Lincoln’s Right to Preserve the Union

By Kent Wright

This essay argues that President Lincoln had both the legal right and constitutional obligation to suppress the insurrections of the Confederate states to preserve the Union.

OUTLINE

Legal Authority and the Guarantee Clause

- Secessionists believed the U.S. government lacked the power to act against secession, raising questions about Lincoln's authority to wage war.
- The Guarantee Clause (Article IV, Clause 4) mandates the Federal government to protect states against domestic violence, conveying a duty to act against insurrections.
- The clause ensures that no state can establish a despotic government, reinforcing the need for Federal intervention when states reject constitutional authority.
- The crisis of 1860-61, marked by armed insurrections and the seizure of Federal property, necessitated Federal action without state consent.

Constitutional Context and Supreme Court Rulings

- Lincoln's actions were supported by the Constitution, which grants Congress the power to suppress insurrections.
- Supreme Court cases, notably the Prize Cases and Texas v. White, upheld the Federal government's right to suppress rebellions and confirmed the indestructibility of the Union.
- The ruling emphasized that even in insurrection, states remain part of the Union, and the Federal government has the obligation to ensure republican governance.

National Security Implications

- Secession posed a significant threat to national security, risking exposure to foreign ambitions and undermining American ideals.
- Lincoln's preservation of the Union was crucial for maintaining national integrity and security.

Conclusion

- The legality of Lincoln's actions and the question of secession were ultimately resolved through military conflict rather than judicial review, highlighting the limitations of constitutional interpretation in times of crisis.

ESSAY

Many secessionists in the antebellum South believed the United States government was legally constrained, leaving President Lincoln powerless to preserve the Union.

Beyond the constitutional question of whether states possessed a "right to secede" under the 10th Amendment, there was a separate issue: whether Lincoln had the legal authority to suppress the insurrections of eleven slave states by waging war against them.

> For further discussion of the legalities of the war, see essays by Gen. John Scales and Kent Wright in "Nooks and Crannies" in the Tennessee Valley Civil War Roundtable website (https://tvcwrt.org). See also "*Prize Cases*" (67 U.S. 635, 1863), where the Supreme Court upheld the Federal government's right to preserve the Union by war. The Court's ruling extended broadly to the legality of wars against perpetrators of war against the United States, regardless of whether the war was against its own states and whether or not war was officially declared. Finally, in the case of "*Texas v. White*" (74 U.S. 700, 1868-1869), the Court confirmed the principle of an indestructible Union and declared the Texas secessionist government null and void.

In this essay, I argue that the United States government under the Lincoln Administration not only had the legal right but also the constitutional obligation to put down the insurrections of 1860 and 1861 and to conduct war in order to preserve the Union of the American States.

Emergency Decisions and Constitutional Authority

Both Lincoln's actions and those of the Confederate states were improvised under extreme haste, taken before any Supreme Court ruling could clarify legality. In that crisis, decisions could not wait for judicial review. A court review would not have mattered anyway because neither side recognized the legitimacy of the other side's courts and laws.

A key but often overlooked provision of the US Constitution is the "forgotten article": Article IV, Clause 4, also known as the Guarantee Clause, which says this:

> *"The United States "shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."*

In this Article, the key words are: "when the Legislature cannot be convened" and "domestic violence," which includes armed insurrections within a state, or by a state. By this we see that the Guarantee Clause means more than authorization to use force. Its deeper purpose is to prevent any state from establishing a monarchic or despotic government on its own, thus ensuring a uniform republican character for every state in the Union. The

Federal guarantee would be meaningless if states could simply secede at will and form a government over which the United States has no control.

And just because the Confederacy wrote an identical guarantee clause into the CS Constitution, that did not mean that the US had to cede its Guarantee obligation over to states whose separation was never recognized.

The Guarantee Clause had long been interpreted to mean that protection of any state, or states, under threat of invasion or domestic violence is to be effected through cooperation between the Federal and state authorities. It stands upon the principle of limited state sovereignty, wherein the normal condition is assumed to be of peaceful relations between the states and the superior Federal government. Under that assumption, if a state cannot maintain the rule of law on its own, the state may apply to the Federal government who has the ultimate responsibility for protection.

This means that under the assumed normal conditions Federal troops cannot enter a state without the consent of the state itself. Scholarly interpretations have recognized this shared responsibility between the states and the Federal government to protect all states threatened by foreign invasions or by internal domestic violence.

However, the secession crisis of 1860–61 created *abnormal* conditions. Eleven of the fifteen slaveholding states repudiated the Constitution, instigated an armed insurrection against the Federal government, and seized U.S. military property by force. With those states having rejected the Constitution, it would be absurd to expect them, the very perpetrators of the insurrection, to appeal to the United States for protection against their own actions.

By default, the Federal government became the sole protector of the Union, which included the states in rebellion whose independence was never recognized by the United States. Thus, it fell to Lincoln to call for the militia of the loyal states to fulfill the Guarantee obligation.

At the same time, it is equally absurd to think Lincoln had to remain passive while threats mounted against two major U.S. military installations and the District of Columbia—the very heart of the US Government. If the U.S. Government could not preserve itself, it could not guarantee anything at all.

The Broader Constitutional Context

The Guarantee Clause, read alongside other constitutional provisions, reveals a broader intent. The Constitution already grants Congress the power "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions" (Article I, Section 8, Clause 15).

However, at the apex of the crisis when Ft. Sumter was fired upon, Congress was not in session and it fell upon President Lincoln to resolve the emergency by way of the powers granted in Article IV, Clause 4.

President Lincoln's right to preserve the Union was upheld by two US Supreme Court rulings: the *Prize Cases* of 1863 and *Texas v. White* in 1868. Both cases hung upon the legality of the insurrection and the right of the United States to suppress it by war.

In Texas v. White, the Court ruled that even while in insurrection, Texas did not cease to be a state of the United States; her citizens did not cease to be US citizens; and that the government under rebel control was invalid. It further ruled that the authority of the United States to suppress rebellions and carry on an internal war is derived from its obligation to guarantee to every State in the Union a republican form of government. The Guarantee Clause was cited no less than eight times in the court proceedings. Although the focus was on Texas alone, it set a precedent that served as a warning to other recalcitrant states who might continue to resist the authority of the United States.

National Security and the Fate of the Union

Secession itself posed a grave threat to U.S. national security, which Lincoln was sworn to protect. The loss of roughly 3,500 miles of coastline and a roughly equal expanse of land borders would have exposed the entire American interior to European colonial ambitions. The *Monroe Doctrine, Manifest Destiny,* and the ideal of *American Exceptionalism* would have collapsed and the "American Dream" might well have perished. Under such conditions, neither the United States nor the Confederate States was likely to survive as a strong and independent nation.

Conclusion

In the final analysis, it is meaningless to debate whether the United State had the right to act forcefully to preserve the Union and whether secession and the ensuing war were legal. Conflicting constitutional interpretations—still alive in political and academic circles today—were never fully settled in a court of law, and likely never will be. In the end, the question was decided not by judges but by *force of arms*, the ultimate arbiter of human conflict.