





Jefferson Davis  
President of the Confederate States of America

**STATE SOVEREIGNTY  
AND THE RIGHT OF  
SECESSION**

**An Historical and Constitutional  
Defense of the Southern Position**

by  
**Greg Loren Durand**

Institute for Southern Historical Review  
Toccoa, Georgia

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The principle for which we contend is bound to reassert itself, though it may be at another time and in another form.

– C.S. President Jefferson Davis

There will come a time when the cry will ring across this land, “The cause of the South is the cause of us all!”

– C.S. Vice-President Alexander H. Stephens



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# CHAPTER ONE

## The Union Viewed as an Experiment



In his excellent treatise on the nature of the Union entitled *Is Davis a Traitor?*, Southern political apologist Albert Taylor Bledsoe wrote, “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.”<sup>1</sup> Secession became the great political question of the Nineteenth Century to be decided, not by appealing to law and reason, which method Abraham Lincoln ridiculed as “exceedingly thin and airy,”<sup>2</sup> but, in the words of Supreme Court

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1. Albert Taylor Bledsoe, *Is Davis a Traitor?* (Richmond, Virginia: The Hermitage Press, Inc., 1907), page 1.

2. John G. Nicolay and John Hay, *Abraham Lincoln: Complete Works* (New York: The Century Company, 1984), Volume I, page 673.

Justice Robert C. Grier, by “wager of Battle,”<sup>3</sup> or, to quote John Andrews, a radical Abolitionist who served as Governor of Massachusetts from 1861 to 1866, by “the logic of bayonets and rifles and pikes.”<sup>4</sup>

From the formation of the original Confederacy under the Articles of Confederation of 1777, and continuing on after the ratification of the Constitution of 1789, it was a well-understood and universally accepted political doctrine that the Union was a compact, or a “league of friendship” between thirteen independent and sovereign States, from which the parties thereof could constitutionally and peacefully withdraw at will. According to Henry C. Lodge:

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3. Justice Robert C. Grier, December 1862, *U.S. Reports*, Volume 67, page 668.

4. Speech delivered in Tremont Temple, Boston; *New York Herald*, December 1859. Andrews was an outspoken supporter of the fanatical assassin John Brown, who had attempted to incite servile insurrection throughout the Southern States in October of 1859. Brown’s weapons of choice for the hoped-for wholesale murder of the families of Southern slaveholders were the rifles and pikes he attempted to confiscate from the Federal arsenal at Harper’s Ferry, in what was then Virginia. Brown’s plan was thwarted when he was captured by U.S. forces under the command of Colonel Robert E. Lee and then tried and hanged for treason by the Virginia authorities on 2 December 1859. An early song popular in the Union army included the lyrics, “John Brown’s body lies a’ moulderin’ in the grave, but his soul is marching on.” This later evolved into Julia Ward Howe’s famous “Battle Hymn of the Republic,” in which the Southern people were likened to the “grapes of wrath” being trampled by the “coming of the Lord.”

When the Constitution was adopted by the votes of States at Philadelphia, and accepted by the votes of States in popular conventions, it is safe to say there was no man in this country, from Washington and Hamilton on the one side to George Clinton and George Mason on the other, who regarded our system of Government, when first adopted, as anything but an experiment entered upon by the States, and from which each and every State had the right to peaceably withdraw, a right which was very likely to be exercised.<sup>5</sup>

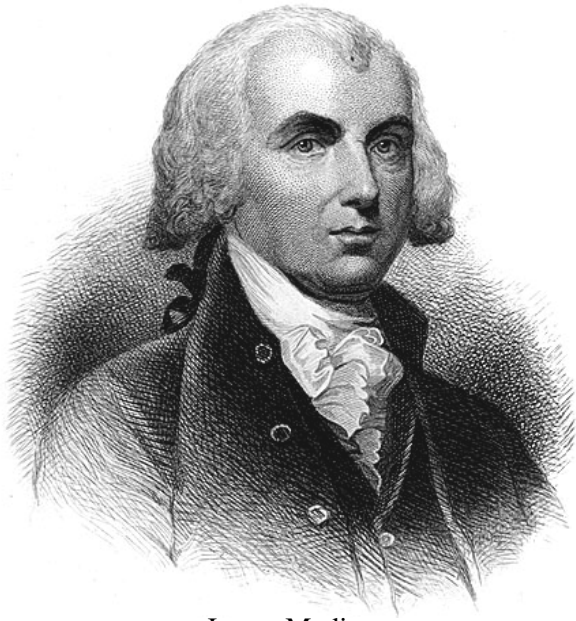
The truth of Lodge's statement is established by George Washington himself, who, in his farewell address, asked, "Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. It is well worth a fair and full experiment." In his correspondence with various dignitaries, Washington constantly referred to the Union of States as "the new confederacy"<sup>6</sup> and a "confederated Government,"<sup>7</sup> and he spoke of the

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5. Henry Cabot Lodge, *Daniel Webster* (Boston: Houghton, Mifflin, and Company, 1899), page 176.

6. Washington to General Pinckney, 28 June 1788; Bernard Janin Sage, *The Republic of Republics: A Retrospect of Our Century of Federal Liberty* (Philadelphia, Pennsylvania: William W. Harding, 1878), page 248.

7. Washington to Sir Edward Newenham, 20 July 1788; Sage, *ibid.*, page 251.



James Madison

Constitution as “a compact or treaty”<sup>8</sup> between “the people of the several States.”<sup>9</sup> In a letter to General Henry Knox, dated 17 June 1788, he wrote, “I can not but hope that the States which may be disposed to make a secession [from the Union] will think often and seriously on the consequence.”<sup>10</sup> Eleven days later, writing to General Pinckney, he announced that New Hampshire had “acceded to the new Confederacy,” and, referring to North Carolina, he said, “I should be astonished if that State should withdraw from the Union.”<sup>11</sup>

James Madison, who is commonly referred to as “the father of the Constitution,” and who was in an authoritative position to properly interpret that instrument, envisioned a “confederate republic” composed of “confederate States,” and described the proposed constitutional system as “a confederacy founded on republican principles, and composed of republican members.”<sup>12</sup> He was certainly aware of the “republican principles” contained in the Declaration of Independence which stated, not only that gov-

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8. Washington to David Stuart, 17 October 1787; Sage, *ibid.*, page 247.

9. Washington to Count Rochambeau, 8 January 1788; Sage, *ibid.*, page 248.

10. Washington to Henry Knox, 17 June 1788; Sage, *ibid.*, pages 249-250.

11. Washington to Pinckney, 28 June 1788; Sage, *ibid.*, page 250.

12. *Federalist Papers*, Number XLIII.

ernments are not republican which do not “deriv[e] their just powers from the consent of the governed,” but that, should a government not answer to the purposes for which it was established, “it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.” Indeed, practically repeating the words of Thomas Jefferson in the Declaration of Independence, he wrote of “the great principle of self-preservation” and of “the transcendent law of nature and of nature’s God, which declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed.”<sup>13</sup>

Madison also said, “Were the plan of the Convention adverse to the public happiness, my voice would be, Reject the plan. Were the Union itself inconsistent with the public happiness, it would be, Abolish the Union.”<sup>14</sup> It may be argued that these were Madison’s opinions *prior* to ratification of the Constitution and therefore cannot be made to apply to the status of the States *after* they had entered the new Union. However, as late as 1830, after the new system had been operational for over forty years, he was still uncertain “whether the Union will answer the ends of its existence or otherwise.” He went on:

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13. *Ibid.*

14. *Ibid.*, Number XLV.

Should the provisions of the Constitution as here reviewed be found not to secure the Government and rights of the States against usurpations and abuses on the part of the United States, the final resort within the purview of the Constitution lies in an amendment of the Constitution according to a process applicable by the States.

And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses, rendering passive obedience and non-resistance a greater evil than resistance and revolution, there can remain but one resort, the last of all, an appeal from the cancelled obligations of the constitutional compact, to original rights and the law of self-preservation. This is the *ultima ratio* under all Government, whether consolidated, confederated, or a compound of both; and it cannot be doubted that a single member of the Union, in the extremity supposed, but in that only, would have a right, as an extra and ultra constitutional right, to make the appeal.<sup>15</sup>

This was not the first time that Madison had described the Union in terms of a compact between the States. In a speech delivered before the Virginia Legislature in December of 1798, he said, "The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign

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15. Madison to the *North American Review*, 28 August 1830; Marvin Meyers (editor), *The Mind of the Founder: Sources of the Political Thought of James Madison* (Indianapolis, Indiana: The Bobbs-Merrill Company, 1973), page 529.

capacity.... The States... [are] the parties to the constitutional compact....”<sup>16</sup> Twenty-three years later, his views had not changed: “Our governmental system is established by a compact, not between the Government of the United States and the State Governments, but between the States as sovereign communities, stipulating each with the other a surrender of certain portions of their respective authorities, to be exercised by a common Government, and a reservation for their own exercise, of all the other authorities.”<sup>17</sup> In the Kentucky Resolutions of November, 1798, Thomas Jefferson described the Constitution as “this compact” to which “each State acceded as a State, and is an integral party....”<sup>18</sup> Similarly, Gouverneur Morris, who served on the Committee on Style which delivered the final wording of the Constitution, stated that his purpose in attending the Convention of 1787 was “to form a compact for the good of America.” He was “ready to do so with all the States” and, in the event that not all States would enter such a compact, he expressed his desire “to join with any States that would.” In his mind, “the

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16. George McHenry, *The Cotton Trade: Its Bearing Upon the Prosperity of Great Britain and Commerce of the American Republics* (London: Saunders, Otley, and Company, 1863), page xxxii.

17. Madison to the *North American Review*, 28 August 1830; Meyers, *Mind of the Founder*, page 529.

18. Kentucky Resolutions, 10 November 1798.



compact was to be voluntary.”<sup>19</sup> Even Alexander Hamilton, who advocated a strong centralized government bordering on a monarchy, had to admit that the Union under the proposed Constitution would “still be, in fact and in theory, an association of States, or a confederacy.”<sup>20</sup> Hamilton was not so dull-witted as to believe secession from a confederacy of States to be impossible, since that is precisely what each of the States would have to do in relation to the Articles of Confederation “in order to form a more perfect Union” under the Constitution.<sup>21</sup> In a letter to Timothy Pickering dated 16 September 1803, he wrote that, despite his disappointment with the results of the Convention, the republican form of government set forth in the Constitution “should have a fair and full trial,” and then added, “I sincerely hope that it may not hereafter be discovered, that through want of sufficient attention to the last idea, the experiment of republican government, even in this country, has not been as complete, as satisfactory, and as decisive as could be wished.”<sup>22</sup> Thus,

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19. Speech delivered on 12 July 1787; John Scott, *The Lost Principle: How the Sectional Equilibrium Was Created, How It Was Destroyed, and How It May Be Restored* (Richmond, Virginia: James Woodhouse and Company, 1860), page 44.

20. *Federalist Papers*, Number IX.

21. George Ticknor Curtis, *History of the Origin, Formation, and Adoption of the Constitution of the United States* (New York: Harper and Brothers, 1855), Volume II, pages 181-182.

22. Max Farrand (editor), *The Records of the Federal Convention of 1787* (New Haven, Connecticut: Yale University Press,

American “republicanism” was clearly identified in the minds of these framers with sovereign States in voluntary union, or, more accurately, confederation with one another.

It is interesting to note that State sovereignty and the reserved right of secession was taught by the United States Government to cadets at West Point Military Academy during the 1825-1826 term, and perhaps longer, through William Rawle’s book, *A View of the Constitution of the United States of America*.<sup>23</sup> In this book, which was also used as a political textbook by several other colleges and academies throughout the country at the time,<sup>24</sup> the author, a Philadelphia lawyer and staunch Federalist, wrote the following:

It depends on the state itself to retain or abolish the principle of representation, because it de-

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1911), Volume III, page 398.

23. Edgar S. Dudley, “Was ‘Secession’ Taught at West Point?”, *The Century Magazine* (New York, 1909), Volume LXXVIII, page 635. In his biography of Robert E. Lee, Douglas Southall Freeman mentioned the tradition that Rawle’s book was used at West Point beyond 1826 (*R. E. Lee: A Biography* [New York: Charles Scribner’s Sons, 1935], Volume I, page 79). For example, Dabney H. Maury, who graduated in 1846, claimed that the book was used at West Point as late as 1861 (“West Point and Secession,” *Southern Historical Society Papers* 6 [July-Dec., 1878], page 249).

24. *The National Cyclopedia of American Biography* (New York: James T. White and Company, 1897), Volume VII, page 442.

depends on itself whether it will continue a member of the Union. To deny this right would be inconsistent with the principle of 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....

The secession of a state from the Union depends on the will of the people of such state. The people alone, as we have already seen, hold the power to alter their constitutions. But in any manner by which a secession is to take place, nothing is more certain than that the act should be deliberate, clear, and unequivocal. To withdraw from the Union is a solemn, serious act. Whenever it may appear expedient to the people of a state, it must be manifested in a direct and unequivocal manner.<sup>25</sup>

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25. William Rawle, *A View of the Constitution of United States of America* (Philadelphia, Pennsylvania: Philip H. Nicklin and Company, 1829), pages 296, 302.