

THE TRI-WEEKLY NEWS.

By Gaillard & Desportes.]

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THE TRI-WEEKLY NEWS

Notes on the Constitution of the United States.

BY D. B. M'CREIGHT.
No. 2.

What is a Constitution?

A Constitution of a Government may be defined to be the ESTABLISHED CONDITION OF LAW. It is the written will of the sovereign, and the nature of that will is, that it shall remain as it is written, until the will of the sovereign changes. A Constitution is a compromise between sovereign and subject, and the grand difference between monarchy or aristocracy and democracy, is, that in the latter this [compromise] is reflexive, and in the former it is not. In other words, the sovereign in democracy is also the subject. He creates Government, and he is amenable to Government.

What is the Constitution of the United States?

The Constitution of the United States is the established condition of law—the written will of the sovereign—the compromise between sovereign and subject, of the United States,—that is of the sovereignty of States united and forming one sovereignty.

What is Sovereignty?

If there be a Herculean task in the politics of our country, it is the effort to define sovereignty. The discussion of this very question has evolved principles of sufficient importance to precipitate a civil war. That the late war is due to misapprehension on this subject, no careful dispassionate and sober judgment can controvert. At the risk of the charge of novelty, insanity or any other thing, an attempt will be made in these notes to explain "sovereignty," and that explanation will be left to the candid and calm reason of the reader.

State—States—United States—are three titles as distinct as red, white and blue.

Popular Sovereignty—State Sovereignty—United Sovereignty, are three other cognomens as distinct as the former.

The whole difficulty the writer apprehends, which has attached to the political term "sovereign," has grown out of the viewing "sovereignty," as an indivisible and incommunicable power. That this is a false premise will appear from the following.

To say that "sovereignty" in man is incommunicable, is to assume that man's sovereignty is created by himself. But whatever rights, powers and privileges are inherent in man (and it is these which constitute his political sovereignty) are the concomitants of his nature and condition. Who gave him these? Omniscience and Omnipotence, the Supreme Sovereign of the Universe. Are the attributes of that Being communicable? By no means. Why? Because they are essential to His very being. Now are the attributes of man's political sovereignty essential to his being? Not at all. These are accidental properties. True, they are within his control, and therefore he has the power to give or withhold them, to use or abuse them, and this power extends to his divorcing one or more of those attributes. The theory then of an indivisible political sovereignty is fallacious.

But to return to the three kinds of sovereignty noticed.

Popular Sovereignty is a condition of organized society in which, while each individual sovereign acts upon his own judgment, and is so far a supreme judge, yet he acknowledges, and is morally and legally bound to acknowledge, respect and obey, the *dicta* of the majority of individual sovereigns emanating from

their will as expressed and contained in the Constitution of their adoption. He may or may not be in that majority, and yet in either case he is a constituent element in a production that is supreme in relation to his individual supremacy, and that "supreme production" is the Constitution of the body politic. That "body politic" is what we call a "State."

State Sovereignty then is SUPERIOR to popular sovereignty in its constituent elements.

But State Sovereignty is INFERIOR to popular sovereignty in its component parts.

Hence the State and the people, each, relatively, is a sovereign, according as the one or the other dictates.

Note.—State Sovereignty is used synonymously with Constitution.

State Sovereignty is the creature of popular sovereignty.

United Sovereignty is the creature of State Sovereignty.

And State Sovereignty is both superior and inferior to Popular Sovereignty; so United Sovereignty is both superior and inferior to State Sovereignty.

After writing the above, the author fell accidentally upon the following paragraph which accords so harmoniously with his view of the creation of State and United (which is preferable to "Federal") Sovereignty, that it is herewith submitted.

A most important argument, covering eighty printed pages, has been received by the President from London, in which are set forth the reasons why Davis cannot be convicted in any court of the crime of treason. The ground gone over dates from the foundation of the Government—includes the "Rights of the States," as then understood—the action of New York, Pennsylvania, Virginia, Massachusetts, and the States in accepting the Constitution, and the opinions of Washington, Fisher, Ames, Hamilton, Webster, Ellsworth, Rufus King, Davie, Spencer, Madison, Jay, Randolph, Franklin, Tench Cox, Jas. Wilson and Chief Justice McKean, of Pennsylvania. The purport of the opinions of these honored dead, as showing the sovereignty of the States, and which the barrister who sends to the President the argument gives in detail, may be summed up in the remark of Wilson in the Pennsylvania Convention '87:

"Upon the existence of the State Governments depends the existence of the Federal plan. The supreme, absolute and uncontrollable power is in the people before they make a Constitution, and remains in them after it is made. * * * My position is, that the absolute sovereignty never goes from the people."

In view of these definitions then it is plain that "Sovereignty" is the relative powers of the people of the respective States, of the Constitutions of the States, and of the Constitution of the United States.

From these too it is plain how absurd it is to talk of the Constitution of the State, or the Constitution of the United States, as a creature, and not at the same time ascribe to them some attributes of sovereignty.

When a citizen of South Carolina assents to the Constitution of his State, he as really and absolutely yields, imparts and communicates some of his attributes of sovereignty to that Constitution as when he submits to the arbitrament in a personal dispute.

Individuality or incommunicability then is not an essential attribute of "Sovereignty."

Take now the preamble to the Constitution, and apply to it these principles. It begins and closes thus:

"We the People of the United States * * * do ordain and establish this CONSTITUTION for the United States."

Or as paraphrased according to the above principles:

We the Sovereigns of the United

Sovereignities * * * do ordain and establish this SOVEREIGNTY for the United Sovereignities,—that is for the government of them,—for the established condition of law to them.

But why "ordain and establish this Constitution."

1. "In order to form a more perfect Union."

"A more perfect Union" implies that one Union had been tried and failed. And such was the fact. The bond of that Union was the "Articles of Confederation and Perpetual Union," but so inadequate was it to the exigencies of the Union, that a Convention of all the States was called "to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union."

2. "Establish Justice." The Convention had been painfully impressed with the necessity of inserting this second object in the ordaining and establishing of a Constitution for the supreme government of the United States. The greatest act of injustice perhaps that could be conceived, as the root of all others, would be the failure on the part of a Government to meet its debts contracted in good faith. And yet the Congress of the Confederation could never meet its liabilities because the States declined or neglected to give it the means, and there was no power given Congress to collect them from the States.

The President has restored the supremacy of the law and dwarfed the military power of the Republic to its proper and very modest proportions. The Supreme Court has just pronounced against the legality of the trial of civilians by a Military Commission, and three persons who were sentenced to death by one of their lawless tribunals have just been released from confinement.

As the angry, turbid flood of civil war subsides, the right of the citizen to a speedy trial by jury is again declared by the Supreme Court of the nation as the inalienable right of the humblest man in this Republic.

In his course towards the mass of those who supported the Southern Confederacy, the President has been singularly, magnanimously and wisely lenient. Nine-tenths of those who for four years, with unparalleled gallantry, upheld the Confederacy, have long since been unconditionally pardoned. The Cabinet officers who counselled the President of the Confederacy, the Congressmen who enacted those stringent conscript and impressment laws which kept up our armies, and many distinguished Generals of the Confederate armies have either been formally pardoned, or have been released upon parole, and no one dreams that they will ever be molested in person or estate.

The military bastiles of the country, with one exception, have long since been thrown open, and the distinguished Confederate officers who were confined in them have been restored to their friends and families. Of the two State prisoners at Fortress Monroe only one still endures all the rigors of close confinement.

For nearly a year the President of the late Confederate States has languished in prison. Feeble in health, and beyond any distinguished statesman of our acquaintance wedded to the gentle pleasures of the family circle, his gloomy cell has been uncheered by the presence of a faithful, noble wife and beloved children. Guarded like the most dangerous criminal upon whom the sentence of death has been pronounced, he has had not one moment of exemption from the presence of an armed guard, since that hideous day when chains were temporarily rivetted upon his limbs.

The ceaseless tramp of the guard, the cheerless waste of waters which are alone visible through the gratings of his cell, the agony of protracted separation from wife and children, have made terrible havoc with the wasted strength of this unfortunate gentleman. The torture of long confinement, with his loved ones reduced to poverty and languishing in exile, may kill Mr. Jefferson Davis; but it does not make him a felon in the eyes of Christendom. His terri-

ble sufferings and noble fortitude in adversity have long since extinguished in the breasts of the people of the South those bitter prejudices and angry feelings which his errors of judgment aroused before the collapse of the Confederacy. Of the thousands who might still have nourished those bitter feelings, had the late President of the Confederate States escaped, not one remains. His misfortunes have melted every heart, and when a blow was struck at the reputation of the imprisoned statesman by an unworthy hand through the columns of a leading Northern journal, the unmanly assailant was denounced by the entire people of the South.

The time has arrived, and the public sentiment of Christendom demands, that the President shall crown his noble policy of pacification by the pardon of Jefferson Davis. The charges that he encouraged the assassins of President Lincoln, and was the cause of the sufferings of the Federal prisoners, are believed neither by friend nor foe. We are not blind to the faults of Mr. Davis' character. His imperious will, ignorance of character, blind devotion to personal friends, strong prejudices and want of wisdom in the selection of proper agents to execute his wishes, were serious faults. But a more humane and (oftentimes unwisely) kind-hearted statesman was never entrusted with the destinies of a people striving to achieve a distinct nationality. He was morbidly averse to inflicting punishment, and shrunk from taking human life with the humanity of a woman. His errors were always upon the side of mercy when the exigencies of a desperate cause called for extreme severity.

The true character of this eminent man can never be blackened by foul accusations of complicity with assassins and tortures of prisoners of war. His humanity, his Christian virtues, his personal integrity and lofty courage are qualities which can never be truthfully questioned. The Southern Confederacy might have had a far more judicious President, but it possessed no distinguished man of purer character than Mr. Davis. Except, therefore, that he was the President of the short-lived Confederacy, he has committed no offence. Thousands who have been pardoned were his equals in what is called "treason" by the North. So far as the acts were concerned which precipitated civil war upon the nation, there were hundreds of our people who were more determined and violent in secession than Mr. Davis.

If the prayers of Christendom for the pardon of Jefferson Davis are of no avail, let us at least no longer witness the spectacle of an illustrious State prisoner immured in a fortress, without a warrant of commitment from a civil tribunal of competent jurisdiction, or the prospect of a fair and speedy trial by a jury of his countrymen. Since the late decision of the Supreme Court, the imprisonment of any civilian by order of the War Department is a most flagitious contempt of the authority of the judicial department of the Government. —*Richmond Times.*

A WARNING.—Not many months since there was wedded to a fair, but alas! too confiding, daughter of a highly esteemed and respected citizen of one of our interior towns, a Northern man, who claimed to have been an officer in the Federal army. The married life of the happy pair appears to have glided along smoothly and pleasantly until at an inauspicious moment a third party steps into the stage and immediately transforms quiet and bliss to discontent and bitterness. The perfidious and brutal husband was confronted by another wife, who, having heard of his infamous conduct, had arrived from the North to institute inquiries and satisfy herself as to the truth or falsity of the report which reached her. To her anguish and sorrow she found that the statement was indeed, true. The affair has created quite a feeling in the district, and how it will end remains to be seen. —*Charleston Courier.*

At a railway station an old lady said to a very pompous gentleman who was talking about steam communication, "Pray, sir, what is steam?" "Steam, ma'am, is, ah!—steam is, ah! ah! steam is steam!" "I knew that chap couldn't tell ye," said a rough-looking fellow standing by, "but steam is a bucket of water in a tremendous perspiration."

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