

## Chapter I

### Opinions about Secession

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The final judgment of history in relation to the war of 1861 will, in no small degree, depend on its verdict with respect to the right of secession. If, when this right was practically asserted by the South, it had been conceded by the North, there would not have been even a pretext for the tremendous conflict which followed. Is it not wonderful, then, that a question of such magnitude and importance should have been so little considered, or discussed? Perhaps no other question of political philosophy, or of international law, pregnant with such unutterable calamities, has ever been so partially and so superficially examined as the right of secession from the Federal Union of the United States. From first to last, it seems to have been decided by passion, and not by reason. The voice of reason, enlightened by the study of the facts of history and the principles of political philosophy, yet remains to be heard on the subject of secession.

No one, at present, denies that the States had a right to secede from the Union formed by the old Articles of Confederation. Indeed, this right was claimed and exercised by the States, when they withdrew from that Confederation in order to form "a more perfect Union." Yet, while that Union was standing and in favor with the people, the right of secession therefrom was vehemently denied. The reason of this is well stated by Mr. Madison in "The Federalist." Having explained and vindicated the right of the States, or any portion of them, to secede from the existing Union, he adds: "The time has been when it was incumbent on all of us to veil the ideas which this paragraph exhibits. The scene has now changed, and with it the part which the same motives dictate."<sup>1</sup> That is to say, the time has been when it became all Americans, as patriots and worshippers of the existing Union, to veil the right of secession; but now is the time to unveil this sacred right, and let the truth be seen! Accordingly, the Convention of 1787 unveiled this right, and the States, one after another, seceded from the Union;

though the Articles by which it was formed expressly declared that it should be “perpetual,” or last forever.

The same thing happened, in a still greater degree, under the new and “more perfect Union.” This, unlike the one for which it had been substituted, did not pronounce itself immortal. Still it was deemed incumbent on all men by Mr. Madison, and especially upon himself, to veil the right of secession from the new Union; which he, more than any other man, had labored to establish and preserve. But having exercised the right of secession from one compact between the States, how could he veil that right under another compact between the same parties? Having, for the benefit of his age, revealed the truth, how could he hope to hide it from all future ages? Having laid down the right of secession from one Federal Union, as the great fundamental law to which the new Union owed its very existence, how could he hope to cover it up again, and make the new compact forever binding on posterity? There is not, it is believed, in the whole range of literature, a sophism more ineffably weak and flimsy than the one employed by Mr. Madison to veil the right of secession from the new Union.

The first compact, says he, was made by the Legislatures of the States, and the second by the people themselves of the States. Hence, although the States had seceded from the first compact or Union, he supposed, or hoped, they would have no right to secede from the second.<sup>2</sup> The first compact was, it is true, originally adopted by the Legislatures of the States; but then it was approved by the people themselves, who lived under it as the Constitution and government of their choice. Were not the States, then, just as much bound by this compact, as if it had been originally made by the people themselves? What would be thought of an individual, who should approve and adopt as his own a contract made by his agent, and, having derived all the advantages of it, should seek to repudiate it on the ground that it was not originally entered into by himself? He would be deemed infamous. Yet, precisely such is the distinction and the logic of Mr. Madison, in his attempt to justify the act of secession from the first Union, and to deny the right of secession from the second Union between the same parties! The two compacts are construed differently; because the one was originally made by agents and afterwards ratified by the principals, and the other was originally made by the principals themselves. Could any sophism be more weak or flimsy? Is it not, indeed, in the eye

of reason, as thin as gossamer, as transparent as the air itself? Hopeless, indeed, must be the attempt to find a difference between the two cases, which shall establish the right of secession in the one and not in the other; since James Madison himself, with all his unsurpassed powers of logic and acute discrimination, was compelled to rely on so futile a distinction.

But the majority needed no veil, not even one as thin as that employed by Mr. Madison, to conceal the right of secession from their eyes. The mists raised by its own passions were amply sufficient for that purpose. The doctrine of secession was regarded, by the reigning majority, as simply equivalent to the destruction of "the best Government the world had ever seen," or was ever likely to see. Hence, before the dread tribunal of the sovereign majority, the touch of secession was political death. The public men of the country, and all aspirants after office, shrank from it as from plague, pestilence, and famine. As to whether secession was a Constitutional right or otherwise, the multitude knew nothing, and cared less; but still, in their passionate zeal, they denounced it as rebellion, treason, and every other crime in the dark catalogue of political offences. Their leaders, having studied the subject as little as themselves, were no less ignorant respecting the merits of the question, and even more fierce in denouncing secession as the sum of all villainies, treasons, and rebellions. Thus, what the logic of Mr. Madison failed to accomplish, was achieved by the rhetoric of angry politicians and the passions of an infuriated majority; that is, the right of secession was veiled. The object of this book is simply to appeal from the mad forum of passion to the calm tribunal of reason.

But why, it may be asked, appeal to reason? Has not the war of secession been waged, and the South subjugated? Can reason, however victorious, bind up the broken heart, or call the dead to life? Can reason cause the desolate, dark, waste places of the South to smile again, or the hearts of her downcast and dejected people to rejoice? Can reason strike the fetters from the limbs of the downtrodden white population of the South? True, alas! reason can do none of these things; but still she has a high office and duty to perform. For, however sore her calamities, all is not yet lost to our bleeding and beloved South. She still retains that which, to every true man, is infinitely dearer than property or life. She still retains her moral wealth,—the glory of her Jacksons, her Sidney Johnsons, her Lees, her Davises, and

of all who have nobly died or suffered in her cause. These are her imperishable jewels; and, since little else is left to her, these shall be cherished with the greater love, with the more enthusiastic and undying devotion.

Let no one ask, then, except a dead soul, why argue the question of secession? For, it is precisely as this question is decided, that the Jacksons, the Johnsons, the Lees, and the Davises of the South, will be pronounced rebels and traitors, or heroes and martyrs; that the South itself will be disgraced, or honored, in the estimation of mankind. History is, at this moment, busy in making up her verdict on this momentous question; which is to determine so much that is most dear to every true son of the South. Shall we, then, remain idle spectators, mere passive lookers-on, while the North is flooding the world with volumes against the justice of our cause? Shall we stand, like the dumb brutes around us, having no word to utter in the great cause of truth, justice and humanity, which is now pending at the bar of History? Or shall we, on the contrary, contribute our mite toward the just decision of that glorious cause? The radicals themselves might, perhaps, derive some little benefit from our humble labors. For, if duly weighed and considered by them, these labors might serve to mitigate their wrath, and turn their thoughts from schemes of vengeance to the administration of justice, from persecution and ruin to peace and prosperity. Be this as it may, however, I shall proceed to argue the right of secession; because this is the great issue on which the whole Southern people, the dead as well as the living, is about to be tried in the person of their illustrious chief, Jefferson Davis.

## Chapter II

### The Issue or Point in Controversy

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It is conceded, both by Webster and Story, that if the Constitution is a compact to which the States are the parties, then the States have a right to secede from the Union at pleasure. Thus, says Webster, in stating the consequences of Mr. Calhoun's doctrine: "if a league between sovereign powers have no limitation as to the time of duration, and contain nothing making it perpetual, it subsists only during the good pleasure of the parties, although no violation be complained of. If, in the opinion of either party, it be violated, such party may say he will no longer fulfil his obligations on his part, but will consider the whole league or compact at an end, although it might be one of its stipulations that it should be perpetual." In like manner Mr. Justice Story says: "The obvious deductions which may be, and, indeed, have been, drawn from considering the Constitution a compact between States, are that it operates as a mere treaty or convention between them, and has an obligatory force no longer than suits its pleasure or its consent continues,"<sup>3</sup> &c. Thus the great controversy is narrowed down to the single question: Is the Constitution a compact between the States? If so, then the right of secession is conceded, even by its most powerful and determined opponents; by the great jurist, as well as by "the great expounder" of the North.

The denial that the Constitution was a compact, is presented in every possible form, or variety of expression. We are told, that it was not made by the States, nor by the people of the States, but "by the people of the whole United States in the aggregate."<sup>4</sup> The States, we are assured, did not accede to the Constitution; it was ordained by the sovereign people of America as one nation. Echoing the bold assertion of Webster, Mr. Motley says, that "The States never acceded to the Constitution, and have no power to secede from it. It was 'ordained and established' over the States by a power superior to the States, by the people of the whole land in their aggregate capacity."<sup>5</sup> It was not

made by the States, and it was not ratified by the States. It was, on the contrary, made and ordained by the people of America as one nation, and is, therefore, the constitution of a national government. Such is the doctrine which, in every mode of expression, is inculcated by the Storys, the Websters, and the Motleys of the North.

When we consider, in the simple light of history, the manner in which the Constitution of the United States was made, or framed, and afterwards ratified, such assertions seem exceedingly wonderful, not to say inexplicable on the supposition that their authors were honest men. But who can measure the mysterious depths of party spirit, or the force of political passions in a democracy? I know something of that force; for, during the greater part of my life, I followed, with implicit confidence, those blind leaders of the blind, Mr. Justice Story and Daniel Webster. History will yet open the eyes of the world to the strange audacity of their assertions.

Ever since the Declaration of Independence, there have been two great political parties in the United States; the one, regarding the American people as one nation, has labored to consolidate the Federal Union, while the other, attaching itself to the reserved rights of the States, has zealously resisted this tendency to consolidation in the central power. Even under the old Articles of Confederation, or before the new Constitution was formed, these political opinions and parties existed. For, however strange it may seem, there were those who, even under those Articles, considered "the States as Districts of people composing one political society,"<sup>6</sup> or the "American people as forming one nation."<sup>7</sup> Indeed, in the great Convention of 1787, by which the Constitution was formed, it was boldly asserted by a leading member, "that we never were independent States, were not such now, and never could be, even on the principles of the Confederation. The States, and the advocates of them, were intoxicated with the idea of their sovereignty."<sup>8</sup> Now, if any aberration of the mind under the influence of political passions could seem strange to the student of history, it would be truly wonderful, that such an assertion, could have been put forth under the Articles of Confederation which expressly declared that "each State" of the Union formed by them "retains its sovereignty, freedom, and independence."<sup>9</sup> The author of that assertion did not interpret, he flatly contradicted, the fundamental law of the government under which he lived and acted.

The above opinion or view of the old Articles of Confederation passed away with the passions to what it owed its birth. No one, at the present day, supposes that the old Articles moulded the States into “one political society,” or “nation,” leaving them merely “districts of people.” For since those Articles have passed away, and the struggle for power under them has ceased, all can clearly see what they so plainly announced that “each state” of the confederation established by them retained “its sovereignty, freedom, and independence.”

But the natures of men were not changed by changing the objects to which their political passions might attach themselves. Hence, the same opposite tendencies arose under the new “Articles of Union,” as the Constitution of 1787 is habitually called by its authors, and produced the same conflicting parties. Each party had, of course, its extreme wing.

There were those who, unduly depressing the States, identified their relations to the central power with that of so many counties to a state, or of individuals to an ordinary political community. On the other hand, there were those who, from an extreme jealousy of the central authority, resolved the States into their original independence, or into their condition under the Articles of Confederation. The watch-word of one party was the sovereignty of the Federal Union; and the watch-word of the other, was the sovereignty of the States.

It was in the Senate of the United States, in 1833, that these two theories of the Constitution stood face to face in the persons of those two intellectual giants—Webster and Calhoun—then engaged in the most memorable debate of the New World. It was then predicted, and events have since verified the prediction, that the destinies of America would hinge and turn on the principles of that great debate. The war of words then waged between the giants has since become a war of deeds and blood between the sections which they represented. Now the question is, on which side, was right, truth, justice?

This is precisely the question which, in 1833, the great combatants submitted to the decision of after ages. As he drew toward the close of his speech, Mr. Calhoun reminded his great antagonist “that the principles he might advance would be subjected to the revision of posterity.” “I do not decline its judgment,” said Mr. Webster, in rising to reply, “nor withhold myself from its scrutiny.” Mr. Webster’s speech on this occasion is pronounced by his learned biographer<sup>10</sup> the greatest

intellectual effort of his life, and is represented as having annihilated every position assumed by Mr. Calhoun. But the combatants did not submit the controversy to the judgment of Mr. Everett; they submitted it to “the revision of posterity.” History is the great tribunal to which they appealed; and history will settle the great issue between them, and between the two hostile sections of the Union.

It was in 1833, for the first time in the history of the country, that it was solemnly asserted and argued, that the Constitution of the United States was not a compact between the States. This *new doctrine* was simultaneously put forth, by Mr. Justice Story in his “Commentaries on the Constitution of the United States,” and by Mr. Daniel Webster in “the greatest intellectual effort of his life,” that is, in his great speech in the Senate of the 16th of February, 1833. In order to show that the Constitution is not a compact between the States, the position is assumed, that it is not a compact at all. If it be a compact, say they, then the States had a right to secede. But it is not a compact; and hence secession is treason and rebellion. The great fundamental questions, then, on which the whole controversy hinges, are, first, Is the Constitution a compact? and, secondly, Is it a compact between the States? These are the questions which shall and ought to be subjected to “the revision of posterity.”

## Chapter III

# The Idea That the States “Acceded” to the Constitution

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Mr. Webster was supposed to have studied the Constitution, and its history, more carefully and more profoundly than any other man. He habitually spoke, indeed, as if he had every particle of its meaning, and of its history, at his finger's end. Hence he acquired, at least among his political friends, the lofty title of “The great expounder.” His utterances were listened to as oracles. If, indeed, his great mind had been guided by a knowledge of facts, or a supreme love of truth; the irresistible force of his logic, and the commanding powers of his eloquence, would have justified those who delighted to call him “the god-like Daniel.” But, unfortunately, no part of his god-likeness consisted in a scrupulous regard for truth, or the accuracy of his assertions. He was, however, so great a master of words, that he stood in little need of facts, in order to produce a grand impression by the rolling thunders of his eloquence. I only wonder, that he was not also called, “The thunderer.” No one better understood, either in theory or in practice, the wonderful magic of words than Daniel Webster.

“Was it Mirabeau,” says he, “or some other master of the human passions, who has told us that words are things? They are indeed things, and things of mighty influence, not only in addresses to the passions and high-wrought feelings of mankind, but in the discussion of legal and political questions also; because a just conclusion is often avoided, or a false one reached, by the adroit substitution of one phrase, or one word, for another.” Nothing can be more just than this general reflection; and nothing, as we shall presently see, can be more unjust than the application made of it by Mr. Webster.

He finds an example of this adroit use of language in the first resolution of Mr. Calhoun. “The first resolution,” says he, “declares that the people of the several States ‘*acceded*’ to the Constitution.” As “the natural converse of *accession* is *secession*,” so Mr. Webster supposes that Calhoun has adroitly, and “not without a well-considered purpose,”

shaped his premises to a foregone conclusion. “When it is stated,” says he, “that the people of the State *acceded* to the Union, it may be more plausibly argued that they may *secede* from it. If, in adopting the Constitution, nothing was done but *acceding* to a compact, nothing would seem necessary, in order to break it up, but to *secede* from the same compact.”

But “this term *accede*,” maintains Mr. Webster, “is wholly out of place . . . There is more importance than may, at first sight, appear in the introduction of this new word by the honorable mover of the resolutions . . .” “The people of the United States,” he continues, “used no such form of expression in establishing the present Government.” . . . It is “unconstitutional language.” Such are a few of the bold, sweeping, and confident assertions of “the great expounder of the Constitution.” But how stands the fact? Is this really “a new word,” or is it as old as the Constitution itself, and rendered almost obsolete at the North by the progress of new ideas and new forms of speech? Was it not, in fact, as familiar to the very fathers and framers of the Constitution of the United States as it afterwards become foreign and strange to the ears of its Northern expounders? This is the question and, fortunately, the answer is free from all metaphysical refinement, from all logical subtlety, from all curious speculation. For there lies the open record, with this very word *accede*, and this very application of the word, spread all over its ample pages in the most abundant profusion. No mode of expression is, indeed, more common with the fathers and the framers of the Constitution, while speaking of the act of its adoption, than this very phrase, “the accession of the States.” No household word ever fell more frequently or more familiarly from their lips.

Thus in the Convention of 1787, Mr. James Wilson, to whose great influence the historian of the Constitution ascribes its adoption by the State of Pennsylvania,<sup>11</sup> preferred “a partial union” of the States, “with a door open for the *accession* of the rest,” rather than to see their disposition “to confederate anew on better principles” entirely defeated.<sup>12</sup> “But will the small States,” asks another member of the same Convention, “in that case, *accede* to it” (the Constitution) Mr. Gerry, a delegate from Massachusetts, was opposed to “a partial confederacy, leaving other States to *accede* or not to *accede*, as had been intimated.”<sup>13</sup> Even Mr. Madison, “the father of the Constitution,” as by way of eminence he has long been called, used the expression “*to accede*” in the Conven-