

WAS SECESSION TREASON?

Memoirs
Of
Service Afloat
During the
War Between the States
By: Admiral Raphael Semmes

Chapter IV
Pages 45–51

A few more words, and we shall be in condition to answer the question which stands at the head of this chapter. Being a legal question, it will depend entirely upon the constitutional right the Southern States may have had to withdraw from the Union, without reference to considerations of expediency, or of moral right; these latter will be more appropriately considered, when we come to speak of the causes which impelled the Southern States to the step. I have combated many of the arguments presented by the other side, but a few others remain to be noticed.

It has been said, that, admitting that the Constitution was a federal compact, yet the States did in fact cede away part of their sovereignty, and from this the inference has been deduced, that they no longer remained sovereign for the purpose of recalling the part, which had been ceded away. This is a question which arises wholly under the laws of nations. It is admitted, that the States were independent Sovereignities, before they formed the Constitution. We have only, therefore, to consult the international code, to ascertain to what extent the granting away of a portion of their sovereignty affected the remainder. Battle, treating of this identical point, speaks as follows: "Several sovereign and independent States may unite themselves together by a perpetual confederacy, without ceasing to be, each individually, a perfect State. They will, together, constitute a federal republic; their joint deliberations will not impair the sovereignty of each member, though they may, in certain respects, *PUT SOME RESTRAINT UPON THE EXERCISE OF IT*, in virtue of *VOLUNTARY* engagements." That was just what the American States did, when they formed the Federal Constitution; they put some voluntary restraint upon their sovereignty, for the furtherance of a common object.

If they are restrained, by the Constitution, from doing certain things, the restraint was self-imposed, for it was they who ordained, and established the instrument, and not a common superior. They, each, agreed that they would forbear to do certain things, if their copartners would forbear to do the same things. As plain as this seems, no less an authority than that of Mr. Webster has denied it; for, in his celebrated argument against Mr. Calhoun, already referred to, he triumphantly exclaimed, that the States were not sovereign, because *THEY WERE RESTRAINED OF A PORTION OF THEIR LIBERTY BY THE CONSTITUTION*. See how he perverts the whole tenor of the instrument, in his endeavor to build up those manufactories of which we spoke in the last chapter. He says: "However men may think this ought to be, the fact is, that *THE PEOPLE OF THE UNITED STATES* have chosen to *IMPOSE CONTROL* on State sovereignty. There are those, doubtless, who wish that they had been left without restraint; but the Constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty, but, the Constitution declares that no State shall declare war. To coin money is another act of sovereign power; but no State is at liberty to coin money. Again, the Constitution says, that no sovereign State shall be so sovereign, as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise from her feelings of honorable justice."

Here we see, plainly, the germ of the monstrous heresy that has driven the States asunder, in our day. The "people of the United States," a common superior, ordained and established the Constitution, says Mr. Webster, and imposed restraints upon the States! However some might wish they had been left without restraint, the Constitution has "ordained it differently!" And the ostrich stomach of the North received, and digested this monstrous perversion of the plainest historical truth, in order that the spindle might whirr on, and the shuttle dance from side to side of the loom.

Following the idea of Mr. Webster, that the people of the United States gave constitutional law to the States, instead of receiving it from them, Northern writers frequently ask, in what part of the Constitution, is the doctrine of secession found? In no part. It was not necessary to put it there. The States who formed the instrument, delegated certain powers to the Federal Government, retaining all others. Did they part, with the right of secession? Could they have parted with it, without consenting to a merger of their sovereignty? And so far from doing this, we have seen with what jealous care they protested against even the implication of such a merger, in the 10th amendment to the Constitution. If the power was not parted with, by explicit grant, did not remain to them, even before the 10th amendment was adopted, and still more, if possible, after it was adopted?

To make it still more apparent, that the common understanding among the Fathers of the Constitution was, that this right of secession was reserved, it is only necessary to refer to what took place, during the transition from the old to the new government. The thirteen

original States seceded, as we have seen, from the Articles of Confederation, not unanimously, or all together, but one by one, each State acting for itself, without consulting the interests, or inclinations of others. One of the provisions of those Articles was as follows: "Every state shall abide by the determination of the United States, in Congress assembled, in all questions, which, by this Confederation, are submitted to them; and the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be *PERPETUAL*; nor shall any alteration, be agreed to, in a Congress of the United States, and be afterward confirmed *BY THE LEGISLATURE OF EVERY STATE.*"

Now, it is a pertinent, and instructive fact, that no similar provision of perpetuity was engrafted in the new Constitution. There must have been a motive for this—it could not have been a mere accidental omission—and the motive probably was, that the Convention of 1787 were ashamed to attempt, a second time, to bind sovereign States, by a *ROPE OF SAND*, which they, themselves, were in the act of pulling asunder. It was in accordance with this understanding, that both New York and Virginia, in their ratifications of the new Constitution, expressly reserved to themselves the right of secession; and no objection was made to such conditional ratifications. The reservations made by these States ensure, as a matter of course, to the benefit of all the States, as they were all to go into the new Union, on precisely the same footing.

In the extract from Mr. Webster's speech, which has been given above, it is alleged among other things, that the States are not sovereign, because they cannot make treaties; and this disability also has been urged as an argument against secession. The disability, like others, was self-imposed, and, as any one may see, was intended to be binding on the States only so long as the contract which they were then forming should long as the contract which they were then forming should endure. The Confederate States respected this obligation while they remained in the Federal Union. They scrupulously forbore from contracting with each other until they had resumed, each for itself, their original sovereignty; they were then not only free to contract with each other, but to do and perform all the other acts enumerated by Mr. Webster; the act of declaring war included, even though this war should be against their late confederates.

The truth is, the more we sift these arguments of our late enemies, the less real merit there appears in them. The facts of history are too stubborn, and refuse to be bent to confirm to the new doctrines. We see it emblazoned on every page of American history for forty years, that the Constitution was a compact between the States; that the Federal Government was created, by, and for the benefit of the States, and possessed and could possess no other power than such as was conferred upon it by the States; that the States reserved to themselves all the powers not granted, and that they took especial pains to guard their sovereignty, in terms, by an amendment to the Constitution, lest, by possibility, their

intentions in the formation of the new government, should be misconstrued.

In the course of time this government is perverted from its original design. Instead of remaining the faithful and impartial agent of all the States, a faction obtains control of it, in the interests of some of them, and turns it, as an engine of oppression, against the others. These latter, after long and patient suffering, after having exhausted all their means of reference, within the Union, withdraw from the agent the powers which they had conferred upon him, from a new Confederacy, and desire "to be let alone." And what is the consequence? They are denounced as rebels and traitors, armies are equipped, and fleets provided, and a war of subjugation is waged against them. What says the reader? Does he see rebellion and treason lurking in the conduct of these States? Are they, indeed, in his opinion, in face of the record which he has inspected, so bereft of their sovereignty, as to be incapable of defending themselves, except with halters around the necks of their citizens?

Let us examine this latter question of halters for a moment. The States existed before the Federal Government; the citizens of the States owed allegiance to their respective States, and to none others. By what process was any portion of this allegiance transferred to the Federal Government, and to what extent was it transferred? It was transferred by the States, themselves, when they entered into the federal compact, and not by the individual citizens, for these had no power to make such a transfer. Although it be admitted, that a citizen of any one of the States may have had the right to expatriate himself entirely—and this was not so clear a doctrine at that day—and transfer his allegiance to another government, yet it is quite certain, that he could not, *EX MERO MOTU*, divide his allegiance. His allegiance then was transferred to the Federal Government, by his State, whether he would or not.

Take the case of Patrick Henry, for example. He resisted the adoption of the Federal Constitution, by the State of Virginia, with all the energies of an ardent nature, solemnly believing that his State was committing suicide. And yet, when Virginia did adopt that Constitution, he became, by virtue of that act, a citizen of the United States, and owed allegiance to the Federal Government. He had been born in the hallowed old Commonwealth. In the days of his boyhood he had played on the banks of the Appomattox, and fished in its waters. As he grew to man's estate, all his cherished hopes, and aspirations clustered around his beloved State. The bones of his ancestors were interred in her soil; his loves, his joys, his sorrows were all centered there. In short, he felt the inspiration of patriotism, that noble sentiment which nerves men to do, and dare, unto the death, for their native soil. Will it be said, can it be said, without revolting all the best feelings of the human heart, that if Patrick Henry had lived to see a war of subjugation waged against his native State, he would have been a traitor for striking in her defense? Was this one of the results which our ancestors designed, when they framed the federal

compact? It would be uncharitable to accuse them of such folly, and stupidity, nay of such cruelty. If this doctrine be true, that secession is treason, then our ancestors framed a government, which would not fail to make traitors of their descendants, in case of a conflict between the States, and that government, let them act as they would.

It was frequently argued in the “Federalist,” and elsewhere, by those who were persuading the States to adopt the Federal Constitution, that the state would have a sufficient guarantee of protection, in the love, and affection of its citizens—that the citizen would naturally cling to his State, and side with her against the Federal Government—that, in fact, it was rather to be apprehended that the Federal Government would be too weak, and the States too strong, for this reason, instead of the converse of the proposition being true. It was not doubted, in that day, that the primary and paramount allegiance of the citizen was due to his State, and, that, in case of a conflict between her and the Federal Government, his State would have the right to withdraw his allegiance, from that Government. If it was she who transferred it, and if she had the right to transfer it, it follows beyond question, that she would have the right to withdraw it. It was not a case for the voluntary action of the citizen, either way; he could not, of his own free will, either give his allegiance to the Federal Government, or take it away.

If this be true, observe in what a dilemma he has been placed, on the hypothesis that secession is treason. If he adheres to the Federal Government, after his State has withdrawn his allegiance from that Government, and takes up arms against his State, he becomes a traitor to his State. If he adheres to his State, and takes up arms against the Federal Government, he becomes a traitor to that Government. He is thus a traitor either way, and there is no helping himself. Is this consistent with the supposed wisdom of the political Fathers, those practical, common sense men, who formed the Federal Constitution?

The mutations of governments, like all human evens, are constantly going on. No government stands still, any more than individuals of which it is composed. The only difference is, that the changes are not quite so obvious to the generation which views them. The framers of the Constitution did not dare to hope that they had formed a government, that was to last forever. Nay, many of them had serious misgivings as to the result of the experiment they were making. Is it possible, then, that those men so legislated, as to render it morally certain, that if their experiment should fail, their descendants must become either slaves or traitors? If the doctrine that secession is treason be true, it matters not how grievously a State might be oppressed, by the Federal Government; she has been deprived of the power of lawful resistance, and must regain her liberty, if at all, like other enslaved States, at the hazard of war, and rebellion. Was this the

sort of experiment in government, that our forefathers supposed they were making? Every reader of history knows that it was not.