

Copy

"Boston April 24 1860

Col. Charles D. Miller,

Dear Sir,

I return you herewith the papers you sent me.

Since I saw you in New York I have given more attention to the question of the jurisdiction of State courts in civil suits against consuls -and have been writing a journal argument on the question. SO soon as it is done, I will send a copy to yourself, or Mr. Sedgwick, or both, as maybe necessary. I am confident the decision of the court of appeals is wrong, and that I shall be able to establish that position. After the argument is written, Mr. Sedgwick will be able to judge whether he will commence a new suit in the State courts. I suppose it would be of no use to bring one in the United States court.

Yours Truly,

L. Spooner

Boston May 25, 1860

Col. Charles D. Miller

Dear Sir,

I have recd a letter from Mr. Smith saying that Judge Peabody

had made some advances to him on behalf of Mr. Phelps, with a view to a settlement. It seems to be important, that before Mr. Smith fixes his terms of settlement he should satisfy himself fully on three points of law involved in the case - in as much as his opinions on these points will be likely to modify very materially the terms to which he would agree. The points are these -

1. The consular question

If Mr. Smith should feel perfectly sure of maintaining his suit in the State court, he will be likely to insist on harder terms than if he should conclude that he will be obliged to sue in the United States court.

My argument is not entirely done but it is so nearly done that Mr. Smith, if he should need it, will probably be able to satisfy himself whether my opinion on the point is correct.

The argument is pretty long, but I will make a copy of it - so far as it is already written - and send it to him, if he desires it.

2. The liability of all the defendants, without specific proof against each one, other than the publication of the libel with their names.

This Point is important, unless you succeed in getting direct poroof attached, and their non-repudiation of it & against it all, which I apprehend you will not be able to do.

Although Mr. Sedgwick must be much more familiar with pleadings and evidence than I am, and although I have a very high respect for his opinion, I confess I still have some doubt whether his opinion on this point is correct. But I have had no time to look at authorities, and can at this time therefore view it only in reference to general principles.

Suppose a libel be published against A.B. charging him with robbing a bank; and the names of the president and all the directors appear affixed to the libel. A reasonable time elapses, and more of them repudiate the publication. Is it necessary that A.B. in order to sustain his suit against all, should have direct proof that each and every one affixed his signature or authorized any one to affix his signature, to the libel before it was published. Does not his acquiescence afterward in the criminal use of his name, imply his consent to such use, and make him liable, the same as if he had originally consulted?

A man's name and influence are his property. And acquiescence in the criminal use of them by another, it seems to me, is, in law, a consent to such use.

3. But suppose those only one liable, who actually signed the libel, or authorized their signatures to it. In that case, the criminality, of those who did sign it, is made much heavier than it otherwise would be; for they are not only libellous but they have added forged names to the libel, to give it greater effect. They are, then, doubly criminal and must bear a double share of liability.

One suggestion more. If Mr. Phelps is anxious for a settlement, may it not be worth while to refuse a settlement with him, with a view of making it necessary for him to use his influence with the others, to bring them to a settlement?

Please send a copy of this to Mr. Sedgwick if you think it necessary or proper.

Yours Truly,

Lysander Spooner

P.S. If I send the argument, how shall I send it? It is too bulky to go by mail. Will the express take it to you?

Boston June 22- 1860

Col Charles D. Miller,

Dear Sir,

Of the very liberal retainer you paid me - more liberal than I should have ventured to ask, if you had left it with me to fix the amount- so much has gone to pay debts that I have no longer any thing left to eat. Not being in the way of receiving any money from other sources, I think you will excuse me for asking you to send \$100 - a thing, which of course I should not expect you to do, until the termination of the suit, if I had any other alternative.

Yours Truly,

L. Spooner

R.B. Minturn

Jan 16, 1867

78 South St, New York.

Dear Sir,

Taking great interest in the subjects on which you have written, and judging from the description of my friend Mr. Wm. B. Scott that I shall find much in your work with which I shall sympathize warmly, I beg that you will forward to me (at above address) one copy of each of your finished works. In payment I enclose cheque of \$10 - and please apply the excess toward the cost of printing your unpublished manuscripts.

Yours Truly,

Rob't B. Minturn.

Lysander Spooner, Esq.

New York, May 25, 1867

My dear Sir,

Great occupation has prevented me from sending an earlier acknowledgment of your __ of the 15th last.

It does not seem to me that your answer meets my point, as I do not desire to object to the first few paragraphs of section IV, in which you bind yourself to the assertion that the principle you are contending for was necessarily implied by the principles asserted in the Declaration of Independence.

My objections being at the top of page 12, where you introduce a new argument by the word Moreover, as follows:

[TYPED]

12

Moreover, it was only as separate individuals, each acting for himself, and not as members of organized governments, that the three millions declared their consent to be necessary to their support of a government; and, at the same time, declared their dissent to the support of the British Crown.

The above I claim to be historically erroneous, as the decision of each colony to join in the contemplated Declaration of Independence was determined by a majority of its qualified citizens, and in every case was contrary to the opinion of a minority or majority of the inhabitants of each colony. The Revolutionary Authorities were in fact Representatives of Oligarchies - and they acted as such, assuming to coerce those of the community whose opinions were adverse to the Rebellion. It seems to me very clear that what was done at that time was very far from being done with the unanimous consent of every citizen, either express or implied; and that it was very distinctly done by "organized governments" and very tyrannical governments at that.

You then go on to say that:

[TYPED]

The governments, then existing in the Colonies, had no constitutional power, *as governments*, to declare the separation between England and America. On the contrary, those governments, *as governments*, were organized under charters from, and acknowledged allegiance to the British Crown. Of course the British king never made it one of the chartered or constitutional powers of those governments, *as governments*, to absolve the people from their allegiance to himself. So far, therefore, as the Colonial Legislatures acted as revolutionists, they acted only as so many individual revolutionists, and not as colonial legislatures. And their representatives at Philadelphia, who first declared Independence, were, in the eye of constitutional law of that day, simply a committee of Revolutionists, and in no sense constitutional authorities, or the representatives of constitutional authorities.

All of which I am quite ready to admit except the phrase that the colonial legislature, in the revolutionary steps they took, "acted only as so many individual revolutionists." On the contrary I think it is clear that they acted as representatives of the dominant faction of the individual oligarchies by which they had been

respectively chosen, and that they had asserted the power (and claim to supremacy) of this oligarchy not merely as against the British government, but also as against all recusants at home. It is true that in one sense they were not constitutional authorities; but they certainly were constituted authorities, de facto governments, asserting sovereignty for themselves or their constituents and claiming allegiance from all inhabitants.

You next say:

[TYPED]

It was also, in the eye of the law, only as separate individuals, each acting for himself, and exercising simply his natural rights as an individual, that the people at large *assented to, and ratified the Declaration.*

On this I would remark that so far as the "people at large" did really assent to the Declaration of Independence, they doubtless did it, each for himself: but how about the large numbers who did not assent to it voluntarily, but were coerced into sustaining or not opposing the movement. Was their assent given "each for himself" and "exercising simply his natural rights"?

The next sentence is this:

[TYPED]

It was also only as so many individuals, each acting for himself, and exercising simply his natural rights, that they revolutionized the *constitutional character* of their governments, (so as to exclude the idea of allegiance to Great Britain); changing their forms only as when their convenience dictated.

And this is also I claim to be historically incorrect, inasmuch as

the constitutional changes in the local governments were clearly made by the dominant factions of the local oligarchies - and not by the public acting "only as individuals."

But I need not continue to apply this argument to each succeeding perspectives, and I will only add that I have just the same objection to your conclusion, which is in these words:

[TYPED]

Thus, the whole revolution turned upon, asserted, and, in theory, established, the right of each and every man, at his discretion, to release himself from the support of the government under which he had lived.

Which, on the contrary, I believe that the Revolution "turned upon asserted and in theory established" nothing more nor less than state sovereignty : that is to say, the at most we can fairly claim that they established was this right of the political majority of every organized community to establish, recognize, assert and maintain any government they choose without regard to any adverse claims of any one class, foreign or domestic.

You of course understand that I sympathize warmly in the general scope & conclusion of your whole argument - viz. That there is no principle of natural right (so called) which requires any man to bear allegiance to a government any longer than he may chose to do so. My objections lie to the particular appeal you have made to history, to show that this principle was asserted in the American Revolution. I deny that this principle was then asserted, and merit that the action then taken was in many respects in violation of this principle, which I am willing to admit, and indeed claim, that another principle, namely that of State Sovereignty, was then asserted or maintained; and that from this principle, by a secondary argument, the right of each individual to secede from the State can be proved by us, though it would have been repudiated by the men of the Revolution and was in conflict with their proceedings.

The assertion of the doctrine of State Sovereignty and the Right of Secession is the distinction doctrine which America has contributed to political progress - the first action of sovereignty is that it is a personal attribute of the Ruler and this notion finds its natural embodiment in an absolute monarchy; the next idea in advance is to attribute sovereignty to the nation, and the natural embodiment of this improved conception is in a limited monarchy or representative government. The third step in progress is to suppose that the Sovereignty resides in separate communities, which are voluntarily united politically, for their own advantage; - this is the doctrine of State Sovereignty, and is most suitably embodied in a voluntary confederacy. The last step will be the acceptance of the doctrine of individual sovereignty, or the right of every man to secede from the State, and to be controlled by himself alone so long as he does not trespass on others.

But the most radical doctrine that has as yet been supported by any large numbers of people is the doctrine of State Sovereignty. In denying that, and asserting the doctrine of natural sovereignty in place of it, I think the United States have made a great retrograde step.

In your argument, I think you miss a point by not dwelling on this doctrine - and that the absence of allusion to it makes some of your arguments unintelligible. For instance on pp. 13 and 14 you say that rebels are not traitors because "having pledged no faith they broke none," while almost all persons brought up in the belief of National Sovereignty will consider that a rebel who has taken an oath of allegiance and then repudiates it (as so many of the Southerners did) have pledged faith and broken it - and such persons will not be able soon to see what you can possibly mean by this argument.

I am, dear Sir,

Yours Sincererly, servants. B. Minturn