

Lincoln, the Radicals, and the seeds of the modern leviathan.

UNION AT ALL COSTS: From Confederation to Consolidation

by John M. Taylor

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From Confederation to Consolidation



John M. Taylor

Foreword by John P. Sophocleus
Auburn University Economist

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Chapter One

The Declaration of Independence

*WHEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.*¹

Prior to the ratification of the U.S. Constitution, the States operated under the Articles of Confederation and Perpetual Union. Adopted on November 17, 1777, it was not until March 1, 1781, that all colonies had joined the confederation. Most of the creators of this new government were not far removed from either living under or having intimate knowledge of governments that were not voluntary, so the description of *Perpetual Union* was perhaps a bit optimistic. Article II expressly spelled out that each State retained its sovereignty and independence as well as all powers not specifically delegated to the central government.

The push to abandon the Articles of Confederation was initiated by those who desired a stronger central government. Once those efforts came to fruition, the States left the Articles of Confederation and voluntarily agreed to join the U.S. Constitution. The new coalition became official when nine States voted to join; this was accomplished with the addition of New Hampshire on June 21, 1788. March 4, 1789, became the official date of commencement. Two of the original thirteen colonies did not join until after the constitution became official—North Carolina became part of the

¹ "The Declaration of Independence," *ConstitutionFacts.com*, <http://www.constitutionfacts.com/us-declaration-of-independence/read-the-declaration/>, (Accessed April 17, 2016).

compact November 21, 1789, and Rhode Island agreed to join May 29, 1790.

Another document predated both the Articles of Confederation and the Constitution and served as the platform for liberation from Great Britain. That document was the Declaration of Independence, often considered the blueprint for government by consent. The Declaration was a direct response to taxation without representation and various acts of oppression initiated by the British government against the thirteen colonies.

Massachusetts Senator Timothy Pickering served under George Washington as adjutant general, Secretary of War, and Secretary of State. He briefly served under John Adams before being dismissed for his opposition to Adams' desire for peace with France. Having worked within the government and realizing the motivation of the colonists, Pickering "once said that secession was 'the' principle of the American Revolution—the very right that the revolutionaries fought for."²

As the primary author of the Declaration of Independence, Thomas Jefferson of Virginia was charged with putting the philosophy of the American Revolution into words.³ Knowing the depth of Jefferson's intellect, John Adams of Massachusetts asked

² Thomas J. DiLorenzo, "Rewriting History, American Style," L.M. Schwartz, *The Virginia Land Rights Coalition*, March 1, 2002, <http://www.vlrc.org/authors/59.html>, (Accessed April 17, 2016).

³ Many have argued that Thomas Paine provided the true inspiration for the Declaration of Independence. Paine, born in England in 1737, moved to Britain's American colonies (Philadelphia) in 1774. His no nonsense approach to independence was embodied in his January 1776 revolutionary pamphlet *Common Sense*. Immensely popular, it was published anonymously and sold approximately 500,000 copies. Paine also published sixteen issues of his pamphlet series, *The American Crises*, between 1776 and 1783, each with a steady drumbeat advocating colonial independence. Though he may not always receive the recognition he deserves, Paine's efforts provided powerful impetus for the colonies to sever their relationship and role as underlings to Great Britain.

his friend to write the first draft. Once the initial draft was finished, "Adams and Ben Franklin made slight alterations to it before the committee presented it to the whole Congress."⁴

Adams had long been an advocate for independence of the colonies. That desire was equally strong in Virginia, a leader in the liberty movement, having declared its independence on May 15, 1776. During an early meeting of congress, Richard Henry Lee expressed the wishes of Virginia: "these United Colonies are, and of right ought to be, free and independent states, that are absolved of all allegiance to the British Crown..."⁵ adding that political connections between the colonies and Great Britain should be dissolved. In early American vernacular a colony or State was essentially the same as a country, e.g., England, France, Spain, etc.

The underlying tenet of the American Revolution was essentially threefold: rights are God-given and unalienable or beyond repute; legitimate governments are created to protect these very rights; and any time government fails to live up to its charge of protecting the rights of the people, "men have a right and even a duty to overthrow that government and create a new one."⁶

Aside from the beliefs of atheists, agnostics, secular humanists, etc., it is generally accepted that rights come from God. God is not only the Creator but also the owner of everything within the realm of earth and humanity. Therefore, if God does not grant our rights, then one would have to assume some form of government grants rights, be it State, Federal, or other. The ideology that rights come from government is generally connected to various forms of collectivism, e.g., socialism, communism, fascism, etc. Though some Founders were Deists, most were Christian, and the

⁴ Kevin R.C. Gutzman, J.D., Ph.D., *The Politically Incorrect Guide to the Constitution* (Washington, D.C.: Regnery Publishing, Inc., 2007), 11.

⁵ *Ibid.*, 10.

⁶ Charley Reese, "We Are Revolutionaries," *LewRockwell.com*, September 19, 2005, <https://www.lewrockwell.com/2005/09/charley-reese/were-revolutionaries/> - September 19, 2005, (Accessed April 17, 2016).

Declaration was based on individual liberty, a cornerstone of Judeo-Christian theology. They understood the tenets of Christianity relative to what constitutes legitimate government.

Second, legitimate government is created to protect the rights of individuals. If it fails to protect these rights, that government forfeits its legitimacy. This was the central argument expressed by Confederate States' President Jefferson Davis in his Farewell Address in the Senate Chamber at the U.S. Capitol on January 21, 1861. Davis claimed the central government had abandoned its charge, "I hope the time may come again, when a better comprehension of the theory of our Government, and the inalienable rights of the people of the States, will prevent any one from denying that each State is a sovereign, and thus may reclaim the grants which it has made to any agent whomsoever."⁷ Davis went on to say:

Then, Senators, we recur to the compact which binds us together; we recur to the principles upon which our Government was founded; and when you deny them, and when you deny to us the right to withdraw from a Government which thus perverted threatens to be destructive of our rights, we but tread in the path of our fathers when we proclaim our independence, and take the hazard. This is done not in hostility to others, not to injure any section of the country, not even for our own pecuniary benefit; but from the high and solemn motive of defending and protecting the rights we inherited, and which it is our sacred duty to transmit unshorn to our children.⁸

⁷ "Jefferson Davis' Farewell Address," Senate Chamber, U.S. Capitol, January 21, 1861, *The Papers of Jefferson Davis*, Rice University, <https://jeffersondavis.rice.edu/Content.aspx?id=87>, (Accessed April 17, 2016).

⁸ *Ibid.*

Conversely, Lincoln referenced the Declaration in the Gettysburg Address and various speeches; however, his interpretation was in a completely different context. Lincoln claimed the Declaration referenced a nation instead of a confederation of sovereign States. Noting the pervasiveness of this ideology within his thinking, he stated: "I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence...."⁹

The third point is that when a government does not uphold its role, it is the duty of the people to either alter the existing government or create a new one. The exact wording from the Declaration is as follows:

That whenever any Form of Government becomes destructive of these ends, 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...But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.¹⁰

The Declaration is not technically the law; however, it is the foundation of the original American ideology of liberty and independence of the Thirteen Colonies. The colonies departed (or seceded) from the British Empire as separate nation-states with their

⁹ "Lincoln, Independence Hall, February 22, 1861," *ushistory.org*, <http://www.ushistory.org/independencehall/history/lincoln.htm>, (Accessed July 14, 2016).

¹⁰ Thomas Jefferson, "The Declaration of Independence," *ushistory.org*, <http://www.ushistory.org/declaration/document/>, (Accessed April 17, 2016).

own individual governments. As the Revolutionary War came to a close, Great Britain and these *united States* began negotiating a peace treaty in April 1782. Representing the Continental Congress from the colonies were American Peace Commissioners John Adams, Benjamin Franklin, and John Jay, with Henry Laurens joining them later. Richard Oswald represented Great Britain in the initial negotiations. Each signed the preliminary articles of peace on November 30, 1782. The final version of the Treaty of Paris of 1783, which officially ended the war, was signed in Paris, France, on September 3, 1783. American signers included Adams, Franklin, and Jay along with David Hartley, representing King George III. On January 14, 1784, the Continental Congress ratified the treaty.

Article I of the Treaty of Paris specifically describes the parties involved in the agreement: "His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States."¹¹ The peace treaty was not made with a centralized authority, but rather with the thirteen individual Colonies.

The general view in most of the South and much of the North was the Declaration of Independence set an American precedent relative to government by consent, and the States joined both the Articles of Confederation and the U.S. Constitution voluntarily. This is often referred to as the Jeffersonian point of view and was prevalent within the Democratic Republican Party of the early 1800's. Lincoln essentially assumed the role of Great Britain, insisting the States of the South did not have the right to break away and create their own republic. He claimed the Union existed before the constitution; it was not a contractual association of States; and it is unbreakable. Lincoln contended the Union originated with the

¹¹ John S. Tilley, *Facts The Historians Leave Out*, Twenty-Second Printing (Nashville, Tennessee: Bill Coats, Ltd., 1991), 25-26.

1774 Articles of Association, which was an agreement among the Colonies to boycott most British imported goods.

It is indisputable that these united States were born out of revolution. One major difference is the South contended it was leaving a *voluntary union*, whereas the thirteen colonies left an *involuntary union* known as the British Empire. As Davis said: "[Our situation] illustrates the American idea that governments rest on the consent of the governed, and that it is the right of the people to alter or abolish them whenever they become destructive of the ends for which they were established."¹² Also, planting a seed for the legitimacy of voluntary government, he said: "A question settled by violence, or in disregard of law, must remain unsettled forever."¹³ As committed as Davis was to his point of view, Lincoln was just as committed to his belief that an unbreakable Union existed before the colonies began identifying themselves as sovereign States in 1776.

¹² "Jefferson Davis Quotes," *Thinkexist.com*,

http://thinkexist.com/quotes/jefferson_davis/, (Accessed April 17, 2016).

¹³ "Jefferson Davis quotes," *AZ Quotes*,

<http://www.azquotes.com/quote/658598>, (Accessed April 17, 2016).

Chapter Two

States' Rights

*"The Secession of a state from the union depends on the will of the people of such state."*¹⁴

William Rawle, LL. D, Philadelphia, PA

The issue of States' Rights has a life dating at least back to the founding of the Original American Republic. As the thirteen independent Republics or States entered into the Articles of Confederation and Perpetual Union, they delegated specific powers to the central government and retained the rest. Article II stated the arrangement: "Each State retains its sovereignty, freedom and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States."¹⁵

After leaving the Articles of Confederation, the States joined the U.S. Constitution and granted additional power to the central government. These enumerated powers are listed in Article I, Section 8 and include power to lay and collect taxes, to borrow money on U.S. credit, to regulate commerce with foreign nations, to coin money, to provide and maintain a navy, etc. The States or the people retained the powers not expressly delegated to the federal government—these are States' Rights. The Ninth Amendment of the Bill of Rights reaffirms that un-enumerated rights are retained by the people and the clearly written Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively,

¹⁴ William Rawle, LL.D, *A View of the Constitution—Secession as Taught at West Point, 1825* (Baton Rouge, Louisiana: Land and Land Publishing Division and Simsboro, Louisiana: Old South Books, 1993), 238.

¹⁵ John S. Tilley, *Facts The Historians Leave Out, Twenty-Second Printing* (Nashville, Tennessee: Bill Coats, Ltd., 1991), 25.

or to the people.”¹⁶ During the Constitutional Convention, emphasis was placed on State sovereignty and individual rights. This was pivotal to reaching an agreement.

In this system of dual sovereignty the people of the States have supreme power over their own affairs. This arrangement was intended to provide a bulwark to keep the central government in check. The significance of State sovereignty emphasized in the Articles of Confederation was carried over to the new alliance. “No one was ever required by the Constitution to swear allegiance to the Federal government or the United States.”¹⁷

After the Revolutionary War, Great Britain made peace with thirteen sovereign, independent States. During the Constitutional Convention, this designation did not change. For example, the State’s representatives identified themselves as in the following examples: “The State of Georgia, by the grace of God, Free, Sovereign, and Independent.”¹⁸ Delegates from New York closed by saying, “This 9th day of May, in the 11th year of the Independence of the said State.”¹⁹ Also, “New York voted to accept the Constitution giving certain powers to Congress, but it added: ‘That the powers of government may be reassumed by the people, whensoever it shall become necessary to their happiness.’”²⁰ On Virginia’s acceptance, they stated: “The powers granted under the Constitution, being derived from the people of the United States, may be resumed by them, whensoever the same shall be perverted to their injury or oppression.”²¹ Rhode Island’s agreement to join the constitution contained a similar stipulation. When Virginia, New York, and

¹⁶ *Ibid.*, 27.

¹⁷ Lyon Gardner Tyler, *The Gray Book: A Confederate Catechism* (Wiggins, Mississippi: Crown Rights Book Company, Wiggins, Mississippi, 1997), 32. Originally printed in *Tyler’s Quarterly*, Volume 33, January and February, 1935.

¹⁸ Tilley, *Facts the Historians Leave Out*, 26.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*, 27.

Rhode Island reserved the right of secession in their respective ratifications of the constitution, "this reservation, according to the rules of law, enured to the benefit of the other States as well."²² The voluntary nature of the compact was made clear; without this guarantee to the States, a new agreement was unlikely.

As the new constitution was being debated, there was strong pressure to include a Bill of Rights. The most intense pressure came from Anti-Federalists such as Patrick Henry and George Mason of Virginia and Elbridge Gerry and Sam Adams of Massachusetts as well as from the lessons of history. "The Magna Carta, the English bill of rights, Virginia's 1776 Declaration of Rights, and the colonial struggle against tyranny provided inspiration and direction for the Bill of Rights."²³ Henry strongly opposed the adoption of the Constitution. He was skeptical of the secret nature of the Constitutional Convention, and he feared the new arrangement would lead to a consolidated central government. Henry was aware of historical precedent illustrating the propensity of central governments to become oppressive and abusive of power. Henry, Mason, and others felt it was necessary to list basic *God-given* or natural rights that the federal government could not constitutionally interfere with. For example, they did not want a central state run by a national church to trample on their individual rights as had happened repeatedly in the history of Europe and Great Britain.

Hamilton and other Federalists wanted a strong central government and looked favorably on a king-like ruler and/or a monarchical style of government. Also, Federalist Chief Justice John Marshall claimed the Union lost its character as a compact under the new constitution although there was no expressed provision or

²² Tyler, 32.

²³ Secession Crisis: "States' Rights Powers Reserved To The States," The War for States' Rights, *Civil War Bluegrass*, <http://civilwar.bluegrass.net/secessioncrisis/statesrights.html>, (Accessed April 17, 2016).

revocation to indicate this occurred. This thinking echoed that of Daniel Webster and, later, Lincoln.

Most early colonists wanted to be left alone to conduct their own affairs at the State or local level. Despite the desires of the more liberty-minded citizens in the early Republic, there was a faction intent on diluting the power of the States. For example, in the 1790's, the Federalist Supreme Court ruled that the State of Georgia must submit to the authority of the federal court in court case *Chisholm vs. Georgia*. "The Georgia legislature passed a bill ordering that any federal agent attempting to execute the court's order should '...suffer death, without benefit of clergy, by being hanged.'"²⁴ This case led to the Eleventh Amendment that protects State sovereignty and limits the federal court's involvement with hearing a suit brought by an individual against a State.

The Federalists' Alien and Sedition Acts of 1798 were direct attacks on the Bill of Rights. In reaction, States' Rights were asserted and explained in the Virginia Resolutions of 1798 and the Kentucky Resolutions of 1798/1799. Written by Madison and Jefferson, respectively, "these resolutions...declared alien and sedition acts unconstitutional."²⁵ They made three basic points: (1) When the States formed the Constitution, by common agreement they created a central or national government and gave it only specific and defined powers. (2) The central or national government was created as an agent of the States, "which were the real sovereigns, and to do only those things which were specifically granted to it in the compact of the Constitution."²⁶ (3) Since the States created the central government, it was they who should decide if the national government acted within its delegated authority. The central

²⁴ James Ronald Kennedy and Walter Donald Kennedy, *The South Was Right!* (Gretna, Louisiana: Pelican Publishing Company, 1994), 230.

²⁵ Captain S.A. Ashe, *A Southern View of the Invasion of the Southern States and War of 1861-1865* (Crawfordville, Georgia: Ruffin Flag Company, published from the 2nd (1938) edition, 1997), 17.

²⁶ *Ibid.*

government was not granted authority to determine the limits of its own power.

States' Rights is also linked to Nullification, a Jeffersonian concept used by John C. Calhoun in South Carolina's opposition to the Tariffs of 1828 and 1832. Calhoun's standoff with Andrew Jackson ultimately led to a compromise that resulted in gradual decreases in import duties. However, it served as a harbinger of future disagreements of a similar nature.

When the treaty with Great Britain was signed in Paris in 1783, the independence of each sovereign State was recognized. The colonies had the option of remaining independent or joining an alliance where defined, specific powers would be delegated to the federal government. When the Constitution was adopted, there was belief in some States that they had the right to nullify any laws created by the central government if those laws were created in contravention of their granted powers. Another tactic designed to protect the States from the central government was a watered-down version of nullification known as interposition, which called for a State to interpose itself between the central government and the people of the State, essentially to block the enforcement of a federal law deemed to be unconstitutional.

Fast-forwarding to the 1860's, concerns were raised in both North and South relative to the consolidation of power in the Executive Branch. Even those connected to Lincoln observed the post-war change in the Federal-State relationship as reflected in Supreme Court Justice Salmon P. Chase's ominous comment, "State sovereignty died at Appomattox."²⁷ In modern times, Maine Professor Jay Hoar's commentary mirrors Chase: "The worst fears of those boys in Gray are now a fact of American life—a Federal government completely out of control."²⁸ Despite these dismal observations, waging and winning the war did not establish centralized government in perpetuity, i.e., the citizenry cannot

²⁷ Kennedy and Kennedy, 219.

²⁸ *Ibid.*

morally or legally be placed at the mercy of an omnipotent central government, without any recourse.

Many Southerners recognized the trend toward centralization. For example, Alabama's Senator Clement C. Clay offered the prognosis: "When they get control of the Federal government, which they vauntingly predict, the Southern States must elect between independence out of the Union or subordination within it."²⁹

Calhoun also saw the handwriting on the wall, observing:

That the Government claims, and practically maintains, the right to decide in the last resort as to the extent of its powers, will scarcely be denied by anyone conversant with the political history of the country. That it also claims the right to resort to force to maintain power she claims, against all opposition, is equally certain. Indeed, it is apparent, from what we daily hear, that this has become the prevailing fixed opinion of a great majority of the community. Now, I ask, what limitation can possibly be placed upon a Government claiming and exercising such rights?...It follows that the character of the Government has been changed, in consequence, from a Federal Republic, as it originally came from the hand so the framers, and that it has been changed into a great national consolidated Democracy.³⁰

The Founders' goal of confining Article 1 powers of the central government was changed by the War Between the States. The expansion of centralized power before, during, and after the war left clear results. Lincoln's forced program of nationalism was triumphant, and the federal government became the master, rather than the agent, of the States in both North and South. Post-war, Southern influence in government became largely insignificant as

²⁹ *Ibid.*, 233.

³⁰ *Ibid.*, 233-234.

Northern corporate and financial interests took control. The late journalist, writer, and syndicated columnist Joe Sobran asserted the three greatest consolidators of centralized government power in history were Bismarck, Lenin, and Lincoln.

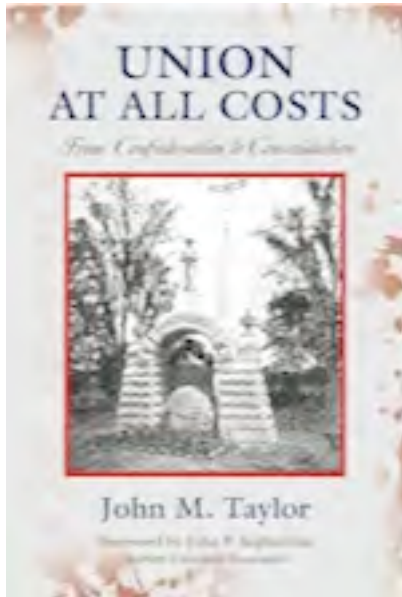
The defeat of the Confederate States of America dealt a near deathblow to States' Rights. As H.L. Mencken, the sage of Baltimore, noted, "The American people, North and South, went into the [Civil] war as citizens of their respective states, they came out as subjects, and what they thus lost they have never got back."³¹ Not only were States' Rights diminished, the program of centralization and consolidation of power became more solidified. Most presidents after Lincoln have taken advantage of this fact. However, as Jefferson Davis said: "The principle for which we contend is bound to reassert itself, though it may be at another time and in another form."³²

³¹ "H.L. Mencken Quotations," *FreedomWriter.com*,

<http://www.freedomwriter.com/quotes.htm>, (Accessed April 17, 2016).

³² "Jefferson Davis quotes," *AZ Quotes*,

<http://www.azquotes.com/quote/658598>, (Accessed August 5, 2016).



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