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The United States are but One Country: A Short History of Grammar and Liberty

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ABSTRACT

This legal essay traces the conversion of "the United States" from a plural to a singular noun in United States Supreme Court decisions, in presidential proclamations and inaugural addresses, in diplomatic correspondence and in public discourse. It did not happen with a bang at the end of the Civil War, but with a whimper at the beginning of the twentieth century. Today, at the beginning of the twenty-first, the singularity of humanity, for which that conflagration was allegedly fought, still eludes us. It is that latter singularity that inspires and organizes this essay.

Not until the digital age was it possible to pinpoint when the Supreme Court finally stopped treating the United States as a grammatical plural. The change was scattered, hesitant, inconsistent, and appears to have been unconscious. The same scattered, hesitant and inconsistent usage occurred in the executive branch, in our national diplomacy and in our public discourse.

Resistance to our grammatical singularity toward the end of the nineteenth century was rarely founded upon considerations of grammatical nicety.

"The struggle between a singular and a plural United States was never about grammar. It was about a singular versus a plural humanity, and the battle is far from over."

A century later, it was no mere grammatical slip that even our most astute political pundits spoke daily during the election of 2008 of "the problem of *race*." There is no such thing, and if there was, it's not a problem. The problem is *racism*, which is all around us. The difference is profound. Our states may be finally united, but our people have a long way to go.

From the introduction:

> Public discourse over our numerical case prominently featured former Confederate and Union army generals who leveled their final volleys 35 years after Appomattox over what was superficially a grammatical quibble cloaking the issue whether humanity itself is singular or plural.
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> Unfortunately, "man's most dangerous myth" of a plural humanity persists in these United States to this day. Whether we ever become "one nation, indivisible, with liberty and justice for all" will depend on how we resolve this second "point of grammar," so tightly intertwined with the first.

In 1896, only four years before the Supreme Court finally ditched the plural United States for all time, *Plessy v. Ferguson* instructs us how deeply entrenched was the fallacy of a plural humanity. This article discusses *Plessy* in this context:

> In 1896, while the nation debated at least its grammatical unity, a certain "Plessy" argued in the Supreme Court that, being "seven eighths Caucasian and one eighth African," he was entitled to sit in the white cars of Louisiana's segregated railway. In *Plessy v. Ferguson*, the Court rejected this argument with a political plural in a single paragraph. Let the United States decide for *themselves*. One can be white in one of these United States and of "the colored race" in another.

"The United States are but one country" pinpoints when the United States finally became a singular noun. We will have to leave it to a future generation to pinpoint when we finally become a singular humanity, should that ever happen.

6100 words

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1. Introduction: Assuming a national form and character

In 1788, John Jay wrote in The Federalist No. 64: "In proportion as the United States assume a national form and a national character, so will the good of the whole be more and more an object of attention." The plural case Jay used in his prophecy of the advancement of the good of the whole of the United States as *they assume* a national form and character died out in the United States at the beginning of the twentieth century, but the prophecy can still inspire us at the start of the twenty-first. One could write the history of the United States under that banner and leave nothing out.

In most, if not all, languages but our own, "the United States" are still treated today as plural. We have lately been treating singular nouns as plural,[1] but we have treated the modified plural noun United States as singular for just over 100 years. There is more here than a grammatical twist.

In most, if not all, corners of the world but our own, the history of liberty is mostly the history of decentralization of power, but in the United States it has been mostly the history of concentration of authority in a central government. The reasons are slavery and postbellum racism. The Civil War was a vivid memory when the United States became a singular noun, but the country is far from shaking off the primeval notions of a plural humanity that caused it.

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[1] The Ford Motor Company *is*, but *they* make cars. Like "her and I," this can't be right.

Tracing the development of the United States from a plural to a singular noun, from *pluribus* to *unum*, is more than an excursion in grammar. It's an excursion into our national form and our national character. It has often been said that we became a singular noun at the end of the Civil War, but, like slavery and racism, it is not that simple. This article will trace our national numerical case from the Federalist Papers to the Constitution, from decisions of the United States Supreme Court to presidential proclamations and inaugural addresses, and from American journalism to American diplomacy. Like so much else in life, there is no clear dividing line. The plural case simply faded away over time and no one noticed when it was finally gone. There was never a directive or even discussion by the Supreme Court, which would sometimes utilize both the singular and the plural in the same case, until the plural quietly disappeared forever from Supreme Court decisions circa 1900.

Public discourse over our numerical case prominently featured former Confederate and Union army generals who leveled their final volleys 35 years after Appomattox over what was superficially a grammatical quibble cloaking the issue whether humanity itself is singular or plural.

Unfortunately, "man's most dangerous myth"[2] of a plural humanity persists in these United States to this day. Whether we ever become "one nation, indivisible, with liberty and justice for all" will depend on how we resolve this second "point of grammar," so tightly intertwined with the first.

2. The Constitution: The United States and "any place subject to their jurisdiction"

Only four of the many references to "the United States" in the Constitution tell its number and it is always plural. Article I, section 9, clause 8: "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under *them*,[3] shall, without the Consent of the Congress, accept any present, Emolument, Office, or Title, of any kind whatever,

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[2] M.F. ASHLEY MONTAGU, MAN'S MOST DANGEROUS MYTH: THE FALLACY OF RACE, COLUMBIA UNIVERSITY PRESS (***1942***)

[3] Unless otherwise noted, all italics in this review have been added by the author.

from any King, Prince, or foreign State." Article III, section 2 states: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under *their* Authority."[4] Article III, section 3 states: "Treason against the United States shall consist only in levying War against *them*, or in adhering to *their* Enemies, giving them Aid and Comfort."

The United States is plural for the fourth time in the Thirteenth Amendment: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to *their* jurisdiction."

3. The Federalist: The United States "in their united or collective capacity"

In The Federalist papers the "United States" was plural everywhere but one conflicting sentence. In The Federalist No. 12 Alexander Hamilton told us that "the United States lie at a great distance from Europe." In a single sentence in The Federalist No. 15, Hamilton inconsistently noted that "the United States *has* an indefinite discretion to make requisitions for men and money; but *they* have no authority to raise either." In The Federalist No. 21, Hamilton wrote: "The United States, as now composed, have no powers to exact obedience, or punish disobedience to their resolutions."

James Madison wrote in The Federalist No. 43: "Among the lesser criticisms which have been exercised on the Constitution, it has been remarked that the validity of engagements ought to have been asserted in favor of the United States, as well as against them."

In The Federalist No. 80, Hamilton wrote that "the judicary authority of the Union ought to extend to . . .all those [cases] in which the United States are a party."[5] In The Federalist No. 82,

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[4] The words "under their Authority" could be read to refer to the Constitution and laws, rather than the states, but see Article VI: "The Constitution and the Laws made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."

[5] ("judicary" original.) Hamilton spoke in the same paper of "controversies to which the United States shall be a party." [also in Article III, section 2] The United States are, or shall be, "a party." There is no need to list them.

Hamilton argued that "the United States should exercise the judicial power with which they are to be invested." In Federalist No. 83, he stated: "The United States, in their united or collective capacity, are the OBJECT to which all general provisions in the Constitution" refer. [caps original]

4. The United States Supreme Court: "The United States are but one country"

United States Supreme Court decisions provide an official record, but only a relative few of the Court's multitude of references to the United States tell us about our national number. In addition to "against the United States," popular during the Civil War, 99% are prepositional phrases – of, in, to, into, by, for, and from the United States – that don't assist this inquiry. The others tell us that an enduring judicial conversion to a singular "United States" did not occur until late1900. Until then, the usage was plural, but, after the Civil War, inconsistent, sometimes even within a single case.

In 1865 the Court noted in *United States v. Circuit Judges* that "(t)he United States, through *their* highest legal officer, had assented."[6] In 1867, in *George v. Stanton*, the Court said: "In the case of Florida v. Georgia, the United States *were* allowed to intervene, being the proprietors."[7]Also in 1867, in *Crandall v. State of Nevada*, the Court struck down a Nevada law taxing railroads and stage coaches one dollar for each person they transport out of the state,[8] with the one plural usage that has never died: "The people of *these* United States constitute one nation."[9] Later in 1867 the Court used the singular case in *United States v. Eckford* ("is indebted"),[10] but the plural in *Stearns v. United States* ("were substantially in possession").[11] The Court used the singular in1869 in *United States v.*

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[6] 70 U.S. (3 Wall.) 673, 685 (1865) (Field, J., dissenting).

[7] 73 U.S. (6 Wall.) 50, 73 (1867).

[8] "Leaving Las Vegas!" Nevada later devised more efficient ways to take your last dollar.

[9] 73 U.S. (6 Wall.) 35, 43 (1868). The Declaration of Independence – "The unanimous Declaration of these thirteen united States of America" – speaks once of "these united Colonies" and 3 times each of "these Colonies" and "these States."

[10] 73 U.S. (6 Wall.) 484, 489 (1867).

[11] 73 U.S. (6 Wall.) 589, 593 (1867).

Roland ("is under no obligation"),[12] but the plural case outnumbered the singular case that year four to one in *Garrison v. United States* ("were to pay"),[13] *United States v. Speed*, ("were not bound"),[14] *United States v. Lane* ("were called on")[15] and *Alviso v. United States* ("have not appealed").[16]

In 1870, the Court mixed singular and plural in *United States v. Keehler* (the United States "were indebted" but "is entitled to judgment"),[17] in *Green v. United States* ("the United States are a party" but "is a necessary party")[18] and in *Ward v. United States* ("The United States "deny their obligation" but "is not in a position").[19] That year we were singular in *Meade v.United States* ("the United States was notified")[20] and *United States v. Lynde* ("the United States . . .claimed that it was covered"),[21] but plural in *Hormsby v. United States* ("the United States were bound to protect"),[22] *Miller v. United States* ("War existing, the United States were invested with belligerent rights"),[23] *Reed v. United States* ("the United States . . .have paid"),[24] *United States v. Burns* ("the United States were authorized")[25] and *Avery v. United States* ("the United States . . .were indebted").[26]

We were one again in 1871 in *Cross v. United States* ("the United States was not bound"),[27] but plural in *United States v. Morgan* ("in no sense were the United States the owners of the vessel, for they had nothing to do with her management, and only reserved to themselves")[28] and in *Leary v.*

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[12] 74 U.S. (7 Wall.) 743, 750 (1869).
[13] 74 U.S. (8 Wall.) 689, 689 (1869).
[14] 74 U.S. (8 Wall.) 77, 84 (1869).
[15] 75 U.S. (8 Wall.) 185, 190 (1869).
[16] 75 U.S. (8 Wall.) 337, 342 (1869).
[17] 76 U.S. (9 Wall.) 83, 84, 89 (1869).
[18] 76 U.S. (9 Wall.) 655, 657, 658 (1869).
[19] 77 U.S. (10 Wall.) 593, 600, 603 (1870).
[20] 76 U.S. (9 Wall.) 691, 717 (1870).
[21] 78 U.S. (11 Wall.) 632, 635 (1870).
[22] 77 U.S. (9 Wall.) 224, 241 (1870).
[23] 78 U.S. (11 Wall.) 268, 306 (1870).
[24] 78 U.S. (11 Wall.) 591, 607 (1870).
[25] 79 U.S. (12 Wall.) 246, 248 (1870).
[26] 79 U.S. (12 Wall.) 304, 306 (1870).
[27] 81 U.S. (14 Wall.) 479, 483 (1871).
[28] 81 U.S. (14 Wall.) 531, 534 (1871).

United States ("the United States agree");[29] in 1872 in *Maddox v. United States* ("are called on"),[30] *Reybold v. United States* ("were empowered"),[31] *United States v. Hickey* ("all their right, title and interest")[32] and in *Allen v. United States* ("are entitled" and "their right of priority");[33] in 1873 in *Goodwin v. United States*, ("are not blameworthy")[34] and in *Bulkley v. United States* ("are liable");[35] and in 1874 in *United States v. O'Grady* ("if they desire"),[36] *Sprott v. United States* ("They did not acquire" and "have never asserted")[37] and in *Titus v. United States* ("if the United States are not").[38]

The United States was or were both singular and plural in 1873 in *Dollar Savings Bank v. United States* ("has no common law" but "are not prohibited").[39]

We were grammatically and substantively plural in 1875 in *United States v. Cruikshank* ("lend their assistance"),[40] where the Court freed members of a Louisiana lynch mob, convicted under federal law of violating the civil rights of citizens of African descent (lynching two of them for trying to vote), on the ground that civil rights were for the states to enforce, not the United States. "The equality of the rights of citizens" secured by the Fourteenth Amendment, said the Court, "is a principle of republicanism," and "(t)he only obligation resting upon the United States is to see that the States do not deny the right."[41] Some southern states tended not to prosecute such murders.

In 1884, in *Ex parte Yarborough* [the "Ku Klux cases"], the United States was singular ("justify the United States in failing to enforce its own laws") when the Court upheld federal

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[29] 81 U.S. (14 Wall.) 607, 622 (1871).
[30] 82 U.S. (15 Wall.) 58, 60 (1872).
[31] 82 U.S. (15 Wall.) 202, 206 (1872).
[32] 84 U.S. (17 Wall.) 9, 14 (1872).
[33] 84 U.S. (17 Wall.) 209, 209, 210 (1872).
[34] 84 U.S. (17 Wall.) 515, 517 (1873) (but in the Syllabus "was not liable," at 515).
[35] 86 U.S. (19 Wall.) 37, 39 (1873).
[36] 89 U.S. (22 Wall.) 641, 648 (1874).
[37] 87 U.S. (20 Wall.) 459, 468 (1874).
[38] 87 U.S. (20 Wall.) 475, 484 (1874).
[39] 86 U.S. (19 Wall.) 227, 238, 239 (1873).
[40] 92 U.S. 542, 556 (1875).

convictions of conspiring to prevent, by force, intimidation or threat, citizens of African descent from voting in federal elections, rejecting the claim that only the states can prosecute such conduct.[42]

We were back to plural in 1887 in *Robbins v. Shelby County Taxing District* when the Court announced our singularity in matters of interstate commerce: "the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems;"[43] and in 1888 in *United States v. American Bell Telephone Co.* ("the United States are plaintiffs").[44]

We were singular in May of 1895 in *United States v. Smith* ("cases in which the United States was interested, though not usually a party")[45] and on November 11, 1895, in *Shiver v. United States* ("the United States loses its title"),[46] but plural the same day in *United States v. American Bell Telephone Co.* ("the United States are parties" and "the United States are petitioners or plaintiffs").[47] We were plural in the syllabus in *United States v. Union Pacific Ry. Co.* ("to which the United States have granted subsidies"),[48] but singular in the decision (the "United States is not bound" and "was entitled to institute its own suit");[49] singular again in 1895 in *United States v. Western Union Tel. Co.* ("The United States has never been reimbursed in full"),[50] but plural in 1898 in *Holden v. Hardy* ("the United States are bound to guarantee to each state a republican form of government").[51]

We were singular in 1899 in *Keck v. United States* ("the United States . . .maintains"),[52] in

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[41] *Id*. at 554-555.
[42] 110 U.S. 651, 659 (1884).
[43] 120 U.S. 489, 494 (1887).
[44] 128 U.S. 315, 359 (1888).
[45] 158 U.S. 346, 352 (1895).
[46] 159 U.S. 491, 495 (1895).
[47] 159 U.S. 548, 550 (1895).
[48] 160 U.S. 1, 2 (1895).
[49] *Id*. at 47, 51.
[50] 160 U.S. 53, 58 (1895).
[51] 169 U.S. 366, 289 (1898).
[52] 172 U.S. 434, 443 (1899).

United States v. Matthews ("the United States prosecutes" and "relies")[53] and in *United States v. Conway* ("the United States is a proper and necessary party"),[54] but plural that same year in *United States v. Johnson* ("civil actions in which the United States are concerned"),[55] in *United States v. New York Indians* ("the United States are in no position to show"),[56] in *Oakes v. United States*, ("the United States rely" and "have authorized"),[57] in *Anglo-California Bank v. United States* ("the United States were properly substituted as a party" and "were plaintiffs and appellants")[58] and in *Coudert v. United States* ("the United States claimed it, but their claim was contested").[59]

The United States were plural in the Supreme Court for the last times on the 5th and 26th of February, 1900, in *United States v. Tennessee & Coosa R. Co.* ("the United States contend")[60] and in *United States v. Parkhurst-Davis Mercantile Co*. ("the United States filed their bill").[61]

We were singular in December of 1900 in *United States v. Choctaw and Chickasaw Nations*, ("the United States was under")[62] and remained so in 1902 in *United States v. Borcherling* ("the United States is a sovereignty . . .has absolute control . . .shall pay its debts"),[63] in *United States v. Barlow* ("also relies")[64] and in *Ainsa v. United States* ("is not subject to suit").[65] We were singular in 1903 in *Oregon & California R. Co. v. United States No. 1* ("now claims"),[66] *Smythe v. United States* ("was indebted"),[67] *United States v. Ricert* ("is entitled"),[68] *Riverside Oil Co. v. Hitchcock*

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[53] 173 U.S. 381, 382, 383 (1899).
[54] 175 U.S. 60, 61 (1899).
[55] 173 U.S. 363, 375 (1899).
[56] 173 U.S. 464, 470 (1999).
[57] 174 U.S. 778, 789, 792 (1899).
[58] 175 U.S. 37, 38, 40 (1899).
[59] 175 U.S. 178, 180 (1899).
[60] 176 U.S. 242, 249 (1900).
[61] 176 U.S. 317, 317 (1900).
[62] 179 U.S. 494, 504, 509 (1900).
[63] 185 U.S. 223, 231 (1902).
[64] 184 U.S. 123, 133 (1902).
[65] 184 U.S. 639, 648 (1902).
[66] 189 U.S. 103, 109 (1903).
[67] 188 U.S. 156, 166 (1903).

("the United States has"),[69] *United States v. Michigan* ("invokes"),[70] *St. Louis Hay & Grain Co. v. United States* ("has paid" and "has done");[71] in 1904 in *United States v. California & Oregon Land Co.* ("is suing," "puts forward," "was bound" and "was not at liberty");[72] and forever after.

5. The President of the United States: North vs. South (of Cuba)

In his inaugural address of March 4, 1813, James Madison told the nation that the War of 1812 "was not declared on the part of the United States until it had been long made on them."[73] His successor, James Monroe, also used the plural case on March 4, 1817 when he said: "During a period fraught with difficulties and marked by very extraordinary events the United States have flourished beyond example" and on March 4, 1821 when he spoke of "the right claimed by the United States for their citizens," of the "great interests which the United States have in the Pacific," and the territorial sovereignty that the "United States now enjoy."

As in the judicial branch, the switch to singular occurred in the executive branch at the turn of the century. In his inaugural address of March 4, 1901, William McKinley spoke of "the established and historical policy of the United States in its relation to Cuba." This was followed by William H. Taft on March 4, 1909 (the United States and "its dependencies)," Herbert Hoover on March 4, 1929 ("The United States fully accepts" and "seeks . . .no special privilege or advantage), Harry S. Truman on January 20, 1949 ("the United States has invested" and "is preeminent among nations") and Dwight D. Eisenhower on January 20, 1953 ("a United States that is strong").

The only plural usage in presidential inaugural addresses in the 20th century was the undying "these United States" used by Warren G. Harding on March 4, 1921 ("The unselfishness of these

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[68] 188 U.S. 432, 444 (1903).
[69] 190 U.S. 316, 320 (1903).
[70] 190 U.S. 379, 396 (1903).
[71] 191 U.S. 159, 164 (1903).
[72] 192 U.S. 355, 358-359 (1904).

United States") and by Ronald Reagan on January 20, 1981 ("These United States are confronted with an economic affliction of great proportions.").

Just as in the Supreme Court, there was inconsistency in the executive branch before the turn of the century. In June of 1895, announcing American neutrality on behalf of President Cleveland, Secretary of State Richard Olney referred to Spain as "a power with which the United States are and desire to remain on terms of peace and amity."[74] Extending the Monroe Doctrine to South America later the same year, Olney changed his tune, at least grammatically, when he said: "Today the United States is practically sovereign on this [South American] continent, and its fiat is law upon the subjects to which it confines its interposition."[75]

On April 22, 1898 we were plural on the north coast of Cuba when President McKinley proclaimed that "the United States of America have instituted . . .a blockade of the north coast of Cuba,"[76] but singular on the south coast on June 27, when McKinley proclaimed that "the United States has instituted . . .an effective blockade of all the ports on the south coast of Cuba."[77]

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[73] Inaugural addresses at The American Presidency Project, http://www.presidency.usb.edu.

[74] United States v. Three Friends, 166 U.S. 1, 64 (1897).

[75] Taft Asks Support for Wilson Policy, N.Y. TIMES, Dec. 12, 1913, at p. 3; GERALD G. EGGERT, RICHARD OLNEY: EVOLUTION OF A STATESMAN, PENNSYLVANIA STATE UNIV. PRESS (1974).

On November 26, 1895, Britain's Lord Salisbury complained of Olney's demand that European powers submit boundary disputes with South American countries to the U.S. for arbitration. Europeans, he said, "are not prepared to admit that the interests of the United States are necessarily concerned in every frontier dispute between any two of the states who possess dominion in the western hemisphere; and still less can they accept the doctrine that the United States *are* entitled to proclaim that the process of arbitration shall be applied to any demand for the surrender of territory." He denied that "the United States *have* a right to insist that the European State submit the demand and its own impugned right to arbitration." LORD SALISBURY'S REPLY.; Declares the Monroe Doctrine Does Not Apply to Venezuela's Case, N.Y. TIMES, Dec. 18, 1895, at 3. [Britain ultimately agreed to arbitrate.]

[76] *The Pedro*, 175 U.S. 354, 357 (1899); The Blockade Proclamation, President McKinley's Pronouncement of the Closing of Cuban Ports to Commerce, N.Y. TIMES, April 23, 1898, at 1; Full text *also available at*: http://www.ucsb.edu/presidency/ws/index.php?pid=69195.

[77] *The Olinda Rodrigues*, 174 U.S. 510, 518 (1899); Full text *available at*: http://www.ucsb.edu/presidency/ws/index.php?pid=69241. McKinley used the singular exclusively in his state of the union address of 1897 ("its aid," "its part," "was one of the last"), but mixed usage in his state of the union address of 1898 ("maintain relations" but "has not been"). *See* http://www.presidency.ucsb.edu/sou.php. The United States was consistently singular to Teddy Roosevelt, who succeeded McKinley in 1901, and to every president thereafter.

Barack Obama mentioned "the United States" once in his inaugural address January 20, 2009, in his last sentence: "God bless the United States of America."[78] In his benediction, Dr. Joseph Lowery honored "Barack Obama, the 44th President of these United States of America."[79]

6. The public debate: The United States "constitute a great nation"

In 1895, while the Court equivocated on national unity, grammatically and otherwise, a newspaper defended Secretary Olney's plural case. After reciting the long history of a plural United States and commending the spirit of unity behind the singular, the editors wrote that the singular

> is of recent origin, and cannot be defended on grammatical grounds. Good writers and correct speakers will not sacrifice the King's English to a claim founded merely on sentiment, nor can the sentiment itself, admirable as it is, be strengthened or promoted by breaking down the rules of grammar. The United States are forty-four in number, they constitute a great Nation, and they require a plural verb. Secretary Olney is right and his critics are wrong.[80]

In the 53rd Congress (1893-1895), Mississippi Senator, former Mississippi Supreme Court Chief Justice, secessionist and Confederate brigadier general James Zachariah George agreed:

> An incident of the session illustrative of his extreme States' rights views, which he never abandoned, was a personal explanation made in the Senate objecting to the printing of his speech in such a way as to make it appear that he referred to the United States in the singular number. In justification of the correctness of his position he entered into an exhaustive analysis of the language of the Constitution, the decisions of the Supreme Court in the early days and the opinions of the fathers to show that the plural number was invariably used in referring to the United States.[81]

As early as 1887, the Washington Post had taken the opposite view. In a letter to the editor, a certain "J.M. McK." attempted to correct the newspaper's grammar: "You probably meant to say

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[78] The Address: 'All This We Will Do', N.Y. TIMES, Jan. 21, 2009, at P2. Like most presidents before him, Obama's references were always to "America" and "Americans."

[79] Benediction: 'On the side of love, not hate', L.A. TIMES, Jan. 21, 2009, at A25.

[80] ONE MUST SAY THE UNITED STATES ARE; To Say "Is" May Be Admirable in Sentiment, but It Is Ungramatical (sic), from the Indianapolis Journal, (Rep.), N.Y. TIMES, June 24, 1895, at 5.

[81] JAMES G. GARNER, THE SENATORIAL CAREER OF J.Z. GEORGE, MISS. HIST. SOC. PUB., Vol. VII, 258-259 (1903). George signed the Mississippi Ordinance of Secession, was briefly Chief Justice of the Mississippi Supreme Court and was three times elected to the United States Senate. BIOGRAPHICAL DIRECTORY OF THE U.S. CONG., 1774 - 2005, at 1111, U.S. Govt. Printing Office, *available at* http://www.gpoaccess.gov/serialset/cdocuments/hd108-

'The United States *have* nothing to learn from England,' and, though only a typographical error, I think it should be set right." The editors replied:

> No; we meant to say just what we did say . . .There was a time a few years ago when the United States was spoken of in the plural number. Men said "the United States are" – "the United States have" – "the United States were." But the war changed all that. Along the line of fire from the Chesapeake to Sabine Pass was settled forever the question of grammar. Not Wells, or Green, or Lindley Murray decided it, but the sabers of Sheridan, the muskets of Sherman, the artillery of Grant.
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> Before the first Bull Run we generally said "the United States are" – are a Confederacy, for instance; after Appomattox we learned to say "the United States is" – is a Nation, for instance. The war settled permanently the question of grammar, and all that implies – behind the sentiment was the syntax. The surrender of Mr. Davis and Gen. Lee meant a transition from the plural to the singular. Whatever we may have thought once, it is now seen to be better for us all to say "the United States is" – is a Nation, for instance.[82]

On May 4, 1901, Union Army general and Secretary of State John W. Foster "found that in the earlier days of the Republic the prevailing practice was the use of the plural, but even then many of our public men at times employed the singular." Treaties, he said, usually used the plural, but "in the treaty of peace with Spain of 1898, the term 'United States' is uniformly treated in the singular."

Foster concluded that "since the civil war the tendency has been toward such use; and to-day among public and professional men it has become the prevailing practice." [83]

Union general John W. Foster of Indiana and Confederate general James Zachariah George of Mississippi disagreed over whether the United States should be singular or plural, first by civil war, then by a more civil engagement. It has been reported that Mark Twain "observed that the Civil War was fought over whether 'United States' was singular or plural,"[84] but this charming way of

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222/g.pdf; *and at* http://bioguide.congress.gov/scripts/biodisplay.pl?index=G000127.

[82] The United States Has, WASH. POST, April 24, 1887, at 4 (italics in original).

[83] John W. Foster, ARE OR IS?; Whether a Plural or a Singular Verb Goes With the Words United States, N.Y. TIMES SAT. REV. OF BOOKS AND ART, May 4, 1901, at BR7.

[84] JOHN M. CONLEY AND WILLIAM M. O'BARR, JUST WORDS: LAW, LANGUAGE AND POWER 149 (2nd ed. 2005). The authors did not cite an original source and none has been found. It is the sort of thing, though, that he might have said.

sounding the genesis of that bloody conflict is more likely attributable to Basil Lanneau Gildersleeve, Professor of Greek at Johns Hopkins University, who wrote in 1909 that "if I chose,"

> I might enlarge on the historical importance of grammar in general, and Greek grammar in particular. It was a point of grammatical concord that was at the bottom of the Civil War – "United States are," said one, "United States is," said another.[85]

After the military, industrial and social total-war mobilization demanded of the United States by the First World War, the grammar war was history. We had overthrown the King *and* his English.

To this day, the Supreme Court of the third state to secede in 1861 opens its sessions with "God save *these* United States, this great State of Florida, and this Honorable Court."[86] The United States Supreme Court uses a similar prayer, but asks God to save the Court and "*the* United States."[87]

7. A singular humanity: "Not properly put in issue"

The struggle between a singular and plural United States was never about grammar. It was about a singular versus plural humanity, and the battle is far from over.

In 1911 the Court used the plural in *Bailey v. Alabama*, but it was quoting the Thirteenth Amendment, which, the Court said, "was not new" and only "reproduced the historic words of the Ordinance of 1787 for the Government of the Northwest Territory, and gave them unrestricted application within the United States and all places subject to their jurisdiction."[88] Bailey was convicted under a rebuttable presumption of criminal intent when a worker quits after being paid. The Court said that it was irrelevant that Bailey was black and convicted in Alabama, not "in New

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[85] BASIL LANNEAU GILDERSLEEVE, HELLAS AND HESPERIA OR THE VITALITY OF GREEK STUDIES IN AMERICA 16 (1909).

[86] http://www.floridasupremecourt.org/education/tours/vounteer_manual_07.pdf, p. 11 ("vounteer" in original url). Note the redundancy. Florida is twice blessed. *See also Newdow v. United States*, 328 F.3d 466, 470, n. 16 (9th Cir. 2003) (O'Scannlain dissenting), *rev'd*, 524 U.S. 1 (2004).

[87] http://www.supremecourtus.gov/about/procedures.pdf; http://www.courttv.com/archive/multimedia/supremecourt/interior1.html

[88] 219 U.S. 219, 240 (1911).

York or in Idaho,"[89] but reversed on the ground that the presumption, "an instrument of compulsion peculiarly effective against the poor and ignorant," violated the Thirteenth Amendment.[90]

Justice Holmes dissented. The rebuttable presumption, Holmes said, "does no harm except on a tacit assumption that this law is not administered as it would be in New York."[91]

Grammatically, the United States were one nation. Politically and socially they were not.

Gradual, hesitant, and full of backsliding describes both the transformation of the United States into grammatical singularity and *its* assumption of a "national form and national character."

In 1896, while the nation debated at least its grammatical unity, a certain "Plessy" argued in the Supreme Court that, being "seven eighths Caucasian and one eighth African," he was entitled to sit in the white cars of Louisiana's segregated railway. In *Plessy v. Ferguson*, the Court rejected this argument with a political plural in a single paragraph. Let the United States decide for *themselves*.

One can be white in one of these United States and of "the colored race" in another:

> It is true that the question of the proportion of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion in the different States, some holding that any visible admixture of black blood stamps the person as belonging to the colored race (State v. Chaver, 5 Jones [N.C.] 1, p. 11); others that it depends upon the preponderance of blood (Gray v. State, 4 Ohio 354; Monroe v. Collins, 17 Ohio St. 665); and still others that the predominance of white blood must only be in the proportion of three-fourths. (People v. Dean, 4 Michigan 406; Jones v. Commonwealth, 80 Virginia 538). But these are questions to be determined under the laws of each State, and are not properly put in issue in this case. Under the allegations of his petition, it may undoubtedly become a question of importance whether, under the laws of Louisiana, the petitioner belongs to the white or colored race.[92]

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[89] *Id*. at 231.

[90] *Id*. at 245.

[91] *Id*. at 248 (Holmes, J., dissenting).

[92] 163 U.S. 537, 552 (1896). It has been argued that Plessy was chosen for the test case because, in addition to the equal protection claim, he raised a due process challenge against racial classification, especially when this (necessarily) is left to the railroad car conductor on site. For an analysis focusing on "the arbitrary nature of racial classifications," see Mark Golub, Plessy as "Passing": Judicial Responses to Ambiguously Raced Bodies in Plessy v. Ferguson, 39 Law & Soc'y Rev., No. 3, Sept. 2005, *available at* http://findarticles.com/p/articles/mi_qa3757/is_200509/ai_n15353162/pg_1?tag=artBody;col1
"White" is a racial classification. No human being is the color white. We are all shades of brown.

In addition to a plural United States, *Plessy* rested upon a second plural construction. It was a fallacy, the Court said, to assume that "the enforced separation of *the two races* imposes a badge of inferiority upon either one, and "(i)f *the two races* are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals.[93] The fallacy of *Plessy* was that it considered *humanity* to be plural.[94]

Forty-five years after *Plessy*, the United States fought a world war lethally inspired by that plural fallacy, with plural armies, separated into black and white regiments.

Some who survived to return home were jailed or lynched for sitting in the wrong seat, drinking from the wrong fountain, or talking to the wrong woman. It took more than grammatical unity to end this and it took more than even *a* strong United States. It took *a* strong, united, people.

Some who survived the war against racism overseas only to face it at home were still around on January 20, 2009, to hear Barack Obama quote Article II, Section 1, Clause 8 of the United States Constitution: "I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

We may be long past the sentiments expressed by President Warren G. Harding in Birmingham on October 26, 1921, four score and seven years before the election of President Barack Obama, when he told Americans to recognize "a fundamental, eternal, and inescapable difference,"

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[93] *Plessy*, 163 U.S. at 551.

[94] The Court devised a national standard for "white person" in *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). The United States sued to cancel Thind's certificate of citizenship on the ground that he was not a "white person" entitled to citizenship under the Naturalization Act of 1790, enacted immediately after Hamilton, Madison and Jay succeeded in ratifying the Constitution. "It may be true," said the Court, "that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them today." *Id*. at 209. Finding for the United States, the Court concluded: "It is far from our thought to suggest the slightest question of racial superiority or inferiority. What we suggest is merely a racial difference." *Id*. at 215. In other words: "I know it when

an "absolute divergence in things social and racial" between "two greatly differing races," and that "(t)he black man should seek to be, and he should be encouraged to be, the best possible black man and not the best possible imitation of a white man,"[95] but throughout the election of 2008 pundits and pollsters persistently spoke of "the problem of *race*" and asked whether "*race* would affect the election." Rarely, if ever, did anyone speak to "the problem of *racism*" or ask whether *racism* would affect the election. The question was "not properly put in issue." There is more here than a grammatical twist. The difference is profound. There is no such thing as race in the human population, and if there was, it's not a problem.

Perhaps someone someday will research the point at which the "prevailing practice" of at least "public and professional men" and women was to finally treat humanity in the singular case.

"In proportion as the United States assume a national form and a national character," said John Jay over two centuries ago, "so will the good of the whole be more and more an object of attention."

He just couldn't tell us how long it would take.

I see it." *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

[95] Harding Says Negro Must Have Equality in Political Life, N.Y. TIMES, Oct. 27, 1921, at 1, 11. Fifty-six years after the "surrender of Mr. Davis and Gen. Lee" that "meant a transition from the plural to the singular," Harding spoke to "appeal to the self-respect of the colored race," "lay aside old prejudices and old antagonisms" and graciously extend *political* equality, although "it would be helpful to have that word 'equality' eliminated from this consideration" and "(r)acial amalgamation there can never be." He urged "the people of the South to take advantage of their superior understanding of this problem," who "threw flowers into the President's car as it passed by." *Id*.