Can States Secede from the United States?

While many believe that the American Civil War "settled" the issue of secession for all time, such a view must be met with the scrutiny of honest scholarship. The secession question seems particularly relevant today with the rise of the Calexit movement. And a candid study of historical context and the notes from the ratification debates in the states reveal a narrative that challenges orthodox opinion.

Truly, the founding generation was a generation of secessionists. The American colonies first became states when they withdrew from the government under the British crown, practicing secession for the first time. After a new constitutional system was proposed in 1787, the states proceeded to depart from their current union under the Articles of Confederation, the second governmental arrangement they seceded from in a generation.

Structurally speaking, under the federal Constitution these states retained all powers not delegated to the general government and not prohibited under Article I, Section 10. After many skeptics demanded assurances that the states would reserve all powers not specifically enumerated, the principle was codified explicitly in the form of the Tenth Amendment.

If that wasn't enough, three states – Virginia, New York, and Rhode Island – all affixed "resumption" clauses to their ratification ordinances when they adopted the Constitution. These clauses made clear that each state had the ability to reassume the powers delegated, withdrawing from the union entirely. Virginia's version reads:

> *"We, the delegates of the people of Virginia…**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, **be resumed by them whensoever the same shall be perverted to their injury or oppression**, and that every power, not granted thereby, remains with them, and at their will…"*

Facing resistance toward the Constitution in New York's ratification convention in Poughkeepsie, Alexander Hamilton suggested secession as a solution to the state's philosophical split on the subject. If New York refused to ratify the document as a whole, he said, New York City would secede from New York State and adopt the constitution as an independent entity.

During the ratification debates, many figures firmly challenged the suggestion that coercive force could be used to obligate a state's membership in the union. Melancton Smith of New York suggested that such coercion would be an anathema to the cause of liberty: "Can it, I say, be imagined, that in such a case, they would make war on a sister state?"

He ridiculed the notion, declaring that "the idea is preposterous and chimerical." George Mason, known today as the "Father of the Bill of Rights," also rejected the assumption that war would befall a seceding state. Answering an inquiry regarding whether the government could "use military force to compel the observance of a social compact," Mason scoffed at such a prospect, declaring that it would be "destructive to the rights of the people."

In the early years of the republic, the prospect of secession was discussed openly among prominent political figures. In

1795, northerners Rufus King and Oliver Ellsworth approached John Taylor of Caroline of Virginia, articulating the concern that the differences between the North and South were too great. “A dissolution of the union,” they said, offered a compelling remedy.

There was talk of secession yet again in 1807, when Thomas Jefferson’s wildly unpopular Embargo Act destroyed the maritime economy of New England. During the war of 1812, secessionist sentiment among the North was so great that five states called together a conference, the Hartford Convention, to mull the prospect of seceding from the union over Madison’s unpopular war policies and the potential for conscription mandates.

The most famous foreign observer of the early republic, Alexis de Toqueville, also affirmed the permissibility of secession, characterizing the power as a unique facet of the United States federal republic:

> *“The Union was formed by the voluntary agreement of the States; and, in uniting together, they have not forfeited their nationality, nor have they been reduced to the condition of one and the same people. If one of the States chose to withdraw its name from the contract, it would be difficult to disprove its right of doing so; and the Federal Government would have no means of maintaining its claims directly, either by force or by right.”*

By the same measure, in 1824 famous Virginian statesman John Randolph of Roanoke, recalling the genesis of the government as the “offspring of the States,” declared that the states had the power “to extinguish this Government at a blow.”

Beyond the constitutional arguments, Thomas Jefferson maintained that secession was permissible regardless of any constitutional consideration on the basis of Lockean natural rights theory. Whenever government became tyrannical, he professed, the people had the right to "alter or to abolish it, and to institute new Government." In his famous indictment of George III, The Declaration of Independence, Jefferson listed a compelling group of causes which impelled the American states "to the separation" from Britain. Maintaining this view for the entirety of his life, when New England states threatened to secede during the War of 1812, Jefferson wrote, "if any State in the Union will declare that it prefers separation….to a continuance in union…I have no hesitation in saying, 'let us separate.'"

Some have cited federal court cases, such as Texas v. White, to allege that secession is constitutionally impermissible. However, this perspective does nothing to refute the picture painted in the ratification debates. No law or judicial edict can supplant the original constitutional understanding or meddle with the reserved powers of the states. Nor does the imposition of force solve constitutional quandaries. Short of a constitutional amendment, secession is indeed a reserved power.

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