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Lysander Spooner, *No Treason. No. II. The Constitution* [1867]



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LIBERTY FUND, INC.
8335 Allison Pointe Trail, Suite 300
Indianapolis, Indiana 46250-1684

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Author: [Lysander Spooner](#)

About This Title:

Although this is numbered number 2 there were only three parts to this series (1, 2, and 6) in which Spooner argues that the individual is not bound to obey the American constitution because it justified slavery and otherwise violated individual rights.

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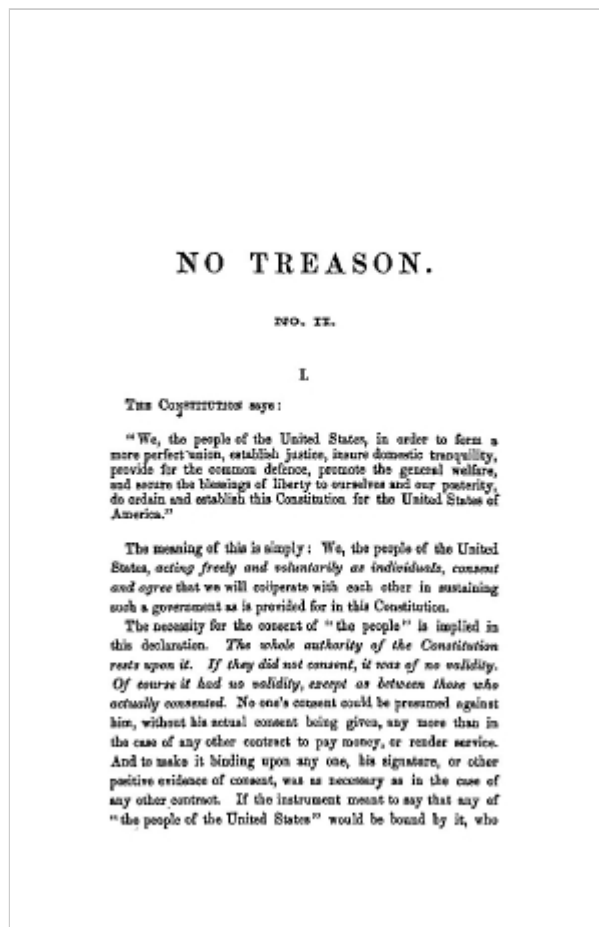


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NO TREASON.

NO. II.

I.

The Constitution says:

“We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

The meaning of this is simply: We, the people of the United States, *acting freely and voluntarily as individuals, consent and agree* that we will cooperate with each other in sustaining such a government as is provided for in this Constitution.

The necessity for the consent of “the people” is implied in this declaration. *The whole authority of the Constitution rests upon it. If they did not consent, it was of no validity. Of course it had no validity, except as between those who actually consented.* No one’s consent could be presumed against him, without his actual consent being given, any more than in the case of any other contract to pay money, or render service. And to make it binding upon any one, his signature, or other positive evidence of consent, was as necessary as in the case of any other contract. If the instrument meant to say that any of “the people of the United States” would be bound by it, who did not consent, it was a usurpation and a lie. The most that can be inferred from the form, “*We, the people,*” is, that the instrument *offered* membership to *all* “the people of the United States;” leaving it for them to accept or refuse it, at their pleasure.

The agreement is a simple one, like any other agreement. It is the same as one that should say: We, the people of the town of A—, agree to sustain a church, a school, a hospital, or a theatre, for ourselves and our children.

Such an agreement clearly could have no validity, except as between those who actually consented to it. If a portion only of “the people of the town of A—,” should assent to this contract, and should then proceed to *compel* contributions of money or service from those who had not consented, they would be mere robbers; and would deserve to be treated as such.

Neither the conduct nor the rights of these signers would be improved at all by their saying to the dissenters: We offer you equal rights with ourselves, in the benefits of the church, school, hospital, or theatre, which we propose to establish, and equal voice in the control of it. It would be a sufficient answer for the others to say: We want no share in the benefits, and no voice in the control, of your institution; and will do nothing to support it.

The number who actually consented to the Constitution of the United States, at the first, was very small. Considered as the act of the whole people, the adoption of the Constitution was the merest farce and imposture, binding upon nobody.

The women, children, and blacks, of course, were not asked to give their consent. In addition to this, there were, in nearly or quite all the States, property qualifications that excluded probably one half, two thirds, or perhaps even three fourths, of the white male adults from the right of suffrage. And of those who were allowed that right, we know not how many exercised it.

Furthermore, those who originally agreed to the Constitution, could thereby bind nobody that should come after them. They could contract for nobody but themselves. They had no more natural right or power to make political contracts, binding upon succeeding generations, than they had to make marriage or business contracts binding upon them.

Still further. Even those who actually voted for the adoption of the Constitution, did not pledge their faith *for any specific time*; since no specific time was named, in the Constitution, during which the association should continue. It was, therefore, merely an association during pleasure; even as between the original parties to it. Still less, if possible, has it been any thing more than a merely voluntary association, during pleasure, between the succeeding generations, who have never gone through, as their fathers did, with so much even as any outward formality of adopting it, or of pledging their faith to support it. Such portions of them as pleased, and as the States permitted to vote, have only done enough, by voting and paying taxes, (and unlawfully and tyrannically extorting taxes from others,) to keep the government in operation for the time being. And this, in the view of the Constitution, they have done voluntarily, and because it was for their interest, or pleasure, and not because they were under any pledge or obligation to do it. Any one man, or any number of men, have had a perfect right, at any time, to refuse his or their further support; and nobody could rightfully object to his or their withdrawal.

There is no escape from these conclusions, if we say that the adoption of the Constitution was the act of the people, as individuals, and not of the States, as States. On the other hand, if we say that the adoption was the act of the States, as States, it necessarily follows that they had the right to secede at pleasure, inasmuch as they engaged for no specific time.

The consent, therefore, that has been given, whether by individuals, or by the States, has been, at most, only a consent for the time being; not an engagement for the future. In truth, in the case of individuals, their actual voting is not to be taken as proof of consent, *even for the time being*. On the contrary, it is to be considered that, without his consent having ever been asked, a man finds himself environed by a government that he cannot resist; a government that forces him to pay money, render service, and forego the exercise of many of his natural rights, under peril of weighty punishments. He sees, too, that other men practise this tyranny over him by the use of the ballot. He sees further that, if he will but use the ballot himself, he has some chance of relieving himself from this tyranny of others, by subjecting them to his own. In short, he finds

himself, without his consent, so situated that, if he use the ballot, he may become a master; if he does not use it, he must become a slave. And he has no other alternative than these two. In self-defence, he attempts the former. His case is analogous to that of a man who has been forced into battle, where he must either kill others, or be killed himself. Because, to save his own life in battle, a man attempts to take the lives of his opponents, it is not to be inferred that the battle is one of his own choosing. Neither in contests with the ballot—which is a mere substitute for a bullet—because, as his only chance of self-preservation, a man uses a ballot, is it to be inferred that the contest is one into which he voluntarily entered; that he voluntarily set up all his own natural rights, as a stake against those of others, to be lost or won by the mere power of numbers. On the contrary, it is to be considered that, in an exigency, into which he had been forced by others, and in which no other means of self-defence offered, he, as a matter of necessity, used the only one that was left to him.

Doubtless the most miserable of men, under the most oppressive government in the world, if allowed the ballot, would use it, if they could see any chance of thereby ameliorating their condition. But it would not therefore be a legitimate inference that the government itself, that crushes them, was one which they had voluntarily set up, or ever consented to.

Therefore a man's voting under the Constitution of the United States, is not to be taken as evidence that he ever freely assented to the Constitution, *even for the time being*. Consequently we have no proof that any very large portion, even of the actual voters of the United States, ever really and voluntarily consented to the Constitution, *even for the time being*. Nor can we ever have such proof, until every man is left perfectly free to consent, or not, without thereby subjecting himself or his property to injury or trespass from others.

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II.

The Constitution says:

“Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.”

This is the only definition of treason given by the Constitution, and it is to be interpreted, like all other criminal laws, in the sense most favorable to liberty and justice. Consequently the treason here spoken of, must be held to be treason *in fact*, and not merely something that may have been falsely called by that name.

To determine, then, what is treason *in fact*, we are not to look to the codes of Kings, and Czars, and Kaisers, who maintain their power by force and fraud; who contemptuously call mankind their “subjects;” who claim to have a special license from Heaven to rule on earth; who teach that it is a religious duty of mankind to obey them; who bribe a servile and corrupt priesthood to impress these ideas upon the ignorant and superstitious; who spurn the idea that their authority is derived from, or dependent at all upon, the consent of their people; and who attempt to defame, by the false epithet of traitors, all who assert their own rights, and the rights of their fellow men, against such usurpations.

Instead of regarding this false and calumnious meaning of the word treason, we are to look at its true and legitimate meaning in our mother tongue; at its use in common life; and at what would necessarily be its true meaning in any other contracts, or articles of association, which men might voluntarily enter into with each other.

The true and legitimate meaning of the word *treason*, then, necessarily implies treachery, deceit, breach of faith. Without these, there can be no treason. A traitor is a betrayer—one who practices injury, *while professing friendship*. Benedict Arnold was a traitor, solely because, *while professing friendship for the American cause*, he attempted to injure it. An open enemy, however criminal in other respects, is no traitor.

Neither does a man, who has once been my friend, become a traitor by becoming an enemy, if before doing me an injury, he gives me fair warning that he has become an enemy; and if he makes no unfair use of any advantage which my confidence, in the time of our friendship, had placed in his power.

For example, our fathers—even if we were to admit them to have been wrong in other respects—certainly were not traitors *in fact*, after the fourth of July, 1776; since on that day they gave notice to the King of Great Britain that they repudiated his authority, and should wage war against him. And they made no unfair use of any advantages which his confidence had previously placed in their power.

It cannot be denied that, in the late war, the Southern people proved themselves to be open and avowed enemies, and not treacherous friends. It cannot be denied that they gave us fair warning that they would no longer be our political associates, but would, if need were, fight for a separation. It cannot be alleged that they made any unfair use of advantages which our confidence, in the time of our friendship, had placed in their power. Therefore they were not traitors in fact: and consequently not traitors within the meaning of the Constitution.

Furthermore, men are not traitors *in fact*, who take up arms against the government, *without having disavowed allegiance to it*, provided they do it, either to resist the usurpations of the government, *or to resist what they sincerely believe to be such usurpations*.

It is a maxim of law that there can be no crime without a criminal intent. And this maxim is as applicable to treason as to any other crime. For example, our fathers were not traitors in fact, for resisting the British Crown, *before* the fourth of July, 1776—that is, *before* they had thrown off allegiance to him—provided they *honestly believed* that they were simply defending their rights against his usurpations. Even if they were mistaken in their law, that mistake, if an innocent one, could not make them traitors in fact.

For the same reason, the Southern people, if they sincerely believed—as it has been extensively, if not generally, conceded, at the North, that they did—in the so-called constitutional theory of “State Rights,” did not become traitors *in fact*, by acting upon it; and consequently not traitors within the meaning of the Constitution.

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III.

The Constitution does not say *who* will become traitors, by “levying war against the United States, or adhering to their enemies, giving them aid and comfort.”

It is, therefore, only by inference, or reasoning, that we can know *who* will become traitors by these acts.

Certainly if Englishmen, Frenchmen, Austrians, or Italians, making no professions of support or friendship to the United States, levy war against them, or adhere to their enemies, giving them aid and comfort, they do not thereby make themselves traitors, within the meaning of the Constitution; and why? Solely because they would not be traitors *in fact*. Making no professions of support or friendship, they would practice no treachery, deceit, or breach of faith. But if they should voluntarily enter either the civil or military service of the United States, and pledge fidelity to them, (*without* being naturalized,) and should then betray the trusts reposed in them, either by turning their guns against the United States, or by giving aid and comfort to their enemies, they would be traitors *in fact*; and therefore traitors within the meaning of the Constitution; and could be lawfully punished as such.

There is not, in the Constitution, a syllable that implies that persons, born within the territorial limits of the United States, have allegiance imposed upon them on account of their birth in the country, or that they will be judged by any different rule, on the subject of treason, than persons of foreign birth. And there is no power, in Congress, to add to, or alter, the language of the Constitution, on this point, so as to make it more comprehensive than it now is. Therefore treason in fact—that is, actual treachery, deceit, or breach of faith—must be shown in the case of a native of the United States, equally as in the case of a foreigner, before he can be said to be a traitor.

Congress have seen that the language of the Constitution was insufficient, *of itself*, to make a man a traitor—on the ground of birth in this country—who levies war against the United States, but practices no treachery, deceit, or breach of faith. They have, therefore—although they had no constitutional power to do so—apparently attempted to enlarge the language of the Constitution on this point. And they have enacted:

“That if any person or persons, *owing allegiance to the United States of America*, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, * * * such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death.”—*Statute, April 30, 1790, Section 1.*

It would be a sufficient answer to this enactment to say that it is utterly unconstitutional, if its effect would be to make any man a traitor, who would not have been one under the language of the Constitution alone.

The whole pith of the act lies in the words, “*persons owing allegiance to the United States.*” But this language really leaves the question where it was before, for it does not attempt to show or declare who *does* “owe allegiance to the United States;” although those who passed the act, no doubt thought, or wished others to think, that allegiance was to be presumed (as is done under other governments) against all born in this country, (unless possibly slaves).

The Constitution itself, uses no such word as “allegiance,” “sovereignty,” “loyalty,” “subject,” or any other term, such as is used by other governments, to signify the services, fidelity, obedience, or other duty, which the people are assumed to owe to their government, regardless of their own will in the matter. As the Constitution professes to rest wholly on consent, no one can owe allegiance, service, obedience, or any other duty to it, or to the government created by it, except with his own consent.

The word *allegiance* comes from the Latin words *ad* and *ligo*, signifying *to bind to*. Thus a man under allegiance to a government, is a man *bound to it*; or bound to yield it support and fidelity. And governments, *founded otherwise than on consent*, hold that all persons born under them, are under allegiance to them; that is, are bound to render them support, fidelity, and obedience; and are traitors if they resist them.

But it is obvious that, *in truth and in fact*, no one but himself can bind any one to support any government. And our Constitution admits this fact when it concedes that it derives its authority wholly from the consent of the people. And the word treason is to be understood in accordance with that idea.

It is conceded that a person of foreign birth comes under allegiance to our government only by special voluntary contract. If a native has allegiance imposed upon him, against his will, he is in a worse condition than the foreigner; for the latter can do as he pleases about assuming that obligation. The accepted interpretation of the Constitution, therefore, makes the foreigner a free person, on this point, while it makes the native a slave.

The only difference—*if there be any*—between natives and foreigners, in respect of allegiance, is, that a native has a *right*—offered to him by the Constitution—to come under allegiance to the government, if he so please; and thus entitle himself to membership in the body politic. His allegiance cannot be refused. Whereas a foreigner’s allegiance can be refused, if the government so please.

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IV.

The Constitution certainly supposes that the crime of treason can be committed only by man, as an individual. It would be very curious to see a man indicted, convicted, or hanged, otherwise than as an individual; or accused of having committed his treason otherwise than as an individual. And yet it is clearly impossible that any one can be personally guilty of treason, can be a traitor *in fact*, unless he, as an individual, has in some way voluntarily pledged his faith and fidelity to the government. Certainly no man, or body of men, could pledge it for him, without his consent; and no man, or body of men, have any right to presume it against him, when he has not pledged it himself.

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V.

It is plain, therefore, that if, when the Constitution says treason, it means treason—treason in fact, and nothing else—there is no ground at all for pretending that the Southern people have committed that crime. But if, on the other hand, when the Constitution says treason, it means what the Czar and the Kaiser mean by treason, then our government is, in principle, no better than theirs; and has no claim whatever to be considered a free government.

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VI.

One essential of a free government is that it rest wholly on voluntary support. And one certain proof that a government is not free, is that it coerces more or less persons to support it, against their will. All governments, the worst on earth, and the most tyrannical on earth, are free governments to that portion of the people who voluntarily support them. And all governments—though the best on earth in other respects—are nevertheless tyrannies to that portion of the people—whether few or many—who are compelled to support them against their will. A government is like a church, or any other institution, in these respects. There is no other criterion whatever, by which to determine whether a government is a free one, or not, than the single one of its depending, or not depending, solely on voluntary support.

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VII.

No middle ground is possible on this subject. Either “taxation without consent is robbery,” or it is not. If it is *not*, then any number of men, who choose, may at any time associate; call themselves a government; assume absolute authority over all weaker than themselves; plunder them at will; and kill them if they resist. If, on the other hand, “taxation without consent *is* robbery,” it necessarily follows that every man who has not consented to be taxed, has the same natural right to defend his property against a taxgatherer, that he has to defend it against a highwayman.

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VIII.

It is perhaps unnecessary to say that the principles of this argument are as applicable to the State governments, as to the national one.

The opinions of the South, on the subjects of allegiance and treason, have been equally erroneous with those of the North. The only difference between them, has been, that the South has held that a man was (primarily) under involuntary allegiance to the *State* government; while the North held that he was (primarily) under a similar allegiance to the United States government; whereas, in truth, he was under no involuntary allegiance to either.

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IX.

Obviously there can be no law of treason more stringent than has now been stated, consistently with political liberty. In the very nature of things there can never be any liberty for the weaker party, on any other principle; and political liberty always means liberty for the weaker party. It is only the weaker party that is ever oppressed. The strong are always free by virtue of their superior strength. So long as government is a mere contest as to which of two parties shall rule the other, the weaker must always succumb. And whether the contest be carried on with ballots or bullets, the principle is the same; for under the theory of government now prevailing, the ballot either signifies a bullet, or it signifies nothing. And no one can consistently use a ballot, unless he intends to use a bullet, if the latter should be needed to insure submission to the former.

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X.

The practical difficulty with our government has been, that most of those who have administered it, have taken it for granted that the Constitution, *as it is written*, was a thing of no importance; that it neither said what it meant, nor meant what it said; that it was gotten up by swindlers, (as many of its authors doubtless were,) who said a great many good things, which they did not mean, and meant a great many bad things, which they dared not say; that these men, under the false pretence of a government resting on the consent of the whole people, designed to entrap them into a government of a part, who should be powerful and fraudulent enough to cheat the weaker portion out of all the good things that were said, but not meant, and subject them to all the bad things that were meant, but not said. And most of those who have administered the government, have assumed that all these swindling intentions were to be carried into effect, in the place of the written Constitution. Of all these swindles, the treason swindle is the most flagitious. It is the most flagitious, because it is equally flagitious, in principle, with any; and it includes all the others. It is the instrumentality by which all the others are made effective. A government that can at pleasure accuse, shoot, and hang men, as traitors, for the one general offence of refusing to surrender themselves and their property unreservedly to its arbitrary will, can practice any and all special and particular oppressions it pleases.

The result—and a natural one—has been that we have had governments, State and national, devoted to nearly every grade and species of crime that governments have ever practised upon their victims; and these crimes have culminated in a war that has cost a million of lives; a war carried on, upon one side, for chattel slavery, and on the other for political slavery; upon neither for liberty, justice, or truth. And these crimes have been committed, and this war waged, by men, and the descendants of men, who, less than a hundred years ago, said that all men were equal, and could owe neither service to individuals, nor allegiance to governments, except with their own consent.

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XI.

No attempt or pretence, that was ever carried into practical operation amongst civilized men—unless possibly the pretence of a “Divine Right,” on the part of some, to govern and enslave others—embodied so much of shameless absurdity, falsehood, impudence, robbery, usurpation, tyranny, and villany of every kind, as the attempt or pretence of establishing a government *by consent*, and getting the actual consent of only so many as may be necessary to keep the rest in subjection by force. Such a government is a mere conspiracy of the strong against the weak. It no more rests on consent than does the worst government on earth.

What substitute for their consent is offered to the weaker party, whose rights are thus annihilated, struck out of existence, by the stronger? Only this: *Their consent is presumed!* That is, these usurpers condescendingly and graciously *presume* that those whom they enslave, *consent* to surrender their all of life, liberty, and property into the hands of those who thus usurp dominion over them! And it is pretended that this presumption of their consent—when no actual consent has been given—is sufficient to save the rights of the victims, and to justify the usurpers! As well might the highwayman pretend to justify himself by presuming that the traveller *consents* to part with his money. As well might the assassin justify himself by simply *presuming* that his victim consents to part with his life. As well might the holder of chattel slaves attempt to justify himself by presuming that they consent to his authority, and to the whips and the robbery which he practises upon them. The presumption is simply a presumption that the weaker party consent to be slaves.

Such is the presumption on which alone our government relies to justify the power it maintains over its unwilling subjects. And it was to establish that presumption as the inexorable and perpetual law of this country, that so much money and blood have been expended.