is made it must be by you, who so loudly stigmatize us as disunionists.” “But the Union, in any event, won’t be dissolved,” Lincoln asserted:

We don’t want to dissolve it, and if you attempt it, *we won’t let you*. With the purse and the sword, the army and navy and treasury in our hands and at our command, you *couldn’t do it*. This Government would be very weak, indeed, if a majority, with a disciplined army and navy, and a well-filled treasury, could not preserve itself, when attacked by an unarmed, undisciplined, and unorganized minority.

“All this talk about the dissolution of the Union is humbug—nothing but folly,” he exclaimed. “We WON’T dissolve the Union, and *you SHAN’T*.”

Lincoln’s admonition underscored the nature of the Union as a sovereign government competent to defend its existence against revolutionary subversion. Far from a voluntary compact of sovereign state-republics, the Union was based on the principles of republican consent and divided sovereignty. No federal Administration ever regarded it as a voluntary political association that depended for its existence on the willful and subjective desires of state politicians and their constituents.

It was axiomatic that the government of the Union had constitutional authority to make and enforce rules of action for individuals. Much as state-sovereignty theorists might speculate otherwise, practical reason established the proposition that

secession, if actually undertaken, would necessarily require violation of national law.

Crisis of the House Divided. The secession movement created a constitutional crisis for which no one was fully prepared. To deal with it required political prudence as well as constitutional conviction. Lincoln told political associates in December 1860 that “the right of a state to secede is not an open or debatable question. It was fully discussed in Jackson’s time, and denied not only by him but by a vote of...Congress.” Privately, he wrote:

I believe you can pretend to find but little, if any thing, in my speeches about secession; but my opinion is that no state can, in any way lawfully, get out of the Union, without the consent of the others; and that it is the duty of the President, and other government functionaries to run the machine as it is.

The duty or ability of the government to maintain its own integrity “is not the ugly point in the matter,” he explained. “The ugly point is the necessity of keeping the Government together by force, as ours should be a government of fraternity.”

After the election, Lincoln adopted a strategy of silence concerning the policy of his Administration toward the secession movement. He let it be known only that the Republican Party would never compromise on the policy of excluding slavery from national territories.

Determined to adhere to constitutionally defined public opinion,

11. Article I, Section 2 of the Constitution provided that Representatives shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons; i.e., slaves.

Lincoln held that executive duty prevented him from revising positions on the basis of which he was elected. “I will suffer death,” he vowed, “before I will consent or advise my friends to consent to any concession or compromise which looks like buying the privilege of taking possession of this government to which we have a constitutional right.” To appease enemies by breaking his pledges would mean that “this government and all popular government, is already at an end.” It would break the only bond of faith between public and public servant and “distinctly set the minority over the majority.”

Eventually, it was necessary to discuss the constitutional nature of the Union in concrete terms. In remarks at Indianapolis on February 11, 1861, en route to Washington, Lincoln discussed federal coercion of states attempting to secede. He believed marching a federal army into South Carolina would be invasion and coercion if the people did not give their consent and were forced to submit. It would not be coercion, however, for the federal government to hold or retake forts belonging to it or to enforce laws for the collection of duties on foreign imports.

If professed “lovers of the Union” considered law enforcement to be invasion and coercion, he said, then the means of preserving the Union “in their own estimation, is of a very thin and airy character.” For them, “the Union, as a family relation, would not be anything like a regular marriage at all, but only as a sort of free-love arrangement—to be maintained on what the sect calls passionate attraction.”

On the general question of states’ rights, Lincoln asked, “What is the particular sacredness of a State?” It was not the power and authority of a state as recognized in the Constitution, which “all of us agree to” and “abide by.” It was the assumption, rather, “that a State can carry with it out of the Union that which it holds in sacredness by virtue of its connection with the Union.”

**DETERMINED TO ADHERE TO
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OPINION, LINCOLN HELD THAT
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The “sacredness” of states’ rights referred to “that assumed right of a State, as a primary principle, that the Constitution should rule all that is less than itself, and ruin all that is bigger than itself.” To conceive the nature of the Union in this way was absurd. If a state and a county were equal in extent of territory and population, Lincoln reasoned, “wherein is that State any better than the county? Can a change of name change the right?” By what principle of original right did one-fiftieth or one-ninetieth part of the nation, “by calling themselves a State, have the right to break up and ruin that nation as a matter of original principle?”

The analogy of a state to a county, defining a state as “a certain district of country with inhabitants,” scandalized advocates of states’ rights.¹² It showed, however, that the secession movement raised the fundamental issue involved in the framing of

the Constitution. Lincoln’s analogy recalled the thinking of nationalist delegates at the Constitutional Convention who, denying that the states were “so many political societies,” viewed them “as districts of people composing one political Society.”¹³

The First Inaugural: Restoring the Authority of the Constitution

When Buchanan in his annual message declared on the one hand that secession was illegal and unconstitutional and on the other hand that the federal government lacked power to prevent a state’s exit from the Union, he admitted to the dissolution of authority in the government of the United States. Authority answers to the need for unity of action in emergency or crisis conditions. It is the practical activity of determining the means of securing the common good when opinion in a community is divided.

Buchanan’s divided loyalties rendered him incapable of coherent exercise of the executive power. Swearing the oath “to faithfully execute the Office of President” and “preserve, protect and defend the Constitution of the United States” did not necessarily constitute a transfer of authority that was gravely if not entirely dissipated. Whether Lincoln would be able to exercise the authority of the federal government was uncertain. It is fair to say that many were dubious.

Lincoln was prepared for the challenge that awaited him, a challenge which, he said in farewell remarks at Springfield, was “greater than that which rested upon Washington.”

12. Albert Taylor Bledsoe, *Is Davis a Traitor; or Was Secession a Constitutional Right Previous to the War of 1861?* (Richmond, Va.: Hermitage Press, 1907), pp. 104–106.

13. See remarks of Samuel Johnson in James Madison, *Notes of Debates in the Federal Convention of 1787 Reported by James Madison* (New York: W.W. Norton & Company, 1965), p. 211.

The Inaugural address marked the formal constitutional beginning of the work of “reinaugurating”¹⁴ the authority of the government of the United States. Seven states had seceded, and four others were poised to join them depending on circumstances. Lincoln’s task was to explain why secession was wrong and preservation of national union right. It was necessary to establish the reason and justice of federal republican union as the theoretical and practical alternative to minority-rule anarchy based on state sovereignty.

“I take the official oath to-day,” Lincoln declared, “with no mental reservations, and with no purpose to construe the Constitution or laws, by any hypercritical rules.” He explained that he assumed the office of chief executive “under great and peculiar difficulty. A disruption of the Federal Union heretofore only menaced, is now formidably attempted.”

The country wanted to know what the Republican Administration would do about the formation of the Confederate States of America in general and Fort Sumter, South Carolina, in particular where federal troops were under siege of Confederate arms. Would Lincoln take a conciliatory or hard-line approach? Would peace be preserved, or would the country descend into civil war?

The Thorny Question of Slavery. Strategically, the slavery question was subordinated to the national question, but it continued to be on everyone’s mind because proponents of compromise were convinced that the only way to save the Union was to give slavery stronger

constitutional guarantees. To allay southern fears, Lincoln reiterated that he had no purpose to interfere directly or indirectly with the institution of slavery in the states where it existed, nor any lawful right or inclination to do so. He did not object to a proposed constitutional amendment passed by Congress stating that the federal government “shall never interfere with the domestic institutions of the States, including that of persons held to service.”

LINCOLN WAS PREPARED TO CHALLENGE PROSLAVERY OPINION WITH RESPECT TO THE CIVIL RIGHTS OF BLACK PERSONS.

Lincoln affirmed the Fugitive Slave Clause of the Constitution but dismissed the question of whether the fugitive slave provision should be enforced by state or national authority. If the slave was to be surrendered, it was of little consequence to him or to others by which authority it was done. No lawmaker ought to assume that “his oath shall go unkept, on a merely unsubstantial controversy as to *how* it shall be kept.” Observing that all Members of Congress were sworn to support the Constitution, including the Fugitive Slave Clause, he suggested that Congress make an effort, “in good temper,” to “frame and pass a law, by means of which to keep good that unanimous [constitutional] oath.”

At the same time, Lincoln was prepared to challenge proslavery opinion with respect to the civil rights of black persons. In any law on the subject of fugitive slaves, he advised, “all the safeguards of liberty known in

civilized and humane jurisprudence ought to be introduced, so that a free man be not, in any case, surrendered as a slave.” He further proposed “to provide by law for the enforcement of that clause in the Constitution which guaranties that ‘The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.’”¹⁵

In appealing to the Privileges and Immunities Clause, Lincoln directly challenged the premise of Chief Justice Roger Brooke Taney’s opinion in the *Dred Scott* decision. Taney said Negroes must not be recognized as citizens of the United States because if they were,

[T]hey would be entitled to all of these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities, under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding.

At a time and in a situation where defense of the Union was paramount, Lincoln reminded the nation of the corrupting effect of slavery on republican liberty and equality.

Perpetuity of the Union and the Fiction of a Right to Secession. Concerning policy toward the secession movement, Lincoln declared that the Union would constitutionally defend and maintain itself. There would be no bloodshed or violence unless it was forced on the government. The

14. In his last public address, in April 1865, Lincoln referred to reconstruction as “the re-inauguration of the national authority.”

15. Article IV, Section 2.

executive power would be used to hold, occupy, and possess the property and places belonging to the government and to collect duties and imposts.

Beyond what was necessary for these objects, “there will be no invasion—no using of force against, or among the people anywhere.” Where hostility to the United States prevented competent resident citizens from holding federal offices, there would be “no attempt to force obnoxious strangers among the people for that object.” Unless repelled, the mails would continue to be delivered in all parts of the Union. Lincoln expressed hope that the people would have a sense of security in which calm thought and action could lead to “the restoration of fraternal sympathies and affections” and “a peaceful solution of the national troubles.”

Lincoln’s policy was not unlike Buchanan’s in its defensive posture, acknowledgement of the difficulty of appointing federal officers in seceding states, and appeal to fraternal sympathies. The fundamental issue, however, was not erosion of affective sentiment between citizens, nor the difficulty of law enforcement in exigent circumstances. It was southerners’ willful and imperious attempt to overthrow the government of the United States under the claim of a right of secession.

The Union was formed of economic and geopolitical needs and interests. In a moral and philosophic sense, what held the country together was the allegiance, loyalty, and attachment of the people to their government. These virtues were embedded in the principles, forms, and institutions of federal republican

constitutionalism, the ground of legitimate authority in America. Most important, they were informed by what Lincoln called the “central idea in our political opinion.” From the formation of the Union, this was the Declaration principle that “all men are created equal,” not the false doctrine that “all States as States, are equal” as Democrats and secessionists claimed.

WHAT HELD THE COUNTRY TOGETHER WAS THE ALLEGIANCE, LOYALTY, AND ATTACHMENT OF THE PEOPLE TO THEIR GOVERNMENT. THESE VIRTUES WERE EMBEDDED IN THE PRINCIPLES, FORMS, AND INSTITUTIONS OF FEDERAL REPUBLICAN CONSTITUTIONALISM, THE GROUND OF LEGITIMATE AUTHORITY IN AMERICA.

In a sense, it is true, as historian Kenneth M. Stampp observed, that Lincoln in the First Inaugural made no original contribution to the classical nationalist argument on the nature of the Union.¹⁶ Lincoln accomplished something more important by providing an authoritative defense and justification of federal republican constitutionalism under the threat of national disintegration.

Stating the ground on which the government would defend itself, he declared: “I hold, that in the contemplation of universal law, and the Constitution, the Union of these States is perpetual.” Perpetuity was implied, if not expressed, in the fundamental law of all national governments. “It is safe to assert,” he explained, “that no government

proper, ever had a provision in its organic law for its own termination.” “Continue to execute all the express provisions of our national Constitution,” he asserted, “and the Union will endure forever—it being impossible to destroy it, except by some action not provided for in the instrument itself.”

To underscore the point, Lincoln took into account the compact theory of the Union to which the South appealed. “Again, if the United States be not a proper government, but an association of States in the nature of a contract merely,” he asked, “can it, as a contract, be peaceably unmade, by less than all the parties who made it? One party to a contract may violate it—break it, so to speak; but does it not require all to lawfully rescind it?”

In addition to political theory, Lincoln relied on history to support the permanence of the Union. “Descending from these general principles,” he observed, “we find the proposition that, in legal contemplation, the Union is perpetual, confirmed in the history of the Union itself.” The Union was older than the Constitution and “was formed in fact, by the Articles of Association in 1774.” It was “matured and continued” by the Declaration of Independence and, in the Articles of Confederation, “further matured and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual.”

Finally, in 1787, “one of the declared objects for ordaining and establishing the Constitution, was ‘to form a more perfect union.’” “But if destruction of the Union, by one or by part only, of the States, be lawfully possible,” Lincoln argued, “the

16. Kenneth M. Stampp, *And the War Came: The North and the Secession Crisis* (Chicago: University of Chicago Press, 1964), p. 200.

Union is *less* perfect than before the Constitution, having lost the vital element of perpetuity.” “It follows from these views that no State, upon its own mere motion, can lawfully get out of the Union—that *resolves* and *ordinances* to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary, according to circumstances.”

The word “perpetuity” was in the Articles of Confederation, not the Constitution. Lincoln put it into the fundamental law through his construction of the express purpose of the Constitution: “to form a more perfect Union.” In Lincoln’s construction, the idea of perpetuity was not mystical or aspirational, but constitutionally binding and legally obligatory. The bonds of Union were political, legal, and constitutional more than they were sentimental and affective.

He summarized: “I therefore consider that, in view of the Constitution and the laws, the Union is unbroken, and, to the extent of my ability, I shall take care, as the Constitution expressly enjoins me, that the laws of the Union be faithfully executed in all the States.” “Doing this I deem to be only a simple duty on my part,” he explained, “and I shall perform it, so far as practicable, unless my rightful masters, the American people, shall withhold the requisite means, or, in some authoritative manner, direct the contrary.” This should not be regarded as a menace, “but only as the declared purpose of the Union that it *will* constitutionally defend, and maintain itself.”

Preserving the Union meant fulfilling the ends of liberty, equality, and consent for which the nation was founded. Lincoln’s position was not

simply that sound political science did not authorize willful and arbitrary destruction of government or that the obligation to obey law in a political community cannot coexist with a right to disobey the same law. To preserve “the vital element of perpetuity” in the nature of the Union, he held that republican government and the practical reason of the Constitution ruled out the claim of secession as a privilege and immunity of a single state or a minority of states. To support this proposition, it was necessary to demonstrate the heretical nature of secession as a constitutional proposition.

**PRESERVING THE UNION MEANT
FULFILLING THE ENDS OF LIBERTY,
EQUALITY, AND CONSENT FOR
WHICH THE NATION WAS FOUNDED.**

With statesmanlike forbearance and intellectual precision, Lincoln reflected on the nature of constitutional politics in America. “All profess to be content in the Union, if all constitutional rights can be maintained,” he averred. The question was whether “any right, plainly written in the Constitution, has been denied?” It had not. “Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied.”

Acknowledging the right of revolution, Lincoln said that if, by the mere force of numbers, a majority should deprive a minority of any clearly written constitutional right, “it might, in a moral point of view, justify revolution—certainly would, if such right were a vital one.” But this was not the case. “All the vital rights of minorities, and of individuals are so plainly assured to them,” he asserted, “by affirmations and

negations, guaranties and prohibitions, in the Constitution, that controversies never arise concerning them.”

No organic law, however, could be framed “with a provision specifically applicable to every question which may occur in practical administration.” The country was divided by questions that the Constitution did not expressly answer:

- Should fugitives from labor be surrendered by state or national authority?
- Did Congress have power to prohibit, or was it required to protect, slavery in the territories?

In deciding these matters, the people necessarily divided into majorities and minorities. “If the minority will not acquiesce,” Lincoln observed, “the majority must, or the government must cease. There is no other alternative; for continuing the government is acquiescence on one side or the other.” If a minority should secede rather than acquiesce, they will make a precedent that in turn may divide and ruin them. A minority of their own will secede from them whenever the majority refuses to be controlled by the minority.

Lincoln speculated: “why may not any portion of a new confederacy, a year or two hence, arbitrarily secede again, precisely as portions of the present Union now claim to secede from it. All who cherish disunion sentiments, are now being educated to the exact temper of doing this.” Was there such perfect identity of interests among the states planning “to compose a new Union, as to produce harmony only, and prevent renewed secession?”

Lincoln articulated the principle of republican constitutionalism:

Plainly, the central idea of secession, is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily, with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people.

To deny majority rule was to destroy republican government. “Unanimity as a permanent arrangement,” he concluded, “is impossible; the rule of the minority as a permanent arrangement is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism, in some form, is all that is left.”

The Limits of Judicial Review.

Secession was not the only threat to republican government that Lincoln considered in the First Inaugural. A different kind of danger presented itself in the practice of judicial review.

A few years earlier, in the *Dred Scott* case, the Supreme Court had upheld the constitutionality of slavery in a decision intended to settle the controversy that was tearing the country apart. With this case seemingly in mind, Lincoln said, “I do not forget the position assumed by some, that constitutional questions are to be decided by the Supreme Court.”

Lincoln noted that decisions of the Supreme Court properly bound the parties to a suit with respect to the object of the suit and that they were entitled to very high respect and consideration in parallel cases by all other departments of the government. Deference to judicial judgment was a practice worth preserving, even at the expense of preventing

erroneous decisions from being overruled. “At the same time,” however,

[T]he candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people will have ceased, to be their own rulers, having, to that extent, practically resigned their government, into the hands of that eminent tribunal.

Lincoln did not intend his observation as a rebuke to the justices, but as a statement of constitutional common sense.

The Fundamental Disagreement over Slavery.

Summarizing, Lincoln said the “only substantial dispute” was that “One section of our country believes slavery is *right*, and ought to be extended, while the other believes it is *wrong* and ought not to be extended.”

“Physically speaking,” he observed, “we cannot separate. We cannot remove our respective sections from each other, nor build an impassable wall between them.” A husband and wife might be divorced and go out of the presence and reach of each other, “but the different parts of our country cannot do this. They cannot but remain face to face; and intercourse, either amicable or hostile, must continue between them.”

The question was: “Is it possible then to make that intercourse more advantageous, or more satisfactory, *after* separation than *before*? Can aliens make treaties easier than friends can make laws?” If war should occur and, after much loss on

both sides and no gain on either, “you cease fighting, the identical old questions, as to terms of intercourse, are again upon you.”

Ultimately, Lincoln believed the fate of the Union depended on the judgment of the people. Again acknowledging the natural right to revolution, he declared: “This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their *constitutional* right of amending it, or their *revolutionary* right to dismember, or overthrow it.”

Lincoln said the executive had no power “to fix terms for the separation of the States.” “The people themselves can do this also if they choose,” he argued, “but the executive, as such, has nothing to do with it. His duty is to administer the present government, as it came to his hands, and to transmit it, unimpaired by him, to his successor.”

Lincoln also affirmed republican self-government. “Why should there not be a patient confidence in the ultimate justice of the people? Is there any better, or equal hope, in the world?” Both sections believed they were in the right. “If the Almighty Ruler of nations, with his eternal truth and justice, be on your side of the North, or on yours of the South, that truth, and that justice, will surely prevail, by the judgment of this great tribunal, the American people.”

The South, he advised, still had “the old Constitution unimpaired, and on the sensitive point, the laws of your own framing under it; while the new administration will have no immediate power, if it would, to change either.” Urging against precipitate action, Lincoln asserted: “Intelligence, patriotism, Christianity, and a firm reliance on Him, who has

never yet forsaken this favored land, are still competent to adjust, in the best way, all our present difficulty.”

In conclusion, Lincoln reiterated his intent to preserve the system of government and Constitution under which the South’s interests were protected. “In *your* hands, my dissatisfied fellow countrymen, and not in *mine*,” he asserted, “is the momentous issue of civil war. You can have no conflict, without being yourselves the aggressors.” Whichever side the Almighty might be on, Lincoln’s constitutional duty was clear. “*You* have no oath registered in Heaven to destroy the government,” he declared, “while *I* shall have the most solemn one to ‘preserve, protect and defend it.’” He closed on a sentimental note:

We are not enemies, but friends.
We must not be enemies. Though
passion may have strained, it
must not break our bonds of
affection. The mystic chords of
memory, stretching from every
battle-field and patriot grave, to
every living heart and hearth-
stone, all over this broad land,
will yet swell the chorus of the
Union, when again touched, as
surely they will be, by the better
angels of our nature.

“And the War Came”

The debate over the nature of the Union boiled down to a nonnegotiable conflict of duties, responsibilities, and obligations between the seceding states and the United States. Like Buchanan, Lincoln denied executive authority to recognize secession or otherwise determine the relations between the states as members of the Union. Unlike Buchanan, he

made it unmistakably clear that he would exercise the power of his office to defend the federal government against unlawful attempts to overthrow it.

THE INTEGRITY OF THE UNION COMPRISED NOT ONLY THE EXERCISE OF SOVEREIGN AUTHORITY OVER NATIONAL TERRITORY, BUT ALSO THE MORAL VIRTUE OF REPUBLICAN GOVERNMENT AND SOCIETY.

The moment of decision came in April 1861. With advance notification to the Confederate high command, Lincoln sent an unarmed relief expedition to U.S. military forces at Fort Sumter, South Carolina. The Confederate government ordered bombardment of the fort, thereby assuming responsibility for firing the first shot in the Civil War.

While believing the Union ought to rest on fraternal feeling, Lincoln accepted “the necessity of keeping the Government together by force.” This was not because he was a fervent abolitionist or ideologue of centralized power, but rather because “force or some other form of coercion is an unavoidable aspect of political life.”¹⁷

When the secessionists decided to resolve the conflict of authority by armed force, Lincoln was prepared for the coming of war. Treating secession as unjustified rebellion, he began the process of “reinaugurating” the authority of the Union on a more truly republican basis.

In the Proclamation Calling Militia and Convening Congress, April 15, 1861, Lincoln called 75,000 state militia into national service

to execute the laws of the United States in seven seceded states against combinations too powerful to be suppressed by the ordinary course of judicial proceedings. He declared, “I appeal to all loyal citizens to favor, facilitate and aid this effort to maintain the honor, the integrity, and the existence of our National Union, and the perpetuity of popular government; and to redress wrongs already long enough endured.”

The proclamation epitomized Lincoln’s construction of the nature of the Union. National security under the federal principle and popular government under the republican principle were theoretically and practically related. What threatened the existence of the Union had a subversive effect on the character of republican freedom. The integrity of the Union comprised not only the exercise of sovereign authority over national territory, but also the moral virtue of republican government and society.

When the South decided on armed rebellion as the means of exercising its claim to the right of “peaceable secession,” Lincoln fulfilled his responsibility to reinaugurate the Union on a more fully realized republican basis. Reversing the course of national disintegration resulting from the claims of state and popular sovereignty, Lincoln exercised the war power of the government to preserve and protect the Constitution to the end of a more perfect Union.

Americans went to war in 1861 to determine the nature of the Union and the moral and legal status of slavery in republican society. What was dimly apparent in earlier sectional disputes now became forebodingly clear. The citizenship and civil

17. Paul Eidelberg, *On the Silence of the Declaration of Independence* (Amherst, Mass.: University of Massachusetts Press, 1976), p. 55.

rights of black Americans were implicated in the meaning of republican self-government and intrinsically related to the nature of the Union and the identity of the people of the United States.

Lincoln grasped the gravity and depth of the crisis of national integrity signified in the slavery controversy. His exercise of the executive power in the secession crisis, at once prudent and boldly resolute, honored and upheld the Founders' intent to create a federal republican Union of authority and obligation. The situation recalled Lincoln's warning in the Springfield Lyceum address that the danger to American institutions was internal, that "As a nation of freemen, we must live through all time, or die by suicide." Secession, aptly described by Republican lawmakers during the Civil War as "state suicide," was destruction from within.

Completing the Constitution

Northern victory in the Civil War left the seceded states in the ironic position of seeking readmission to the Union. In Lincoln's words, the former Confederate states were "out of their proper practical relation with the Union." The Emancipation Proclamation, January 1, 1863, declared that all persons held as slaves in states designated in rebellion "are, and henceforward shall be free."

The pretension to independent sovereignty having failed, southerners were forced to fall back on the doctrine of sovereign state powers under the Constitution. To reclaim those powers, however, they were required to accept constitutional amendments that further limited states' powers and guaranteed fundamental civil rights and liberties of the freed people.

The Reconstruction amendments extended the founding principles of federal republican liberty and self-government throughout the nation.

- The Thirteenth Amendment (1865) declared that neither slavery nor involuntary servitude shall exist within the United States or in any place subject to their jurisdiction.
- The Fourteenth Amendment (1868) conferred national and state citizenship on all persons born or naturalized in the United States. It further prohibited the states from depriving any person of life, liberty, or property without due process of law or denying to any person the equal protection of the laws.
- The Fifteenth Amendment (1870) prohibited the federal and state governments from denying or abridging the right to vote of citizens of the United States on account of race, color, or previous condition of servitude.

The recognition of black Americans' personal liberty and civil rights expanded significantly the political and constitutional identity of the people of the United States. Reconstruction policy, based on the restoration of federal republican constitutional authority signified by the First Inaugural Address, confirmed and substantiated the "new birth of freedom" to which Lincoln had pledged the nation in the Gettysburg Address.

The unity of political meaning in the Civil War and Reconstruction is expressed in the concept of the American regime as a national democracy based on the distinct yet related principles of national

unity and individual rights of liberty, equality, and consent. The country's political, economic, and social expansion in the antebellum era was bound to alter the relative power of North and South as constituent parts of the nation.

The status of slavery in republican society and the nature of the Union with respect to the relative powers of the federal and state governments were fundamental issues of national existence that required resolution. Clearly, change was imminent: The status quo could not be maintained, and the terms of constitutional union needed to be revised. The question was whether sectional conflict would be settled through deliberative political means or by violent military means. Despite the best efforts to arrange a compromise, Americans went to war in 1861.

The Constitution and the Union were preserved. Secession was proved to be lawless rebellion. The nature of the Union was clarified and confirmed along two constitutional-structural axes: the federal principle of divided sovereignty and the republican principle of equal citizenship based on the natural rights of individuals. American republican nationality was secured both as an intrinsic good and for the purpose of extending liberty throughout the country as a whole.

Based on the principles of the nation's political tradition, the Civil War and Reconstruction were a fulfillment and completion of the Constitution, not a revolution against it.

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