

SECESSION IN AMERICA

By Donnie Kennedy

A Northern View

*The secession of a state from the Union depends on the will of the people of that state. The people alone... hold the power to alter their constitution.*¹ William Rawle

Secession, poke salad, and crackling bread, in modern America are viewed with the same skeptical eye. Anyone advocating even the study of the right of secession is viewed as an eccentric at best or a radical neo-Confederate at worst. Yet, there was a time in the early days of this republic when the right of secession of an American State was fully embraced by the vast majority of Americans. Although secession, poke salad, and crackling bread are associated with the South, only the latter two, a delight of Southern cuisine, can be said to be fully Southern. In modern America secession is inextricably linked with the Southern Confederacy, yet, a study of the right of secession will show us more about what our founding fathers of 1776 wrought and less about the Confederacy and the “Civil War.”

A causal perusal of the early constitutions of Northern States demonstrates that these early Americans viewed their States as sovereign entities within a federation of states. For example, consider how the State of New Hampshire describes her political existence: “The people of this state have the sole and exclusive right to governing themselves as a free, sovereign, and independent state....”² Four years after the adoption of the Federal Constitution, New Hampshire boldly proclaims to the world her sovereign right to rule herself. The people of New Hampshire go even further by declaring that they have the right to “establish a new government” at their own volition: “[W]henever the ends of government are perverted, or public redress are ineffectual, the people may, and of right ought to, reform the old, or establish a new government. The doctrine of non-resistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.”³ Thus, according to the people of New Hampshire in 1792, non-resistance to arbitrary power is “absurd.” That which was true in 1792, was equally true in 1861 and remains true today, that is, it is absurd to think that a free people would offer non-resistance to arbitrary power.

Other Northern states were equally opposed to the arbitrary abuse of power by the central government. Twelve years before New Hampshire’s declaration of state sovereignty, Massachusetts proclaimed: “The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent State....”⁴

These are two representative samples of the people of Northern States affirming their belief in state sovereignty and real State’s Rights. Even after the adoption of the Federal Constitution, the people of Northern States maintained the view that each state was a free and independent commonwealth within the Federal Union. Thus, when in 1825, Mr. William Rawle of Philadelphia, Pennsylvania published his textbook on the United States Constitution that included information on how and under what circumstances a state could secede from the Union; no national outcry was heard. Mr. Rawle, a Northerner, an abolitionist, and a friend of both President George Washington and Benjamin Franklin, was merely restating a recognized fact in early American history. Lincoln and the Radical Republicans conveniently forgot this fact 35 years later.

One year after its publication, Mr. Rawle’s textbook was reviewed by the eminent journal, North American Review, of Boston, Massachusetts. Surely, if secession is un-American, seditious, or treasonous, the good folks in Boston, Massachusetts would be more than happy to share that knowledge with the rest of the nation. Yet, in a

review of over 1900 words, this textbook which advocates the right of secession by a state within the Federal Union, was blessed by the North American Review with the following comment: “For those, who are desirous of studying the noblest monument to human wisdom, the Constitution of the United States, we recommend the treatise of Mr. Rawle as a safe and intelligent guide.”⁵ Note that these Yankees not only failed to write one negative word about Mr. Rawle asserting the right of secession but they go further by stating that Rawle’s textbook is a “safe and intelligent guide.” This textbook was the same textbook used at the United States Military Academy at West Point both as a textbook and a reference book for the study of the United States Constitution.

From the first chapter to the last chapter of his textbook, Mr. Rawle advocates the view that the States were the prime movers in the formation of the Federal government. That is, the States existed before the formation of the Federal government and were the sole source of any power the Federal government possessed. Commenting upon the very first paragraph of the Constitution (Art. I, Section I), Rawle states: “The first paragraph evinces that it [Federal government] is a limited, and not a general government. The term ‘all legislative powers hereby granted,’ remind both the congress and the people of the existence of some limitation.” The very act of “granting” demonstrates the action of a superior (the people of the sovereign States) to an inferior (the Federal government). This is just one of many examples of Mr. Rawle’s defense of a strict construction view of the Constitution.

The chapter titled ‘Of the Union,’ forms the grand finale of Mr. Rawle’s book. It is in this chapter that Mr. Rawle takes off his gloves and, without reservation or equivocation, states that secession is the natural right of a free people. As Mr. Rawle states, “To deny this right would be inconsistent with the principle on which all our political systems are founded, which is, that the people have in all cases, a right to determine how they will be governed.”⁶ Here, Mr. Rawle is directing his readers back to the Declaration of Independence. In 1776 the founding fathers asserted that the right of freemen to live under a government of their choice was an unalienable right. It is granted to man from God and therefore, no government, no king, no battle won or battle lost could negate that which God had granted. True, a tyrant or a tyrannical system could deny a people the right to life and free government but tyrants do not destroy those principles that are “unalienable.” Anyone in the past, present, or future, who declares his opposition to this American principle of government, that is, government by the consent of the governed, is making the ultimate un-American statement.

The constitutions of early Northern States and the words of Mr. William Rawle of Pennsylvania stand in sharp contrast to the view of the Radical Republicans in 1861. Also, the Chicken Littles of today who run and hide anytime the issue of the right of secession is broached, should be seen for what they have become--true Southern chickens. The South was right in 1861 and, as the Declaration of Independence so clearly states, she is STILL right! To deny this right is, as Mr. Rawle so correctly noted, “inconsistent with the principle on which all our political system are founded.”

If true American freedom is ever to be revived, we cannot play the part of Chicken Little nor keep company with those who insist the sky is falling every time the subject of the right of secession, i.e., “government by the consent of the governed” is broached. Chicken Little is fit only to live in Col. Sanders’ chicken house. A chicken house is not a fit place for freedom loving people. As for me, I chose freedom; REAL American freedom. The freedom Mr. Rawle, a Northerner, wrote about, is the same freedom that Northern States codified in their state constitution, the freedom won for us by our Colonial forefathers, and defended for us by our Confederate forefathers. I will not be afraid or ashamed of the right of secession because it is the very cornerstone of real American freedom.

A Southern View

If the bond of union be the voluntary consent of the people, the government may be pronounced to be free; where constraint and fear constitute that bond, the government is no longer the government of the people, and consequently they are enslaved.⁷ St. George Tucker

As was explained in the first part of this review of the issue of secession, the right of government by the consent of the governed, is not just a Southern idea. As was demonstrated, the Declaration of Independence, the early constitutions of Northern States, and a noted Northern constitutional authority confirm the right for free men to alter or abolish their government. Therefore with great authority we can state that the right of secession, which is a function of free men acting to “alter or abolish” the government they live under, is a central theme of American political philosophy. As Mr. William Rawle of Pennsylvania noted, to deny this right would “be inconsistent with the principle on which all our political systems are founded, which is, that the people have in all cases, a right to determine how they will be governed.”⁸ For the first few decades of these United States the concept of state sovereignty bolstered the idea of secession as a right of the people of an American state. Although viewed as an almost exclusively Southern idea today, as has been demonstrated, the right of secession of an American state from the Union is very American.

If Mr. William Rawle of Pennsylvania is viewed as the representative of Northern advocates of the right of secession, Mr. St. George Tucker of Virginia should be viewed as Rawle’s Southern counterpart. Tucker’s *View of the Constitution of the United States*, published as part of his edition of Blackstone’s famed *Commentaries on the Laws of England*, was released in 1803 making Tucker one of the first commentators on the Federal Constitution.

Tucker’s distinguished military career during the War for Independence established him as an American patriot. After Independence, Tucker continued his patriotic service as a delegate to the Annapolis Convention, which was responsible for the calling forth of the Philadelphia Constitutional Convention. During this time Tucker taught law at William and Mary College and served as a judge on Virginia’s highest court. As a distinguished patriot, jurist, and author, Tucker’s advocacy of the right of secession cannot be disregarded. Tucker’s theory of state’s rights has given much grief to those who advance the bankrupt notion that secession was the brainchild of rabid Southern slaveholders. Tucker of Virginia, like Rawle of Pennsylvania, was a strong opponent of the institution of slavery. Tucker even goes beyond Rawle by advocating ending discrimination against free people of color. One hundred and fifty years before the modern Civil Rights movement, we see a Southern abolitionist pointing out areas of American life that he views as restricting the liberty of Americans. Yet, this man is a proponent of the right of secession, i.e., government by the consent of the governed.

According to Tucker, the glue that binds a union of free men together is the free choice, i.e., consent, of those people who are being governed. Free men have the right to consent to the government they live under, un-free men (slaves) do not have that choice. According to Tucker (see above citation), with the removal of consent, freedom is destroyed and slavery becomes the condition of a once free people. Now reconsider what Lincoln did to these (once free) United States of America. According to St. George Tucker, by destroying consent and replacing it with coercion (the point of a bloody bayonet), Lincoln reduced every American, regardless of color, from freedom to slavery. As Tucker notes, when “constraint and fear” holds a union together, the people “are enslaved.” This should be a sobering thought for all Americans, including the Chicken Littles who run and hide at the mention of the right of secession.

By its very defining nature, free governments are bound by the will of free men. A union that tramples upon the will of free men cannot be said to be a “free” government any longer. In these United States the will of the people has been linked to and voiced by the people of the sovereign states. From the signing of the Declaration of

Independence, the adoption of the first government under the Articles of Confederation, the secession from the Articles of Confederation and the accession to the Union under the Federal Constitution, all these actions of free men have been done by the authority of “we the people” of the sovereign states. Given the history of secession in early America, is it any wonder that Tucker states: “[I]t then becomes not only the right, but the duty of the states respectively, to throw off such government, and to provide new guards for their future security. To deny this, would be to deny to sovereign and independent states, the power which, as colonies, and dependent territories, they have mutually agreed they had a right to exercise, and did actually exercise.”⁹

Both Rawle and Tucker agree that free government is destroyed when and if the right of government by the consent of the governed is denied. Thomas Jefferson, the primary author of the Declaration of Independence, and James Madison the Father of the Constitution, agree with Mr. Rawle and Mr. Tucker’s view of state sovereignty. In the Kentucky Resolves of 1798 Jefferson states: “That the several states composing the United States of America, are not united on the principle of unlimited submission to their general government....That to this compact [Union] each state acceded as a state....That the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself.”¹⁰

Likewise, James Madison in the Virginia Resolves of 1798 states: “[I]n case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact [Constitution], the States, who are the parties thereto, have the right, and are duty bound, to interpose for arresting the progress of the evil, and liberties appertaining to them.”¹¹

At this point two things should become clear. First, secession is not a Southern idea or scheme and, second, the right of secession and secession itself is not un-American or un-Patriotic. The unalienable right to “alter or abolish” the government we live under is enshrined in the most basic and fundamental document of American history, the Declaration of Independence. Until men such as Joseph Story, Daniel Webster, and Abraham Lincoln came along, state sovereignty, state’s rights, and secession were viewed as an American right. Lincoln, his sycophants, and Appomattox changed the view of state sovereignty and as a consequence, turned these United States upside down.

SECESSION: A MODERN VIEW

*The first thing I have at heart is American liberty; the second thing is American Union.*¹² Patrick Henry

Patrick Henry understood something many Americans today have trouble understanding, that is, form without substance is meaningless. “The first thing I have at heart is American liberty.” With this statement Mr. Henry points out that the true meaning of being an American comes from the blessings of liberty. Putting it bluntly, as Americans, we embrace the idea that in our system of government, “liberty trumps everything.” If liberty comes first, what comes second? According to Mr. Henry “the second thing is American Union.” Ah, the contrast between Mr. Henry’s view of the Federal Union and Mr. Lincoln’s view of the Federal Union could not be more pronounced. Mr. Lincoln’s view proclaims that any American liberty may be sacrificed in order to preserve the Union. Mr. Henry’s view places liberty first and the Federal Union second.

Today, the United States of America reflects Lincoln’s model of union and rejects Patrick Henry’s model of American union. This fact is more than just an historical fact or a footnote to American political philosophy. For all Americans there are real and deleterious consequences as a result of the imposition of Lincoln’s view of government over that of Henry’s view. Today, the Federal government, unrestrained by any power other than itself, has become an “autocratic” government. America’s citizens cannot resist Federal orders and edicts without

facing the dire prospects of Federal prison. This is the natural consequence of placing the American Union first and American liberty second.

As an example of just how intrusive and belligerent the Federal government has become vis-à-vis a citizen's private property, consider the Federal government's "glancing geese" Wet Lands Policy. According to Washington bureaucrats if a flight of geese glances down upon your property and spy a body of water and think about landing on that property, your land then falls under the control of the Federal government. You may not improve, change, or otherwise use your property without first obtaining Federal permission. This author bears witness to the fact that the Federal government's rules, which holds true regarding geese in flight, are also true for beavers and their dam projects!

If the abuse of power by the Federal government was limited only to the use and ownership of private lands, that would be enough to ignite a patriotic firestorm from patriots like Henry, Jefferson, Madison and Washington. But as the old adage states, "Power corrupts and absolute power corrupts absolutely." Without the check and balance of true Federalism, that is, a system of balance between the State and Federal governments where the abuses of the Federal government can be challenged and defeated by We the People of the Sovereign States, all American liberty is in danger.

Today, the average American worker will have to work four to six months just to earn enough money to pay his yearly taxes; his children are the property of the Federal government's courts and will be bussed to and placed in schools as the Federal government deems necessary; common laws of decency, which protect his family from all forms of pornography including sodomy, are being overturned by Federal courts; and, God, the Bible, and the Ten Commandments are being ejected from his State by the Federal government. Is there anyone so simpleminded who would think that Jefferson, Madison, and Henry would agree with and submit to this type of Federal government? According to Jefferson, Madison, Tucker, and Rawle, among many other patriots, one of the prime rights of a state is the authority to judge for itself how long the state would remain in the Federal Union. Do the Chicken Littles, who run and hide at the mention of the right of secession, honestly believe that Judge Roy Moore's Ten Commandments would have been removed from the Alabama Supreme Court Building if the people of these United States believed in the right of secession?

Yet, because of the destruction of State's Rights, that is, the right of secession, our freedom today is nothing more than a grant to us from the Federal government. Unlike our ancestors who believed that our freedom was a grant from God, today's Americans are apt to naively accept the idea that our rights and freedom are a grant from the government. If the Federal government is to be the guardian of our freedom, then "who shall guard the guards?"

The right of secession is the guardian of our freedom from Federal abuse. At this point every American needs to voice the words placed upon the Confederate Battle Flag of Co. F, 5th South Carolina Volunteer Infantry, Kings Mountain, S. C., "Like our Ancestors, We shall be Free." Once real State's Rights have been restored, like our ancestors, we will be free!

1 William Rawle, A View of the Constitution, (1825, ed. Walter D. Kennedy and James R. Kennedy, Old South Books, Simsboro, La., 1993) 238.

2 Article VII, New Hampshire State Constitution, 1792.

3 Article X, New Hampshire State Constitution, 1792.

4 Constitution State of Massachusetts, 1780

5 *North American Review*, (1826: New York: AMS Press, Inc., 1965) XXII: 450.

6 Rawle, 235.

7 St. George Tucker, as cited in *A View of the Constitution of the United States, With Selected Writings*, Clyde N. Wilson, ed. (Liberty Press: Indianapolis, IN, 1999) 27.

8 William Rawle, *A View of the Constitution*, (1825, ed. Walter D. Kennedy and James R. Kennedy, Old South Books, Simsboro, La., 1993) 235

9 Tucker, as cited in Wilson, 86.

10 Thomas Jefferson, *Kentucky Resolves of 1798*.

11 James Madison, *Virginia Resolves of 1798*.

12 Patrick Henry, as cited in William Wirt Henry, Ed., *Patrick Henry: Life, Correspondence, and Speeches* (1891), Harrisonburg, VA: Sprinkle Publications, 1993) III, 449