



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
 Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 6: The Civil War/Reconstruction Era - Federalism

OXFORD
 UNIVERSITY PRESS

Jefferson Davis, "The Right of Secession" (1861)¹

Jefferson Davis was not a terribly effective president. As president of the Confederate States of America, he proved to be a micromanager, to be focused on military affairs to the exclusion of all else, and to be inept in his personal dealings with those around him. These failures had not been fully evident in his career to that point. At the time of secession, the West Point graduate was among the most distinguished politicians in the South, having served in both chambers of Congress and as U.S. secretary of war. The selection of the senator from Mississippi as president was also indicative of how political leadership among the slaveholding states had shifted from the Old Dominion to the younger states of the Deep South. Among his virtues, besides his prior military experience, were his unwavering belief in the southern cause and his acumen in political argument.

He marshaled those resources in his postwar account and defense of the South's struggle for independence. He was late to the game. Confederate Vice President Alexander Stephens and Assistant Secretary of War Albert Bledsoe had published elaborate defenses of the constitutionality of secession while Davis still languished in federal prison awaiting the government's decision as to whether he would be tried for treason. Davis had laid out the argument in his own resignation speech from the Senate when Mississippi seceded, but money problems and the barbs of published criticisms of his presidency led Davis to take up the pen on his own behalf. Perhaps surprisingly, no effort was made after the war to suppress the writings of Confederate leaders, whether personal memoir or defense of the "Lost Cause."

....
 So far from being against the Constitution or incompatible with it, we contend that, if the right to secede is not prohibited to the States, and no power to prevent it expressly delegated to the United States, it remains as reserved to the States or the people, from whom all the powers of the General Government were derived.

... We have seen that a number of "sovereign, free, and independent" States, during the war of the Revolution, entered into a partnership with one another, which was not only unlimited in duration, but expressly declared to be a "perpetual union." Yet, when that Union failed to accomplish the purposes for which it was formed, the parties withdrew, separately and independently, one after another, without any question made of their right to do so, and formed a new association. One of the declared objects of this new partnership was to form "a more perfect union." This certainly did not mean more perfect in respect of duration; for the former union had been declared perpetual, and perpetuity admits of no addition. . . .

The formation of a "more perfect union" was accomplished by the organization of a government more complete in its various branches, legislative, executive, and judicial, and by the delegation to this Government of certain additional powers or functions which had previously been exercised by the Governments of the respective States. . . . There was no abandonment nor modification of the essential principle of a compact between sovereigns, which applied to the one case as fully as to the other. There was not the slightest intimation of so radical a revolution as the surrender of the sovereignty of the contracting parties would have been. The additional powers conferred upon the Federal Government by the Constitution were merely transfers of some of those possessed by the State governments - not

¹ Excerpt taken from Jefferson Davis, *The Rise and Fall of the Confederate Government*, vol. 1 (New York: Appleton and Company, 1881), 168-192.



OXFORD
UNIVERSITY PRESS

subtractions from the reserved and inalienable sovereignty of the political communities which conferred them. It was merely the institution of a new agent who, however enlarged his powers might be, would still remain subordinate and responsible to the source from which they were derived – that of the sovereign people of each State. It was an amended Union, not a consolidation.

....

Entirely in accord with these truths are the arguments of Mr. Madison in the “Federalist,” to show that the great principles of the Constitution are substantially the same as those of the Articles of Confederation. He says:

I ask, What are the principles? Do they require that in the establishment of the Constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed. . . .

“The truth is,” he adds, “that the great principles of the Constitution proposed by the Convention may be considered *less as absolutely new, than as the expansion of principles which are found in the Articles of Confederation.*”

....

The present Union owes its very existence to the dissolution, by separate secession of its members, of the former Union, which as we have thus seen, as to its *organic principles*, rested upon precisely the same foundation. The right to withdraw from the association results, in either case, from the same principles. . . .

It is not contended that this right should be resorted to for insufficient cause. . . . No association can be dissolved without a likelihood of the occurrence of incidental questions concerning common property and mutual obligations – questions sometimes of a complex and intricate sort. If a wrong be perpetrated, in such case, it is a matter for determination by the means usually employed among independent and sovereign powers – negotiation, arbitration, or, in the failure of these, by war, with which, unfortunately, Christianity and civilization have not yet been able entirely to dispense. . . .

....

Secession . . . was the assertion of the inalienable right of a people to change their government, whenever it ceased to fulfill the purposes for which it was ordained and established. Under our form of government, and the cardinal principles upon which it was founded, it should have been a peaceful remedy. The withdrawal of a State from a league has no revolutionary or insurrectionary characteristic. The government of the State remains unchanged as to all internal affairs. It is only its external or confederate relations that are altered. To term this action of a sovereign a “rebellion,” is a gross abuse of language. . . .

....