

THE CIVIL WAR'S TRAGIC LEGACY

The States Have
Little Recourse Against
the Federal Government

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The Civil War produced at least two important outcomes. First, although it was not President Lincoln's intent, it freed slaves in the Confederate States. Second, it settled the question of whether states could secede from the Union. The causes of and the issues surrounding America's most costly war in terms of battlefield casualties are still controversial. Even its name—the Civil War—is in dispute, and plausibly so.

A civil war is a struggle between two or more factions for control of the central government. Modern examples are the conflicts in Lebanon, Liberia, and Angola. In 1861, Jefferson Davis, the president of the Confederate States, no more wanted to take over Washington, DC, than George Washington wanted to take over London in 1776. The Confederate States were fighting for independence from the Union. Whatever one's sentiments, the conflict is more accurately characterized as a war for Southern independence; in the South, you frequently hear it called the War of Northern Aggression.

Unrestrained Government

History books most often say the war was fought to free the slaves. But that idea is brought into serious question by Abraham Lincoln's repeated disclaimer: "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the states where it exists. I believe I have no lawful right to do so, and I have no inclination to do so." The real causes had more to do with problems similar to those the nation faces today—a federal government that has escaped the limits of the Constitution.

John C. Calhoun expressed that concern in his famous Fort Hill Address of July 26, 1831, when he was Andrew Jackson's vice president. Calhoun, who later became a senator from South Carolina, said, "Stripped of all its covering, the naked question is, whether ours is a federal or consolidated government; a constitutional or absolute one; a government resting solidly on the basis of the sovereignty of the States, or on the unrestrained will of a majority; a form of government, as in all other unlimited ones, in which injustice, violence, and force must ultimately prevail."

Calhoun, like Jefferson, feared Washington, DC's usurpation of powers constitutionally held by the people and the states ("consolidation"). For example, of the tariffs enacted to protect Northern manufacturers, Calhoun said that "an undue proportion of the burden of taxation has been imposed on the South, and an undue proportion of its proceeds appropriated to the North."

Import duties extracted far more from the South than from the North, and Southerners complained of having to pay either high prices for northern-made goods or high tariffs on foreign-made goods. They also complained about federal laws not dissimilar to the Navigation Acts that helped bring on the War for Independence.

The Nullification Doctrine

A precursor to the War Between the States came in 1832 when South Carolina called a convention to nullify the tariff acts of 1828 and 1832. Branded “the tariff of abominations,” the duties were multiples of previous duties. The convention declared them unconstitutional and authorized the governor to resist federal efforts to collect them. After reaching the brink of armed conflict with Washington, a settlement to reduce the tariffs in steps—the Great Compromise of 1833—was reached.

South Carolinians believed there was precedence for the nullification of unconstitutional federal laws. Both Jefferson and James Madison suggested the doctrine in 1798. It was used to nullify federal laws in Georgia, Alabama, Pennsylvania, and the New England states. The reasoning was that the federal government was created by, and hence was the agent of, the states.

When Congress threatened to raise tariffs to unprecedented levels and the Republican Lincoln was elected president, a special South Carolina convention unanimously adopted an Ordinance of Secession and a “Declaration of Causes” stating that “We assert that fourteen of the States have deliberately refused for years past to fulfill their constitutional obligations. . . . Thus the constitutional compact has been deliberately broken and disregarded by the non-slaveholding States; and the consequence follows that South Carolina is released from her obligation. . . .” Continuing, the Declaration, asserted, “We, therefore, the people of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent state, with full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do.” The next year war started when South Carolinians fired on Fort Sumter, an island in the harbor of Charleston, South Carolina.

The principal-agent relationship between the states and federal government was not an idea invented by South Carolina in 1860; it was taken for granted. At Virginia’s convention to ratify the US Constitution, the delegates said, “We delegates of the people of Virginia . . . do in the name and on the behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them, and at their will.”

The clear and key message was: the people of Virginia, through their delegates, entered a contractual agreement with the several other sovereign states and created the federal government as their agent. When the federal government violates their grant of power, the people of Virginia have the right to take back the power and fire their agent.

In light of the outcome of the War Between the States, the federal government can do anything it wishes and the states have little or no recourse. A derelict US Supreme Court refuses to do its duty of interpreting both the letter and spirit of the Constitution. That has translated into the 70,000 federal regulations and mandates that control the lives of our citizens. It also translates into interpretation of the “commerce” and “welfare” clauses of our Constitution in ways the framers could not have possibly envisioned. Today, it is difficult to think of one elected official with the statesman’s foresight of a Jefferson, Madison, or Calhoun who can articulate the dangers to liberty presented by a run-amok government. The prospects for liberty thus appear dim. The supreme tragedy is that if liberty dies in America, it is destined to die everywhere.