



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

Note on the Creation of West Virginia

The constitutional status of West Virginia complicated debates about secession during the Civil War. Republicans and Democratic Unionists who denied the legitimacy of state secession embraced secession within a state when the mountainous northwestern counties of Virginia embarked on a course of action that eventually led to their separation from Virginia and the creation of West Virginia.

Virginia politics had historically been structured by contests for power between the slave-rich eastern counties and the slave-poor western counties. The eastern counties consistently proved more successful, dominating politics in part through gerrymandering and malapportionment. Secession provided another occasion for these sectional disputes. Most Virginians strongly supported secession from the Union after the attack on Fort Sumter. The state's "Ordinance of Secession" was adopted by the delegates to a state convention on April 17, 1861. The people from the northwest counties of the state were strongly opposed to secession. The disappointed pro-Union delegates to the state convention quickly recommended that dissident counties send representatives to Wheeling so that they might have their own convention. This First Wheeling Convention met from May 13 through May 15. The representatives delayed action until the outcome of the popular vote on the Ordinance of Secession. The next week, Virginians voted 132,201 to 37,451 to secede from the Union.

Once the secession ordinance was adopted, a Second Wheeling Convention was convened on June 11. Two days later John Carlile introduced "A Declaration of the People of Virginia." That proposal called for the government of Virginia to be reorganized on the grounds that the existing officeholders had abandoned their legitimate positions by attempting to secede. The Wheeling Convention debated whether the four northwestern counties should secede from the state or simply re-form the Loyal Government of Virginia. John Carlile pointed out that simple secession from the state was not an option. Article IV, Section 3 of the U.S. Constitution provided that "no new states shall be formed or erected within the jurisdiction of any other state . . . without the consent of the legislatures of the states concerned as well as of the Congress." The convention approved a two-step plan they believed to be consistent with the constitution. Members of the convention would first re-form the legitimate government of Virginia. They would then seek congressional permission to create a new state out of Virginia's northwestern counties.

The delegates to the Second Wheeling Convention formed what they regarded as a legitimate government of Virginia. They decided that Francis H. Pierpont would be the new governor of the state and that various delegates from the Wheeling Convention would constitute the new state legislature. On July 1, 1861, the newly appointed Virginia legislature met at Wheeling, filled other state offices, and elected two United States senators, John Carlile and Waitman T. Willey. The U.S. Senate recognized these representatives of the so-called "Pierpont Government" as the legitimate representatives of the state of Virginia. The Wheeling Convention reassembled on August 20 to organize a popular vote on the formation of a new state. The election was held on October 24. A total of 18,489 citizens voted in favor of a new state. Only 781 opposed statehood. A constitutional convention later presented a document to the people of the western part of the state on February 18, 1862. The new state constitution was overwhelmingly ratified. The "loyal" state legislature of Virginia quickly approved the formation of this new state within its boundaries, now dubbed "West Virginia." On December 31, 1862, Abraham Lincoln signed the enabling act that admitted West Virginia on the condition that citizens in the new state amend



OXFORD
UNIVERSITY PRESS

the proposed state constitution to provide for the gradual end of slavery. Six months later, the president issued a proclamation recognizing the admission of the West Virginia into the Union.¹ Prominent political leaders had quite different views on the secession of Virginia from the United States and the “secession” of West Virginia from Virginia. Confederate President Jefferson Davis condemned the latter effort at secession. He wrote,

The legally expressed decision of the majority was the true voice of the state. When, therefore, disorderly persons in the northwest counties assembled and declared the ordinance of secession “to be null and void,” they rose up against the authority of the state. . . . The subsequent organization of the state of West Virginia and its separation from the state of Virginia were acts of secession. Thus we have, in their movements, insurrection, revolution and secession. . . . To admit a state under such a government is entirely unauthorized, revolutionary, subversive of the constitution and destructive of the Union of States.”²

Lincoln had a different view:

We can scarcely dispense with the aid of West Virginia in this struggle, much less can we afford to have her against us, in Congress and in the field. Her brave and good men regard her admission into the union as a matter of life and death. They have been true to the union under many severe trials. The division of a state is dreaded as a precedent but a measure expedient by a war is no precedent for times of peace.

It is said that the admission of West Virginia is secession, and tolerated only because it is our secession. Well, if we call it by that name, there is still difference enough between secession against the constitution and secession in favor of the constitution. I believe the admission of West Virginia into the union is expedient.³

Is there a difference between secession against the constitution and secession in favor of the constitution? Did Virginia forfeit its right not to consent to the formation of West Virginia by adopting the Secession Resolution? Did the delegates at Wheeling have a claim to be the legitimate government of Virginia in 1861 and a right to exercise the powers of a state government under the U.S. Constitution?

¹ On the history of the formation of West Virginia, see generally Otis K. Rice and Stephen W. Brown, *West Virginia: A History* (Lexington: University of Kentucky Press, 1993). and Richard Orr Curry, *A House Divided: A Study of Statehood Politics and the Copperhead Movement in West Virginia* (Pittsburgh: University of Pittsburgh Press, 1964).

² Jefferson Davis, *The Rise and Fall of the Confederate Government*, vol. 2 (New York: Appleton and Company, 1881), 306.

³ Opinion on the Admission of West Virginia into the Union, in *Collected Works of Abraham Lincoln*, ed. Roy P. Basler, vol. 6 (New Brunswick, N.J.: Rutgers University Press, 1953), 28.