

*To the Garrison of
London*

*With the report of
The author*

STATE SOVEREIGNTY.

REBELLION AGAINST THE UNITED STATES BY
THE PEOPLE OF A STATE

IS ITS POLITICAL SUICIDE.

BY

JAMES A. HAMILTON.

PUBLISHED BY THE EMANCIPATION LEAGUE IN THE CITY OF NEW YORK.

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It is proposed to discuss these great propositions with candor, and in a manner, it is hoped, which will tend to impress upon the public mind such clear views in relation thereto as that the arts of party politicians and demagogues may never again, by exciting feelings of State pride, sap the foundation of the people's loyalty to their Government of the United States.

In 1798, ambitious men, to promote a party triumph, induced numbers, and ultimately a majority of the people, to believe that the State Governments were in danger of destruction from the encroachments of the central Government. Then, and thus, was created "The States' Rights Party."

This skillful effort of party strategy produced the famous resolutions of 1798, passed by the Legislatures of Virginia and Kentucky, proclaiming dogmas in relation to the powers of the States which, without a very forced construction, laid the foundation of Nullification by South Carolina in 1832, and culminated in the "Slave Barons'" Rebellion in 1860.

This is the teaching of history. It is referred to now only as a warning voice, and to prepare politicians and partisans, as well as the people, not to receive the dogma of "*State Sovereignty*" as embracing a truth worthy of all acceptance, and of so sacred a character as to forbid questioning or examination.

It is due to the distinguished men who proposed the resolutions of 1798, to say, they did not contemplate the dire consequences of their work; and that one of them, during the period of nullification, took great pains to prove that those resolutions did not countenance the destructive and pestilent doctrine of secession.

"The evil that men do lives after them."

The following great truths and maxims in regard to government are stated because pertinent to this discussion:

"The sovereignty and independence of the people began by a Federal act."

"Sovereignty is the supreme, ultimate authority in a country."

"Supreme authority is sovereign."

"In this country, sovereignty is in the people."

"The fabric of the American Empire rests on the solid basis of the consent of the people of America—the pure and original foundation of all legitimate authority."

"In every government, there must be a supreme, absolute authority lodged somewhere."

In our complicated system, "The General Government must not only have a soul, but strong organs by which that soul is to operate." "The soul is the *people of the United States*." The organs are found in that Government they have "*ordained and established for themselves and their posterity*."

Every government must establish "an undisputed organ of the public will."

"All men are created equal. They are endowed by their Creator with certain inalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of those ends, *it is the right of the people to alter or abolish it, and to institute a new government.*"

"The power of the *majority* and *liberty* are inseparable; destroy *that*, and *this* perishes."

"A government ought to contain in itself every power requisite

to the full accomplishment of the objects committed to its care, and the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good, and to the sense of the people.”—*Federalist*.

These are maxims to which every citizen of the United States will give his unhesitating and unqualified assent.

We proceed, in order clearly to understand the relations of the States to the United States Government, and the powers of each, to give a brief history of the rise and progress of the various governments to which we have been subjected. This will be interesting and instructive.

On the 5th September, 1774, the deputies from all the colonies, except Georgia, assembled in a congress in Philadelphia. The object was, to state their grievances, as “*subjects*,” and to appeal to the King and their fellow-subjects of England for redress. On the 20th October they adjourned to meet again on 10th May, 1775, “unless their grievances were redressed in the mean time.”

On the 19th April, 1775, the war of the Revolution was begun by the battle of Lexington. On the 10th May following, the second Congress assembled at Philadelphia. This Congress, in July, sent “a most loyal petition to the King, and a conciliatory address to the people of Great Britain.” They, at the same time, prepared by vigorous measures for resistance. They voted to raise an army of twenty thousand men; appointed Washington commander-in-chief; enacted articles of war; bills of credit representing six millions of dollars were authorized to be issued; a navy was commenced; letters of marque and reprisal were issued.

This Congress continued in permanent session, and

on the 4th July, 1776, issued that immortal Declaration which made "the people of the colonies sovereign and independent," by which, as "one people," they assumed among the powers of the earth the separate and equal station to which the law of nature and of nature's God entitle them. "And they solemnly declared that these United Colonies are, and of right ought to be, free and independent *States*. And that, as such, they had full powers to levy war; to contract alliances; to establish commerce; and to do all other acts which independent States may of right do."

It is to be remarked, that this act of the Congress of 1776 was not only a Declaration of Independence, but it established a Provisional Government—a pure despotism—which, in obedience to the last *maxim*, on the 27th December appointed Washington DICTATOR, and conferred upon the delegates in Congress assembled full and absolute powers to levy war, and to do "all other acts and things which independent States may of right do." In short, it was made "the undisputed organ of the national will."

This absolute Government continued from July, 1776, until March, 1781.

It will be remembered that "the Articles of Confederation" were duly prepared and ready for signature on the 9th July, 1778, two years after the Declaration, and that they were ratified by the signatures of the delegates of the various States, from the 8th August, 1778, down to March 1st, 1781. This being a *compact between sovereign States* (in the second article it is declared that "each State retains its sovereignty, freedom and independence"), it consequently did not bind any one State until all the States parties to it had ratified it, which was not done by Maryland until 1781.

Thus it appears that the *first*, a Provisional Government, one of absolute powers, was established on the 4th July, 1776, and continued until March 1st, 1781—a period of nearly five years; and from that time until the adoption of the Constitution of the United States, in 1788, a period of seven years, we had a limited Government of confederated States, each sovereign and independent, with constitutions of government formed by the independent and sovereign people of those States; that in the formation of these State Governments, *the people* of each State invested their Government with as large a portion of *their sovereignty* as was necessary to the end in view, and they retained the power to alter or abolish their respective Governments according to their discretion.

This historical statement of our several governments brings us up to the period when measures were taken to establish another and the actual government of the United States.

On the 14th May, 1787, a convention of delegates assembled at Philadelphia, *appointed* by their respective *State Governments*, pursuant to a resolution of the Congress of the Confederation, in these words: “*Resolved, That in the opinion of Congress it is expedient that, on the second Monday of May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of the Government and its preservation.*”

We give the resolution in full, to show that the sole

and express purpose of Congress, and of the Legislatures appointing delegates was, that the Government of the Confederate States should be preserved and amended ; and to that end we add that the instructions to the delegates, in most if not all cases, conformed to that purpose.

We do this to give the advocates of State rights all its advantages, and to show that if such a Government was *not* framed, if the confederated Government was *not* preserved, it was not from misconstruction or accident, but under the influence of a clear conviction that its inherent defect was incapable of being cured, and that it must, therefore, be proposed to be abolished. We say *proposed*, because the convention had no power to establish a Government, but only to recommend a scheme for adoption.

We now come to the consideration of the great questions—

First. How was the Constitution of the United States formed ?

Second. Who formed it ?

Third. By whom was it adopted and ratified ?

The convention was of delegates appointed and instructed by twelve of the thirteen sovereign and independent States. (Rhode Island was not represented.)

The first great question to be decided by the delegates was *whether they would obey or disregard their instructions*. They decided to *disobey*, and proceeded to form a new and very different Government from that which had called the convention into being.

Two leading plans were submitted to the convention. One, "*The Virginia Plan*," which proposed to form a General Government, independent of the control of the States. The other proposed to amend the *Articles of Confederation*," and thus to leave the General Govern-

ment dependent upon the State Governments, as it was before.

The great and leading question was thus distinctly presented for decision; and after long, earnest, and anxious discussion, the plan of a confederacy was discarded, and the convention proceeded to devise the form of a constitution of government, in the name of, and to which the *whole people of the United States were the parties*.

“We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, 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.”

Language could not more distinctly mark the fundamental difference between these instruments. The *first* was made, as clearly as language could do so, “*a league*”—an agreement—a confederation between sovereign States. It was *formed by the Congress* which was the organ of those States. It was *sanctioned by the Legislatures* of the several States, and *not* by the people thereof.

Whereas, the second was declared to be *a constitution*. It was “ordained and established *by the people of the United States*, for themselves and their *posterity*.” It was, in despite of instruction and the resolution of Congress, directed to be submitted *to a convention of delegates chosen in each State* BY THE PEOPLE THEREOF.” All this was done, and this constitution of government so formed was ordained and established *by the people*, through *their delegates* in conventions held in the different States.

It has been remarked that the sovereign and inde-

pendent people of the States formed their State Governments, making them sovereign and independent States, as they certainly were, and in the Articles of Confederation they were so declared to be.

The Constitution for the United States prepared by the convention of 1787, made "the States essential and component parts of the Union," "necessary to the form and spirit of the general system." In doing this, their sovereignty and independence were merged, and made subordinate to that system. The Constitution necessarily and properly "left with the State Governments those *residuary authorities* which were judged proper for local purposes" under it. The civil and domestic concerns of the people were to be governed by the laws of the respective States.

It is undeniable that in all mixed systems there must be a control somewhere. Either the general interest is to control the particular interest, or the contrary. If the former, then certainly the Government was so formed as to render the power of control efficient to all intents and purposes. If the latter, a striking absurdity follows. Whatever constitutional provisions are made to the contrary, every government will at last be driven to the necessity of subjecting the particular to the universal interest. In obedience to this necessity,—in order that the varying interests of a State and a General Government might not clash,—it became the duty of wise men so to frame a scheme of government for the whole people as that there should not be two *sovereignties* moving in the same sphere.

They consequently proposed to abolish the sovereignty and independence of the States, and at the same time they deemed it "necessary that all of the everyday rights of property, of social arrangements, of mar-

riage, of contracts,—every thing that makes up the life of a social community,—should be under the control, not of a remote or distant authority, but of one that is limited to, and derives its ideas and principles from, a local community.”—(*William M. Evarts.*)

We have said the proposed constitution of government contemplated the abolition of State sovereignty.

This position will be found to be sustained by a *critical examination* of the sovereign powers attributed to the General Government and denied to the State Governments by the Constitution proposed for the adoption of the people.

The people of the United States have formed a Government with “an undisputed organ of the national will,” which is known to the nations of the earth as having all the attributes of a sovereign and independent power. Thus the State Governments collectively were once known; and as such they formed treaties with foreign powers. Are they individually or collectively so recognized at present? They certainly are not. Why? Because when the Constitution of the United States was established they descended from that superior condition. This is the fact; and such is the judgment of mankind.

There cannot exist in the same government two superiors, because “supreme authority is sovereignty,” and “two powers cannot be supreme over each other.”

Washington, in his letter addressed to Congress, 17th September, 1787, as President of the Convention, says: “It is obviously impracticable, in the Federal Government of these States, to secure all the rights of independent sovereignty to each, and to provide for the safety and interests of all. In all our deliberations on this subject, we kept steadily in our view that

which appears to us the greatest interest of every true American,—the *consolidation of our Union*, in which is involved our prosperity, political safety, and perhaps our national existence.”

In order to “*the consolidation of our Union*,” the States gave up the following sovereign rights and conferred them upon the Government of the United States, viz. :

“The right to lay and collect taxes, duties, imposts, and excise; to borrow money on the credit of the United States; to regulate commerce with foreign nations and among the several States, and with the Indian tribes.”

Under the last grant of power, the State Governments cannot decide what *persons* or property shall be brought within the domain of any State. They cannot give any exclusive right to their own citizens to navigate their own and coterminous waters. They cannot authorize a bridge to be built across a stream within their own borders where the tide ebbs and flows.

The United States can regulate the commercial intercourse of the citizens of any State with foreign powers or any other States, and inhibit such intercourse with foreign countries for an indefinite period. Witness the embargo of December, 1807, which continued for eighteen months. This exercise of the “*restrictive energies*” of the Government (as they were called) was to recommend a theory, which, at that time, had very respectable advocates, that the United States would become a more prosperous and happy nation if they would forego, altogether and forever, all *foreign* commerce, and thus promote the great agricultural interests.

“To establish an uniform rule of naturalization.” Under this exclusive grant the Federal Government

has the power to confer the rights of citizenship upon whom, and as it pleases, in every State of the Union, and thus give to such citizen, in common with all the other citizens of any State, all "privileges and immunities of citizens in the several States."

"To establish uniform laws on the subject of bankruptcy." "To coin money, regulate the value thereof and of foreign coins." These powers are the highest attributes of sovereignty. They are given exclusively to the General Government. The right to coin money by the States was recognized, by the Articles of the Confederation, to belong to the States.

The power to establish a Bank of the United States is an incidental power, so adjudged by the Supreme Court of the United States, and declared by Mr. Madison in one of his messages to Congress. Another and vastly important incidental power, which comes home to the business and interest of every citizen, is the currency of the country. Mr. Madison, in his message of 1815, recommended the inquiry whether "the notes of the United States should be issued, upon motives of general policy, as a common medium of currency;" and in his message of 1816 he says: "The Constitution has intrusted Congress *exclusively with the power of creating and regulating a currency of that description.*"

"To fix the standard of weights and measures." An exclusive power which enters into the traffic and everyday domestic concerns of the people of every State.

"To establish post-offices and post-roads." This gives to the General Government the exclusive power to establish post-offices, mails, and letter-carriers in every city, town, county, and State of the United States; and to build roads over any part of any city, town, or place of any State; and it consequently gives the right

of eminent domain, in such cases, to the General Government.

“To promote the progress of science and useful arts, by securing to authors and inventors exclusive rights.” An exclusive power which comes home to all the people of all the States.

“To define and punish piracies and felonies on the high seas, and offences against the laws of nations.” Exclusive sovereign powers.

“To declare war, raise and support armies.” These are ranked among the highest *attributes* of *sovereignty*; they are exclusive, and they grant to the General Government unlimited power over the lives and property of the people of the States, by compelling them, if need be, to become soldiers; and, by taxation, to yield up their property to the public service; thus giving to it the absolute control of persons and property, which are inaptly said to be peculiarly the objects of State concern and protection.

The clauses respecting the militia—the bulwark of civil liberty and popular government—are most significant:

“Congress shall have power”—“to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.”

“To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.”

The only power left to the States over this important element of power is to be found in the reservation, to wit, “the appointment of the officers,” “and the au-

thority of training the militia according to the discipline *prescribed by Congress.*" In effect, all the power reserved to the State Governments over their civic soldiers is to prepare them for the use of the supreme Government, to be called for by that Government to suppress insurrections of the people "in such State or in any other State." In short, to place at the disposal of the supreme power a disciplined army, composed of the people of each and all the States between the ages of 18 and 45 years. (Act of 1792.)

"No State shall enter into any treaty, alliance, or confederation, coin money, *emit bills of credit*, make anything but gold and silver a legal tender." The writ of habeas corpus may be suspended by the General, not the State Governments.

The power to pass "bills of attainder or *ex post facto* laws" is forbidden to the States, by the Constitution of the United States, as well as to the General Government.

"No tax or duty shall be laid on articles exported from any State." This inhibition is made by the Constitution of the United States on both Governments.

The exception in section 10, art. 1, goes strongly to prove the absolute subordination of the powers of the States to the United States. It is in these words: "No State shall, *without the consent of Congress*, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net proceeds of such duties shall be for the use of the Treasury of the United States. *And all such laws shall be subject to the revision and control of the Congress.*" We have italicized the last branch of this clause as decisive of the question of the sovereignty of the States.

Inspection laws are purely municipal regulations ; they touch “ the every-day institutions, the social arrangements of the community ; ” they control their domestic affairs. A State cannot lay any imposts or duties to execute their inspection laws *without the consent of Congress*, and as an additional humiliation, although the power so to legislate by a State depends upon the *consent of Congress of the United States*, “ all such laws shall be *subject to the revision and control of Congress.* ”

Another and a most marked evidence of the subordination of the Legislatures of the States, is found in the following language :

“ No State shall, *without the consent of Congress*, lay any duty of tonnage, *keep troops or ships of war* in time of peace, *enter into any agreements or compact with another State or with a foreign power.* ”

In connection with this stern inhibition,—this clear denial of the sovereignty of the States,—this direct submission of the legislative power of the State to the will of Congress,—it becomes us to recollect that the people *of the United States ordained and established this Constitution* in order to form a “ *more perfect union*, ” as the Union had been made “ *perpetual.* ” This purpose could have had no relation to the *duration* of the Union of the States. It meant something more ; it was intended to make the Union *more perfect* by prohibiting to the States the means which might be used for its destruction.

An army or a navy, or combinations by “ agreements or compacts ” between States, or with foreign powers, would give great power to rebellious States, or people, in their efforts to destroy the Union, and in their resistance to the efforts of the General Government to preserve it.

Another declared purpose was "to ensure domestic tranquillity."

These inhibitions are not only direct and palpable abrogations of the rights and sovereignty of the States in these respects, but they clearly indicate that the people of States might attempt to disturb the "domestic tranquillity," or to break up the Union by secession; and if they did so, that the United States had the right and the power (the States being without troops or ships of war, or the strength to be derived from combinations among themselves or with foreign powers) to restore "domestic tranquillity," and preserve the Union by *force of arms*.

In this view of this clause, it is worthy of remark that *by* this denial to the States of the right to keep troops and ships of war in time of peace, the United States might lose a powerful auxiliary in preparing for war.

The great State of New York, if permitted to keep up a considerable military and naval force at her own expense, might render essential assistance to the United States, in arming forts, preserving the frontiers from the inroads of savages, and in repelling the attacks of a public enemy.

All this was well understood by the sagacious statesmen who made these clauses a part of the Constitution. They also clearly foresaw, and we know they greatly feared, attempts at disunion. Balancing the two, they wisely, in order to diminish the latter evil, yielded the former advantage.

Can it be said, in the face of these inhibitions, that the Government has *not* the constitutional right, nay, that it is not its absolute duty, by coercion, to put down rebellion by the people of any State or government?

He reads the Constitution with a very indistinct appreciation of the meaning and intent of these clauses, who will maintain State sovereignty or the right of secession.

We might upon the fact of this appropriation of all the essential attributes of sovereignty to the United States Government, and their denial to the States, rest our assertion that, by this scheme of a Constitution for the United States, State sovereignty was abolished.

But, in our endeavor to exhaust the subject, we proceed to show, that the States cannot, with appropriate language, be called sovereign and independent States, even within their appropriate sphere.

By article 4, section 1, it is provided, that "*full faith* and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State;" and to Congress is given the power "to prescribe the manner in which such acts, records, and judicial proceedings are to be proved, and their effects."

Upon examining the effect of this clause, it will be found to subordinate the judiciary of the one State to that of another. Thus, a citizen of New York goes to Georgia; he is sued there, a judgment rendered against him for a given sum of money. It may be groundless, although according to the laws of proceeding and the rules of evidence of the latter State. We put a strong case. The defendant returns to New York. The plaintiff commences a suit in the Supreme Court of that State. The case comes on for trial. The record of the judgment rendered by the court of Georgia is "proved" according to the act of Congress, and the court of New York must give judgment thereon.

We do not question the expediency of such a provision, but we aver that it is one clearly inconsistent

with the idea that each State possesses sovereign powers in its domestic affairs, or even so far as to control its judicial action.

Section 2: "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." The Congress of the United States has the exclusive power of naturalization; that is, to give the privileges and immunities of citizens to such persons as it pleases, and upon such terms as it may choose; and such naturalized citizens are, perforce of this sovereign power, made citizens of *all the States*. This presents a peculiar case. The State Governments are said emphatically to have the control of "the everyday institutions, operations, and social arrangements of their community," and yet they have no power to decide what persons shall be members of their communities!

It is absurd to attribute to a State sovereign powers, and at the same time to declare that she has no right to say what kind or description of persons shall or shall not participate in the "privileges and immunities" given to her citizens by her laws.

Section 3, article 4, declares that "new States may be admitted *by Congress* into the Union." The States-rights party insist that ours is a confederacy of sovereign and independent States; and yet no one of these sovereigns, nor all of them combined, has the power to decide what people, State, or country shall or shall not be one of their associates, and thus participate with them in the government of their country, in its glory or advantages.

It is believed when the people conferred these sovereign attributes upon the General Government, they relegated all essential sovereign rights and powers from their State systems.

Section 4: "The United States shall guarantee to every State in the Union a republican form of government." When the people of the respective States thus empowered the Government of the United States to give them a particular form of government, which is the true meaning of the clause of guarantee, they certainly admitted that the United States possessed *the supreme ultimate authority in the country*, and that the States *did not*, in respect to *the people of the States*, possess such authority.

The people of the States, as such, gave up, in regard of their State Governments, that fundamental right recognized by the maxim that "every nation has a right, *in its own discretion*, to change its own form of government, to abolish it and substitute another." In this case, the people of the States gave up the right to alter their government from a republican to a pure democracy, to a monarchy, or to a despotism.

They admitted that they could not, so long as the Government existed, be subjected to any other than a republican form of government; and thus far the people of each State yielded their sovereignty and independence to the people of the United States.

We close this examination of the scheme of government which was prepared by the Convention of 1787, to be submitted to the people of the United States for their adoption, under the conviction that it has been made with candor, and that it has resulted in proving there is no solid foundation for the belief that the actual government of our country is a confederacy of sovereign and independent States, in any sense of the terms; but with a clear conviction that the State Governments, instead of being "free, sovereign and independent States," as they certainly were when they ratified the

Articles of Confederation, became by the present Constitution component and essential parts of the General Government; the object of State Governments being merely civil and domestic, "to support the legislative department of the United States, and to provide for the administration of the laws."

Our next duty is to show how the Constitution proposed by the Convention was disposed of and adopted, and how the State Constitutions were adapted to their new condition in relation to the new government.

The Convention agreed upon the form of the Constitution, which was signed by the delegates on the 17th September, 1787, and, with the letter of the same date from Washington, addressed to the President of the Congress, was sent to that body then assembled in Philadelphia, pursuant to a resolution of the Convention, directing it "to be laid before the United States in Congress assembled," and expressing the opinion that it should afterward be submitted to a convention of delegates, *chosen in each State by the people thereof, for their assent and ratification.*

It was submitted to Congress on 28th September. That body sent copies of it to the State Legislatures; and the people of the several States were called upon to elect delegates to conventions to be held on designated days and places in each State; which they did; and between the 7th December, 1787, and 21st November, 1788, the people of all the States, except Rhode Island, assented to and ratified the Constitution of the United States of America, as it was prepared by the Convention and submitted to the respective State Conventions, without alteration. And thus did the people of the United States of America ordain and establish this Constitution of the United States of America. And thus does "the fabric

of the American Empire rest on the solid basis of the consent of the people of America, the pure and original foundation of all legitimate authority.”—(*Federalist*.)

We have asserted, and we believe we have proved, that the respective States ceased by that act to be sovereign and independent; that they became, “in spirit and in form, component parts of the Government of the United States;” that their constitutions were materially altered, in order that they might conform to their changed and subordinated condition.

These State constitutions were originally formed by the people of the States, in their independent and sovereign capacity, through conventions of delegates elected by the people, and assembled for that purpose; and they were altered by the same people through the same agency.

When the people of a State elected their delegates to a convention, with full power to reject or adopt the constitution of government presented for their deliberation, which directly by its very terms, and inferentially and necessarily by its spirit and import, essentially changed their respective State constitutions, their delegates were thus authorized by the people of the States, if upon full deliberation they should adopt the Constitution of the United States, so far to change their State constitutions as would be required to conform them to the altered condition of their respective States. They did so; and thus we find that such changes, radical as they were, were made by *the authority of the sovereign will*.

We cite two strong cases to show the changes thus made, and we aver that the subsequent action of both Governments shows that they received the full approval of the Government and people.

By clause 2d, article 6th, it is declared : "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, *any thing in the constitution or laws of any of the States to the contrary notwithstanding.*"

It must be admitted that before the Constitution was adopted by the people of the United States, the State constitutions and laws were the supreme law of the land within their respective jurisdictions, and that the judges in every State were controlled thereby. It must also be admitted that as soon as the Constitution of the United States was established, its Constitution, laws, and treaties were superior to the constitutions and laws of the States, and that thus a change was made by the people of the several States of their respective constitutions, in order that they might be in conformity with this new and sovereign power.

Again, by the 3d clause of the same article, it is declared that the members of the several State Legislatures, and all executive and judicial officers of the *several States* "shall be bound by oath or affirmation to support this Constitution." This was so essential a change of the constitutions of the several States as to forbid those who were the recognized organs of these Governments to act, until they had taken that oath ; and that thus not only the soul of each State Government was, but that the organs through which that soul acted were, made obedient to the Federal Constitution, and that such organs could exist only in obedience to its commands.

We hold, in conclusion, that as the Constitution of the United States was the work of the people of the

United States of America, they, and they alone, have power to alter or to abolish that constitution of government. When we say the People, we mean the people of the United States, *not* the people of a State or many States, constituting less than a majority of the whole people.

REBELLION AGAINST THE UNITED STATES BY THE PEOPLE
OF A STATE IS ITS POLITICAL SUICIDE.

The necessary consequences of this condition of the people and governments of the States in relation to the General Government is, that when the people of a State, not a mere faction, rise up in rebellion against the Government, and use the organs of their State to destroy the Government of the United States, they destroy the organism of their State Government, and thus accomplish the political suicide of their State Government. The soul of the State remains, but its organs are destroyed. * The latter cannot act as organs, because they cannot take the required oath, and cannot perform their duty to the supreme power in obedience to the commands of the Constitution of the United States.

It must be admitted that the question whether the State Governments in rebellion are abolished or not, is a very difficult one. We approach it with diffidence. The question in the outset is, What is a *State*? The aggregation of a people as a community is *not* a State until they have "established a *public authority*, to order and direct what is to be done by each in relation to the end of the association. This political authority is the *sovereignty*, and he or they who are invested with it are the *sovereign*." When this is done, there is a "body politic, or *State*."—(*Vattel*.)

We have high authority for asserting that when the

Constitution of the State of New York was formed, "the sovereignty of the people, by our Constitution, was vested in their representatives in senate and assembly, with the intervention of the Council of Revision." This was the "public authority" of the State of New York. The like may be properly said of the other State Governments before the existing Government of the United States was adopted by the whole people. By that act, as we have seen, the State Governments, and the people thereof, were made component parts of the Government of the United States, and the essential attributes of their sovereignty were vested in the latter Government. *It is the "undisputed organ of the public will."* This is the state of facts upon which this important question arises.

It is a maxim of universal acceptance, that "the people, in their discretion, have a right to alter or *abolish* one government and to establish another." And it is therefore true that *the people of the United States*, who established the Government of the United States, have the right to alter or abolish that Government; and equally so that the people of one or several States have *not* that right.

It is also true that the people of the several States have the right to alter their several State Governments, with these limitations: 1st. That such alterations do not change their relations to the Government of the United States, or in any respect impair the rights or powers of that Government in relation to the people or governments of the States; and 2d. That they shall establish a republican government. Thus far, the people of each State have, by uniting with the people of all the other States, and thus forming that "*body politic*" which is, and is known as, the People and Government

of the United States, divested themselves of plenary power over their State Governments.

Under and by virtue of the powers vested by the Constitution of the United States in its Government, that Government has the absolute possession of all the domain within its borders; and it has full sovereign power over all the people of the United States, in all those respects, and to those ends and purposes for which it was formed and established.

From these positions, it is clear that the Government or the people of a State have no right or power to withdraw from the Government of the United States; and that when the people of a State rise in rebellion against the Government of the United States, and make use of their State Governments as their instruments to destroy, by force, the Government of the United States, they are guilty of "*high treason*." The people of such State, or all those who unite in such a purpose are TRAITORS, and as such they *forfeit life and property*, and all rights of every kind. Blackstone says: "The natural justice of forfeiture or confiscation of property for treason is founded in this consideration: that he who has thus violated the fundamental principles of government, and broken his part of the original contract between king and people, *hath abandoned his connection with society*, and hath no longer any right to those advantages which before belonged to him purely as a member of the community."

If this be a correct view of the position of traitors, can it be with propriety said that men so circumstanced can be considered as the "public authority" of a "body politic"? Is it possible that they can individually or collectively possess the attributes of any power to "order and direct what is to be done by each in relation

to the end of the association," which is "to promote their mutual benefit and advantage"? How can a State Government be said to exist when the people of the community, including those who were invested with the functions of government, have "*abandoned all their connections with society*"? It is a strange paradox to insist that the governments of the people who have attacked, with great power, the national life, and who, in every form, by word and deed, declare their purpose to do so, still form a part of that nation.

As State Governments they no longer exist; as a people, they form a part of the whole people of the United States, owing obedience and allegiance to its Government, and must be reduced by force "into subordination to the laws."

That provision of the Constitution of the United States which guarantees to every State a republican government, necessarily admits or assumes, as a matter of fact, that the people of a State may abolish their existing *republican* State Governments. To establish another form of government,—a monarchy, an autocracy, or despotism,—necessarily implies that they have abolished their existing republican government."

This suggestion is presented in answer to the opinions entertained by very respectable authority, that the State Governments cannot be destroyed or abolished by any act of the people of the State; and in support of that opinion, it is averred that as long as there is any number, however small, of those who are favorable to the existing State Government, that Government necessarily exists. This view certainly ignores the great principle of popular government, that the majority of the people must *rule*,—that the will of the majority gives the law to the whole.

The Administration, by several acts, seem to admit

that the States in rebellion have abolished their governments.

A military government has been appointed for Tennessee. Andrew Johnson, in his appeal to the people, says: "The State Government has *disappeared*, the Executive has abdicated, the Legislature has dissolved, the judiciary is in abeyance." "In such a lamentable crisis" (the people of the State without a government) "the Government of the United States could not be unmindful of its high constitutional obligation to guarantee to every state in this Union a republican form of government." "This obligation the National Government is now attempting to discharge. I have been appointed, in the absence of the regular and established State authorities, a military governor for the time being."

We infer from the language of this appeal,—which we must believe correctly represents the views of the President and his Cabinet, because we cannot suppose Governor Johnson would have been sent to Tennessee without having precise instruction,—indeed, it may well be presumed, as a matter of wise precaution,—that this appeal had received the approval of the Government. It speaks of the "performance by the Government of its constitutional duty to the State," under the guarantee clause. It declares "the State Government has disappeared," and consequently that the Government of the United States was to perform its constitutional obligations by giving to the people a government of a republican form.

If the former State Government was not abolished by the rebellion of the people, then that Government still exists; and then there was no constitutional obligation to give the loyal people another government.

As the Governor had abdicated and the Legislature

was dissolved, all that was necessary was, that a Governor and Legislature should be elected under the protection of the power of the United States, by the loyal people of the State. Such abdication and dissolution do not invoke the exercise of the power of the United States under the guarantee clause.

We entertain no doubt whatever, that it is the duty of the Government to establish provisional governments in all the rebellious States. Under the conviction that by the energy of the Executive, the skill of our generals, and the bravery of our soldiers, this cruel war, so far as it respects the action of large armies, will be shortly terminated by our glorious victories, we believe the Government will be driven to the conclusion that the people in rebellion have destroyed their governments, and the only means of restoring to the Unionmen of those States the protection of regular governments, and to the citizens of other States their rights and privileges in those States, will be by establishing territorial governments for the people of all States in the rebellion.

It is not improbable that the traitors, when their armies are vanquished and their assumed governments are dispersed, will perversely refuse to return to a due subordination to the laws of the United States.

It is always to be remembered in regard to the States in rebellion, that they form a part of the domain or territory of the United States; that "the United States is the sovereign in possession, and that the people of the State (in rebellion), once one of the United States, are not."

The people of Western Virginia, holding the opinion that their State Government was abolished by the treason of the people in other parts of the State, with the organs of that Government have formed another

government, which has been recognized by the United States as the existing government of that State.

EMANCIPATION.

The President, in his most admirable proclamation, recommended to the people of the United States to implore spiritual consolation in behalf of all who have been brought into afflictions by the casualties and calamities of sedition and *civil war*.

The Secretary of War, in his general order, dated April 9, 1862, ordered thanks to be given to the Lord of Hosts in delivering this nation, by the arms of patriot soldiers, from the horrors of treason, rebellion, and *civil war*.

We have thus the highest authority for saying that we are engaged in a *civil war*, which Vattel (Book 3, chap. 13, § 295) and other authoritative publicists declare is a public war. "The war between the two parties stands on the same ground, in every respect, as a public war between two different nations." "They decide their quarrel by arms, as two different nations would do. The obligation to observe the common laws of war toward each other is, therefore, absolute." When the blockade of the rebel ports was declared, France and Great Britain decided that both parties, being public enemies, were entitled to the rights of belligerents.

We refer to the fact that our Government, by exchanging prisoners, has treated this as a public war. This is assuredly the common sense view of this subject, and we rejoice that it is thus authoritatively settled, because decisive consequences must follow in regard to slavery, under the laws of war.

It is well settled (see Vattel, Book 3, chap. 9, § 165, Booty) that when an army advances into the country of its enemy, "the established laws of war give to an

enemy the use and enjoyment of real property of which he obtains possession," and the *absolute ownership* of all personal property which falls into his hands. The latter is called *booty*, and, except ships, becomes vested in the captors the moment they acquire a firm possession." With regard to ships, by the general rules of maritime law, condemnation is necessary to the complete investment of the property in the captors. Wheaton's Elements, &c., p. 432, may be referred to in support of this rule, with the authorities to which he refers.

"Negroes, by the laws of the States in which slavery is allowed, are personal property. They, therefore, on the principle of those laws, like horses, cattle, and other movables, are liable to become *booty*, and belong to the enemy as soon as they come into his hands."

"Belonging to him, he was free to apply them to his own use, or set them at liberty. If he did the latter, the grant was irrevocable; restitution was impossible." "Nothing in the laws of nations will authorize the resumption of liberty once granted to a human being."—(*Hamilton.*)

Vattel, § 162—"We have a right to deprive an enemy of his possessions; of *every thing that may augment his strength*, and enable him to make war. This every one endeavors to accomplish in the manner most suitable to him." The slaves augment the strength of an enemy; we, therefore, have the right to take and free them.

Apply these well-settled laws of war to the course of the advance of our armies into the enemy's country, and absolute, immediate emancipation follows, in regard to all persons held as property by the laws of the rebel States.

To allow slaves thus falling into our hands, or which

have been induced to come into our camps as an asylum to the oppressed, "to fall again under the yoke of their masters, and into slavery, is as *odious* and *immoral* a thing as can be conceived. It is odious because it brings back to servitude men once made free."

Apply this to the case of the negroes who, in South Carolina, are now taken care of by the Government, and treated as free men. They form "a colony of civilization" in that State.

We close this too much extended examination with the following, from Blackstone, upon the laws of nature as they effect the liberty of man:

"The Deity has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever. This is what is called the *Law of Nature*, which, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity contrary to this; and such of them as are valid derive all their authority mediately or immediately from this original."

We give a commentary, written in 1775, by Hamilton:

"Upon this law depend the natural rights of mankind. The Supreme Being gave existence to man, together with the means of preserving and beautifying that existence.

"He endowed him with rational faculties, consistent with his duty and interest, and invested him with an inviolable right to personal liberty and personal safety." * * *

"Natural liberty is a gift of the beneficent Creator to the whole human race." * * * "Civil liberty is founded on that, and cannot be wrested from any people without the most manifest violation of justice. *Civil liberty is only natural liberty modified and secured by the sanctions of civil society.* It is not a thing in its own nature precarious and dependent on human will and caprice; but it is conformable to the constitution of man, as well as necessary to the *well-being* of society."

April, 1862.

JAMES A. HAMILTON.

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