

Lincoln's Refutation of Secession

By Veronica Burchard

Prepared for the Organization of American Historians
Used with Permission

Background

All seem to agree that Abraham Lincoln was indefatigably devoted to preserving the Union, but were his means those of a hero or those of a tyrant?

The debate on the constitutionality of his various actions as president: his suspension of habeas corpus, the shutting down of proslavery newspapers in the North, all rest on what was truly the most monumental constitutional issue he would face: the legality of secession and the nature of the Constitution itself.

Indeed, since the Constitution was first ratified, the threat of secession—exaggerated though it might have been—had dogged the national government. Georgia and South Carolina responded to an anti-slavery petition to Congress by intimating that they would secede if Congress attempted to free the slaves. In response to the Alien and Sedition Acts of 1798, James Madison and Thomas Jefferson denied the obligation of states to honor unconstitutional federal laws; these arguments were later resurrected by John C. Calhoun in support of the right of secession.

Secession plots by the Federalists (including the Hartford Convention) abounded in the early nineteenth century. But no state had ever followed through on a threat to secede until Lincoln was elected president. Lincoln had no choice but to confront the question of the constitutionality of secession.

In December, soon after Lincoln's election, South Carolina seceded from the Union, and six more states followed within the next two months. As Lincoln took the oath of office in 1861, Jefferson Davis had already been sworn in as the president of the Confederacy, which would eventually include eleven states. A salient fixture in Lincoln's mind was the presidential oath he took to uphold the Constitution—a document that is silent on matters of states leaving the Union.

To consider the constitutionality of unilateral secession, he had to confront the more fundamental question of the nature of the Union. What was the nature of the states' ratification of the Constitution, and how did that assent bind them? Was the United States a nation of people, or a nation of states? Was the Constitution a compact between the national government, the states, and the people, or was it more like a multilateral treaty among sovereign states, from which any state could withdraw, at whatever time, for whatever reason?

Lincoln came to the conclusion that secession was improper—saying in his first inaugural address that while one side could *break a* contract, the approval of both sides was needed to rightfully and justly *rescind* the contract. Ultimately, Lincoln served as commander in chief in a war whose goal was the restoration of the Union based on the Constitution.

National Standards

Era 3: Revolution and the New Nation (1754-1820s)

Standard 1A: Analyze political, ideological, religious, and economic origins of the Revolution.

Standard 1B: Explain the major ideas expressed in the Declaration of Independence and their intellectual origins.

Standard 3A: Analyze the features of the Constitution which have made this the most enduring and widely imitated written constitution in world history.

Era 5: Civil War and Reconstruction (1850-1877)

Standard 1A: Chart the secession of the southern states and explain the process and reasons for secession.

Recommended Time

Two class periods plus research time

Materials

Handout A: Foundations

Handout B: Abraham Lincoln's First Inaugural Address (1861)

Handout C: Sacredly Obligatory?

Handout D: Discussion Points

Objectives

Students will:

- Understand competing views of the Union as formed by the Constitution
- Analyze documents from American history for perspectives on the Constitution and the Union.
- Synthesize perspectives on the constitutionality of unilateral secession
- Evaluate Lincoln's understanding of the nature of the Union and assesses his actions in light of that understanding.

Procedure

Anticipatory Activity: To create a mindset for the lesson, introduce students to some of the ideas that have formed the philosophical basis of the American ideal of just government. Ask students to perform close readings on the brief selections on **Handout A: Foundations**. Discuss the questions below in small groups or as a class. With respect to the first two passages: • What did the Founders believe was the purpose of government? • When did the Founders believe government should be changed? • Why are the definitions of the bolded words critical to the meanings of these passages? With respect to the last passage: • Why is this passage known as the "Supremacy Clause" of the Constitution? • What effect (if any) does this section of the Constitution have on the idea of state sovereignty?

Primary Source Analysis

A. In order to introduce the topic of unilateral secession, encourage students to imagine and discuss a scenario where several parties have agreed to certain conditions, and then one party

decides to withdraw from the agreement, without seeking the approval of the other parties. For example:

- In the middle of a classroom discussion activity, a student decides to get up and walk out.
- Several friends have agreed to take a vacation to Switzerland; after all have paid for their plane tickets and hotel reservations, one decides not to go after all.
- One player on a team decides to leave in the middle of the game.

B. Have students read *Handout B: Abraham Lincoln's First Inaugural Address (1861)*.

Divide the class into six groups and have each group focus their attention on reading and discussing one assigned paragraph. After a few moments, have student's jigsaw into new groups of six with one member representing each paragraph. In their new groups, students should brief each other on their section. C. Reconvene the class and have groups summarize Lincoln's main arguments against unilateral secession. As a large group, have students discussed the following questions:

- what is Lincoln's view of unilateral secession?
- What evidence does he give to support his view?
- Which piece(s) of evidence do you find most persuasive? Least persuasive?
- Would Lincoln have believed that the 1776 documents on Handout a provided philosophical justification for unilateral secession by Southern states? Why or why not?
- What information would you like to have in order to learn if the Founders shared Lincoln's views? What types of information would be convincing?

Synthesis

A. Let students know you will offer them more time to research fully the questions presented in the day's lesson. They should also spend time reading the Declaration of Independence and the Constitution, analyzing them for clues as to the nature of the Union it created. For now, though, they will get some background information on the views of those who framed and debated the Constitution.

B. Cut out and distribute to four students who are strong readers the cards on **Handout C: Sacredly Obligatory?** Have them stand one at a time, introduce themselves as the individual quoted on the card, and read the statements aloud. (*Encourage students to read their cards dramatically.*) Allow student discussion on the implications of each.

Guided Controversy

A. After students have had additional research time, distribute Handout D: **Discussion Points**. Have students work individually to analyze each statement on Handout D and determine how it could be used to support the constitutionality of unilateral secession, and/ or how it could be used to undermine that position. *Note: Most of the statements could be used to support either view, depending on how one approaches them.*

B. Put students in groups of four and arrange their seats so one pair of students is facing the other pair. Within each group, assign two students to argue for the position that the Constitution is a permanent compact between the federal government, the states, and the people, and the other two

to argue the position that the Constitution is a multilateral treaty between sovereign states that can leave the union voluntarily and unilaterally. Students should use the Constitution as well as arguments on Handout D as well as others they discovered during their research time. C. After debates have proceeded for a few moments, invite a group of four to come to the middle of the room where four chairs have been arranged for a “fishbowl” debate. Students should again ground their arguments in the Constitution.

Wrap-Up

Encourage students to reflect on the questions of the lesson. What is the best way to determine the nature of the Union? Reading the Constitution using contemporary definitions of terms? Determining original intent by analyzing the Founders’ writings?

Optional Extension Activity

A. Have students research New England’s opposition to the war of 1812 and the Hartford Convention, at which secession was discussed.

B. Have students compare and contrast the arguments put forth by James Madison and Thomas Jefferson in the Virginia and Kentucky Resolutions, and the ones advanced by John Calhoun during the nineteenth- century nullification controversy.

Handout A: Foundations

Directions: *Read carefully the selections below, paying close attention to the words in bold. Then discuss your teacher's questions within your groups.*

The Virginia Declaration of Rights (1776) III. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community whenever any government shall be found inadequate or **contrary to these purposes**, a **majority of the community hath** an indubitable, unalienable, and indefeasible **right to reform, alter or abolish it**, in such manner as shall be judged most conducive to the public weal.

Declaration of Independence (1776) We hold these truths to be self-evident That to secure [inalienable] rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — 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. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes 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.

Article VI of the United States Constitution (1787) This Constitution, and the laws of the United States **which shall be made in pursuance thereof**; and all treaties made, or which shall be made, under the authority of the United States, shall be **the supreme law of the land**; and the judges in every state shall be bound thereby, **anything in the Constitution or laws of any State to the contrary notwithstanding**.

Handout B: Abraham Lincoln's First Inaugural Address (1861)

I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself. [1]

Again: If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all too lawfully rescind it? [2]

Descending from these general principles, we find the proposition that in legal contemplation the Union is perpetual confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association [by the First Continental Congress] in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was “to form a more perfect Union.” [3]

But if destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void, and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances. [4]

[Has] any right plainly written in the Constitution been denied? I think not Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied May Congress prohibit slavery in the Territories? The Constitution does not expressly say. Must Congress protect slavery in the Territories? The Constitution does not expressly say . . . [5]

In your hands, my dissatisfied fellow-countrymen, and not in mine, is the momentous issue of civil war. The Government will not assail you. You can have no conflict without being yourselves the aggressors. You have no oath registered in heaven to destroy the Government, while I shall have the most solemn one to “preserve, protect, and defend it.” [6]

Handout C: Sacredly Obligatory?

Federalist #39 (1788) Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a FEDERAL, and not a NATIONAL constitution. If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly NATIONAL nor wholly FEDERAL. In requiring more than a majority, and particularly in computing the proportion by STATES, not by CITIZENS, it departs from the NATIONAL and advances towards the FEDERAL character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the FEDERAL and partakes of the NATIONAL character.... The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both.

The Preamble to the Constitution (1787) We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Patrick Henry's Speech, 1788 [W]hat right had they to say, *We, the People* . . . instead of *We, the States*? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.

George Washington's Farewell Address (1796) The basis of our political systems is the right of the people to make and to alter their constitutions of government . . . but the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all . . . [I pray] that your union and brotherly affection may be perpetual; that the free Constitution, which is the work of your hands, may be sacredly maintained.

Handout D: Discussion Points

Directions: *Read the statements below and determine how they help define the nature of the Union. Do they support or cast into doubt a constitutional right of unilateral secession (or could they could do both)?*

1. When Virginia ratified the Constitution in 1788, it attached this statement to Congress: "*The delegates do, in the name and in behalf of the people of Virginia, declare and make known that 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...*" Two other states made similar statements upon ratification.

2. A delegate to the New York ratifying convention proposed that New York should ratify the Constitution on the condition that New York would secede if certain amendments were not adopted within a certain time frame. James Madison wrote to New York delegate Alexander Hamilton in 1788 stating that Congress would not consider conditional ratifications. Hamilton

read Madison's letter to the New York convention, and the conditional ratification proposal was defeated.

3. Article IV of the Constitution establishes procedures for admitting new states, but says nothing about states leaving the Union.

4. Under the Articles of Confederation, all the states had to agree before amendments could be passed. Under the Constitution, only three-quarters of the states must agree for the amendment to go into effect for all the states—even for those states that did not ratify the amendments.

5. The Articles of Confederation (1781) declared the states to be “*in perpetual union.*” The Constitution's Preamble (1787) declares that it will “*form a more perfect union.*”

6. James Madison wrote in *Federalist* No. 45, “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

Veronica Burchard writes and edits instructional materials, creates Internet content, and works with teacher and scholar teams to develop lessons at the Bill of Rights Institute. Prior to joining the Institute, Veronica taught high school for seven years in Fairfax County, Virginia, and Alachua County, Florida. Her awards include a 1999 NEH Summer Seminar and “Outstanding Teacher of the Year” for 2000 by the Vienna Optimists Club. Veronica received her Master's (1996) and Bachelor's (1994) degree in English from the University of Florida.