LOBBY SEVEN

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*"They write politics, we write government"*

# SECESSION

## A Little Rebellion, Now and Then

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

*I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature." – Abraham Lincoln*

Separatist movements seem to be gaining momentum everywhere. Scotland nearly left the United Kingdom. Quebec regularly has the wild thought to go on its own. Basques, Kurds and Tibetans, and others argue that they are oppressed minorities - with varying validity of grievances. Going back a few years, Sudan birthed a South, Timor lost its L'Este, and Czechoslovakia – the country, as well as its name – was cleaved in two. Yugoslavia split into many component parts, and then Montenegro left Serbia and Montenegro and then Kosovo left Serbia, which Serbia still disputes. And then there are the disputed regions, where the split may or may not represent the will of the people therein: Crimea and South Ossetia, for example.

While separatist movements in the United States today are the province of charlatans and cranks, this was not always the case. Despite what some people say, the Civil War was fought over slavery, not inability to compromise. But how our nation moved from a fundamental disagreement over this heinous practice, to a split that could easily have been fatal, is a more complex story with relevance to the current day.

- How did the Civil War start?
- Is secession legal?

**How did the Civil War start?**

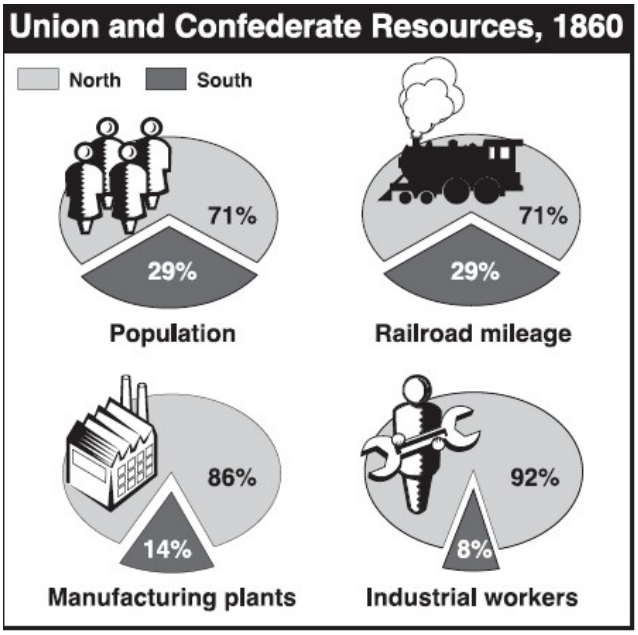
Let's be clear: we know why the Civil War started. It started because of slavery, and disagreements about if it should exist and whether it should spread. The questions of how the War started has greater complexity. How did a long-festering disagreement move from the halls of Congress to Shiloh, Antietam and Gettysburg? Why did secession happen in 1860, as opposed to decades earlier or later?

The story of the Civil War begins in Philadelphia, in the summer of 1787. At that time, the United States was little more than a confederation of sovereign states.[1] In order to survive in a world of nation-

[1] Although it was an explicitly perpetual confederation. This will be important later.

states – and to compete with those states' quickly modernizing economies – a stronger form of government was necessary. A group of 55 delegates from 12 states met and wrote our Constitution.[2]

At the Convention, compromises were the order of the day, as the resulting document would have to be signed by all 13 states. The issue of slavery was in the background of the many compromises made in Philadelphia. Some states had slaveholders; some of those slaveholders were present at this Convention. A document immediately eliminating slavery was not feasible.[3] Slaves would count as three-fifths of a person with regards to taxation and representation, and the slave trade could not be prohibited until 1808.[4] Had the United States remained with the Original 13, this compromise would likely have been stable for a long period.




But we wanted to get bigger. First, the territory between the original states and the Mississippi River, already in our possession, would be turned into states. Then, via purchase, war, or negotiation, we would expand to the Rocky Mountains, the Rio Grande and finally the Pacific. Would slavery be allowed to expand into this vast, new area?

The period from 1789 until 1850 was one of compromises made between halves of a nation which were rapidly moving apart – on slavery, but also on other issues. The North was rapidly industrializing, using canals to link its grand lakes and rivers, turning its land into a web of railroad lines. The South's economy remained almost exclusively agricultural. A trading empire in the North led to a merchant marine, bustling ports and growing cities. The cash crops of tobacco, rice, and cotton led the South to remain almost exclusively rural; in 1860, only one of the twenty largest American cities was in the South.[5] This reinforced its slave-based economy. The sectarian divide is not understood without this economic context.

Increasing population in the North during the early 19th translated to large majorities in the House of Representatives. However, as long as the Union maintained an equal number of slave and free states, the South would have a veto over legislation. The need to add new slave-state votes to the Senate was a concrete reason for the South for focus on slavery's spread. The North, on the other hand, was concerned about "slave power" – the ability of the Southern minority to control the national agenda via this veto. Even those Northerners who were not morally opposed to slavery did not want it to gain political power by expansion.

[2] Rhode Island refused to attend.

[3] We can complain about the compromises made by Northern delegates, some of whom had strong moral opposition to slavery. Had Southern states not joined the Union due to prohibitions on slavery, there would have been even less of a mechanism to eventually eliminate its practice. It is likely to have persisted for a period longer than 76 years in this alternative scenario.

[4] Said prohibition being duly enacted on January 1, 1808. Interestingly, this 20-year suspension is one of only two substantive provisions of the Constitution that could not be changed via amendment (equal representation of states in the Senate being the other).

[5] And that was New Orleans, whose economy had more in common with New York than Savannah.

| Year | Slave States | Free States |
|---|---|---|
| **1789** | 8 | 5 |
| **1800** | 9 | 8 |
| **1821** | 12 | 12 |
| **1837** | 13 | 13 |
| **1846** | 14 | 15 |
| **1858** | 15 | 17 |
| **1861** | 15 | 19 |

**TABLE 1 - SLAVE AND FREE STATES, BY YEAR**

Fortunately – at least as far as preservation of the Union was concerned – the period from 1820 to 1850 was one of Great Compromisers. In 1820, the slave-free balance was kept by admitting Missouri and Maine, respectively, to the Union. This Missouri Compromise also established a line, 36° 30' of latitude, which would divide future slave and free states. This offered confidence to the growing number of Free Soilers, those who opposed the spread of slavery but not necessarily its existence.

This Missouri Compromise held until the Mexican War threw a monkey wrench into things. A transparent land grab, many (but not all) proponents of this War viewed the expansion of slavery – and the maintenance of that balance in the Senate – to be a key war aim. Long before victory was assured, opponents of slavery attempted to prohibit it in any lands that might fall into American hands. This posed a political problem for those who wished to extend slavery, but didn't want to say that they were conducting a war for that express purpose.

In 1850, two full years after the end of the war, a new compromise finally dealt with the territories that had been won. In this compromise, slave-holding Texas received desperately-needed debt relief, and the rest of the newly-won territories would be permitted to decide the slavery question for themselves when they decided to join the Union. But at the same time, California was admitted as a free state. Free states would outnumber slave-holding states for the first time.

If you were a Southerner, and perhaps a bit paranoid,[6] this was an ill omen. And the South's Senatorial position was a deteriorating one. Minnesota and Oregon were the likely next candidates for statehood – both free. The land taken from Mexico in the great slavery-extension enterprise was poor for agriculture, and unlikely to attract slaveholders. At this point, there seems to have been a change in the South's strategy. Previous actions had always been compromises – not taking all they might have at the negotiating table, ensuring the results were palatable to their Northern brethren. Going forward, they seemed to take as much as they could get. Their bargaining position was reinforced with an ever-present, if often unstated, threat to secede from the Union if they didn't get what they wanted.

The first overreach was actually part of the 1850 Compromise: the Fugitive Slave Act. Under the Act, escaped slaves were required to be returned to their masters. Local governments, even in free states, were compelled to aid in such return. It also permitted Southerners to cross into the North to "aid" any local officials who might not be so sanguine about participating. Because suspected slaves had no right to trial, bounty hunters didn't need to exercise caution as to exactly who they captured. Free blacks could be (and were) brought to the South. Given that "states rights" was the credo of the South,[7] this national interference in local judicial affairs was entirely hypocritical. Practically, for many Northerners, enforcement of the Act was often their first experience with slavery. The Fugitive Slave Law did not leave a good first impression.

In the early 1850s, some of the areas from which the Missouri Compromise prohibited slavery were

[6] It bears noting that this paranoia was largely unwarranted. We've said already that many Northerners were opposed to the *spread* of slavery, but those favoring its elimination from where it already existed were a minority as late as 1860.

[7] Or at least its "not openly racist" credo.

approaching statehood. Not only were people moving to the excellent farmland, but a more formal government would facilitate a Transcontinental Railroad. This huge territory was certain to be carved into free state after free state, irrevocably upsetting the balance. To fight this, a new compromise made it through Congress, the Kansas-Nebraska Act. It revoked the dividing line which was a critical provision of the Missouri Compromise. The region would now also choose its status by popular vote.

Proponents of this compromise thought they had solved the problem of slavery for another generation; after all, who could object to people making their own decisions. More insightful leaders, including some Southerners, understood the truth. By reneging on the deal of 1820, the South had gone back on its word. Huge numbers of Northern Free Soilers – previously happy to let slavery continue where it existed – were livid. The breakout of a guerilla war between pro- and anti-slavery factions in Kansas didn't smooth any feelings.

In case things weren't already on a knife's edge, the Supreme Court got involved. In one of its most infamous decisions, a former slave, Dred Scott, sued for his freedom since he had spent significant time in free territories. There was precedent for this; an 1835 case, never overruled, said an instant of freedom meant freedom forever. But the Court was now under the sway of Chief Justice Roger Taney, an anachronistic jurist who was soon to become a thorn in Lincoln's side. Blowing through the precedent, Taney's opinion said that people of African descent could never be American citizens, and thus never have right to bring a case in court. Now, right or wrong, such a decision that Scott lacked "standing" to sue would normally have ended the case. But Taney went on. The Court decided that:

- Congress lacked the power to determine the status of slavery in territories.
- Territorial assemblies lacked the power to prohibit slavery on their lands.
- The Missouri Compromise was therefore unconstitutional.

To make matters worse, there is no way to read this decision without worrying that *states* may also lack the ability to prohibit slavery within their borders. New York, Massachusetts and Wisconsin did not want slave populations in their states.[8] Northerners now became paranoid – but this time with good reason.

We'll now take a brief interlude to describe the politics of this era, the so-called Second Party System. The Presidency of James Monroe is known as the "Era of Good Feelings" – but this designation is a complete misnomer. It is true that there were no political parties in America at the time. The election of 1816 was the last hurrah of the Federalists, a descendant of Washington's supporters. With the Federalists gone, Monroe ran for re-election without opposition. Despite this, the Congresses of Monroe's second term quickly became contentious and non-productive. Without political parties, nobody was able to organize – either for or against the Administration. With each man for himself, it was difficult to debate two sides of a policy and come to a compromise.

This was followed by the contested election of 1824, where John Quincy Adams became the President despite not winning the most Electoral College Votes. Dysfunction increased further. Supporters of the defeated Andrew Jackson subverted Adams in every manner available. It was only with Jackson's election in 1828 – after more than a decade without real political parties – that our politics began to normalize. Mostly through the work of Vice President Martin Van Buren, the

[8] For what it's worth, not all Northerners who opposed slavery in their states were on the moral high ground. Many of them didn't want competition against white laborers. Others didn't want more African-Americans around because they were racists.

supporters of Jackson became the Democratic Party. Jackson's opponents, previous splintered into many smaller groups, soon formed a consistent platform as the Whigs.

Why we care is that these two parties, Democrats and Whigs, were both national parties. Both had roughly equal strength on both sides of the Mason-Dixon line. In the 1836 Presidential Election, Van Buren won Michigan and Mississippi. In his failed 1840 re-election, he still won New Hampshire and Alabama, Illinois and Virginia. The 1846 House of Representatives featured a Whig-heavy New York delegation, but Democrats won most of the seats in Maine, Illinois and Michigan. Both parties had massive internal disagreements on the topic of slavery. But they also recognized that splintering over this issue would send them to political irrelevancy. As long as the parties stayed together, and stayed national, they served as a strong glue holding the country together. Forty years passed from the Missouri Compromise until the start of the Civil War – more than a generation. A major reason slavery didn't tear the country apart earlier should be credited to the political parties during this critical period.

The Kansas-Nebraska Act caused the Whig Party to splinter along sectional lines. Nearly every Southern Whig voted for the Act; Northern Whigs bolted the party in response. By 1856 most had found a home in the new Republican Party. The Republicans were explicitly opposed to the expansion of slavery – and not thrilled with it where it already existed. It was a purely regional party, not even bothering to run candidates in the South. In its first national election, Republican John C. Fremont had an unexpectedly strong showing. Democrats retained the Presidency only by nominating James Buchanan, whose primary qualification was that he had been out of the country during the fractious recent past, and therefore avoided taking positions on…well…most everything.

The Dred Scott decision finished the process of splitting the parties by region. Many anti-slavery former Democrats joined the former Whigs as Republicans. The rump Democratic Party ran two candidates in the 1860 election, North and South. Another party even sprang up, calling itself Constitutional Union.[9] Now, this splintering wasn't the cause of Lincoln's election. If the votes of all other candidates had been combined, he still would have won. However, the South now claimed a grievance; Lincoln hadn't even been on the ballot in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee or Texas. Along with Virginia, where Lincoln won 1.1% of the vote, this was the eventual Confederacy.

The secession threat, long present in negotiations between North and South, now proved to be more than a bluff.[10] Only four days after the election, South Carolina's legislature called for a convention to consider departure.[11] Within a month, it had taken that step – unanimously. By the time Lincoln was inaugurated on March 4, eight states had seceded, not discouraged by Buchanan's statement that he would not attempt to coerce them otherwise.

But so what? The secession ordnances were filled with stirring words about states' rights and freedom and whatnot, but they were just pieces of paper. Southern members of Congress stopped showing up, but the institution continued to function. Lincoln could easily form a cabinet of those who opposed secession. You can envision a world where the South seceded on paper, the North ignored it,

[9] Its platform was basically the old Buchanan strategy of having no opinions on any topic.

[10] While it is possible to argue with my narrative of the cause, we can now all agree that the Civil War did not happen because of a "lack of ability to compromise," as some foolish people might have you believe. The South seceded before any action had been taken against them. What exactly was the North supposed to compromise on? Vote for the candidates that the South told them to?

[11] The votes wouldn't even have been counted yet!

and everybody went on their merry way. During his inaugural address, Lincoln said that although he did not view secession as having any legal meaning, he would neither interfere with slavery in the South nor be the first to draw blood. He promised not to send carpetbaggers down to run the various Federal offices. He even offered to continue delivering their mail. He would only do two things that could possibly be called coercive: continue to collect tariffs and continue to hold Union property – meaning barracks, forts, and arsenals.

But what sovereign nation – for that is what the Confederacy considered itself – would allow a foreign power to keep troops on its land and collect taxes from its people? Without fear of opposition from the outgoing Buchanan Administration,[12] the South had already begun to seize Federal property.

| Date | State | Seizure |
|---|---|---|
| **Jan 2** | S. Carolina | Fort Jackson |
| **Jan 3** | Georgia | Fort Pulaski |
| **Jan 4** | Alabama | Mount Vernon Armory |
| **Jan 5** | Alabama | Forts Morgan and Gaines |
| **Jan 6** | Florida | Apalachicola Arsenal |
| **Jan 10** | Louisiana | Baton Rouge Arsenal and Barracks |
| **Jan 14** | Florida | Fort Taylor |
| **Jan 29** | Louisiana | Revenue Ship McClelland |
| **Jan 30** | Alabama | Revenue Ship Lewis Cass |
| **Jan 31** | Louisiana | New Orleans Mint and Customs House |
| **Feb 8** | Arkansas | Little Rock Arsenal |

**TABLE 2 - SOUTHERN STATES SEIZING NORTHERN PROPERTY - PARTIAL LIST**

But the greatest assault on Union patience came on February 18, when General David E. Twiggs surrendered all U.S. forces in Texas to the secessionist government. Not only the forts, barracks and arsenals were subject to this, but nearly one of every four American soldiers was based in the Lone Star State.[13]

This left Fort Sumter. Sitting in the harbor of Charleston, the cradle of secession, Sumter wasn't the last Federal fort in the South. But it was a clear symbol that South Carolina was not (yet) a real country. Fewer than 100 U.S. troops were in the island fort, commanded by Major Robert Anderson. During the winter and early spring, attempts at reinforcing or resupplying them had been thwarted by guns loyal to the South. On April 14th, ships sent by Lincoln were ordered to force the issue. The newly proclaimed Confederacy decided to eliminate the garrison before they could arrive.

The first battle of the Civil War was bloodless – Anderson surrendered Fort Sumter to the overwhelming firepower despite taking no casualties. However, both sides responded by raising troops. Once the troops are raised, it is only a matter of time before they will fight. The Civil War had begun.

**Is secession legal?**

When considering the legality of secession, we need to treat the answer like an onion. As with many complex legal topics, several layers must be pealed. Such an exercise will tell us both about the actions taken by the South in 1861, as well as offer guidance to any future, *extremely hypothetical*, attempts to depart.

The outermost layer is the simplest. As a matter of strict jurisprudence, states can not secede. The

[12] Not that I feel the need to be fair to our 15th President, but in fairness to Buchanan, he did refuse to remove Federal troops from Charleston when secessionist government demanded he do so.

[13] Twiggs claimed that he surrendered due to a hopeless military situation, but he was soon booted from the U.S. Army and immediately became a CSA general. Aged 70 and in poor health, he soon retired and passed away in 1862.

actions of the secession conventions and Confederate government were no more than a glorified Model U.N.[14] In Texas v. White, the Supreme Court considered directly the legality of Texas's departure from the union. In granting the case, the Court had to determine the nature of Texas's government, and thus the state itself, during the interregnum. It clearly stated that Texas had never left the Union, because there is no mechanism by which a state can unilaterally secede.[15] The decision offered no workaround, no ifs, ands or buts. Secession has no legal basis.

Although the Supreme Court is the final arbiter in a case like this,[16] nothing prevents us from considering whether it came to the right decision. For this, we of course look to the Constitution. The Constitution includes no provision and no process by which a state can leave the Union. It does not seem to consider the possibility in any way.

Now, this can be interpreted both ways – it may not say how a state can secede, but also isn't prohibited. The Court has been forced to rule in many cases where the Constitution provides no direct guidance, and the result is not always that the Constitution doesn't apply. However, those using this lack of Constitutional guidance to support the legality of secession have a difficult argument to make in context. The Constitution explicitly provides instructions on other critical topics about the Union's foundational nature – a "meta-Constitution" if you will. It describes how new states will be added, as well as limits to their addition. It describes the amendment process for changing itself. In the Preamble, the stated goal is the formation of a more perfect Union; this is not consistent with a less permanent Union. This does not look like a simple compact between sovereign states.

We can go further, thinking about the process by which the Constitution was written and ratified; it was an extension of the existing Articles of Confederation. The Articles expressly stated that they were perpetual; their formal name was the "Articles of Confederation and Perpetual Union." The Constitution incorporated many features of the Articles.[17] As with other foundational concepts, it seems clear that perpetuity would be imported into the aforementioned more perfect union created by the Constitution.

Some are wont to say that the Constitution itself is invalid, because the Convention went beyond its mandate in creating a new foundational document.[18] As support for this position, an oft-quoted fact is that the Articles required unanimity of all 13 states to amend, while the Constitution required only 9 to adopt. True, perhaps. But when

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[14] Conducting Model U.N.-style negotiations between North and South in the context of 1860-1861 would be a fascinating exercise. Although, it may be in poor taste to have half of your high school students working diligently to preserve and protect slavery.

[15] To provide context, the issue in question was the legal owner of bonds sold by the Confederate Texas Government. In order to sell the bonds, they had to be signed by the Governor – but by which Governor? The (reconstructed) state of Texas brought the suit, claiming that sales of the (Rebel) state of Texas were invalid. The Court agreed, saying that the sales were not legally consummated, as they hadn't been signed by the pre-war Governor (Sam Houston, who famously thought the whole secession thing mad). Of course, even in a seemingly simple case like this, there are always wrinkles. The same Supreme Court justices also said that some actions of Rebel governments intended to "maintain peace and order" were legal. For example, marriage licenses. The line was drawn between keeping the trains running on time and acts specifically supporting the Rebel war effort.

[16] Actually, it's the only arbiter. Lawsuits brought by states are in the Supreme Court's "original jurisdiction" meaning it acted as a trial court in Texas v. White, as opposed to its usual role as an appellate entity.

[17] Such as, the name of the country, which was first stated in the Articles.

[18] Sure, they were only supposed to revise, but who is to say what "revise" means anyway? If the Constitution had started with an explicit statement of its revisory purpose, would that substantively change its nature or legality?

pokey Rhode Island finally got around to ratifying on May 29, 1790, this point became moot.[19]

When the Constitution fails to address a legal question head-on, it is relevant to consider the thinking of those who wrote it. This is the entire basis of the "Originalist" theory of legal interpretation; a law means exactly what it meant to the lawmakers who wrote it. Those who believe that the law must evolve to take into account things the Framers couldn't have known are called "Living Constitutionalists";[20] even this group considers the intent of a law's authors to be an important factor in its interpretation. Fortunately, we know a lot about our Founding Fathers contemporaneous thinking on the subject of secession.[21]

Two of the Constitution's greatest proponents, James Madison and Alexander Hamilton, specifically had views that are clear today. As one of many examples, in a letter to Hamilton intended to be read at the New York ratifying convention, Madison said that "the Constitution requires as adoption in toto and for ever." Hamilton himself added that the "terms of the constitution import a perpetual contract between the states…The oath [of office] to be taken stands in the way…of unilateral secession." Several state conventions considered approving the Constitution conditionally. In other words, they would join if they could reserve the right to leave later. Constitutional backers, including Madison, Hamilton, and John Jay, were desperate to achieve ratification but were still completely unwilling to accept conditions. It was made abundantly clear that anything other than strict approval did not count. Even the opponents of the Constitution agreed it was perpetual; it was one of the stated reasons for their opposition. Patrick Henry, who might be considered the leader of the anti-Constitutionalists, stated that one reason for his opposition was that it was a **perpetual** compact of the **people,** rather than the **states**. To him, this precluded any future right of secession. In other words, those who both supported and opposed the Constitution during the period of its writing and ratification were in agreement that the document prohibited secession.

And with that, we've peeled the final layer of the onion, reaching the center. None of these layers has provided any significant strong evidence of a right for states to go their own way.[22]

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So far, we've spoken only of secession – a legal process the a region takes within the laws of its parent country. The illegality of secession makes the United States fairly unique – a perpetual, Federal country. Most other countries are either not Federal in nature, or they have specific provisions to allow departure of their subject states. While Quebec's right to leave the Canadian Confederation is not entirely unilateral, a clear vote to do so would have a strong legal basis. Scotland, a constituent country of the United Kingdom, also has a clear legal path to independence, should it choose. In contrast, France, where states clearly have no ability to leave, is a unitary structure; all power resides directly in the

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[19] Rhode Island was in danger of being beaten to ratification by Vermont, which joined in early 1791. If this had happened, history books would be forced to say that there were 13 colonies, but 14 original states. How would the flag work?
Two centuries of elementary school teachers can thank the Ocean State for getting its act together in time.

[20] I am in this category. I just don't think that James Madison's specific thoughts on, say, internet privacy rights should be our **sole** guidance on the issue. Living Constitutionalists frequently see a strong correlation between what Originalists see as the Framers' intent with their personal political views.

[21] As opposed to what they thought about campaign finance reform, another topic where Originalists are accused of putting their own words in our Framers' mouths.

[22] Some images in this piece are attributable to User:Golbez.derivative work: Kenmayer (talk) - CC BY 2.5, https://commons.wikimedia.org/w/index.php?curid=11784662

national government, local government power is entirely derived.[23]

Separate to the legal right of secession, the natural right of revolution played an important role in America's history. As you may be aware, the United States only exists because we conducted an extra-legal revolution against those damn Brits. Every one of our Founders agreed that all people have a right of revolution. Thomas Jefferson expressed this in the Declaration of Independence:

> "When a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government."

But the whole point of the Declaration of Independence is that such rights are not absolute. The right of revolution applies only to those with a really good reason to revolt – and then only The People as a group, not an individual. Given the seven years of war during which it attempted to prevent its colonies from practicing this right, you may be surprised to know that, extra-legal revolution was a principle inherent in English law.[24]

Which begs the question – even assuming that the South lacked the right to legally secede, did it have the moral right to conduct a revolution? While the injuries required to activate such right are obviously subject to debate, I dare anybody to challenge my decision to focus on Jefferson's thoughts on the matter:

> "Societies exist under three forms sufficiently distinguishable. 1. Without government, as among our Indians. 2. Under governments wherein the will of every one has a just influence, as is the case in England in a slight degree, and in our states in a great one. 3. Under governments of force: as is the case in all other monarchies and in most of the other republics. To have an idea of the curse of existence under these last, they must be seen. It is a government of wolves over sheep…I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical.

In late 1860, no action had been taken against the South; in fact, the previous ten years had been a nearly unbroken string of compromises in her favor. Nothing had been taken from her. The South's Revolution was not in response to concrete losses of rights, but merely disagreement with the results of a legally conducted election. Sure – they may have feared new policies to come from the new President. But, even if you grant that these fears were warranted, which I do not, such fear is a cause for vigilance, and not for rebellion.

In other words, the South did not only lack a legal right to secede. It also lacked the conditions necessary to permit the extra-legal right to revolution, according to our most famous proponent of such rights.

I'll close with this. I've read more about the Civil War, its causes and the history of our Republic leading up to it than I would care to admit. No matter how much I've read, or seen, or heard, just the idea of slavery, one person owning another, I'm unable to put my head around it. Sure, the Romans did it, but they also wore togas unironically. The Civil War wasn't really that long ago. There are many people alive today who personally met Civil War veterans. The first shot fired at Pearl Harbor was closer to the last shot fired at Appomattox than to the present day.

The toll of the Civil War was great, 620,000 Americans dead topping the list of losses, but far from the sole item on it. Grievous injuries, famine,

[23] The United States is not entirely unique. Germany is also a federal nation, and its court have recently ruled that its states have no right of secession. And I'm sure there are other examples of which I'm not aware.

[24] See Pauline Maier, *From Resistance to Revolution*. Professor Mayer, a professor of mine at MIT, also covers many topics relevant to this piece in *Ratification: The People Debate the Constitution*.

destruction of property – scars of hatred that still affect our nation and its politics. Thinking about the War, I am forced to consider both sides of the ledger. Was this tragic event the price we were forced to pay for the eradication of slavery? Knowing the costs, and uncertain of the results, would both sides still have fought? How do we balance these costs against the continuation of such a terrible practice? Could we have achieved the same result sooner, or at a less terrible price?