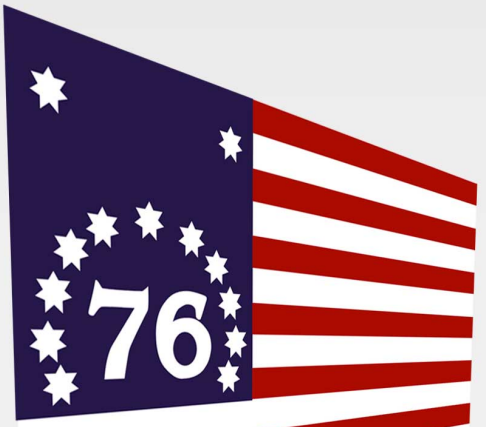
IS DAVIS A TRAITOR?

OR

WAS SECESSION A CONSTITUTIONAL RIGHT PREVIOUS TO THE WAR OF 1861?

Albert Taylor Bledsoe



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or

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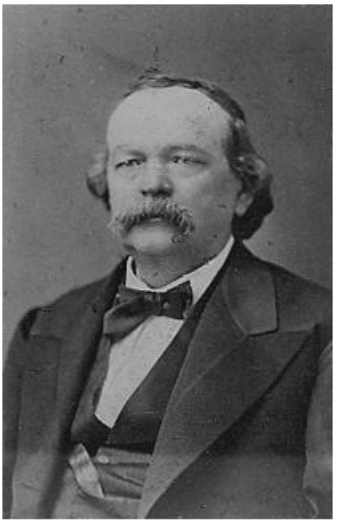
For the men of 1776

Albert Taylor Bledsoe
c. 1848



Albert Taylor Bledsoe
c. 1875
Photo by Eliza Bach

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PREVIOUS TO

THE WAR OF 1861?

BY

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PREFACE.

It is not the design of this book to open the subject of secession. The subjugation of the Southern States, and their acceptance of the terms dictated by the North, may, if the reader please, be considered as having shifted the Federal Government from the basis of compact to that of conquest; and thereby extinguished every claim to the right of secession for the future. Not one word in the following pages will at least be found to clash with that supposition or opinion. The sole object of this work is to discuss the right of secession with reference to the past; in order to vindicate the character of the South for loyalty, and to yipe off the charges of treason and rebellion from the names and memories of Jefferson Davis, Stonewall Jackson, Albert Sydney Johnston, Robert E. Lee, and of all who have fought or suffered in the great war of coercion. Admitting, then, that the right of secession no longer exists; the present work aims to show, that, however those illustrious heroes may have been aspersed by the ignorance, the prejudices, and the passions of the hour, they were, nevertheless, perfectly loyal to truth, justice, and the Constitution of 1787 as it came from the hands of the fathers.

The radicals themselves may, if they will only read the following pages, find sufficient reason to doubt their own infallibility, and to relent in their bitter persecutions of the South.

The calm and impartial reader will, it is believed, discover therein the grounds on which the South may be vindicated, and the final verdict of History determined in favor of a gallant, but down-trodden and oppressed, People. - Albert Taylor Bledsoe

CHAPTER XV INTRODUCTION

In the preceding chapters Bledsoe has, as the skilled attorney he was, established the merits of his case in defending Jefferson Davis against the charge of treason. In this chapter he begins the detailed process of proving each of his points beginning with a definition of what "a People" and "a State" are, and as we shall see, in the Constitutional system each are one and the same. Here Bledsoe cross examines Justice Joseph Story by quoting Story's own work[1] on the SCOTUS and establishes that Virginia, by her act of 15 May, 1776, declared her Independence and therefore could not have relied on the "national act of making independence" -the Declaration of Independence- by one American people Story & company claim. The most amusing part of this fact filled chapter is Bledsoe's shock that Americans liberated themselves from Britain so they could re-unify themselves as one American People.

1. Story, Joseph, Commentaries on Constitution of The United States

CHAPTER XV.

The hypothesis that the people of America form one Nation.

We have seen, in the preceding chapter, some of the absurdities flowing from the assumption, that the people of America form one nation, or constitute one political community. But as this is the — —, the first and all-comprehending falsehood, of the Northern theory of the Constitution, by which its history has been so sadly blurred, if not obliterated, and by which its most solemn provisions have been repealed, so we shall go beyond the foregoing *reductio ad absurdum,* and show that it has no foundation whatever in the facts of history. I was about to say, that it has not the shadow of such a foundation; but, in reality, it has precisely such a shadow in the vague popular use of language, to which the passions of interested partisans have given the appearance of substance. And it is out of this substance, thus created from a shadow, that have been manufactured those tremendous rights of national power, by which the clearly-reserved rights of the States have been crushed, and the most unjust war of the modern world justified. I purpose, therefore, to pursue this — —, — this monstrous abortion of night and darkness, into the secret recesses of its history, and leave neither its substance nor its shadow in existence. Fortunately, in the prosecution of this design, it is only necessary to cross-examine those willing witnesses by whom this fiction has been created, and compare their testimony with itself, in order to show that they are utterly unworthy of credit as historians of the American Union. I shall begin with Mr. Justice Story.

The hypothesis that the people of America form one Nation.

The attempt of Mr. Justice Story to show, that the people of America formed one nation or State.

This celebrated commentator strains all the powers of language, and avails himself of every possible appearance, to make the colonies of America "one people," even before they severed their dependence on the British crown. Thus, he says: "The colonies were fellow-subjects, and for many purposes *one people.* Every colonist had a right to inhabit, if he pleased, in any other colony; and as a British subject, he was capable of inheriting lands by descent in every other colony. The commercial intercourse of the colonies, too, was regulated by the laws of the British empire; and could not be restrained, or obstructed, by colonial legislation. The remarks of Mr. Chief Justice Jay on this subject are equally just and striking: 'All the people of this country were then subjects of the king of Great Britain, and owed allegiance to him; and all the civil authority then existing, or exercised here, flowed from the head of the British empire. They were, in a strict sense, *fellow*-subjects, and in a variety of respects, *one people.'"* [2]

Now all this signifies just exactly nothing as to the purpose which the author has in view. For, no matter in what respects the colonies were "one people," if they were not one in the political sense of the words; or if they had no political power as one people, then the germ of the national *oneness* did not exist among them. But this is conceded by Mr. Justice Story himself. "The colonies," says he, "were independent of each other in respect to their domestic concerns."[3] Each was independent of the legislation of another, and of all the others combined, if they had pleased to combine. In many respects, indeed, the whole human race may be said to be one. They have a common origin, a common psychology, a common physiology, and they are all subjects of the same great Ruler of the world. But this does not make all men "one people" in the political sense of the words. In like manner, those things which the colonists had in common, and which are so carefully enumerated by Mr. Justice Story, do not make them one political community; the only sense in which their oneness could

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2 Story on the Constitution, vol. i., p. 164.

3 Story on the Constitution, vol. i., p. 164

have any logical connexion with his design. Nay, so palpably is this the case, that he fails to make the impression on his own mind, which he seems so desirous to make on that of his readers; and the hypothesis that the colonies were "one people," is utterly dispelled by his own explicit admission. For, says he, "Though the colonies had a common origin, and owed a common allegiance, and the inhabitants of each were British subjects, *they had no direct political connexion with each other.* Each was independent of all the others; each, in a limited sense, was sovereign within its own territory. There was neither allegiance nor confederacy between them. The Assembly of one province could not make laws for another, nor confer privileges which were to be enjoyed or exercised in another, farther than they could be in any independent foreign state. As colonies, they were also excluded from all connexion with foreign states. They were known only as dependencies, and they followed the fate of the parent country, both in peace and war, without having assigned to them, in the intercourse of diplomacy of nations, any distinct or independent existence. They did not possess the power of forming any league or treaty among themselves, which would acquire an obligatory force, without the assent of the parent State. And though their mutual wants and necessities often induced them to associate for common purposes of defence, these confederacies were of a casual and temporary nature, and were allowed as an indulgence, rather than as a right. They made several efforts to procure the establishment of some general superintending government over them all: but their own differences of opinion, as well as the jealousy of the crown, made these efforts abortive."[4]

It is impossible for language to be more precise and explicit. Hence, in whatever other respects the colonies may have formed "one people," we are here authorized, by the undisputed and the indisputable facts of history, to consider them as separate and independent of each other, in the political sense of the terms. And this is all our argument needs.

Mr. Justice Story, not satisfied with the oneness of the people of the colonies before their separation from Great Britain, which he has been at so much pains to establish, next endeavors to show, that they were certainly moulded into one nation by the

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4 Story on the Constitution, vol. i., p. 163-164.

Declaration of Independence. If they were "one people" before, it is difficult to conceive how they were made so by that Declaration. To that act, says he, " union was as vital, as freedom or independence."![5] But what sort of union? Did the people unite and become one nation, in the sense that it was a sovereign political community; so that the whole could make a Constitution and laws for the parts? If not, then the assertion misses the mark aimed at, and must go for nothing. But no one pretends, for a single moment, that they became one people in any such sense of the words. Mr. Justice Story himself admits, that such union was temporary, and designed to perish with the common danger which had called it into existence. "The union thus formed," says he, " grew out of the exigencies of the times; and from its nature and objects might be deemed temporary, extending only to the maintenance of the common liberties and independence of the States, and to terminate with the return of peace with Great Britain, and the accomplishment of the ends of the revolutionary contest."[6] Thus it is conceded that they became "one people," not to ordain a Constitution or to enact laws, but only to resist a common enemy, and to continue united only during the presence of the common danger. Hence, this union was, according to Judge Story's own admission, more imperfect and fragile than that which, from the operation of a similar cause, had sprung up among the States of Greece, the Swiss Cantons, the United Netherlands, or the members of the German Diet. Yet no one has ever considered any one of these unions as forming one nation, or people, as contradistinguished from a federation of sovereign and independent States. Such attempts, indeed, to prove that the colonies, or the States of America were one nation, or political community, are simply desperate. They are scarcely made, before they are overthrown by the hand that reared them.

But let us admit, for the sake of argument, that the colonies formed one people before their separation from Great Britain, and that they were again made one people by the Declaration of Independence. Then no one colony could lawfully act without the concurrence of the others; as the parts would not be independent of the whole. Accordingly, Mr. Justice Story declares, that "the

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5 Vol. i., Book xi., chap. 1., p. 200. Note.

6 Vol. i., Book ii., chap, ii., p. 209.

colonies did not severally act for themselves, and proclaim their own independence." [7] But it is well known; that Virginia did so. "Virginia," says Judge Story, " on the 29th June, 1776, (five days before the Declaration of Independence.) declared the government of the country as formally exercised under the crown of Great Britain, *totally dissolved,* and proceeded to form a new Constitution."[8] Nay, she had already formed a new Constitution, in pursuance of her resolution of the 15th of the preceding month, and she adopted it on the 29th of never been regarded as tainted with treason, or rebellion, against the people of America, because she thus proclaimed her own separate independence, and established her own Constitution. On the contrary, she has ever been honored by her sister colonies and States, for this bold and independent act.

This is not the only insuperable difficulty in the way of the hypothesis, that the colonies were made one people *by* the Declaration of Independence. For, if this hypothesis be adopted, we must believe that this one people were afterwards broken up into separate and independent States by an act of Confederation! In the case of Gibbons and Ogden,[9] the Supreme Court of the United States, say, (and the words are quoted with approbation by Mr. Justice Story,)[10] "As preliminary to the very able discussion of the Constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the situation of these States, *anterior to its formation.* It has been said, *that they were sovereign, were completely independent, and were connected with each other only by a league.* THIS IS TRUE."[11] Now, if this be true, as the Supreme Court of the United States affirm, and as Mr. Justice Story admits, how were this one people broken up into so many separate, "*sovereign,"* and "*completely independent"* States? This must have been done by the Articles of Confederation; since it is only in the presence of these Articles, that this fine theory about the oneness of the American people disappears, and the States once more shine out as free and

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7 Vol. i., Book ii., chap, i., p. 197.

8 Ibid.

9 6. Wheaton, p. 187.

10 Vol. i., p. 323.

11 Vol. i., Book ii., chap. iii., p. 323.

independent sovereignties. No other cause can be assigned for the change.

It is perfectly certain, indeed, that if the people of America were one nation, or political community, prior to the adoption of those Articles, they then became divided into separate, distinct, and independent States. For, according to those Articles, "*Each State retains its sovereignty, freedom, and independence."* Each State retains! This language implies, indeed, that each State was free, sovereign and independent before those Articles were adopted. But then this is only one of the difficulties in the way of the theory of Judge Story.

If they were not free and sovereign States before, if, on the contrary, they were one people, or nation, or political community, then it were absurd to speak of their union as an act of confederation. For it would, indeed, have been an act of separation, and not of confederation. It would have been the dividing of one nation into separate and sovereign States, and not the uniting of such States into one Confederacy. This is another of the difficulties, which stand in the way of the theory of Judge Story, and of the Northern school of politicians.

Again, if one people were thus divided into free, sovereign and independent States, by the Articles of Confederation; then it is very inaccurate in Judge Story, to say, as he always does, that the States granted the powers by which the Confederacy *was* formed. He should, on the contrary, have spoken only of powers resumed by the States, or restored to them by the American people.

But we may now take leave of his theory and all its insuperable difficulties. It is sufficient for my purpose, that after the Articles of Confederation were agreed upon, as the supreme law, the States were then free, sovereign and independent. It is asserted by the Supreme Court of the United States, as well as by Judge Story himself, that anterior to the adoption of the Constitution the States *"were sovereign, were completely independent, and were connected only by a league."* It was in this capacity, it was as free, sovereign and completely independent States, that they laid aside the old, and entered into the new, "Articles of Union," as the Constitution is everywhere called in the proceedings of the Convention of 1787. *This is conceded.* Hence, the situation of the colonies before their separation from the mother country, or of the States before the adoption of the Articles of Confederation, has nothing to do with our present inquiry; which relates to the

The hypothesis that the people of America form one Nation.

character in which the people, or the peoples of America, ordained the Constitution of the United States. If any one has a mind to amuse himself by building up or pulling down speculations or hypothesis on this subject, he may do so to his heart's content. It is sufficient for every practical purpose, that- when they came to adopt the new form of government, each State was a completely free, sovereign, and independent political community, and in that capacity *acceded* to the compact of the Constitution.

The attempt of Mr. Curtis to show that the people of America formed one nation, or political community.

Mr. Curtis, in his extended and elaborate History of the Constitution of the United States, seems to vie with the introductory sketch of Judge Story, in the establishment of the foregone conclusion, that it was created by and rests on, "the political union of the *people* of the United States, as distinguished from the *States* of which they are the citzens."[1] * For this purpose, it is necessary to show, in the first place, that such a political union of the whole people of the country had an existence. Accordingly, the facts of history are recast and moulded in order to suit this hypothesis. If possible, the conflict between fact and theory is, in his work, even more glaring than it is in that of Mr. Justice Story.

"The people of the different colonies" were, says he, "in several important senses, *one people."*[2]

This is true. But it is not even pretended, by Mr. Curtis, that this was a political union; he only says, that it enabled them to effect such a union. He admits, on the contrary, in the most explicit terms, "that the colonies had no direct political connexion with each other before the Revolution commenced, but that each was a distinct community, with its own separate political organization, and without any power of legislation for any but its own inhabitants; that, as political communities, and upon the principles of their organizations, they possessed no power of forming any union among themselves, for any purposes whatever, without the sanction of the Crown or Parliament of England."[3]

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1 Vol. i., p. 122

2 Vol. i., p. 9.

3 Vol. i., p. 9.

The hypothesis that the people of America form one Nation.

"It is apparent," says he, "that previously to the Declaration of Independence, the people of the several colonies had established a *national government* of a revolutionary character, which undertook to act, and did act, in the name and with the general consent of the inhabitants of the country."[4] Thus, even previous to the Declaration of Independence, the people of the colonies formed one nation, and established "a national government." A nation, with a national government, and yet dependent colonies!

"This government," says he, "was established by the Union in one body of delegates representing the people of each colony." That is, each colony, acknowledged to be perfectly and wholly independent of every other, sends delegates to one body; and this body, whose duty it is to advise and recommend measures to the several colonies, is "a national government!" Surely, if such an advisory council may be called a government at all, it is anything rather than *national* in its character. It is, in fact, merely the shadow of a federal government.

Mr. Curtis himself is evidently not satisfied with the "one nation," in this stage of its development, or purely verbal existence. Hence, he insists, with Mr. Justice Story, that the colonies were really made one nation by the Declaration of Independence. "The body by which this step was taken," says he, "constituted the actual government of *the nation, at the time;"*[5] that is, while they were yet dependent colonies!" It severed the political connexion between the people of this country and the people of England, and at once erected the different colonies into free and independent States."[6] Thus, the colonies formed "one nation" before their separation from Great Britain, and afterwards became "free and independent States." Or, in other words, the nation preceded the States; an opinion for which Mr. Lincoln has been most unconsciously laughed at. This opinion is still more explicitly advanced by Mr. Curtis, in another portion of his history. "The fact," says he, "that these local or State governments were not formed until a Union of the people of the different colonies for national purposes had *already taken place,* and until the national power had authorized and recommended their establishment, is of great importance in the

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4 Vol. i., p. 39.

5 Vol. i., p.51.

6 Vol. i., p.51.

Constitutional history of our country; for it shows that no colony, acting separately for itself, dissolved its own allegiance to the British crown, but that this allegiance was dissolved by the supreme authority of the people of all the colonies," &c, &c.[7] This fact, which is deemed of so much importance in the constitutional history of this country, happens, as we have seen, to be a fiction; and a fiction, too, in direct conflict with the well-known fact, that Virginia declared her own separate independence.

But if, by the Declaration of Independence, the colonies became "free and independent States," how could that act have moulded them into one sovereign political community, or nation? This is one of the mysteries, which I am glad it is not incumbent on me to solve. Was the Declaration of Independence itself necessarily, *or ex vi termini,* a declaration of independence, and, at the same time, one of subjection to a higher authority? If we may adopt Mr. Curtis as a guide, we must answer this question in the affirmative. For, says he, although the colonies were thereby "erected into free and independent States," "the people of the country became henceforth the rightful sovereign of the country; they became united in a national corporate capacity, *as one people;* they could thereafter enter into treaties and contract alliances with foreign nations, could levy war and conclude peace, *and do all other acts pertaining to the exercise of a national sovereignty."*[8] If so, then of course they could ordain Constitutions and enact laws; they could set up, or pull down, or modify the parts, called States, as if they were counties, or mere districts of people. For such is the power of one sovereign State, or nation, over its various members.

But, unfortunately, for this bold assertion, Mr. Curtis himself tells us, on the very next page of his work, that "on the same day on which the committee for preparing the Declaration of Independence was appointed, another committee, consisting of a member from each colony, was directed to *prepare and digest the form of a confederation to be entered into between*," that is, after they should become free and independent States. "This committee, he continues, "reported a draft of Articles of Confederation on the 12th of July, &c." These Articles were discussed, postponed,

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7 Vol. i., pp. 39, 40.

8 Vol. i, p. 52.

resumed, amended, and, finally, adopted.

Now whence resulted the powers conferred by these Articles of Confederation? Were they not granted by the "free and independent States?" Most assuredly they were; no one has ever had the hardihood to deny so plain a fact, except by implication. But if all the powers of the new "national government," as it is called by Mr. Curtis, were granted by "free and independent States," each acting for itself, as every one acknowledges it to have done; then for what conceivable purpose has he conjured up the phantom of a pre-existing national sovereignty of the whole people of the country?

It is certain that this phantom has been completely laid by Mr. Curtis himself. The whole elaborate illusion, which it has cost him so much pains to get up, is thus dispelled by a plain, simple and unpremediated statement of unquestionable facts, by the author himself. "The parties to this instrument," says he, referring to the Articles of Confederation, "were *free, sovereign and independent political communities,* — each possessing within itself *all* the powers of legislation and government over its own citizens, *which any political society can possess.* But, by this instrument, *these several States* became united for certain purposes."[9] Surely, all this must have been absent from the mind of Mr. Curtis, when he spoke of the people of the several States as having been previously merged into one absolutely sovereign political community. But it seems to be requiring too much to expect a Massachusetts politician to remember any thing he may have said on any preceding page of his work.

Nor is this all. For it is also conceded that the States, which were "free, sovereign and independent political communities " before they adopted the Articles of Confederation, retained the same prerogatives, or attributes, after that event. "The Article," says he, "declared, —as *would indeed be implied, in such circumstances, without any express declaration,*—that each State retained its sovereignty, freedom, and independence."[10] It was, then, in this condition of "free, sovereign, and independent political communities," that the States passed from the old to the new Articles of union, or severally agreed to the compact of the

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9 Vol. i. p. 143.

10 Vol. i. p. 143.

Constitution. Why, then, conjure up shadows and phantoms of a national unity only to dispel them? The cause of secession only demands the fact, that the States, as "free, sovereign, and independent political communities," formed and entered into the new "Articles of Union;" and this fact is conceded both by Story and Curtis.

The use of the term People.

Much of the inconsistency and contradiction in the views above examined, is due to the ambiguities of the word *people,* and the utter confusion of its loose, floating significations, with its technical or scientific sense. We sometimes pronounce a people one, because they have a (common origin, or a common language, or a common religion, or even because they inhabit the same portion of the globe.) Thus, we speak of "the people of Europe," or "the people of America," without intending to convey the idea that they are a people in the political sense of the term. When we say, however, that "the people are sovereign," we use the word in a more restricted sense. We then speak of the *people* in the political or technical sense of the term.

This includes only the qualified voters of the community, or those by whom Constitutions may be ordained, and re-modelled. For no other persons participate in the exercise of the sovereign power. Women and minors are excluded, as well as some other classes, even in our American States. It is in this limited sense of the word, that the *people* are said to make compacts, or Constitutions and laws, either by themselves or by their agents.

If Mr. Justice Story had borne this in mind, he might have saved himself from all his criticisms on the doctrine of a social contract based on the ground that "infants, minors, married women, persons insane, and many others,"[11] take no part in the formation of civil societies, or in the creation of constitutions and governments. No one includes such persons in the idea of a people, when these are said to be sovereign. Hence, his "limitations and qualifications " of the doctrine in question, have exclusively arisen from his own misapprehension. Something more than a mere natural person is necessary to constitute one of "the people," one of the multitudinous sovereignty of an American State. "The idea of a

11 Vol. i., Book iii., chap, iii., p. 296.

people," says Burke, evidently using the term in its restricted or political sense, "is the idea of a corporation; it is wholly artificial, and made, like all other legal fictions, by common agreement."[12] That is, says he, "in a rude state of nature, there is no such thing as one people. *A number of men in themselves, can have no collective capacity."* Or, in other words, something more than a number of men is necessary to make a people, or State. It must be agreed and settled, as to who shall take part in the exercise of political power, ere constitutions and laws may be ordained or remodelled by them.

But in vain did Burke, and Hobbes, and other writers on the philosophy of politics, endeavor to "fix, with some degree of distinctness, an idea of what we mean when we say, the People."[13] Their labors seem to have been lost upon the politicians of the Massachusetts school; and, in some instances, at least, they appear to have only cast their pearls before swine. For one of the great lights of that school kindles into a blaze of fiery indignation against Mr. Burke, for simply advancing the incontestable truth, that what we call a People is, in the political sense of the word, the result of an agreement or mutual understanding of a community of persons. "0, that mine enemy had said it!" the admirers of Mr. Burke may -well exclaim," cries this great light of Massachusetts. "0, that some scoffing Voltaire, some impious Rousseau had uttered it! Had uttered it? Rousseau did utter the same thing, &c."[14] This is true. For widely as Edmund Burke and Rousseau differed on most points, they agreed in this, that it is not nature, but art, which determines the question, as to who shall participate in the exercise of political power, or constitute a People, in the political sense of the word. Even "the impious Rousseau" is sometimes right, and nearly, if not quite, always so when he agrees with Edmund Burke.

In his attempt to show that the Constitution was adopted by the people, and not by the States, Mr. Justice Story deceives himself by means of the ambiguities of the term *people,* and repeatedly contradicts his own positions. "The States never, in fact," says he, "did, in their political capacity, as contradistinguished from the

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12 Appeal from the New to the Old Whigs.

13 Ibid

14 Everett's Orations and Speeches, vol. i., p. 122.

people thereof, ratify the Constitution."[15] This is very true, if by States in their political capacity, he means, as he seems to do, the State governments. But this is not to the purpose. Every one admits, that the Constitution was ratified, not by the Governments, but by the people of the States. Nor does any one deny, that the term *State* is sometimes used to signify the government of a State. Thus we, often say, that the State does so and so, when the thing is done by its Government. But the question is, may we not say, that the Constitution was ratified by the States, as well as by the people of the States? Or, in other words, are not the terms *State* and *People* properly used as equivalent expressions? These words were, as we have already most abundantly seen, habitually used as convertible terms by the Convention of 1787.

We may truly say, indeed, with Judge Story, that the Constitution was not ratified by the States, as contradistinguished from the people; because it is not very easy to distinguish a thing from itself. In assuming this position, Mr. Justice Story forgets what he had said in the preceding Book of his Commentaries, namely, "the State and the people of the State, are equivalent expressions."[16] "Nay, the State," he again says, "by which we mean the people composing the State, may divide its sovereign powers among various functionaries, &c."[17] Here the term *people* is clearly used to include only the qualified voters, or those who share the sovereign power; and, in this sense, they are called "the State." It is precisely in this sense, that the Constitution was ratified by the people, or the States. We may, and indeed should, distinguish between the meanings of the term *State,* when it is figuratively used to signify the government of a State, and when it is used to signify the State itself. But we shall never distinguish the people of a State from the State itself, until we can find a State which is not composed of people.

But the attempt is made to show, that, in adopting the Constitution, the States acted as mere districts of people, and not in their sovereign political capacity,[18] But if this were so, then the different districts would have been considered together in making

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15 Vol. i., page 330.

16 Vol. i., Book ii., p. 198.

17 Ibid, p. 194.

18 Story's Com. on the Constitution, vol. 1, p. 330.

up the final result, and the majority of the one grand, national whole would have ordained the Constitution. The fact, however, the undenied and the undeniable fact, is quite otherwise. Each State, with all its own laws, and institutions and government, either went in, or remained out, at its own sovereign will and pleasure. In the words of the *Federalist,* it was "only to be bound by its own voluntary act." No other State, nor all other States combined, nor the whole people of America, had the least authority to control its decision. This was an absolutely free, sovereign and independent act of each State. It may be doubted, indeed, if there was ever a more superficial gloss, or a more pitiful subterfuge, than the assertion of Judge Story, that the States adopted the Constitution, not as States, but only "as districts of people" composing one great State or nation. It is at war with facts; it is at war with his own repeated admissions; and it is at war with the plainest dictates of truth, as well as with the unanswerable arguments of the *Federalist.* Sad, indeed, must have been the condition to which the great sophist was reduced, when he could stoop to so palpable a gloss on one of the plainest facts in the history of the Constitution!

CONCLUSION

Mr. Justice Story has, I am aware, as well as Mr. Webster, laid great stress on the fact, that the Constitution addresses the language of authority to the States. "The language of a compact is," says he, "I will, or will not do this; that of a law is, thou shalt, or shalt not do it."[19] This is what the act of entering into a compact signifies, but it is not usually the language of the instrument itself. On the contrary, the Articles of Confederation, which are universally admitted to form a compact, use precisely the same style as the Constitution. Both say what *shall,* and what *shall not,* be done by the States. Precisely the same style is also employed in the formation of compacts or treaties between wholly separate and independent powers. Nay, in the most ordinary articles of co-partnership, it is usual to say, in the same manner, what *shall,* and what *shall not,* be done by the parties

19 Vol. i., p. 308.

thereto. Yet all such instruments rest upon the agreement of the parties, and derive their binding force from their voluntary act.

There is a very simple law of language, which seems to have escaped the attention of these great expounders of the Constitution. The language of written contracts usually speaks *of* the parties in the third person, and not *for* them in the first person. Hence, they necessarily assume the imperative style; laying down what *shall,* and not saying what *will,* be done by them. It would have been ridiculous, indeed, if the Constitution had said, No State *will* emit bills of credit, or coin money, and so forth, instead of saying, as it does, that no State *shall* do such acts. Like other written contracts, it says *shall,* of course, because it speaks *of* the parties in the third person, and lays down the obligations imposed upon them by their own consent. This is a very simple law of language. But that is no reason why it should be overlooked by the great lights of jurisprudence.

"In compacts," says Judge Story, "we ourselves determine and promise, what *shall* be done, before we are obliged to do it." No words could more admirably suit our purpose, or the facts of the case. For each State agreed to the compact of the Constitution, which prescribes "what *shall* be done," before it was bound by it. That "no State *shall* emit bills of credit," and so forth, is precisely the style which, according to Judge Story himself, as well as according to all usage, would be employed in articles of agreement between the States; and hence, to argue for the use of *shall,* instead of *will,* that the Constitution addresses the language of authority from the people of America to the States, is simply ridiculous. "In compacts," says Story, "we ourselves determine and promise what *shall* be done, before we are obliged to do it." And yet, in the face of this obvious fact, he argues from the use of *shall* in the Constitution, that it is not what the State "determined and promised," but what they were commanded to do! that it is not, and cannot be a compact between the States at all!

A and B enter into articles of agreement. These articles, according to good usage, say what A *shall* do, and what B *shall* do. What shall we say, then, of these articles? Shall we say, that they

do not form an agreement, or contract at all? Shall we say, that A commands B, or "addresses to him the language of authority," as a law-giver speaks to a subject? If so, then B. also commands A, and each is evidently the master of the other! Precisely such is the profound logic of Mr. Justice Story!

CHAPTER XVI INTRODUCTION

Bledsoe presents five arguments in favor of the right of the Southern States to secede in 1861 and provides copious amounts of documentation to make his points. Most of the documentation comes from those whom agitated for War in Northern states but had previously stated and reserved their state's right to secede/leave the union over the issue of slavery. The arguments from the *"Anti-Slavery League Examiner"* are the most compelling here as Bledsoe compares their embrace of secession prior to 1861 to the same right claimed by the South.

CHAPTER XVI.

Arguments in favor of the Right of Secession.

In the preceding chapters, it has, I think, been clearly demonstrated, that the Constitution of the United States was a compact to which the several States were the parties. This, as we have seen, was most explicitly the doctrine maintained by the fathers of the Constitution, and was unequivocally set forth by the *Federalist* in submitting that instrument to the people, and that it is confirmed by all the historical records of the country. If any proposition, indeed, respecting the Constitution can be considered as unanswerably established, it is the doctrine of the *Federalist,* that the act by which it was ordained was "not a *national,* but a *federal* act;" having been ratified "by the people of America, *not as individuals composing one nation, but as composing the distinct and independent States to which they belong,"*[1] that the Constitution, "the compact," was established by "the States regarded as distinct and independent sovereigns."[2] It is, then, on this clear, broad, immutable foundation, that the argument in favor of secession rests.

Argument in favor of Secession from the doctrine of reseved rights.

It is frequently asked, by the opponents of secession, where is the right of a State to withdraw from the Union set forth or contained in the Constitution? But this question betrays a gross ignorance with respect to the origin of State rights. These rights are not derived from the Constitution at all; on the contrary, all the

1 *Federalist,* No. xxxix.

2 Ibid, No. xl.

That concludes our preview of "Is Davis a Traitor's", Chapter XV, offered free of charge by Mike Church & Founding Father Films Publishing.
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