SECESSION[1]

By
Dr. Walter Block[2]

Abstract:

Secession, political disassociation, can be justified on libertarian grounds, particularly on the basis of the law of free association. We make this case, and then consider objections to this thesis. We conclude with the claim that the war that occurred in the U.S. between 1861 was not a "civil war," but rather a war of northern aggression.

Key words:

Secession, slavery, rights, freedom of association, racial and sexual discrimination

JEL category: H11

I. Introduction

The essence of libertarianism is the non aggression axiom, based on private property rights, which themselves are derived from self ownership and homesteading of virgin territory. If these are the bedrocks of the libertarian philosophy, then the law of free association is one of the chief and foremost implications of these premises. In this perspective, *all* human interaction, without exception, should be based on voluntary agreement. No one should be forced to associate with anyone else against his will.

But this applies to *all* realms of human endeavor, the political as well as the economic. In the former case, this means that people should be free to enter into any political relationship they desire. It also requires that they be free to depart from any political jurisdiction that no longer serves their interests, as they see them. In a word, secession is always justified, the thesis of the present paper. In section II we make the case for secession. Section III is devoted to considering, and rejecting, numerous objections to this thesis. We conclude in section IV by addressing ourselves to a related positive, not normative question: was the war of 1861 in the U.S. a civil war or not?

II. The case for secession

Strictly speaking, the violation of the free association premise amounts to slavery. The only thing really wrong with the "curious institution" is that one of the

[1] I would like to thank my friends Jeff Hummel and Roger White for many discussions, over the years, on the issues discussed in this paper. I am of course entirely responsible for any errors in this paper.
[2] Dr. Walter Block, Harold E. Wirth Eminent Scholar Endowed Chair and Professor of Economics, College of Business Administration, Loyola University New Orleans, 6363 St. Charles Avenue, Box 15, Miller 321, New Orleans, LA 70118, c.v.: http://www.cba.loyno.edu/faculty.html, office: (504) 864-7934, dept: (504) 864-7944, fax: (504) 864-7970, wblock@loyno.edu

parties was unable to quit, to, in a word, disassociate from the other.[3] Compared to that, all of the other disadvantages of slavery amounted to virtually nothing. Indeed, ignoring this one point, slavery was pretty good: the slave was given good clean healthy gruel to eat, a cabin in which to sleep which was at least as healthy if not more so than the barn in which the horses were housed, good exercise through picking cotton all the live long day, and he could and did sing songs as he did so. None of this is at all problematic, provided only, that he could quit at will. This goes, even, for the whippings he sometimes received; after all, brutal beatings are not intrinsically deleterious; masochists, at least, like them. So important is free association that as long as he was free *not* to associate with the slave master, these whippings, and what most people would consider these other indignities, were of no moment. This holds true even if the slave master is a "kind" one: he offers really high grade fodder, good clothes, clean cabins, never gives "undeserved" whippings, and when he engages in this practice, he does it in a "humane" way. With regard to the latter, the voluntary masochist is in the identical situation, and his rights are not at all violated.

But slavery is only the tip of the iceberg. There are many lesser violations of the law of free association. These, too, violate the rights of their victims. Marriage, too, where the law forbids the possibility of divorce, no matter what are the wishes of the two partners. Even though the husband and the wife initially came together on a completely voluntary basis, something that cannot be said for slavery or long run kidnapping, still, this relationship is an exploitative one, unless the two parties agreed to a permanent union, and were free to choose this among other possibilities. For, to the spouse who wants out and is nevertheless forced to maintain the marriage, life can be a living hell. Under libertarianism at least, it would be unjustified to make any such imposition. This is the case even when the offending spouse is not "at fault." For example, if he is sick, but not a drunkard, or a wife beater, nor unfaithful.[4]

A similar analysis applies to the employer employee relationship. No employee should be forced upon an unwilling employer (for example, through affirmative action), nor should any firm be allowed to compel anyone to work for it (the draft). This applies, even, in cases where the employer or employee is otherwise inoffensive. Just as in the case of slavery, it is not a matter of the characteristics of either of them. Of *sole* concern is the voluntariness of the association.

Thus, the only proper relationship between and employer and an employee is one of strict voluntarism. Unless there is a contract between them to the contrary,[5] this is an "at will" relationship. The employee should be able to quit whenever he wants, for whatever reason seems sufficient to him or for no reason at all,[6] and the employer should also be free to fire an employee whenever he wants, for whatever reason seems sufficient to him or for no reason at all. Tit for tat. After all, this is a reciprocal relationship. Each gains from his association with the other, or they would not have interacted in this manner in the first place.

[3] The master was of course free to sever his connection with the slave through voluntary manumission.

[4] Arranged marriages can be compatible with libertarianism, provided that both partners agree to them.

[5] On specific performance contracts see Block 1999, 2001, 2003, 2004, 2006.

[6] Remember, if he cannot depart at will he is to that extent a slave

What would we think of an employer who did not like a particular employee, fired him, and then went around threatening or actually using violence against any other firm that was willing to hire this (now ex) employee? If we were libertarians, we would unreservedly condemn any such behavior as incompatible with the non aggression axiom, and with the law of free association. In like manner, what would we think of a man who divorced his wife, and then surrounded her house with his buddies and threatened to beat up, or actually did so, any other man who wished to date his (now ex) wife? We would place such a husband in exactly the same category.

Well, then, what of the union that downs tools and walks off the job? So far, so good. If an individual worker can licitly quit his job, he does not lose that right just because others choose to do so at the same time. This is entirely compatible with libertarian law even if he does do in concert with them or in collusion with them or in "conspiracy" with them.[7] But, now, suppose in addition to this mass quit, the union does one more thing: it sets up a picket line surrounding the employer's factory, and prohibits anyone from entering the premises, whether customers, would be investors, or would be employees (scabs). Or, it aids and abets in the enactment of legislation such as the Wagner Act that prohibits firms from hiring alternative workers while being struck, or forcing the firm to bargain with organized labor, when the only thing the employer wishes is to divorce them, or disassociate from them. Then, it is clear, this is a violation of the non aggression axiom of libertarianism, and its law of free association.

It will not avail organized labor anything to claim that they really own these jobs, and that the scabs are in effect stealing them from their rightful owners, the working men in the union. A job is not owned by anyone. Rather, it is the result or embodiment of a (hopefully) voluntary agreement between the two parties: to trade money, working conditions and other benefits for labor services. To say that this is owned by the employee and thus the employer may not fire at will[8] is thus nonsense. This amounts to partial slavery of the employer by the employee. It would be as preposterous as to claim that the employee cannot quit his job. It would be of a piece with the statement that since A patronized B's restaurant for many years, B could not close up shop, or raise his prices, or refuse further entry to A.[9] Mere past commercial acts do not confer rights on *either* of the parties to the transaction such that it must continue for evermore, and on the same terms. Each meal is a one shot deal, with no implications for further such interactions.

What of customer – vendor relationships? The law of free association applies here as well. No store owner should be forced to sell to anyone against his will. He should be free to place a sign on his shop window to the effect that blacks, or whites, or Jews, or Irish, or Orientals, or men,[10] or women, or left handed red headed people,

[7] Acting in concert with someone is acceptable, in collusion with them is bad, and conspiring with them is awful. Yet, all three words describe the same acts substantively; they only differ in the evaluation of them by the speaker.

[8] Always assuming there is no contract in effect to the contrary

[9] What's the name of that Jack Nicholson film with that theme? Tba.

[10] There are several gyms that are open to women only. This is because some women are uncomfortable engaging in exercise with men present. Of course in a libertarian society they would have that right. But at present, given our non discrimination laws, it is hypocritical to make this one exception.

are not welcome. He, in other words, should not be forced to be open to "the public," only to those kinds of people with whom he wishes to interact.

In similar manner, customers should not be forced by law to patronize, or be forbidden from so doing, any shop. If there is a person who hates Orientals, for example, all of them, he should not be compelled to eat at Chinese, Tai, Korean or Japanese restaurants. Curiously, the law presently allows customers to discriminate on this basis, that is, it safeguards their rights of free association, but not vendors. Why? Perhaps this is due to pragmatic considerations: it is easier to monitor shop keepers than customers on this basis.

So far, we have been discussing private, and/or economic issues. What of the political sphere? Should free association prevail in this arena as well? Certainly yes, at least according to the libertarian philosophy.[11] Association should be voluntary here as well. There are no justified exceptions.

This means that secession[12] should also respect the wishes of the people involved. If a state such as South Carolina, or a group of states such as the Confederacy, wish to depart from the union, no longer desire to *associate* with it, they should be free to do so.

How far "down" should this process be allowed to occur? All the way down to the individual level, is that is the goal of the people involved. That is, if it is justified for a state to secede from the union, then this applies, too, to the situation when a county wishes to secede from the state. Or, to a city which no longer aspires to be associated with the county. And, also, to a borough that yearns to lave the city, to a neighborhood that craves to be free of the city, to a city block which no longer relishes its association with the neighborhood, to a group of homeowners longing to separate from the city block, to the occupants of a single house that no longer wants to be part of this small group, right down to the *individual* in that one home who wishes to divorce the members of his family or his house mates. Freedom is freedom. The lover of liberty is not a nose counter. If an action is right for a group of whatever size, it is justified for an individual, and vice versa.[13]

My claim is that the War Between the States in 1861 was clearly over secession, it was not a civil war. In secession battles, one party wishes to separate from the other; the initiator of the secession is willing to leave entirely alone, henceforth, what previously constituted the entire political entity, or, rather, the other part of it that would still remain after the secession departure took place. That is, the South had territorial ambitions in the north. Had the South won, presumably, it would have established trading and other peaceful relations with the North, but would not

[11] We abstract from the issue of whether there ought to be a public or political sector of society in the first place. For an answer in the negative to this question, see ()

[12] And also amalgamation such as the process occurring in the European community as of 2006

[13] For the libertarian case in favor of secession, see Adams, 2000; Block, 2002A, 2002B; DiLorenzo, 2002, 2006A; Gordon, 1998; Kreptul, 2003; McGee, 1994A, 1994B; Rosenberg, 1972; Rothbard, 1967; Stromberg, 1979; Thornton and Ekelund, 2004.

have attempted to control its inner functioning any more than it would have tried doing regarding Mexico or Canada, or, for that matter, Portugal or Paraguay.

In very sharp contrast indeed, in a *civil* war, each party wishes to rule the other, or, the entity comprising the both of them. Cromwell's civil war in England is a case in point. So was the Spanish Civil War of 1936. There, the Communists and the Franco Fascists each desired to rule the *entire* country, Spain, comprised of the elements controlled by each of them. There is such a sharp contrast between the two, secession and civil war, that it is hard to believe that anyone could ever conflate the two.

Despite the clear distinction laid out here, there are several objections to this thesis. It is to these that we now turn.

III. Objections

1. Fugitive slave acts

The confederate states wished to rely on the fugitive slave acts, according to which white people could be deputized (against their will) and forced to help capture runaway slaves.

To be sure, this occurred before 1861, and even perhaps to some greatly lesser degree, during the period 1861-1865. And yes to the extent this did occur, it certainly is an aspect of the south controlling the north. Given our distinction, this would indeed incline us to believe that the "unpleasantness" of 1861-1865 was a civil war, not one of secession.

However, there are two things wrong with this objection. First, *de minimus.* If this was *all* the south demanded of the north, if in every other way the confederacy would follow a policy of strict non interference with the north, then this hardly constitutes an attempt at total control. We stipulate that the American revolution of 1776 was a war of secession, not a civil war, since the colonies did not attempt to alter the British government.[14] And yet, and yet, at late as 1812 the British were impressing American seamen into their navy. Does this mean we have to go back on our stipulation that the Revolutionary War of 1776 was a war of secession, not a civil war? Not a bit of it. This impressment of a few sailors was so minor a detail[15] that it hardly compels any such change. A more accurate description of this was that there were two sovereign nations, the U.K. and the U.S. (and, contrary to fact conditional, the South and the North), the former of each pair engaged in war like activities against the latter.

There is a far more serious problem with this objection. To make sense, it must be couched in the form of a contrary to fact conditional, not a historical claim. That is, for this objection to bear any weight at all, it is not sufficient to maintain that before 1861 some southern state authorities would compel some citizens of northern states to help with slave catching. What is needed is a demonstration that the South

[14] They necessarily *changed* it though; it was not, could not be, exactly as it was before this war.
[15] Roughly equivalent to the South "impressing" northerners into runaway slave catching expeditions

went to war to compel the North to continue this practice. Then and only then could the thesis be supported that in 1861 there was a civil war (over this issue) not a war of secession. And even here the claim would be woefully inadequate, given the de minimus consideration. But it at least would be *relevant.* Needless to say, no such evidence has ever been put forth. Indeed, those who offer this argument do not even seem aware of the fact that it is incumbent upon them to supply such evidence.

2. Geographical discontinuity

These considerations obviate one objection to secession: suppose those who want to secede are not geographically connected. For example, when Pakistan separated from India, it did so in the form of not one by two non connected pieces of real estate, Pakistan, proper, and the territory of what later became Bangla Desh. Or, if the country of Palestine ever gets off the drawing boards, it likely to consist of not even two but rather three separate entities: Gaza, most of the West Bank, and part of Jerusalem.

In like manner, consider when (and if) garbage disposal, electricity, sewer and water services ever get fully privatized. Under these conditions, there are two possibilities. First, there might be economies of scale, savings in amalgamation, where each firm serves only contiguous customers. Second, another scenario is also plausible; here each firm serves dis-contiguous customers, given that there are benefits of many competitors. Which will come about as a result of privatization? It is impossible to say, ex ante. It is an empirical issue, and depends upon how the economies of scale stack up against the benefits of numerous scattered competitors.

3. Secession from totalitarian regimes, only

Just as departure from even a "kindly" spouse or slave master is justified, so is it the case that a runaway province can properly have its way even if the central government is not at all cruel.[16] This lower political order is warranted in departing for any reason convincing to it, and *not* to its central master, or, for no reason at all.[17] For example, it need not at all be the case that the central government does not allow elections, nor impose "one man one vote," nor follow the rule of law, nor be unjust in any meaning of that term. Even if the federales do not ride roughshod over the

[16] If Quebec secedes from Canada, surely a relatively humane national government, then Montreal may depart from the Belle Province and either rejoin the rest of Canada or set up shop on its own.

[17] The "Declaration of Independence" (http://www.ushistory.org/declaration/document/index.htm) opens with these words: "when in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." It may well be true that "a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." But libertarian theory requires no such thing. Freedom of speech includes the right of *not* speaking. "A decent respect to the opinions of mankind (also)requires that … (divorcing spouses, or quitting employees, or firing employers) should declare the causes which impel them to the(se) separation(s)." But so what. There is a higher authority that this mere piece of paper, that is, libertarianism, and *it* requires *nothing of the sort* as a precondition of liberty.

province in any such way, still, the latter are justified in departing from the now unwanted embrace of the former, at least according to the doctrine of free association.

4. Slavery trumps secession

Another objection to the Confederacy movement is that slavery was practiced there; slavery, surely, is incompatible with libertarianism, so, goes the argument, even libertarians must oppose secession in 1861.

However, if libertarian purity is the requirement for secession, then no such departure of one political entity from another will ever be permitted. Palestine could not be allowed to separate from Israel, nor Israel from Palestine, since each is less than 100% pure. The 13 colonies should not have been allowed to leave the unwanted embrace of the English in 1776. Slavery was practiced too, all the war from New England to the Carolinas and Georgia. Neither Singapore nor Malaysia was a completely libertarian society. So, no divorce there wither, on this ground. Come to think of it, in divorce between spouses, neither is likely to be entirely without sin of various types and varieties. Is divorce, separation or secession to be restricted to angels?

5. States or people?

Still another objection to the attempted departure of the South in 1861 is the claim that it was not the *states* that created the original union in 1776. Therefore, it is improper for the states to dissolve the union in 1861. Rather, since it was individual people who created the U.S., only they, or an individual basis, not their states, can rend it asunder.

There are problems here. First of all, this claim is factually incorrect. The U.S. came into being only after nine of the thirteen *states* (or colonies) approved of the union. Second, even if it were true, this seems like a superficial and otherwise spurious objection. For if the original decision was make directly by individuals, not states, still, individuals, at least according to the theory of democracy, can register their preferences through these political intermediaries, as well as directly. Third, there is simply no evidence let alone proof, that anyone ever voluntarily approved of the creation of the U.S. There is no signed contract in existence attesting to this (Spooner). Consider, if A were to sue B, claiming the latter owed him as little as $100, A would be laughed out of court did he offer as little proof of this debt as exists attesting, even pertaining, to the claim that individuals, through their contracts with one another, set up the U.S.

6. Inevitable change

Secession is not justified, for in leaving the mother country (as in the U.S. departure from the UK in 1776) or the other constituent elements of the country (that is, the other states in the southern secession of 1861) changes inevitably occur as far as the spurned partner is concerned. This, it must readily be admitted, cannot be denied. It is true, also, in the case of one spouse divorcing the other. Inevitably, and virtually necessary, changes will be imposed by the party wishing to depart. And the

spurned partner, the remnants of the amalgamation, can be expected to resent this, otherwise, they would have been voluntarily engaging in the dissolution process.

The problem with this argument is that it is "too good." In one fell swoop it negates the possibility of *any* secession or break up. That slave master, too, can be expected to look with dismay at the departure of "his" valuable slave property, since his own situation is changed, and necessarily so. Are we, in justice, therefore obligated to take note of this discomfort, and impose continued slavery? No more so than in the political case.

This is a necessary result if we define the slave master, or the spurned political jurisdiction, as including the relationship with the slave, or the subject junior political entity. Thus, if the colonies leave the mother country, the latter is inevitably altered. *All* spurned partners prefer to prevent the departure of their spouse – whether in the personal or the economic or the political realm. Did they not, they would agree to the separation.

But the law of free association is clear on this matter. All human interaction should be voluntary, and no one may impose his will on another, or force the latter to deal with him, when he wishes, only, to end the relationship.

Suppose, somehow, that a world government claiming sovereignty over every last person on earth came into being. The position of the anti secessionist would be that this form of government would be sacrosanct. It could never be rent asunder. For to allow this, even if the world government allowed one man one vote, the rule of law and other procedural rights, would be necessary to change the world government. It would be a *world* government no longer, but merely one large government amongst several others, depending upon how many people seceded from it, and what political arrangements ensued thereafter.

Secession or dissolution of the Hindus and the Muslims in what was then India, followed by the partition into Pakistan and India, save countless lives. As would separating the Kurds, Sunnis and Shiites into separate countries in the middle East. As occurred in Yugoslavia and Czechoslovakia. Ditto for the two state solution regarding Israel and Palestine. Combining these different peoples into a one state "solution" would be like putting scorpions in a bottle and shaking it. But this latter scenario is indistinguishable from dissolution or separation or, yes, secession.

7. If you don't like it here, leave[18]

There are some opponents of secession who will readily contemplate the physical departure of unhappy citizens. They think this should satisfy those who seek political dissolution. But they are confused. What is at stake here is not emigration, but rather secession. In the former case, the unhappy citizen sells of his property and departs for greener geographical pastures. In the latter case he stays put, and seeks a better political deal, right where he is. Why should he be forced to change locale, just because he is dissatisfied with his political masters. People need not leave their homes when they wish to engage a different phone company, cable provider, grocer or tailor.

[18] See on this Gregory (2006), Molyneux (2006),Vuk (2006).

In those realms, free association reigns supreme. Why, in principle, should it be any different in any other area of human endeavor?[19] In any case, the property in which the would-be seceder lives might have been in his possession *before* the creation of the government. It comes with particular ill grace, then, for the minions of the Johnny-come-lately state to insist that those who were there before them have only the option of emigration, but not secession. More likely, the ancestors of the present-day would–be seceders were domiciled in the old homestead before the creation of the government. But this should not matter one whit, as long as this property came down to its present owners through an unbroken chain of inheritance, or, for that matter, sale. We go further. This applies to *all* extant inhabitants of the country, whether they predate the state, or their ancestors do, or not. We all have a right not to be governed against our will.

8. Continuum, complexity[20]

"I have written a little on this scattered throughout my book, EMANCIPATING SLAVES, ENSLAVING FREE MEN, but it does not contain the full argument. (I would now argue this point as follows:) The distinction between civil wars and wars of secession is not rigid. Most of what are called 'civil wars' have secessionist aspects and most of what you might call 'wars of secession' display features common to what you would call 'civil wars.' Thus, the Russian Civil War involved secessionist movements in the Ukraine and elsewhere as well as a fight over control of the Russian central government. The American Revolution was not just about home rule but about who should rule at home, and in some areas involved a serious civil war between Patriots and Loyalists. I could give many other examples. The term 'civil war' has always been broadly applied to any armed conflict raging within the boundaries of what was once a single country, regardless of the political goals of the participants. Moreover, such wars can be very fluid, with goals changing. Secessionist movements have transformed themselves into new central governments given the opportunity."

Hummel makes several points in this comment. Let us consider each in turn. First, there is no rigid barrier between a civil war and a war of secession in many real world cases. This cannot be denied, but, there is no rigid barrier, either, between any of the colors. For example, red and orange blend into one another. But that does not mean that we cannot ever tell the difference between these two colors. Yes, there is a range of indeterminacy between red and orange, right on the border between them. Here, it is indeed difficult to tell them apart. But anyone who says that on the basis of this consideration that the two of them comprise only one color, not two, is clearly taking this point too far. As is Hummel, in his claim that there is no distinction to be made between a civil war and a war of secession. The war that took place in the U.S. from 1861-1865 was so overwhelmingly an example of the latter, and so little one of the former, that to deny this is to call into question the discernment of anyone who

[19] One reason it *is* different, of course, is that the political realm is compulsory, while economic relations are voluntary, Buchanan and his Public Choice School to the contrary notwithstanding. On this see Buchanan and Tullock, 1962; Buchanan, 1975; Buchanan, Tollison and Tullock, 1980. For a critique see Block and DiLorenzo, 2000, 2001; DiLorenzo and Block, 2001; Rothbard, 1989, 1997.

[20] I wrote to my friend, Jeff Hummel, author of a book dealing at least tangentially with the issues addressed in this paper (Hummel, 1996) asking him to articulate his views on secession. This objection was articulated by him in a letter to me of 9/15/06. Material in brackets supplied by present author

denies this. Similarly, despite the fact that there some relatively small secessionist elements in the Ukraine in 1917, to call those events a war of secession, and not a Civil War as Hummel correctly labels this conflagration, is to indicate a lack of historical judgment on the part of anyone whom makes this claim. A similar analysis applies to the American Revolution against Britain in 1776. Yes, there were disputes between the Patriots and the Loyalists, but to claim that this was a "serious civil war," on a par with what took place between the Americans and the British, again evidences a problematic assessment.

According to that old joke, an elephant, with a mouse on its back, traveled over a rickety bridge. Whereupon the mouse exclaimed, "Boy, *we* sure made that bridge sway." Hummel's view that the Russian Civil War between the Reds and the Whites was really one of secession, or, that the American wars of 1776 or 1861 were really civil wars between the Patriots and the Loyalists in the first case, and between the North and the South in the second, make a similar error in judgment as does our fictional mouse. This is such a great error of degree that it is virtually an error of kind.

Hummel's second argument is that "The term 'civil war' has always been broadly applied to any armed conflict raging within the boundaries of what was once a single country, regardless of the political goals of the participants." Not so, not so. *Any* armed conflict? Well, then a set to between the Blood and the Crips would qualify as a civil war, surely an unwelcome conclusion in political economic analysis. "Broadly applied," moreover, is just an invitation to imprecision in language. No, "the political goals of the participants" are *crucial* in determining just what kind of war takes place. One of the key insights of Austrian economics[21] is that purpose and intention are a key to understanding human action. Were this not the case we would be free to label an accidental discharge of a gun as first degree murder. Why mention the "changing goals" of armed conflict if the goals are irrelevant?

Hummel's third point is that "Secessionist movements have transformed themselves into new central governments given the opportunity." Well, what of it? If and when this occurs, then what started out as a war of secession *changes* into a civil war.

Hummel also writes to me:

"In the border areas of western Virginia, eastern Tennessee, parts of Kentucky, and particularly Missouri, as well as elsewhere, the American Civil War did become a brutal 'civil war' even according to your limited definition--as different factions fought over local and state control. Indeed, this continued to go on at a low level of violence throughout the former slave states during Reconstruction."

But this is but another example of the main war occurring between the South, wishing to leave the United States and form its own confederacy, and the North, wishing to prevent this, while a minor civil war was also taking place *within* a few of the states, such as the four mentioned by Hummel. This writer, himself, correctly refers to these minor incidents as a "low level of violence," at least compared to the

21

major league carnage which constituted the war of secession between North and South. It is all a matter of proportion, and my claim is that Hummel's sense of proportion is skewed.

IV. Conclusion

Let us conclude by asking a very different question. Was the bloodshed in the U.S. in 1861 (to put a non pejorative spin on the matter) a civil war or a war of secession? Before answering, not that this is a positive not a normative issue. We have been dealing throughout this paper so far with the latter case; we have been asking which side, if any, was *justified* in fighting.[22] But now, in sharp contrast, we do not at all address this issue. Instead, we only ask, merely, how can this conflagration most accurately be *described*?

To make this case, I asked my friend and Loyola New Orleans colleague Roger White to articulate it for me. Here is his reply,[23]:

"Why the War of 1861 Was a Civil War and Not a War Between the States: The Founders of the United States and the Framers of the Constitution clearly understood both the Founding and the Framing to be an action taken by the People of the United States. The Declaration Independence begins, "When in the Course of human events it becomes necessary for one *people* (italics added) to dissolve the political bands which have connected them with another, "etc. The Preamble of the Constitution begins, 'We the *People* (italics added) of the United States, in Order to form a more perfect Union,' etc. Thus, the Civil War was a war within the body of the American People as understood by the members of that people. Those who ratified each document did not change the wording from 'people' to 'states,' implying that those involved, and not just the principle drafters, believed that these were the acts of one people. Thus, the War of 1861 was a war of a people with itself. As such, this war was a civil war. The fact that a part of this people was trying to rend it in two does not make it any less of a civil war. In parallel fashion when a part of a soul runs counter to its whole, as when one is drunk, the turmoil involved remains a conflict internal to the soul. The Civil War of the United States was a conflict within the heart of the American People."

There are difficulties with this theory. First of all, the Constitution is without a scintilla of moral authority (Spooner, 1870), since it was not *signed* by anyone.[24] Nor does the fact that people voted with secret ballots, nor paid taxes, establish the voluntary nature of this supposed *agreement.* The problem with secret ballots is that they cannot establish contractual agreements. Yet, were one person to sue another for as little as $100, without benefit of a signed contract, he would be laughed out of court. We are supposed to give credence to a document that would not so much as serve as evidence for a $100 debt? As for taxes, holdup victims also hand over their money, but this does *nothing* to establish the legitimacy of the transaction.

[22] Our answer, of course, is the South.
[23] in his letter to me of 9/17/06
[24] The Declaration of Independence was signed by a mere handful. How does that obligate the millions of people for whom *no* evidence of agreement can be shown?

But, let us make the heroic assumption to the contrary; that is, that the Constitution is a legitimate document. Let us posit that it was indeed signed at the time it was drawn up, and even duly notarized. However, even with this stipulation, it was signed over two centuries ago; why should it still remain in force, and be used to compel people living today, who we cannot posit agreed to it. Why, then, should they be bound by it? Abraham Lincoln is reputed to have said that the Constitution is not a suicide pact (http://en.wikipedia.org/wiki/The_Constitution_is_not_a_suicide_pact).[25] But neither, then, is it an agreement for all time, even on the wild eyed assumption that it was an agreement at *one* time. So, even if we concede that this Constitution was the creature of the *people* rather than the states, it still by no means follows that the grand children and great grandchildren of these *people* should still be bound by it.

Secondly, given that the fact that the Declaration of Independence and the Constitution were created by the people and not the states implies that no secession could be justified in 1861, how, then, is it that these documents, particularly the former, *were* used to justify secession in 1776? That is, the Declaration of Independence was a Declaration of Independence from England. If it could serve this purpose in the 18th century, why could it not do so, also, in the 19th? The point is, there is a logical contradiction committed in White's analysis. One and the same set of documents can justify U.S. secession from Great Britain, but not Southern secession from the North.

References:

Adams, Charles. 2000. *When in the Course of Human Events: Arguing the Case for Southern Secession*. Lanham, Mass.: Rowman & Littlefield

Block, Walter. 1999. "Market Inalienability Once Again: Reply to Radin," *Thomas Jefferson Law Journal*, Vol. 22, No. 1, Fall, pp. 37-88

Block, Walter. 2001. "Alienability, Inalienability, Paternalism and the Law: Reply to Kronman," *American Journal of Criminal Law*, Vol. 28, No. 3, Summer, pp. 351-371.

Block, Walter. 6/10/02A. "A Libertarian Theory of Secession and Slavery," http://www.lewrockwell.com/block/block15.html

Block, Walter. 7/9/02B. "Secession," http://www.lewrockwell.com/block/block18.html; http://www.secessionist.us/secessionist_no8.htm; http://www.southernnationalist.org/secession_block.htm

Block, Walter. 2003. "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein," *Journal of Libertarian Studies*, Vol.17, No. 2, Spring, pp. 39-85; http://www.mises.org/journals/jls/17_2/17_2_3.pdf

Block, Walter. 2004. "Are Alienability and the Apriori of Argument Logically Incompatible?" *Dialogue*, Vol. 1, No. 1. http://www.uni-svishtov.bg/dialog/2004/256gord6.pdf

Block, Walter. 2006. "Epstein on alienation: a rejoinder" *International Journal of Social Economics;* Vol. 33, Nos. 3-4, pp. 241-260

Block, Walter and Tom DiLorenzo. 2001. "The Calculus of Consent Revisited," *Public Finance and Management*, Vol. 1, No. 3; electronic journal, url: www.spaef.com <http://www.spaef.com>; http://spaef.com/PFM_PUB/pubv1n3.html

[25] For a critique of "Honest Abe" see DiLorenzo (2002, 2006B).

Block, Walter and Tom DiLorenzo. 2000. "Is Voluntary Government Possible? A Critique of Constitutional Economics," *Journal of Institutional and Theoretical Economics*, Vol. 156, No. 4, December, pp. 567-582

Buchanan, James M., and Gordon Tullock. 1962. *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Ann Arbor: University of Michigan.

Buchanan, James M. 1975. *The Limits of Liberty*, Chicago: University of Chicago Press.

Buchanan, James M., Robert D. Tollison, and Gordon Tullock, eds. 1980. *Toward a Theory of the Rent-Seeking Society*, College Station: Texas A&M University

DiLorenzo, Thomas. 2002. *The Real Lincoln: A New Look at Abraham Lincoln, His Agenda, and an Unnecessary War*, New York: Random House

DiLorenzo, Thomas. 2006A. "Happy Secession Day." http://www.lewrockwell.com/dilorenzo/dilorenzo103.html

DiLorenzo, Thomas. 2006B. *Lincoln Unmasked.*

DiLorenzo, Tom and Walter Block. 2001. "Constitutional Economics and the Calculus of Consent," *The Journal of Libertarian Studies*, Vol. 15, No. 3, Summer, pp. 37-56; http://www.mises.org/journals/jls/15_3/15_3_2.pdf

Gordon, David, ed. 1998. *Secession, State and Liberty* New Brunswick: Transaction Publishers

Gregory, Anthony. 2006. "On Loving the Country." October 18. http://www.lewrockwell.com/gregory/gregory124.html

Hummel, Jeffrey Rogers. 1996. *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War*. Chicago: Open Court.

Kreptul, Andrei. 2003. "The Constitutional Right of Secession in Political Theory and History." *The Journal of Libertarian Studies*, Vol. 17, No. 4, Fall, pp. 30-100; http://www.mises.org/journals/jls/17_4/17_4_3.pdf

McGee, Robert W. 1994A. "Secession Reconsidered," *The Journal of Libertarian Studies*, Vol. 11, No. 1, Fall, pp. 11-33; http://www.mises.org/journals/jls/11_1/11_1_2.pdf

McGee, Robert W. 1994B. "Secession as a Tool for Limiting the Growth of State and Municipal Government and Making it More Responsive: A Constitutional Proposal." *Western State University Law Review.* 21. Spring.

Molyneux, Stefan. 2006. "[Insert Name of Country Here]: Love It or Leave It!" April 3; http://www.lewrockwell.com/molyneux/molyneux17.html

Rosenberg, John S. 1972. "Toward A New Civil War Revisionism" in Gerald N. Grob and George Athan Bilias, eds., *Interpretations of American History*, I (New York: The Free Press, 1972), 459-479.

Rothbard, Murray N. 1967. "The Principle of Secession Defended." *Colorado Springs Gazette Telegraph* (Pine Tree Column), October 3.

Rothbard, Murray N. 1989. "Public Choice: A Misshapen Tool." *Liberty*, May, pp. 20-21.

Rothbard, Murray N. 1997. "*Buchanan and Tullock's* The Calculus of Consent." *The Logic of Action Two: Applications and Criticism from the Austrian School*. Glos, UK: Edward Elgar Publishing Ltd., pp. 269-274.

Spooner, Lysander. [1870] 1966. *No Treason: The Constitution of No Authority and A Letter to Thomas F. Bayard*, Larkspur, Colorado: Rampart College http://www.lysanderspooner.org/notreason.htm

Stromberg, Joseph. 1979. "The War for Southern Independence: A Radical Libertarian Perspective, " *Journal of Libertarian Studies* Vol. 3, No. 1, pp. 31-54

Thornton, Mark and Robert B. Ekelund. 2004. *Tariffs, Blockades, and Inflation: The Economics of the Civil War*. Wilmington, Delaware: Scholarly Resources, 2004.

Vuk, Vedran. 2006. "The Logic of 'Love it or Leave It.'" May 18 http://www.lewrockwell.com/orig6/vuk2.html