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MEMPHIS APPEAL.

THE SOVEREIGNTY OF THE STATES.

We conclude the review of Judge Hunter's pamphlet on Sovereignty, Allegiance and Secession.

After a full statement of the defects of the Articles of Confederation, and a very defective and imperfect one of the various measures, steps and occurrences that led to the assembling of the Convention of 1787, Judge Hunter, the author, broadly states that there were two parties in the Convention; one in favour of State Sovereignty, citizenship of States only, and allegiance to the States, and a Confederacy of independent States; and the other in favour of a central, consolidated Government, that should embody in itself all the attributes of a sovereign independent nation, with citizenship of the nation and allegiance to the central federal power. He truly states that the theories of the delegates were not affected by the latitude, North or South, from which they came, nor by any considerations connected with slavery: and that it was a contest between the large and small States.

The questions of citizenship and allegiance were little discussed, and that of State sovereignty only as a reason for insisting on equal representation in Congress.

Mr. Randolph of Virginia, as Judge Hunter states, proposed a plan for a *National* Government, almost as soon as the Convention assembled. Mr. Pinckney of South Carolina proposed another, but abandoned it and supported Randolph's, which was that a *National* Government ought to be established, consisting of a *Supreme* Legislature, Judiciary and Executive: the Legislature to consist of two Houses, one elected by the people of the respective States, and the other by the House so elected by the people: the States to be *unequally* represented, that is, according to the *population* of each State, in *each* branch.

Judge Hunter does not state that the plan also proposed that the Executive should be elected by the Legislature, and the Judges by the Upper House; and that the Legislature should have the power to veto laws injurious to the general interest, enacted by the States, and powers of legislation much more imperial than were finally conceded by the Constitution.

This plan was supported by Washington and Madison. Its purpose was to give all the powers of the Government to the large States, Massachusetts, Virginia and Pennsylvania. North and South Carolina and Georgia, to secure the continuance of the slave-trade, voted with these three States; and the struggle was between these and the smaller States, Maryland, Delaware, Connecticut, New Jersey and New Hampshire, with which New York sided.

The large States prevailed. The Convention determined on inequality of representation in both Houses, and the small States determined to withdraw from the Convention. This led, after the matter had been referred and re-referred, to committees of the whole and special committees, to a compromise, by which the equality of the States was recognized, by the provision that the States should be *equally* represented in the Senate. The word 'National' was then struck out, as no longer appropriate, because those in favor of a federal, federate or confederate government had prevailed, and the Virginia plan had been defeated.

Judge Hunter quotes at length from the report of Luther Martin, made to the Maryland Legislature, who naturally exaggerated the national features of the Constitution, and still more those of the 'plan,' which he had opposed, and which, he declared, was intended to destroy State sovereignty altogether. He had proposed to declare that the people of a State making war against the United States should not be deemed guilty of treason; but the Convention refused to adopt the provision. The victory of the small States was incomplete, because although the original plan was essentially changed by giving each State an equal voice in the Senate, all the details and language of the instrument were not accommodated to, or made to be harmonious with the changed nature of the plan. The defeated States conceded nothing that they could with success refuse, and endeavoured, of course, to make the victory of the small States of as small value as possible: but the abandonment of the word 'National' shows the extent of their defeat.

Mr. Martin argued that the compact between the States, entered into by the Articles of Confederation, could only be dissolved by the consent of *every* State: but the Convention acted without any regard to Rhode Island. The Confederation was to be perpetual, also, but that too was disregarded.

Notwithstanding the concessions thus wrung from the large States, and the abandonment of the word 'National,' Luther Martin, Patrick Henry and others, who were opposed to the adoption of the Constitution, represented it as establishing a consolidated Government and destroying State Sovereignty. Judge Hunter quotes from the speech of Mr. Henry in which he insisted that the Constitution was not a compact between the States, on account of the phrase "We, the People of the United States," in the preamble. We should suppose that Judge Hunter had heard arguments of counsel enough to know that the objections so taken, and the arguments of those who opposed the Constitution, do not at all prove that it was what they asserted it to be.

He says that these arguments and statements of Luther Martin and Patrick Henry and others show that the doctrine of State sovereignty was most unequivocally and forever condemned. But Mr. Madison, replying to Patrick Henry, expressly denied the correctness of that great man's construction of the Constitution; the Virginia Convention relied on his assurances; and the Constitution was ratified by that State and others with the distinct understanding that it did *not* annul State sovereignty, or establish a National Consolidated Government, but a federal one. The doctrine of "an independent sovereignty in the States as a principle to be perpetuated in the Government," was *not* condemned, but triumphed. Judge Hunter says that it was condemned when the Convention voted by a majority of one State, that "the right of suffrage in the *first* and *second* branches of the Congress ought not to be according to the rule established in the Articles of Confederation, but according to the whole number of white and other free citizens and inhabitants," etc. He says that "the Government was thus placed on the shoulders of the people, instead of upon the supposed sovereignty of the States, renouncing in direct and positive words the rule of State representation, as recognized in the Articles of Confederation; and the Constitution *embodying* that principle was reported and subsequently adopted."

Now Judge Hunter certainly knew that if that vote had stood unaltered, the Convention would have been dissolved; that the small States and New York refused to proceed unless it was rescinded or modified, and that, finally, after a fierce and prolonged struggle, it was decided that the principle should be abandoned, and representation in the upper branch *should* be equal. How *much* was thus conceded might be a question to be argued; but it was certainly an abandonment of the principle that the equality and sovereignty of the States were not to be recognized at all. It conceded the whole *principle:* it destroyed the *National* feature of the plan, and retained, in one branch, the *federal* character of the Government. The resolution asserted that representation ought not to be equal in *either* branch. That was according to the plan, and preserved its unity. The concession wrung from the large States subsequently, rescinded the resolution as to one branch, recognized the equality of the States, and conceded the principle contended for by the small States. The Delegates from the large States confessed this, and acknowledged it, with anger and mortification, as a defeat.

The language of Judge Hunter, which we have quoted, is therefore deceptive and unfair. The *principle* embodied in the resolution quoted by him was *not* embodied in the Constitution. The resolution was in part rescinded, and a contrary principle, that of the equality and sovereignty of the States, embodied in that instrument.

Judge Hunter says that the Constitution was not adopted by the States, in the form of a compact between them, but by *the people of the United States* in their capacity as *citizens of the United States*, uncontrolled and unaided by any action on the part of the States. To prove this, he relies on the arguments and objections of Henry and Martin, counsel, as it were, using every argument within their reach to defeat the Constitution.

The Constitution *was* adopted by the States. The people of *each* State, in Convention, gave the separate assent *of the State.* It was to be, and it became, in force, as soon as it had been ratified *by nine States.* Conventions were required, because it was thought that ratification by the Legislatures would not, for want of authority so to act for the States, be ratification by the States.

No one will deny that the amendments to the Constitution were made by the States, and not by the people of the United States at large. Three-fourths of the States may now amend it, against the will of an immense majority of the people of all. The amendments adopted have become part of the Constitution. Is that instrument, then, the work, in part, of the *people* of the United States, and in part of the States themselves as Sovereignties? Did one power make and does another add to and diminish by amendment? Such a proposition is eminently absurd.

That the powers of the General Government were greatly enlarged by the Constitution in no way affects this question. The States, by compact between themselves, established a political corporation, called the United States, in which *they* were the corporators, having unequal voices in one branch of the Directory or Legislature, and an equal voice each in the other branch. They could confer on the corporation, and did confer on it, such powers as they pleased. All the Acts of the Corporation are *their* acts. *They* act by means of it. So long as a State continues to be a corporator, the laws enacted *for* all, by the corporate agent *of* all, are supreme for all and binding on the people of all. Treason against the nation so constituted of and by the States is so, because it is treason against each respectively. Allegiance is but the owing of obedience, and the action of the State, in forming the corporation or nation has bound its citizens to obey the laws enacted by herself jointly with the other States. The States have not set a superior over themselves, any more than an ordinary corporation is the *superior* of the shareholders. In *law*, the corporation is distinct from the States: in *fact*, they *are* the corporation; its property is *their* property, its laws, its debts, its contracts, its treaties, are theirs.

If a State, having thus become a co-operator, can for sufficient cause withdraw by rescinding the compact, then all these consequences of its union with the others cease. That it can *not* withdraw in an extreme case, when there is no other remedy left, and the Constitution and its own rights are grossly violated, Judge Hunter indeed *asserts*, but does not attempt to prove. It would be far more satisfactory, if he would condescend to consider the arguments on the other side, which he does not even notice.

As an attempt "to supply a great public want," as an exhaustive or even able defence of Webster's theory of the Constitution and Government, the pamphlet is a failure. The defects of its logic are as great and glaring as its assumptions are bold without being original. No one who had never before heard of the subject would guess, from anything contained in it, that its propositions in regard to the Constitution had ever been considered and discussed by any one, in the way of denial or refutation; and yet we may certainly be allowed to say that arguments *have* been made against them that it would require all the intellect and ability of men greater than Judge Hunter to refute.

The argument that there is no citizenship of a State, but only of the United States, because the Constitution provides that Representatives and Senators must have been for a certain number of years citizens of the United States, and the President a native-born citizen of the United States, loses all its weight, and the proposition is ignobly exploded, when we read the provision that citizens of one State are entitled to all the privileges and immunities of citizens of other States.

The Constitution empowers Congress to establish a uniform *rule* of naturalization; not to pass laws for such naturalization without regard to the States. In our opinion, the 'rule' was intended to be prescribed for the States to follow; and it was never meant that any one should become a citizen of the United States, nor can any one lawfully become so, unless by becoming a citizen of some State. The practice has been otherwise; so that if all the States were to agree to dissolve the Union, there would still remain a large body of citizens of the United States, not citizens of any State; and when the States had all entered into new combinations, the United States would still continue to exist, composed of that body of men, and be the proprietor of all the property of the nation; and the States and their people, perhaps, guilty of treason for seceding from the Union.

Finally the learned jurist, venturing upon a new subject, in which he might naturally be supposed to be at home, declares that the right of eminent domain is "*one of the indispensable attributes of a sovereign nation.*"

We wonder that Judge Hunter should not know that the right of eminent domain is in every *State* in the Union, to take land for public purposes. To have learned this, he need not have looked into many books. He would have found it so held in *Harding v. Goodlett*, 3 *Yerg.* 41, by the Supreme Court of Tennessee, and by the Supreme Courts of almost every other State in the Union.

And if His Honour had looked at the case of *Pollard's Lessee v. Hagan*, 3 *Howard* 212, in the Supreme Court of the United States, he would have found it decided by that Court that the United States never had or held any municipal sovereignty, jurisdiction, or right of eminent domain, in the old States, and none in the territory out of which Alabama or any other of the new States was formed, except for temporary purposes. "The United States," the Court said, "have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State, or elsewhere, except in the cases in which it is expressly granted." This decision was affirmed in *Goodtitle v. Kibbe*, 9 *Howard* 471, and *Doe v. Beebe*, 13 *Howard* 25.

If, therefore, Judge Hunter is right in saying that the right of eminent domain is one of the essential attributes of sovereignty, the United States are not sovereign, because they do not possess it within the States, at all, except by concession from the particular States.

On the whole, Judge Hunter will hardly have convinced any one that he had shed any new light on the questions which he has discussed, or that the Supreme Court of the United States erred when it said, in *Wheaton & Donaldson v. Peters*, 8 *Peters* 658, "The Federal Government is composed of twenty-four sovereign and independent States."

THE RADICAL TICKET.

The New York *Herald* says:

The Republican ticket, headed by Gen. Grant, seconded by Colfax, is a strong ticket; the platform upon which they are placed is conveniently evasive and withal as elastic as India rubber. It means, on the great financial issue, greenbacks or gold, as Congress may hereafter determine; and it means a qualified or universal negro suffrage, according to the market to be supplied. How the Democracy are to fight this ticket and platform it is for their wise heads to determine between this and the 4th of July.

The ticket is like a tadpole. Grant is the head and belly and Colfax is the tail. The relative dimensions of the two are very much as between those parts of the incipient frog.

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The amount of money abstracted fo[illegible] the last five or six years from the pr[illegible]

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