

## **What reasons did the Union have for enjoining the South in the Civil War, rather than cutting them loose?    Quora.com**

Let's be clear about the differences between seceding from the United States and waging war against it. The breakup of a nation is not necessarily accompanied by war. There are numerous examples in history where a nation breaks up peaceably. Some recent examples are when Norway seceded from Sweden in 1909, and when the Czech Republic seceded from Czechoslovakia in 1992. Swedes did not attack Norway to force it back into that nation, and Slovaks did not object to separation from Czechs. So there was no war. They get along peaceably as separate nations.

When the Constitutional Convention was held in the fledgling United States, there were many issues on which the delegates disagreed. They had to make compromises, for example between big states and small states, and on the issue of slavery. The resulting document said nothing on many issues which have arisen since the 1780s.

This was the case on the issue of secession. The Founders could not agree, so rather than stir up a controversy that might doom the entire document the delegates decided to say nothing. There is no provision in the Constitution that says anything either for or against the right for a state to leave the United States. Trying to claim that because the Preamble says its purpose is to "create a more perfect Union" is hardly a clear meaning regarding secession.

The U.S. Supreme Court never ruled on this question until 1869, four years after the Civil War ended, when in *Texas v. U.S.* the decision settled the issue by saying that a state may not secede unless it has "the consent of the [other] states." By this Supreme Court decision, a state may not unilaterally secede but it might leave the Union if it gains the agreement of the other states. Since an amendment to the Constitution may be passed on any subject when three-fourths of the states agree, a state's secession may be recognized by simply passing an amendment, with the same procedure the Constitution has been amended 27 times since 1791.

What happened in 1861, however, was more than just Southern states declaring their intent to leave the Union. On February 4, the first seven states to assert their independence met in Montgomery, Alabama, and formed a new government. This action was a direct violation of Article I Section 10 "Powers Prohibited to the States" Number 1: "No state shall enter into any treaty, alliance, or confederation; grant letters of marque... coin money... make anything but gold and silver coin a tender in payment of debts."

These states violated the Constitution when they declared themselves united into a new "Confederate States" government. When the new Confederate President Jefferson Davis granted letters of marque to ship captains he violated this Section, and when the Confederate Congress issued paper currency, they violated this Section as well.

In addition, when the Confederate government passed duties on imports or exports, they violated Section 10 Number 2, which states "No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports." Furthermore, Number 2 also specifies that any 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."

Beyond that, Section 10 Number 3 states: "No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war." When the Confederate government licensed ships, mustered troops into a Confederate army, and built warships like the ironclad *C.S.S. Virginia*, it most certainly violated this Section.

To make itself perfectly clear, Section 10 Number 3 also specifies: "No state shall, without the consent of Congress... enter into any agreement or compact with another state, or with a foreign power, or engage in war." The Southern states violated all clauses of this Section when they made their compact with each other, when they attempted to persuade Britain and France to ally with them against the United States, or when they engaged in warfare.

While the Constitution forbids the states from taking the above actions, it declares that the federal government is "the supreme law of the land; and the judges in every state shall be bound thereby." [Article VI, Section 2]. Article 1 expressly grants Congress many powers that the states retained under the previous Articles of Confederation, including to "declare war, grant letters of marque... raise and support armies... maintain a navy... calling forth the militia... suppress insurrections and repel invasions." [Article 1, Sections 11-15]. It also allows the suspension of habeas corpus "in cases of rebellion." [Article 1, Section 9 Number 2].

To accomplish these goals the Constitution vests the executive power in the President, a much more powerful office than under the Articles of Confederation. The President's sworn duty is to "preserve, protect and defend the Constitution of the United States." [Article 2, Section 1, Numbers 1 and 8]. In case of conflict, the President is authorized to act as "commander in chief of the Army and Navy of the United States, and of the militia of the several states," [Article 2, Section 2], and "he shall take care that the laws be faithfully executed" [Article 2, Section 3].

When the Confederate Congress passed a law in February 1861, closing the Mississippi River to all commercial shipping from the United States, this was a direct violation of U.S. laws of commerce, and the U.S. President had the duty to enforce those laws. When the Southern militias violently took over U.S. arsenals, ports, post offices, and fortifications, all of which had been paid for by federal taxes, the President had the duty to see that the laws are faithfully executed. Under the Constitution, these were acts of insurrection, rebellion, and war.

Even if an argument could be made for the right of the 13 states which had originally formed the United States to also withdraw from it, that right cannot be argued for states whose existence was a later creation of the United States. When the Louisiana Purchase was made in 1803, the states of Louisiana and Arkansas were creations of the United States, with those lands paid for by the federal treasury.

In early 1861, it still might have been possible, if the Southern states had not acted violently but had merely declared their intent to leave the United States peacefully, for there to have been negotiations with Congress to settle these issues. When he was inaugurated on March 4, 1861, President Abraham Lincoln stated his intention to resolve the crisis peaceably. But as commander in chief, Lincoln was within his rights to send a ship to resupply the federal garrison that occupied the tiny Fort Sumter in Charleston Bay, South Carolina.

However, the possibility of peaceful resolution was lost when Confederate President Jefferson Davis ordered Confederate forces in Charleston to bombard Fort Sumter. By taking that violent action on April 12, 1861, Davis and his military officers fell under an entirely different part of the Constitution.

While the Constitution says nothing about secession, it is extremely clear in Article III, Section 3, Number 1, when it states: "Treason against the United States, shall consist only in levying war against them." The Confederate political and military officials now were, according to the definition in the Constitution, committing acts of treason. And the punishment for treason was death.

Accordingly, by levying war against the army of the United States, Jefferson Davis, Robert E. Lee, and all other members of the Confederate government and military who had previously taken a permanent oath of allegiance to the United States when they were sworn in as officers in the U.S. armed forces, were literally subject to the death penalty.

In most civil wars throughout human history, the usual punishment for leaders of the losing side has been death. And in most cases, death was preceded by extreme tortures. What is most remarkable about the American Civil War was the lack of such punishments. To take the most prominent examples, Jefferson Davis, who had been an officer in the U.S. military during the Mexican American War, and who was U.S. Secretary of War in the 1850s, was imprisoned for two years but then allowed to go free and move to Canada. Even when he later returned to his home state of

Mississippi and gave speeches defending secession and writing a book justifying his every action, he was not re-arrested. Robert E. Lee, who was given a free education at the U.S. Military Academy at West Point, and who also served as an officer in the Mexican American War and on the Texas frontier, was allowed to go home peaceably in 1865, after being the supreme military commander of Confederate armies that caused the death of nearly half a million Northern soldiers, not to mention scads more white civilians and black enslaved people. Lee was never even arrested.

In conclusion, it is important to distinguish secession, which is not mentioned in the U.S. Constitution, and treason, which is defined specifically as "levying war" against the United States. The Confederate government officials and military most certainly were guilty of treason, if ever there was a treasonous act in America.

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