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CONFEDERATE NATIONALISM: POLITICS AND GOVERNMENT IN THE CONFEDERATE SOUTH, 1861-1865.

Rice University, Ph.D., 1964
History, modern

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Confederate Nationalism: Politics and Government in the Confederate South, 1861-1865

by

John Brawner Robbins

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

Thesis Director's signature:

Houston, Texas

May, 1964
TO MY MOTHER
AND TO THE MEMORY
OF MY FATHER
Acknowledgments

The idea for this dissertation grew out of discussions in Professor Frank E. Vandiver's seminar in Confederate history. For suggesting a new view of the Confederacy and of President Davis and for allowing me to undertake this project, I owe him a great debt of gratitude. To Professor Andrew Forest Muir, I am appreciative for help in the early stages of writing. By far my greatest appreciation is extended to Professor Barnes P. Lathrop of Texas University who, in the absence of Professor Vandiver, directed and carefully edited the writing of the entire dissertation. I shall always be grateful for his advice and lessons in careful scholarship. My thanks are also extended to Professors Floyd S. Lear and James Street Fulton, who along with Professor Lathrop, acted as my dissertation committee.

I would also like to thank Professors William H. Masterson and Leonard M. Marsak of Rice University, and William W. Abbot of the College of William and Mary for much help, advice, and historical insight during the course of my graduate study.

My appreciation is also extended to the Rice University History Department for summer travel money and microfilm expenses.

The directors and staffs of the libraries and institutions listed in the bibliography greatly aided the project by
extending me many courtesies during the course of my research. At Fondren Library, Rice University, I am particularly grateful to Mr. Joe Dumenil of the Photoduplication Division, Miss Pender Turnbull of the Rare Book Room Division, and Mrs. Marvine Brand of the Interlibrary Loan Department.

I would also like to thank my sister, Retta, and Harry Guffee and John Mullen of the Rice Architecture Department for help with the maps.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prologue</td>
<td>2</td>
</tr>
<tr>
<td><strong>CHAPTER</strong></td>
<td></td>
</tr>
<tr>
<td>I. THE INCEPTION OF A GOVERNMENT</td>
<td>8</td>
</tr>
<tr>
<td>II. A GOVERNMENT TAKES SHAPE</td>
<td>37</td>
</tr>
<tr>
<td>III. HABEAS CORPUS</td>
<td>64</td>
</tr>
<tr>
<td>IV. CONSCRIPTION</td>
<td>94</td>
</tr>
<tr>
<td>V. TAXATION</td>
<td>129</td>
</tr>
<tr>
<td>VI. WAR AND THE ECONOMY</td>
<td>159</td>
</tr>
<tr>
<td>VII. ELECTIONS IN WARTIME</td>
<td>191</td>
</tr>
<tr>
<td>Epilogue</td>
<td>224</td>
</tr>
<tr>
<td>Appendixes</td>
<td>232</td>
</tr>
<tr>
<td>Bibliography</td>
<td>274</td>
</tr>
</tbody>
</table>
And then, to turn tragedy into irony, after four years of bitter warfare, the North, and then the South belatedly, hurried as rapidly as possible into the Modern Age.

Avery O. Craven
PROLOGUE

The words "Confederate" and "nationalism" seem, upon first consideration, paradoxical. How can the principle of confederation with its emphasis on the individual and insistence on local sovereignty be reconciled with nationalism and its corresponding emphasis on the state and insistence on centralism? This is essentially the problem which faced Confederate and state politicians in their struggle to establish Southern independence.

What is nationalism? In the sense that it is used in this study, it is the desire to create and sustain a central government, the ability to think in larger than local terms, and, in general, the conviction that Southern independence is of paramount importance. It is Jefferson Davis, Clement C. Clay, Albert G. Brown, Louis T. Wigfall, Ethelbert Barksdale, John Milton, Francis R. Lubbock, Thomas O. Moore, and a host of lesser known public figures and plain citizens throughout the length and breadth of the Confederacy. It is tampering with—and at times violating—constitutional rights, property rights, and social codes which all Southerners held most sacred. It is suspending the writ of habeas corpus, the impressment of private property, commercial controls, direct and far-reaching taxation, and conscription of virtually all able-bodied men in the South—conscription which
eventually included even the black man. It is Barksdale declaring in the House that he would "throw aside the constitution rather than that the South should be subdued and brought under the dominion of the North," Wigfall maintaining that "The government had the undeniable right to take private property for public use . . . ," Kentucky Senator Henry C. Burnett saying that his "chief aim was severance from the Northern government," even if it meant Negro soldiers, and Galveston, Texas, lawyer William P. Ballinger writing, "Property too is subject to the public exigencies over and above its liability to use for compensation . . . The public good is paramount--it is the supreme right & . . . its \[\text{property}\] sacrifice is a duty to be owed the public."\(^1\)

Currently, as Frank B. Vandiver pointed out in "The Confederacy and the American Tradition: An Introduction," the tide of historical interpretation does not view the Confederacy in this vein.\(^2\) The standard picture of the Confederate government and politics—when indeed the historian can tear himself away from military personalities and battle minutiae—is that of Frank L. Owsley's *State Rights and the Confederacy*. In this work, Owsley argues that the tombstone of the Confederacy should read: "Died of State Rights."\(^3\) He reasons that the South failed to establish its independence because it could not develop a sense of unity. Dissident state governors such as Georgia's irascible Joe Brown and North Carolina's wily Zebulon Vance blocked the measures of
the Confederate government at every turn in its effort to achieve Southern independence. Owsley and those who follow in this school thus assign to the South and the Confederacy the peculiar doctrine of state rights, and by implication assert that the South stood outside the American experience of Nationalism.

Too often overlooked, however, is the fact that the ante bellum South also developed a sense of nationalism. For some it was a peculiarly Southern nationalism, but for others, among whom were many Southern Whigs, the feeling of nationalism represented the desire for government to aid the economic development of the nation. This raises the question: how un-American was Confederate nationalism? In rhetoric and practice Confederate and American nationalism appear quite similar: Jefferson Davis' use of the words "Southern independence" bore striking similarity to Abraham Lincoln's use of the word "Union." The problems of these two nationalists were in many cases parallel, for the actions of the dissident Southern governors were often similar to those of their Northern counterparts.

This statement is not meant to suggest, however, that differences were lacking between North and South. Two nations do not engage in a war stretching over four long and bloody years without having between them some basic difference—either imagined or real. In studying the Confederate nationalist, one is struck by the re-occurring phrase, "to preserve
our way of life." Exactly what this way of life encompassed in all its ramifications is far beyond the scope of this study, or for that matter, probably beyond that of any single study. But let one observation be made: state rights was not the foundation stone of a Southern way of life or politics; it was in most cases only the surface issue. State rights stood for something far deeper. In many cases it stood for what Ulrich B. Phillips has called the "central theme" of Southern history: the South is and shall remain a white man's country.

To apply the term "state rights" to explain the birth of the Southern government and to justify the clashes and disagreements within the Confederacy is an over simplification. Quite often local political ambitions and personalities played more prominent roles in creating disagreement than did a peculiar Southern adherence to the doctrine of state rights. Davis' difficulties with Brown, Vance, and Henry S. Foote, for example, can be understood more profitably when detached from than when subordinated to a consideration of state rights.

A revolution which was perpetrated in the name of state rights by fire-eaters of the cotton South quickly went full cycle and was taken from the hands of those who began it. Moderates came to the forefront. Under the leadership of Jefferson Davis many of these moderates became ardent Confederate nationalists. They created a national government and under the pressures of war greatly expanded its authority.
They realized that in order to win the war and achieve independence a strong centralized government was necessary. The struggle of these men to create and preserve a Southern nation is the story of Confederate nationalism.
NOTES


3. Frank L. Owsley, State Rights in the Confederacy (Chicago, 1925), 1.

CHAPTER I

THE INCEPTION OF A GOVERNMENT

"We the people of the Confederate States . . . in order to form a permanent federal government . . . do ordain and establish this Constitution for the Confederate States of America."

Preamble

It was an ideal day for the beginning of a new government and a new nation. The sun shone brightly and the balmy air made it seem more like spring than the eighteenth day of February, 1861. A festive atmosphere prevailed in Montgomery that day for the inauguration of Mississippi's Jefferson Davis as first President of the newborn Confederacy. Thousands of Confederates, men and women dressed in their Sunday best, lined the streets of the city and spread flowers in the path of Davis as he rode up the imposing hill to the Alabama capitol to begin formally his task of building a nation. The sky-blue pants and bright red coats of Georgia's Columbus Guards at the head of the procession added color to the already lavish affair, and the Alabama Regiment Band, playing "Dixie" for the first time, lent a martial air to the procession. Davis with his Vice President, Alexander H. Stephens, and Chaplain Basil Manly by his side followed in an elegant carriage drawn by six iron gray horses. Congressional and local committees on arrangements, commissioners from states not yet in the
Confederacy, governors, state supreme court justices, and the leading citizens of Montgomery followed in other carriages completing the gay turnout.¹

Arriving at the Capitol, Davis was greeted by Barnwell Rhett of South Carolina, chairman of the congressional committee on arrangements for the inauguration. With Rhett on his left and Stephens on his right, the new chief executive entered the halls of Congress. There, the president of Congress, Howell Cobb of Georgia, who himself had been prominently mentioned for the office which Davis assumed today, greeted the Confederacy's chosen leader and introduced him to the members of the Provisional Congress. Then Davis with the Vice President on his right and Cobb on his left proceeded with Congress to the west portico for the inauguration ceremonies.²

Chaplain Manly began with a prayer, after which Cobb moved forward and administered Davis the oath as provisional President of the Confederate States of America. The formal swearing in concluded, the crowd hushed as Davis prepared to deliver his inaugural address. Nearly six feet tall, of slight frame, but erect as a soldier, with sharply defined features, Davis looked at the crowd and the bustling city of Montgomery with a piercing gaze. At once an imposing figure and an unaffected Southern gentleman, Davis lent great dignity to the office he was now assuming.³

Davis spoke to the crowd in a voice which possessed an indescribable charm.⁴ He recited the argument for separation
from the old Union: the perversion of the American ideal in the United States and the growing economic rivalry between North and South. Secession was clearly within the stream of the American tradition. In fact, he noted, it formed the heart of the American idea of government. The creation of the Southern government illustrates the American idea that governments rest on the consent of the governed, and that it is the right of the people to alter or abolish them at will whenever they become destructive of the ends for which they were established. . . .

The right solemnly proclaimed at the birth of the United States, and which has been solemnly affirmed and reaffirmed in the Bills of Rights of the States subsequently admitted into the Union of 1789, undeniably recognizes in the people the power to resume the authority delegated for the purposes of government. . . . They formed a new alliance, but within each State its government has remained; so that the rights of person and property have not been disturbed.

Davis next turned his attention to a problem which troubled many Confederates: reconstruction and the admission of free states into the Confederacy. He made it perfectly clear that the Confederacy intended to establish an independent government.

We have entered upon a career of independence, and it must be inflexibly pursued. . . . As a necessity, not a choice, we have resorted to the remedy of separation, and henceforth our energies must be directed to the conduct of our own affairs, and the perpetuity of the Confederacy which we have formed.

He did not, however, close the door on the admission of new states.

With a Constitution differing only from that of our fathers in so far as it is explanatory of their well-known
intent, freed from sectional conflicts, which have interfered with the pursuit of the general welfare, it is not unreasonable to expect that states from which we have recently parted may seek to unite their fortunes to ours under the Government which we have instituted. For this your Constitution makes adequate provision; but beyond this, if I mistake not the judgment and will of the people, a reunion with the States from which we have separated is neither practicable nor desirable. To increase the power, develop the resources, and promote the happiness of the Confederacy, it is requisite that there should be so much of homogeneity that the welfare of every portion shall be the aim of the whole. . . .

After pledging his loyalty to the cause of Southern independence, Davis again stressed the Americaness of Southern separation: "We have changed the constituent parts, but not the system of government. The Constitution framed by our fathers is that of these Confederate States." 5

The inaugural pleased most, and "the manner in which Davis took the oath of office was most impressive," according to Thomas R. R. Cobb, a member of the Provisional Congress who viewed the proceedings.6 Another observer, Jacob Weil, a lieutenant in an Alabama regiment, had some reservations. Weil, who witnessed the ceremonies from a veranda on the capitol about five feet from the new President, found him both "imposing and impressive," but, feared that he would not have the understanding to lead the South through the struggle which was bound to ensue.7 Many shared Weil's misgivings. Certainly the harsh events of the coming years would confront him with the sternest tests of leadership: how not only to create a government, but also to organize a country and to marshal its strength to fight a modern war.
The basic facts about the new chief executive were well known. Born in Kentucky in 1808, he had attended Transylvania University and the United States Military Academy at West Point. After a distinguished military career, climax ed with recognition as the "hero of Buena Vista," and after a successful law practice, he became United States Senator from Mississippi. He remained in the Senate, except for a tour of duty as Franklin Pierce's Secretary of War, until Mississippi seceded. Politically he had always staunchly championed Southern rights; but as a moderate he did not cooperate with fire eaters and those who continually called for secession.8

Many in Montgomery knew that Davis represented a compromise choice for the presidency. Georgia secessionists Robert Toombs and Howell Cobb and Alabama's fire eater William L. Yancey all had been prominent candidates for the position. Even before the Provisional Congress opened on February 4, however, it demonstrated a desire for moderation. Already many delegates were turning their backs on the makers of the revolution and searching out moderates. Thomas R. R. Cobb of Georgia reported that "as to provisional president . . . the strongest current is for Jeff Davis. Howell [Cobb] and Mr. Toombs are both spoken of and there seems to be a good deal of difficulty in settling down on any person."9

Three days later, T. R. R. Cobb (whose letters to his wife constitute the best information on the Convention) again reported the same current,
There is but little speculation as to the probable President, Jeff Davis is most prominent, Howell next, Toombs, Stephens, Yancey and even Joe Brown talked about. Howell honestly I believe shrinks from the responsibility of the position and asks his friends not to urge or use his name as his wishes are adverse to it.10

President-making reached its height on February 8, the night before the election of the provisional President and Vice President. The results of state caucuses that evening found Alabama, Mississippi, and Florida for Davis, Louisiana and Georgia for Cobb, and South Carolina divided between Cobb and Davis. Much depended on Georgia since it was the "Empire State" of the lower South. Bitter feelings erupted the next morning when Georgia caucused. In light of the apparent solid support for Davis in three delegations, Howell Cobb announced his "wish that Mr. Davis be unanimously elected." Alexander H. Stephens suggested, however, a complimentary vote for Toombs. (Toombs and Stephens had reconciled their recent differences and established an entente cordial.)11 T. R. R. Cobb objected and noted that since four states favored Davis, it would put Toombs in a "false position." While Martin J. Crawford polled the other delegations and confirmed Cobb's information, Toombs returned the courtesy by suggesting Stephens' name for Vice President. Ironically enough his election would place an opponent of the secession which had created the new republic only a heart-beat away from its top office. Cobb reported that "Kenan and Nisbet responded in favor of it but a deathlike stillness
reigned as to the balance. We saw they had us, so after a few minutes Howell retired, Bartow followed him and I followed Bartow."  

Thus on February 9, Congress assembled and after swearing an oath to support the Provisional Constitution, cast six votes for Jefferson Davis of Mississippi for provisional President of the Confederate States and six votes for Alexander H. Stephens of Georgia for Vice President.  

The election of these two men to lead the new nation represented the dictates of moderation and conciliation. Neither of the other two serious candidates for the office, Toombs and Howell Cobb, could have won without a fight, and in the end a desire of unanimity prevailed. This desire coupled with the actions of the "faction-split Georgia delegation . . . assured the election of Jefferson Davis."  

Curious Southern transportation problems forced Davis, who was at home on his plantation, into a roundabout journey before he reached Montgomery to take the helm of the new Southern government. From Vicksburg, he went north to Memphis, thence east to Chattanooga, south to Atlanta, and finally west to Montgomery. All along the way people turned out to greet their new leader with gun salutes by day and bonfires by night. The usually aloof Davis, warmed by the crowds, delivered as many as twenty-five speeches along his circuitous route. By the time he arrived in Montgomery, the city was "agog" with excitement over his presence. In a rare
display of unanimity William L. Yancey greeted the new president with the immortal words, "the man and the hour have met." 19

After his inauguration on February 18, Davis turned to the task of constructing the executive department of the Confederate government. Several factors influenced the selection of the cabinet officers: the payment of political debts, the desire to select the best men, and the great importance of recognizing all the states in the cabinet. 20 Davis' first selection for cabinet positions were Robert W. Barnwell of South Carolina, Secretary of State; Robert Toombs of Georgia, Secretary of the Treasury; Braxton Bragg of Louisiana or Clement C. Clay of Alabama, Secretary of War; Stephen B. Mallory of Florida, Secretary of the Navy; Henry T. Ellet of Texas, Postmaster General; and William L. Yancey of Alabama, Attorney General. Barnwell, Clay, Yancey, and Ellet declined; Barnwell and a majority of the South Carolina delegation suggested Christopher G. Memminger for Secretary of the Treasury; Clay and Yancey urged the appointment of Leroy Pope Walker as Secretary of War; and the Texas delegation recommended John H. Reagan for Postmaster General. Toombs was switched from Treasury to State, Mallory accepted the Navy Post, and Judah P. Benjamin became Attorney General to complete the provisional cabinet. 21

Approval of the cabinet was widespread, and Davis was in a position to face the problem of building a nation under the constant threat of war. 22
To meet the crisis, Davis had first to think differently. No longer could he confine himself to concern for Mississippi. Now he had to take a broad view of all things Southern. That, in itself, put him in a peculiar relationship to all other Confederates. The idea behind the Confederacy was largely localism, anti-nationalism. Davis had clearly understood the old Southern view, and had always sympathized with and defended it. Now he had to look beyond it, to see all state and local problems in the context of the Confederate States.  

While Davis struggled with his problems, the Provisional Congress wrote the document which defined the form and nature of the new Confederate government. Before considering the constitution which the delegates wrote, it is instructive to view the background of the Confederate "Founding Father."

The seven seceded states of the lower South sent fifty delegates to the Montgomery Convention. All members except those from Florida, where the governor appointed them, were chosen by the state secession conventions. The secession conventions which elected the Founding Fathers had a certain similarity throughout the South. All were composed of middle-aged men, dominated by lawyers and farmers and for the most part comprising the leading figures of the state. Politically, the delegates who came from former Whig counties of the lower or cotton South tended more towards constitutional union and co-operation than did those from the traditionally Democratic counties. The areas in which the Whig party held sway remained more conservative than the rest of the South. This was particularly true of Georgia,
Florida, Mississippi, and Louisiana. Secession sentiment had also run strongest in counties where slaves constituted 62½ per cent or more of the population. Thus the immediate revolutionaries of the South were men of established means, both economically and socially. Politically, Democrats were more prone to immediate secession than old line Whigs.

The same picture is reflected in the membership of the Montgomery Convention. "The Confederate 'Founding Fathers' were a group of Southern-born, middle-aged, well-educated, slaveholding lawyers and planters who were prosperous and highly experienced in public service." Their record of public service is particularly impressive. Sixteen of the members had judicial experience, nine as circuit or district judges, six as associate or chief justices of state supreme courts and one as a federal judge. The membership was rich in legislative experience: forty-five had served in their state legislatures and twenty-three in the United States Congress (eighteen in the House, nine in the Senate, four in both House and Senate). In occupations the writers of the constitution were mainly lawyers or planters and virtually all owned slaves.

Politically, the convention counted thirty-one Democrats, seventeen Whigs, and two men of unknown political preference. The secessionists outnumbered the co-operationists (those who did not support separate state secession) and the unionists "by slightly more than a three-to-two ratio,
with Alabama and Mississippi having the only secessionist minorities." Attitude toward secession was not the most important factor in the selection of the delegates. "Neither Whigs nor co-operationists were slighted for their earlier conservatism and the state conventions usually selected delegates whose sympathies were in accord with the districts they represented." 33 A recent student of the convention observed that

Although the founding of a new Confederacy was a radical act, the convention that performed this act was not radical in nature. The members of the Montgomery Convention were representatives of the slaveholding realty interests and the political leadership of the South. The major motivation or objective of the membership was not to derive economic gain from the two constitutions that they were to write. It is more realistic to hold that the principal objective was to establish a government that would preserve and perpetuate the political, social, and economic conditions which represented the Southern way of life in 1861. 34

On February 9 the Provisional Congress appointed a committee of twelve to frame a permanent constitution for the Confederate States of America. Two representatives from each state composed the committee: from South Carolina, Barnwell Rhett and James Chesnut, Jr.; from Alabama, Richard W. Walker and Robert H. Smith; from Florida, Jackson Morton and James B. Owens; from Georgia, Robert Toombs and Thomas R. R. Cobb; from Louisiana, Alexander DeClouet and Edward Sparrow; and from Mississippi, Wiley P. Harris and Alexander M. Clayton. 35 The committee possessed much talent. There were two state justices (Walker and Clayton) and four
former United States Senators (Rhett, Chesnut, Morton and Toombs), and all but Cobb and Clayton had legislative experience of some kind. T. R. R. Cobb felt that the membership of the committee "comprised the highest order of intellect, legal ability and statesmanship in the South, in no way inferior to the framers of the Constitution of 1789." All were either lawyers or planters, seven casting themselves in the dual role of lawyer-planter. Politically, the Committee divided evenly between former Whigs and Democrats.

Under the guidance of Rhett as chairman, the committee met four hours a night. Rhett reported the product of the committee's efforts on February 28, and every afternoon for the next few days Congress sat as a constituent assembly to debate its provisions. The document received unanimous approval on March 11, 1861.

The preamble of the Confederate Constitution contains both striking departures from and striking similarities to the Constitution of the United States. The Confederates began: "We the people of the Confederate States, each State acting in its sovereign and independent character ... " Significantly, the framers also declared their intention to "form a permanent federal government." Thus in their very first sentence the authors, by expressing a desire for a permanent government, denied in effect the right of secession which created their government. The Confederate document deleted the phrase "to promote the general welfare," but
added a clause "invoking the favor and guidance of Almighty God. 41

The first article of the Confederate Constitution, like its United States counterpart, defined the legislative branch of government. The new document "delegated"—rather than "granted"—legislative powers to Congress. Requirements for membership in Congress and the ratio for apportioning representation in the lower house of the legislature remained the same including the counting of slaves as three-fifths of a person. There was one difference: whereas the Federal Constitution had delicately referred to slaves as "other persons," the Southerners called them "slaves." 42

The document extended to the House of Representatives sole power of impeachment "except that any judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof." 43 Local in nature, Southerners did not like undue interference in their lives from the national government.

Certain members of the Provisional government, such as Memminger, Toombs, and Reagan, held cabinet offices as well as seats in Congress, and Toombs for one had strongly urged upon the committee that framed the constitution a provision embodying the British system of selecting cabinet officers from among members of Congress. 44 The constitution adopted forbade simultaneous membership in more than one branch of
the government but permitted Congress to enact a law granting to "the principal officer in each of the executive departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department." 45

Confederates, in their new constitution, undertook to institute several reforms which they thought would make the central government more responsible fiscally. The Post Office Department was to become self sufficient after March 1, 1863. Congress was prohibited from appropriating money from the treasury except on a two-thirds vote of both houses and then only when "it be asked and estimated for by some one of the heads of departments, and submitted to Congress by the President." Excepted from this limitation were appropriations to pay congressional expenses and claims against the government declared lawful by a court. In an apparent attempt to end "pork barrel" legislation, the constitution gave the President an item veto, permitting him to "approve any appropriation and disapprove any other appropriation in the same bill." Furthermore, riders on bills were prohibited: "Every law, or resolution, having the force of law, shall relate to but one subject, and that shall be expressed in the title." 46 As a final safeguard the constitution required that all appropriations specify in "federal currency" the exact amount of each expenditure and enjoined that "Congress shall grant no extra compensation to any public contractor,
officer, agent or servant, after such contract shall have been made or such service rendered." From the emphasis placed on financial integrity and fiscal responsibility, one could presume that this subject had greatly troubled Southerners in the old Union. These innovations, then, constitute an interesting Southern critique of the federal union.

Federal protection of industry and aid to internal improvements had troubled many Southerners in the old Union and they attempted to correct this situation in their constitution. Congress received power to lay and collect taxes, duties, and excises but only "for revenue necessary to pay the debts, provide for the common defense," etc. The constitution clearly prohibited the use of any "duties or taxes on importations from foreign nations ... to promote or foster any branch of industry." It was equally specific about aid to internal improvements: neither the commerce clause nor any other shall "ever be construed to delegate the power to Congress to appropriate money for any internal improvements intended to facilitate commerce." What the old Whigs in the Convention thought of these restrictions on economic nationalism, so contrary to the American system of Henry Clay, does not appear.

The major additions to the Confederate Constitution dealt with the South's peculiar institution—Negro slavery. The constitution specifically forbade the importation of "negroes of the African race, from any foreign country other than the slave-holding States or Territories of the United
States." It also gave Congress the power to prohibit the importation of slaves from any state or territory not belonging to the Confederacy.\textsuperscript{49}

Property in slaves was carefully protected by specific constitutional guarantees. One declared that no law denying or impairing "the right of property in negro slaves shall be passed."\textsuperscript{50} Another guaranteed citizens of the Confederacy "the right of transit and sojourn in any State of this Confederacy, with their slaves, and other property; and the right of property in said slaves shall not be thereby impaired." As to fugitive slaves, the constitution required that runaways "be delivered up on claim of the party to whom such slaves belong, or to whom such service or labor may be due."\textsuperscript{51}

In one final effort to make the protection and existence of slavery as legal and substantial as possible, the constitution declared that citizens of the Confederate States had the right to take slaves into any territory which the Confederacy might acquire and that in such territory "the institution of negro slavery, as it now exists in the Confederate States shall be recognized and protected by Congress and by the territorial government."\textsuperscript{52}

The great struggle in the Constitutional Convention in Philadelphia in 1787 had occurred over the question of the composition of Congress. At Montgomery the "Great Debate" came on the question of the admission of new states to the Confederacy.\textsuperscript{53} Slavery lay at the heart of this fight.
Staunch secessionists such as Georgia's T. R. R. Cobb, South Carolina's William Porcher Miles, Louisiana's John Perkins, and Mississippi's Wiley P. Harris feared a reconstruction of the Union and wished to block the admission of any free state into the Confederacy. Cobb, for example, moved to amend the article governing the admission of new states by declaring, "But no State shall be admitted which, by its constitution or laws, denies the right of property in negro slaves, or the right of the master to recapture his slaves." 54 Another faction led by Alexander Stephens did not wish to close the door to free states. The solution was a compromise which did not prohibit the admission of free states but gave any considerable minority a veto thereon by requiring "a vote of two-thirds of the whole House of Representatives and two-thirds of the Senate, the Senate voting by States," to admit any other state to the Confederate States. 55

It thus appears both from an examination of the Constitution itself and from the time which Congress spent debating the admission of new states that slavery was of paramount importance to the Confederate "Founding Fathers." They specifically legalized Negro slavery and provided constitutional guarantees to protect it against any and all assaults. Many feared the admission of new states into their union lest it disrupt their right to hold Negro slaves. Only after they obtained a provision which required a full two-thirds majority to sanction the admission of a new state did they
abandon their insistence upon a constitutional requirement prohibiting free states. Clearly, most wanted the new nation to be a slave-holding republic.

In March, 1861, Alexander H. Stephens spoke in Savannah on the Confederate Constitution and the nature of the new government. Considered in the light of the constitution and the debates at Montgomery, this famous "cornerstone" speech, delivered to a wildly cheering crowd, is readily understandable. "The new constitution," said Stephens, has put to rest, forever, all the agitating questions relating to our peculiar institution—African slavery as it exists amongst us—the proper status of the negro in our form of civilization. This was the immediate cause of the late rupture and present revolution. . . . The prevailing ideas entertained . . . by most of the leading statesmen at the time of the formation of the old constitution, were that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally and politically. . . . They rested upon the assumption of the equality of the races. This was an error. It was a sandy foundation, and government built upon it fell when the "storm came and the wind blew."

Our new government is founded upon exactly the opposite idea; its foundations are laid, its cornerstone rests upon the great truth, that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition.56

The social, economic, and political life of the South rested on the cornerstone of slavery. Certainly the founding fathers did much to give credence to this belief by specific constitutional provisions which built a wall of legal sanction around the institution of Negro slavery.

Article II of the Constitution defined presidential
requirements and powers. It remained basically the same as its Federal counterpart except that the President's term was extended from four to six years and he became ineligible to succeed himself.\textsuperscript{57} Apparently troubled by the development of the spoils system and political patronage in general, the Confederates wrote a civil service reform into their constitution:\textsuperscript{58}

The principal officer in each of the executive departments and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the executive departments may be removed at any time by the President, or other appointing power when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and, when so removed, the removal shall be reported to the Senate, together with the reasons therefor.\textsuperscript{59}

Article III gave Confederate courts the same judicial power and authority that Federal courts enjoyed. The Confederate Constitution added only that "no state shall be sued by a citizen or subject of any foreign state."\textsuperscript{60} The major arguments concerning state sovereignty and authority versus Confederate sovereignty in relation to the judicial power were to occur in Congress—not in the Montgomery Convention. In 1863, when the Senate debated a bill to organize the Supreme Court, sharp disagreement broke out. William L. Yancey of Alabama wished to deny appellate jurisdiction to the Confederate courts. Benjamin H. Hill of Georgia bitterly contested Yancey's position and defended appellate jurisdiction for Confederate courts. The heated exchange between the men ended in violence when Hill threw an ink well
at Yancey, hitting him on the cheekbone. Strongly as Yancey and Hill felt about it, the question of appellate jurisdiction was not the sole cause of the Senate's failure to establish a Supreme Court. Some feared that Davis if given the opportunity would appoint John A. Campbell chief justice, and others saw no pressing need for the high court since state courts for the most part were ruling favorably on Confederate legislation.

The last major change in the Confederate Constitution from the United States model affected the amending power. The Constitution provided that upon the demand of three states, "legally assembled in their several conventions," Congress must summon a convention of all the states to consider amendments to the constitution. When two-thirds of the convention voting by states, and two-thirds of the states by vote of their legislatures agreed on the same amendment, it would become part of the constitution.

Thus two-thirds of the states might restrain the actions of the general government. One student of the Confederate Constitution has noted that the South saw the difficulty of the American system in the ability of the general government to enlarge its powers by construction without recourse to the amending power.

As the Confederate Convention attacked the problem seen here they determined that some authority, empowered to regulate the hierarchy of constitutional, federal and state law must be established, unless the anarchy attendant upon a confederate system should ensue. They re-
solved this problem by providing easy access to the ultimate source of sovereign authority, the electorate. 64

This provision probably most nearly reflected John C. Calhoun's influence on the Confederate Constitution. Calhoun, especially in his Disquisition on Government, had concerned himself with the protection of the minority in the American system of majority rule. The Confederate solution to the problem was certainly not radical. It did not support the idea of single-state nullification of a federal law. It did, by permitting three states to bring about a convention make it comparatively easy to refer the validity of a law to the tribunal of the states. Yet it still required a favorable vote of two-thirds of the states to make a change in the constitution, an arrangement that can hardly be regarded as strongly oriented toward state sovereignty or as a limitation on the power of the central government.

The Confederate Constitution is interesting for what it did not change or exclude from its Federal model. Most significantly, Congress received the power to enact "all laws which shall be necessary and proper" for the exercise of its delegated powers and "all other powers vested by this Constitution in the Government of the Confederate States, or in any department or officer thereof." 65 Thus the Confederates placed the famous necessary and proper clause, chief tool of those who expanded federal authority, in their constitution. Furthermore they declared that "This Constitution and the laws of the Confederate States made in pursuance thereof . . .
shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." These two provisions coupled with the clause permitting a strong judiciary created a federal government of substantial power and authority.

Nevertheless, most students of Confederate government have viewed the constitution as a clear-cut and concise embodiment of state rights thinking. Charles R. Lee concludes an excellent study of the Confederate Constitutions with the observation that they "represent the ultimate constitutional expression of the state rights philosophy and the state sovereignty concept in nineteenth century America." Another recent student of Confederate government believes "that by largely co-opting the 1787 constitution the Confederacy created a governmental system which it had not intended to create." He argues that the "Founding Fathers," intended to construct a government based on state rights and state sovereignty, but unintentionally extended too much power to the Confederate government, a power that was further expanded during the war.

In light of the extensive judicial, legislative, and political experience possessed by the writers of the Confederate Constitution, it seems unlikely that they unwittingly created a stronger government than they desired. It seems reasonable to argue that they clearly and distinctly sought
to construct a government of divided sovereignty; consequently, assuming the sovereignty of the central government within the sphere of its delegated powers, they specifically stated the sovereignty of the states. This assertion did not, however, make the general government merely an agent of the states. The substance of its powers was much too great for that.

Furthermore, if the "Founding Fathers" wanted a government which clearly embodied the state-rights concept, it seems curious that they neglected to provide machinery for nullification of national laws and to acknowledge the right of secession as the ultimate expression of state sovereignty. Instead, they provided for a "permanent federal government" with the power to enact all laws "necessary and proper" to carry out its delegated powers, and they made these laws the "supreme law" of the land. The Confederate Constitution established a government of considerable national power.

In view of the background of the writers of the constitution, it seems reasonable to conclude that they sought to give constitutional expression to the Southern way of life in 1861. If that be true, the fundamental law they framed would indicate that Southerners employed the term "state rights" to stand for the preservation of a way of life which included localism, individualism, agrarianism, and the protection of their peculiar institution.

Even though the Confederacy had been created by a radical act of secession led by men who were in some degree
local in outlook and attitude, the government that left Montgomery was firmly established upon a constitution which gave it considerable national power to direct the life of the newborn Southern nation. The government left Montgomery to fight a war of undreamed proportions—a modern war which would require all the energies of the nation. No longer would war be merely an army versus an army, but now it was a nation versus nation—the political, social, and economic resources of an agrarian nation against the political, social, and economic resources of an agrarian, commercial and nascently industrial giant.

This modern war forced a further expansion of the Confederacy's national power. The work of the Montgomery Convention had placed a nationalist at the head of a national government. As the government moved from its first capital at Montgomery to its new capital at Richmond, the organization of the permanent government and the development of a war program began.
NOTES


3. Coulter, Confederate States, 26-27; see also Frank E. Vandiver, The Making of a President: Jefferson Davis, 1861 (Richmond, 1962), for a further description of Davis.


7. Jacob Weil to Josiah Weil, May 16, 1861, copy of letter in Archives Collection, University of Texas, Austin.

8. There are many biographies of Davis. Among others, in addition to the works of Strode and Vandiver already cited, see Allen Tate, Jefferson Davis: His Rise and Fall. A Biographical Narrative (New York, 1929); Robert McElroy, Jefferson Davis: The Real and Unreal (2 vols., New York, 1937); William E. Dodd, Jefferson Davis (Philadelphia, 1907); and H. J. Eckenrode, Jefferson Davis, President of the South (New York, 1923).

10. Cobb to wife, Montgomery, February 6, 1861, ibid., 164.

11. Cobb to wife, Montgomery, February 9, 1861, ibid., 168.

12. Cobb to wife, Montgomery, February 11, 1861, ibid., 171.


14. Duncan F. Kenner to Governor A. B. Roman, Montgomery, February 9, 1861, Jean Urain LaVillebeuvre Papers, Department of Archives, Louisiana State University, Baton Rouge.


17. Coulter, Confederate States, 26; Vandiver, Making of a President, 12.


20. Rembert W. Patrick, Jefferson Davis and his Cabinet (Baton Rouge, 1944), 50.

21. Ibid., 51.

22. Ibid., 52.

23. Vandiver, Making of a President, 6-7.


26. Ibid., 262.
27. Ibid., 264.
28. Lee, Confederate Constitutions, 47.
29. Ibid., 48.
30. Ibid., 158.
31. Ibid., 48, 158.
32. Ibid., 158; see also Pitts, "The Provisional Constitution," 100-01.
34. Lee, Confederate Constitutions, 49.
35. Journals, I, 42.
40. Ibid., 896.
41. A copy of the Confederate Constitution can be found in Journals, I, 909-24. Lee in Confederate Constitutions, 171-200, prints the constitutions of the United States and the Confederate States side by side.
42. Art. I, sec. 2, par. 3.
43. Art. I, sec. 2, par. 5.
44. Lee, Confederate Constitutions, 97.
45. Art. I, sec. 6, par. 2.
46. Art. I, sec. 7, par. 2; sec. 9, par. 20.
47. Art. I, sec. 9, par. 9, 10.
48. Art. I, sec. 8, par. 1, 3.
49. Art. I, sec. 9, par. 1, 2.
50. Art. I, sec. 9, par. 4.
51. Art. IV, sec. 2, par. 1, 3.
52. Art. IV, sec. 3, par. 3.
55. Art. IV, sec. 3.
57. Art. II, sec. 1, par. 1.
59. Art. II, sec. 2, par. 3.
60. Art. III, sec. 2, par. 1.
65. Art. I, sec. 8, par. 18.
66. Art. VI, sec. 3.

CHAPTER II

A GOVERNMENT TAKES SHAPE

"Congress . . . shall prescribe the time for holding the first election of members of Congress under this Constitution . . . ."

Article VII, Section 2

The Montgomery Convention had written the constitution for the permanent government and selected the man to lead the South in its struggle for independence. Davis accepted his challenge and set to work building a nation during 1861. He had first to supervise the organization of a government and an army. Furthermore, fast moving events embroiled the new nation in armed conflict by April, 1861, and compelled the development of means to prosecute the war. In none of the aspects of this early governmental and military preparation was the new nation free from political disagreement.

As this organization went forward, the Confederacy held its first elections under the permanent constitution. The South that went to the polls in November, 1861, to select the government for the new Confederacy was not politically united as it was to be after defeat and reconstruction. Indeed the South in its ante bellum days had shown sharp political rivalries. The Democrats, although the majority party in the last decade, had faced stiff competition from the
Whigs. In the election of 1860, for example, John Bell, candidate of the Constitutional Union Party, which was neo-Whig, carried three of the states represented in the Confederate Congress. John C. Breckinridge, the candidate of the Southern Democrats, won only seven states of the cotton South by a clear majority.¹ "Thus it was that when the Confederacy took its permanent form in 1861, slightly more than forty per cent of its voters, outside Texas and South Carolina, were aligned with the Opposition or former Whig party."²

Southerners found it hard to drop old political ties and organizations. For this reason, one student of the Confederate Congress has seen former political alliances as a factor in the first congressional elections.

Unionists, secessionists, Whigs, and Democrats had possessed good organizations during the winter of 1860-1861 and, practical men all, continued them into the Confederacy. Any candidate associated with an organization could hope for success; now that everyone was a loyal Confederate even former Unionists could expect to be successful in districts which had once supported them.³

Newspapers and leading citizens throughout the new nation were quick to insist that former party affiliations were now meaningless. Ofttimes, however, their words were empty, for Whig papers which preached political harmony complained that too many Democrats were being elected or appointed to offices while Democrats charged that Whigs or Unionists were gaining the preferred positions in the South.

The elections of 1861 and the organization of the permanent government were conducted under the shadow of former
politics. For the most part the elections were relatively devoid of issues and excitement. Men usually announced their candidacy through a "card" in a newspaper and engaged in very little campaigning. They did, however, often employ established organizations to help their cause. Occasionally a candidate went on the stump to preach loyalty to the Confederacy and readiness to uphold the Southern cause. Few made specific recommendations for legislation. Those who did usually were candidates in large cotton-growing districts who urged that the government buy the cotton crop of the South.

In the lower South, the politically active state of Georgia came up with a contest in every one of its ten Congressional districts. In describing the election, the Augusta Chronicle observed: "There are truly no parties now, but the animus of old parties will doubtless have much to do in these elections. . . . There seems to us to be just as much hankering after the flesh-pots, in the Confederacy, as ever there was in the old Union."4 Earlier the paper had hoped that the election would be conducted on a high plane:

One of the greatest evils from which we have suffered in the past . . . was the inordinate passion for office-seeking displayed by a portion of the people and the consequent tendency to pander to popular passions for the sake of office. . . .

It is our first great duty now in the coming elections, to begin a reformation in this important particular. In determining for whom we should cast our votes, a prime consideration, is to be sure and avoid giving them to those persons who, in the past, have been notorious office-seekers, always seeking to advance themselves, and hesitating at no
disreputable means to secure their aims. 5

The Confederacy hoped to elect men of the highest type to Congress and to suppress any conflict lest it damage the facade of harmony.

Disagreement broke out nevertheless in the third and fifth congressional districts. The third, consisting of twelve counties in the west central part of Georgia, and the fifth, numbering eleven east central counties, formed part of the black belt of the state. In the third, Martin J. Crawford, incumbent member of the Provisional Congress, was unseated by a determined challenge from Hines Holt. Crawford attributed his defeat to Holt's advocacy of government purchase of the cotton crop. "The planters of the country are mad on the subject," Crawford explained to Vice President Stephens. He wrote that this issue would elect Holt by an "overwhelming majority.... Even some of the men who have invited me to run are going to vote against me." The defeated candidate had harsh words for his successful opponent: "Relying upon his know nothing majority in the district, he dared to run; he will be troublesome, and as he is a fool in politics he will be much in the way." 6

In the fifth district, M. C. Fulton also employed the cotton purchase issue in an effort to ride to victory over David M. Lewis. Writing to the voters of the district, he declared:

If Mr. Lewis had committed himself at all to this policy,
I should have supported him cheerfully; but believing, as I do, that the true policy is for the Government to take control of the cotton . . . I have consented at this hour to the use of my name as a candidate.7

Fulton sought the support of Stephens, but in the end lost a close race to Lewis.8

Other men won endorsement on the grounds of membership in the Provisional Congress or other distinguished public service. Thus the Southern Recorder urged the election of Augustus H. Kenan in the fourth district because "We think it quite proper that he should have an opportunity of aiding to perfect the Government whose Constitution he took part in forming."9 In the tenth district, in the northwest corner of the state, Lawson Black ran an amazing little announcement:

I am a candidate to represent you in the next Confederate Congress. In this, I am actuated by the same motive, as all other candidates, viz: For the money that is to be made by the office. I have not been solicited to run by either friend or foe, and therefore, have had less to do with intriguers and street brawling politicians than either of the men who ran for Governor. . . . I have always thought the salvation of the United States depended on the success of the Whig party, and I think now if the American party had succeeded we would not have so many Dutch to fight at the present.10

In the final polling, Black ran well behind the winner Augustus H. Wright and runner-up L. W. Crook.11

Georgia sent to the first Congress a ten-man delegation which numbered among it three Whigs, Hines Holt in the third, Augustus H. Kenan in the fourth, and Lucius J. Gartrell in the eighth. The third district had a background of Whig
strength while the fourth and eighth had always been solidly Democratic. The Whig first district, however, elected Democrat Julian Hartridge. The politics of the representatives from other areas of Whig strength is not known.\textsuperscript{12}

In another cotton state of the lower South, Mississippi, contests occurred for all except one of the seven House seats.\textsuperscript{13} Ethelbert Barksdale, who was to become an ardent supporter of the Davis administration, did undertake an extensive speaking campaign, delivering twenty-two speeches in his district of nine counties in south central Mississippi.\textsuperscript{14} Oddly enough, Barksdale had no opposition. In Mississippi's cotton-growing, heavily slave-populated Delta, which composed the fourth district, C. L. Buck sought relief for the cotton growers by arguing that "the Confederate government must either become the purchaser of the cotton crop or such portions of it as will be sufficient to afford the requisite relief, or else make a sufficient advance upon the crop to do it."\textsuperscript{15} Apparently this was not enough; Henry C. Chambers, a planter and former member of the Mississippi legislature, won the seat.

Among the seven-man Mississippi delegation, there was only one identifiable Whig, Reuben Davis who represented the Democratic second district in the northeast corner of the state. The fourth and fifth districts, the only areas in Mississippi where former Whig strength had predominated, elected Democrats Henry C. Chambers and Otho R. Singleton to the first Confederate Congress.\textsuperscript{16}
In Alabama the strong men of the victorious secessionist party wisely stood aside for the sake of harmony and entrusted "much of the important work of organizing the new government to the defeated cooperationists party, who, to say the least, disapproved of the whole policy of the victors." 17 The result of this harmony gave Alabama a moderate delegation at Montgomery, and this accord apparently carried over into the November elections. Alabama did, however, witness one of the few charges of corruption in the Confederate elections of 1861. In the fourth district, situated in the northeastern part of the state, Williamson R. W. Cobb was charged with land speculation. This accusation contributed to Cobb's defeat and the election of John P. Ralls, a physician and cooperationist. 18 The nine-man Alabama delegation counted three former Whigs, William R. Smith, in the second district, Francis S. Lyon in the fifth, and William P. Chilton in the sixth. Lyon and Smith represented districts which had Whig backgrounds, while Chilton's district had been strongly Democratic. The seventh, eighth, and ninth districts, all areas of former Whig strength, elected Democrats David Clopton, James L. Pugh, and Edward S. Dargan. 19

In Louisiana, "Politics of the ordinary sort took a vacation ... during the war. Political parties were virtually nonexistent and election campaigns were tame affairs as compared to those of ante bellum days." 20 John Perkins sought election in the sixth district, in northeast Louisiana,
because "This is not a time when a man has a right to consult private feelings, if he can serve his country." Since he "had been one of the earliest advocates of Southern Confederacy," Perkins felt qualified to offer himself to the voters of his district.\(^{21}\) Louisianians elected Perkins as well as all the states' representatives in the Provisional Congress except Alexander DeClouet. There were three Whigs in the delegation, Charles Conrad, Duncan F. Kenner, and Lucien J. Dupre, representing respectively the second, third, and fourth districts, all areas of demonstrated Whig support in previous elections. The other politically identifiable member, John Perkins, a Democrat, came from the Democratic sixth district.\(^{22}\)

Florida sent two men to Congress. One, Robert P. Hilton of the second district, was a Democrat. This area had voted Whig in 1848 but Democratic since 1852.\(^{23}\) Hilton is the only man in the Florida delegation whose politics is known.

The two remaining states of the lower South, Texas and South Carolina, had never had a strong Whig party, and all the members they sent to Congress, except John A. Wilcox of the first Texas district, were Democrats.\(^{24}\)

For the most part, contests in the upper or border South were confined to North Carolina and Virginia. In North Carolina five of the ten congressional districts were not contested, but even so political activity was probably greater than in any other Confederate state. The Whigs were usually strong in the state and enjoyed a substantial following among
the people. Closely related to this Whiggery was the strength of the Union element within North Carolina and a pronounced tendency to consider candidates on the basis of their attitude toward secession. The editor of the North Carolina Standard, William Woods Holden, decried this attitude:

Now a days when men are spoken of for office, we hear it said that this one was too slow and that one was too fast in seceding from the old Union. This therefore of itself creates a party in all save organization. . . . It is better we think to take a man for what he is than for what he has been, provided he was not a dishonest self-seeker or scrambler for office.

The paper proposed a better test for office: is the candidate for strict construction of the Confederate Constitution? does he regard the people as capable of self-government? and is he honest, capable, and faithful? 25

In the fourth district of the state, J. W. Ellis feared that the old Union men were trying to secure as many offices as possible. "If they succeed North Carolina is sold out to Lincoln." He preferred Thomas D. McDowell, a Whig secessionist for Congress. 26 The old Whig organization in the district backed McDowell, and he won an uncontested election. 27 The organization evidently carried a great deal of weight, for McDowell did not announce his candidacy until October 16 and then did not bother to campaign. 28

Lively contests developed in the third, fifth, and tenth districts. The winner in the third, Owen R. Kenan, expressed the feelings of most in seeking to minimize the importance of party: "Old party issues are gone, passed away, and we are
now in the midst of a most important crisis requiring all our energies." In the fifth or Raleigh district, a heated campaign took place between J. H. Gooch, Josiah Turner, Jr., and the eventual winner, Archibald Arrington. Bitter campaigning also occurred in western North Carolina in the tenth district between William H. Thomas and Allen T. Davidson. In most cases the issue in the elections was unionism and the candidates' positions on secession.

The North Carolina delegation numbered six Whigs of whom four—W. N. H. Smith in the first district, Thomas S. Ashe in the seventh, Burgess S. Gaither in the ninth, and Allen T. Davidson in the tenth—represented districts which had a background of Whig strength. The other two Whigs, Owen R. Kenan in the third and Thomas D. McDowell in the fourth, came from Democratic areas. One of the three Democrats, Robert R. Bridgers in the second, hailed from a Whig district; the other two Democrats, Archibald Arrington in the fifth and William Lander in the eighth, came from Democratic districts.

Virginia sent the largest delegation, sixteen men, to the Confederate Congress. Several of the districts—the fourteenth, fifteenth, and sixteenth, and sizable portions of the tenth, eleventh and twelfth—were, however, strong in Union sentiment, and forty-nine counties seceded in effect from Virginia and established the state of West Virginia. Early military reverses contributed to or confirmed the loss
of these counties to the Confederacy. Once they passed under Federal jurisdiction, Virginia found herself with from three to five representatives in the Confederate Congress who had in fact no home district.

Virginia's hesitation to secede and the powerful Unionist sentiment in the state made a man's position on secession an important and almost an overriding consideration in the elections. For the most part throughout the campaign, candidates spent a majority of their time explaining their stand on secession.

In the ninth district, composed of seven counties in the northern part of the state, Robert E. Scott defended his attitude toward secession:

While a hope remained of obtaining a satisfactory settlement of the questions that divided the Northern and Southern people, I was strongly in favor of the preservation of the late Federal Union. ... I did not concur in the policy of the immediate and separate secession of this state.

But the failure of the Washington Peace Conference convinced him of the inevitability of secession. Scott assured voters that he now stood for Southern independence: "Let no one entertain a thought of reconstructing the old union. The time for reconstruction has passed." Though he was the incumbent member of the Provisional Congress, Scott was defeated by a former Democratic governor, William Smith.

In the eighth district, covering nine eastern Piedmont counties, Daniel DeJarnette, in his successful campaign, pointed with pride to his early support of secession. He
reminded the voters of his speech on January 10, 1861, advocating the right of peaceable secession. "If the political antecedents of those who court your favor are scrutinized, I invite your scrutiny to the record of my eight years of public service."33

In the fifth district, composing Virginia's Southside blackbelt, Thomas F. Goode sought to unseat Thomas S. Bocock by emphasizing his own early support of secession. Goode noted that "At a time when it was reckoned but little short of treason I proclaimed before the people that the election of a Republican President should be the signal for planting the standard of the South upon Pennsylvania Avenue."34 Goode failed, however, in his bid to unseat the popular Bocock who was a distinguished alumnus of the Southside's Hampden-Sydney College.

In the third district, encompassing the peninsula to Richmond, successful candidate James Lyons explained that he had urged secession as early as 1856. Lyons, a State Rights Whig, also called for a close scrutiny of encroachments by the Confederate government on the rights of the states,

Although the Government must necessarily be very much centralized and strongly sustained during this war, there can be no safety for us in the future, not any guarantee against another war at some distant day with the Central Government except in the strength and independence of the State Governments.35

Lyons stood alone at this time among Virginia candidates in
warning about the dangers of a centralized Confederate government.

Virginia sent five Whigs to Congress. With the exception of Lyons, they came from districts ten through thirteen in western Virginia, which was for the most part Democratic. Three areas of old Whig strength, the first, sixth, and ninth districts, elected Democrats Muscoe R. H. Garnett, John Goode, and William Smith. 36

From Arkansas, where the Whig Party had been weak even in its heyday, the only identifiable Whig in the congressional delegation was Augustus H. Garland. Representing the third district, he won a close election in a field of six. J. P. Johnson, his nearest competitor, contested the election, but over a year later withdrew his protest. 37 Tennessee, which had been a Whig stronghold, sent three Whigs, John B. Heiskell from the first district, William G. Swan from the second, and Meredith P. Gentry from the seventh, to Congress. The Whig fifth and ninth districts, however, elected Democrats Henry S. Foote and John D. C. Atkins. The traditional Democratic seventh district held true to form and elected Democrat George Washington Jones. 38

Two other states, Kentucky and Missouri, had rump governments in exile and received seats in the Confederate Congress. Since most of the territory in both states was under Federal control, they will not be considered as participants in the elections of 1861.
Information on Confederate congressmen and elections is too incomplete to permit a sweeping conclusion concerning the role of former political affiliations. Certainly men were aware of old party labels. Ofttimes former Whigs and Democrats supported men of their party, but there are enough instances where areas of Whig or Democratic strength returned men of the opposite party to discount former political affiliation as the single most important factor in the election. Other considerations also governed: a candidate's stand on secession, his popularity in general, or his stature as an established leader might contribute appreciably or decisively to his success. For the most part the elections were dull affairs conducted without much fanfare. In 1861 the South wished to present a united front to the world, and in the minds of many this precluded open political contests.

Political rivalry became more apparent in the selection of Confederate senators and in appointments under the new government. Bitter party feeling erupted in Georgia during the senatorial election. The Augusta Chronicle cried that "The President, the Vice-President, every member of the cabinet, and nearly every civil officer of consequence is chosen from the late Democratic party." The paper argued that men who had supported Bell, for example, had been almost wholly "ignored and proscribed" in the disposition of offices. What the Chronicle had in mind was that the legislature ought to elect Benjamin H. Hill, a former Whig who had opposed secession.39
On November 19, the Georgia legislature selected Hill on the first ballot. His success resulted from a strong resentment in the legislature against Robert Toombs because of his opposition to many Confederate policies. The Southern Recorder hailed the election as an indication of "the absence of party spirit in our General Assembly."

Despite the Recorder's optimism, a bitter struggle ensued for the other senatorship. Herschel V. Johnson saw in the proceedings the operation of party and a prejudice against those who had opposed secession.

I know that great pretensions are being made everywhere that party must now be ignored and that by the fervor of the time, we should all be fused into one patriotic brotherhood. . . . The distinctions of party have taken a new name, but they are as palpable and existent as they ever have been for thirty years. The sentiment now is that co-operationists and especially such as supported Douglas, are to be proscribed. . . . Hence you cannot fail to see, that if I desire to be Confederate Senator, I am on the list of the proscribed. Supporters of Robert Toombs and former United States Senator Alfred Iverson struggle through five indecisive ballots to elect their man to the other seat. Finally on the sixth ballot, Iverson withdrew and Toombs secured the position. Humiliated by the Legislature's apparent reluctance in selecting him, Toombs declined to serve. Governor Brown appointed Dr. John W. Lewis to fill the position and in November, 1862, the legislature elected Herschel V. Johnson.

Alabama sent two secessionist Democrats to the Confederate Senate. William L. Yancey handily won the first position, and the contest for the other was bitter. Unionists and old line
Whigs unsuccessfully sought the election of Thomas Watts, a former Whig who had become an uncompromising secessionist. By a narrow vote, the legislature selected former United States Senator Clement C. Clay, a Democrat.  

Mississippi witnessed an attempt to divide the senatorships between the traditional parties. A correspondent to the Jackson Weekly Mississippian urged the legislature to follow such a policy.

Democracy nor Whiggery has an exclusive right to govern; honors ought to be and must be divided if you want a contented people--by such a course, party prejudice will gradually disappear and our greatest intellects will find their proper level.  

The outcome of the legislators' efforts, however, was the selection of two Democrats, Albert Gallatin Brown and James Phelan. The Weekly Mississippian maintained that the legislature had indeed attempted a division of the seats between the two parties, but that state sectionalism had complicated the situation. The legislature first chose Brown, a Democrat and a native of southern Mississippi. Wafer Brooke, the candidate of the old line Whigs, unfortunately also hailed from the southern part of the state. Accordingly many members from north Mississippi both Whig and Democrat voted against him. Phelan, "an old line Democrat" came from northern Mississippi, and this enabled him to win a close election.  

Sectionalism also complicated the selection of North Carolina senators and resulted in the division of the honors between Whigs and Democrats. George Davis, Whig and an east-
erner, was selected first. According to the North Carolina Standard many Westerners supported Davis in order that the other senator would thereby come from the western part of the state, however "conservatives and friends of the Confederate government" supported another easterner, Democrat William T. Dortch, who won the seat. The outcome of this sectional squabble resulted in the selection of a Whig and a Democrat to Congress.

Besides North Carolina, Tennessee with Landon Carter Haynes, a Democrat, and Gustavus A. Henry, a Whig; Louisiana with Edward Sparrow, a Whig, and Thomas J. Semmes, a Democrat; and Florida with Augustus E. Maxwell, a Democrat, and James M. Baker, a Whig, divided their senatorships between parties. Georgia, Mississippi, Alabama, Arkansas, Kentucky, Missouri, South Carolina, and Texas sent two Democrats; Virginia alone sent two Whigs.

Even though political fighting had broken out in the selection of the legislative branch, most Southerners were determined to present a solid front in support of Davis and Stephens in the presidential election. Newspapers urged the selection of Davis and scolded those who might question the selection of Stephens. The Weekly Mississippian declared that a large vote for Davis and Stephens "will demonstrate thoroughly that we are a united people, and the demonstration of this fact will be conclusive evidence to our foes . . . that we are a nation."
However much the South may have desired to present a unified political front, it is obvious that seeds of political dissent were in the new nation at birth and sprouted early. They cropped up in the election of Congress and in the selection of Confederate senators. But where opposition and complaint grew obvious and loud was in criticism of appointments—both civilian and military—by the new government. An arduous enough task in peace time, the organization of a government became even more difficult under the pressure of war. Davis had to make his way between two pairs of conflicting factions: first, original secessionists versus cooperationists and Unionists, and second, Democrats versus Whigs.

Almost from the inception of the government the grumbling over office began. Thomas R. R. Cobb of Georgia, a representative in the Provisional Congress who had been an early advocate of secession, complained to his wife: "The best claim to distinction under the existing regime—seems to be either to have opposed secession or have done nothing for it." On the other hand, a Virginia representative to the Provisional Congress, William Cabell Rives, did not like the current leadership and appointments because "Revolution places the worst men in ascendancy and moderation becomes a badge of suspicion. Patriots have to bend before this storm; and wait for the people to recover their sense in the school of adversity." Here was a difficult problem for the administration to handle. In much of the South secession had not been an over-
whelmingly popular movement, and many of her leading citizens had not supported immediate secession. But should leadership of high quality be ignored in the formation of the government because it had not originally supported the movement for secession? For example, should a man like William P. Ballinger, a lawyer of Galveston, Texas, be denied the patronage of the Confederate government because of his views on secession?

Ballinger wrote:

No man more sincerely opposed secession—I spoke against it—and voted against it. I believed it unnecessary & revolutionary & that it was knell to Republican institutions—and did not promise stability or prosperity to the South. I still believe it all. I mourn bitterly the day that ever secession was resolved on. Events have proved not its wisdom, but the full measure of evils, so far, that the lovers of the Union prophesied from it. But, yet, the great mass of Southern people believed it necessary—if they go back it will be because they are whipped back.

Notwithstanding this attitude, Ballinger was appointed Confederate receiver of sequestered property.

In recognizing the anti-secession element in the nation, the administration irritated and alienated numerous leaders of secession. Many original secessionists felt that they had taken the risks in the creation of the new government, yet those who hesitated were rewarded with all the offices and high positions. R. T. Scott complained to Alabama Senator Clement C. Clay: "I am not satisfied as to the workings of the Confederate Government, there is a screw loose somewhere; to be a submissionist seems to be the best passport to office and distinction." What Scott objected to specifi-
cally was the appointment of Joseph C. Bradley as Confederate
tax collector for Alabama, "the most lucrative office I ex-
ppect in the State." Bradley had voted for Douglas and had
worked against secession in both Alabama and Tennessee.
Scott went on to say that President Davis himself had been
opposed to Secession and he too has been rewarded for his
services. . . . If the true men of the South are to be
set aside for the promotion of such men, we have indeed
failed to accomplish any good; it will be a wet blanket
upon the efforts of the true men of the South who took
the ball at its first bounce, and who have stood manfully
by our cause to the present hour. . . . I think you
should write to President Davis remonstrating against his
appointments from the submission ranks.53

Thus the appointments under the new government—both
civilian and military created a contest between the original
secessionists and the unionists. While men such as Scott
felt that submissionists received all the jobs, Attorney
General Thomas Bragg heard "old Union men" complaining that
they did not get their share.54

Others believed the rivalry of parties affected the ap-
pointment of officers and governed the councils of the new
government. James D. B. De Bow wrote in August, 1861, that
"I can see far enough into affairs already to speak advisedly
that appointments under the new regime will be governed by
the same . . . liberal conservatives as the old one." Par-
ties would form, he feared, and aspirants with party back-
ing would take precedence in appointments over "men of letters
or even of official qualifications."55 The North Carolina
Standard asked, "Why is it that in the midst of a bloody war
waged for the very existence of the State . . . that many of
our best and wisest men are rigidly and constantly excluded
from the councils of the State and nation? The paper answered
its own question: "It is party." 56

A Georgia representative to the Provisional Congress,
Eugenious A. Nisbet, believed that party feeling and personal
rivalries were slowly destroying the foundations of Congress
and the new government. Nisbet viewed with foreboding the
revival of "a captious spirit & the manifestation of that
lust for power--party & personal." Indeed, the "revival of
old Party animosities" made him fear for the future of the
new nation. 57

Thus by the time of Davis' inauguration as permanent
president of the Confederate States in February, 1862, po-
itical strife was already well under way in the country.
Elections to the Confederate House and Senate and the myriad
of appointments under the new regime heightened the rivalry
between secessionists, Unionists, Whigs and Democrats.

After inauguration as permanent president, Davis turned
once again to confront the activities of political bitterness.
Unionists and Whigs cried that Davis had nary a representa-
tive of their group in his new cabinet. Finally, in order to
please this element, Davis replaced Thomas Bragg in the De-
partment of Justice with Thomas Watts of Alabama. Bragg de-
scribed the reason for the move:

The President had sent for me. . . . He spoke of the ar-
angement of the Cabinet. Said he was entirely satisfied
with it, but the Old Whig & Union party in Congress was insisting on being represented, and that he was informed that the cabinet could not be confirmed by the Senate if nominated as it now stood.58

The selection of cabinet officers was a small-scale worry in comparison with that of filling the growing civil service of the South. It seemed that everyone wanted to work for the government. The following letter to South Carolina representative William Porcher Miles is highly typical of letters which comprise the bulk of many collections of Congressmen's papers:

I perceive in the report of the proceedings of Congress in the morning papers that the Military Committee has reported a bill for an increase of the clerical force of the War Department. My nephew, Mr. John Thompson Quarles, who will hand you this letter, is desirous of obtaining one of the new clerkships, and I should feel under very great obligation to you if you could use your influence in his behalf.59

In satisfying the demands of the people for government jobs, Davis ran afoul of party. As early as March, 1862, papers attacked him for ignoring Whigs in the appointment of officials for the Confederacy.60 Besides proscribing Whigs, Davis was attacked for favoring West Point generals and for appointing men from other states to lead regiments of state troops.

One incident well illustrates the political trouble created by considerations of this sort. Squabbles over appointments alienated Davis from the politically powerful Alabama Senator, William L. Yancey. Yancey and his colleague, Clement C. Clay, originally protested Davis' appointment of men
from other states to lead Alabama regiments. Davis replied that he would not be dictated to in the making of appointments. Argument began; resolves solidified. When Davis appointed E. M. Burton postmaster in Montgomery without Yancey's approval, the Senator exploded. He withdrew the application for a commission for his son Dalton, and accused Davis of having personal enmity towards him. Clay tried to heal the breach, but the damage was done.  

Thus in the organization of a new government to direct the South's fight for freedom, many could not discard former political feelings. Consequently by the time Davis turned his attention fully to the great task before him, winning the war, political factions had already combined to hamper his efforts and create problems which were to become apparent during the course of the war.
NOTES


5. Ibid., September 26, 1861.


7. Augusta *Chronicle*, November 2, 1861.


10. Augusta *Chronicle*, November 2, 1861.

11. Ibid., November 24, 1861.

12. Appendix I and II.


15. Ibid., October 29, 1861.

16. Appendix I and II.


18. R. T. Scott to Clement Clay, Scottsboro, Ala., October 11, 1861, Clement C. Clay Papers, Manuscripts Division, Duke University, Durham, N. C. Cobb had a checkered career.

19. Appendix I and II.

20. Jefferson Davis Bragg, Louisiana in the Confederacy (Baton Rouge, 1941), 179.


22. Appendix I and II.

23. Ibid.

24. Robison, "Whigs in the Politics of the Confederacy," 4; Appendix I and II.


29. Ibid., October 16, 1861.

30. Ibid., October 16, 30, 1861.

31. Appendix I and II.

32. Richmond Enquirer, October 1, 1861.

33. Ibid., September 27, 1861.

34. Ibid., October 22, 1861.

35. Ibid., October 8, 1861.

36. Appendix I and II.

37. David Y. Thomas, Arkansas in War and Reconstruction, 1861-1874 (Little Rock, 1926), 332-33.
38. Appendix I and II.


40. T. Conn Bryan, Confederate Georgia (Athens, 1953), 37.

41. Southern Recorder, November 26, 1861.

42. Herschel V. Johnson to E. A. Cochran, Sandy Grove, Ga., October 31, 1861, Herschel V. Johnson Papers, Manuscripts Division, Duke University.


44. L. Bradford to Clay, Montgomery, December 1, 1861, J. W. Withers to Clay, Mobile, November 29, 1861, Clement C. Clay Papers; Patrick Davis and his Cabinet, 304; Nuerberger, The Clays of Alabama, 189-90.

45. Weekly Mississippian, October 30, 1861.

46. Ibid., November 27, 1861.

47. North Carolina Standard, September 18, 1861.

48. Before the end of the first Congress, Alabama and Georgia were represented by a Whig and a Democrat. Robert Jemison, an Alabama Whig, replaced William L. Yancy, and Herschel V. Johnson, a Democrat, joined Whig Benjamin H. Hill in the Senate from Georgia.

49. Weekly Mississippian, October 9, 1861.


52. William P. Ballinger Diary, August 7, 1861, typed copy, Archives Collection, University of Texas.
53. R. T. Scott to Clement Clay, Scottsboro, Ala.,
October 11, 1861, Clement Clay Papers.

54. Thomas Bragg Diary, January 22, 1862, typed copy,
Southern History Collection, University of North Carolina.

55. James D. B. De Bow to Charles E. A. Gayarre, Rich-
mond, August 28, 1861, Charles E. A. Gayarre Papers, Depart-
ment of Archives, Louisiana State University.


57. E. A. Nisbet to Alexander Stephens, Macon, Ga.,
February 6, 1862, Stephens Papers, Library of Congress.

58. Bragg Diary, March 17, 1862.

59. John R. Thompson to William Porcher Miles, Colum-
bia, S. C., March 11, 1862, William Porcher Miles Papers,
Southern History Collection, University of North Carolina.

60. Richmond Enquirer, March 19, 1862, answering an
attack on Davis by the Richmond Whig.

61. Clement Clay and William L. Yancey to President
Davis, Richmond, April 21, 1862, William L. Yancey Papers.

62. Clay to Yancey [ca. December 17, 1862], Yancey to
Davis, Montgomery, May 6, 1863; Davis to Yancey, Richmond,
June 20, 1863, Yancey to Davis, Montgomery, June 26, 1863,
Clay to Yancey, June 30, 1863, Yancey to Davis, Montgomery,
July 11, 1863, William L. Yancey Papers; printed in Alabama
Historical Quarterly, II (Summer, Fall, 1940), 258-60,
336-41.
CHAPTER III

HAEBAS CORPUS

"The privilege of the writ of habeas corpus shall not be suspended, unless . . . the public safety may require it."

Article I, Section 9

Southerners took great pride in their constitutional heritage. A rural people, intensely individual and local in outlook, they jealously guarded against any undue intrusion in their life by the national government. They believed strongly in the American tradition of guaranteed personal liberties. War challenged this tradition—and it was the measures of their own Confederate government which provided the sternest test. The dilemma of directing an increasingly total war while holding steadfast to the principles and traditions of constitutional government presented itself in no issue more clearly than in the suspension of the writ of habeas corpus.

Confederate leaders, conscious of the constitutional traditions of the South, soon found themselves in a perplexing situation. They recognized the necessity for harsh measures to halt the disloyal activities manifesting themselves in various places, especially in western North Carolina, eastern Tennessee, and Richmond. Conditions clearly called for a declaration of martial law and the suspension of personal
liberties.

Essential to the declaration of martial law was the suspension of the writ of habeas corpus. Habeas corpus, a common law writ of ancient origin, is designed to insure the speedy liberation of persons illegally imprisoned. It directs the arresting officer "to produce the body" of the detained person in court and show just and legal cause for his detention. The cornerstone of English liberty, it was one of the major issues in the fight against absolute government in England, and became for the purpose of enforcing the rights of personal liberty "the greatest and most important remedy known to law." Such being the case Southerners, steeped in the tradition of constitutional guarantees of law and liberty, were bound to be extremely sensitive to any threat of arbitrary arrests or martial law. Davis obviously framed his program of Confederate nationalism in consideration of these traditions.

The Confederate President clearly demonstrated the philosophy of his war program as he faced the problem of the suspension of the writ of habeas corpus. Unlike Lincoln, Davis never attempted to suspend the writ without Congressional permission. Numerous arrests were made, however, by Confederate civil and military authorities on charges of treason and on suspicion of aiding and abetting the enemy. Many of the arrests made by military commanders were, "to say the least," extra-constitutional. Murmurs of protest against the
government steadily increased as army commanders declared martial law in many parts of the Confederacy. To legitimize what was necessary to maintain the war-making power and to preserve the security of the nation in its struggle for independence, Congress, in February, 1862, clothed the President with the power "to suspend the privilege of the writ of habeas corpus in such towns, cities, and military districts as shall in his judgment be in such danger of attack by the enemy as to require the declaration of martial law for their effective defence."  

Armed with Congressional permission, Davis moved quickly to protect the nation's internal security. He immediately placed the Virginia cities of Norfolk, Portsmouth, Richmond, and Petersburg under martial law. In succeeding months Davis placed the western counties of Virginia, east Tennessee, and sections of South Carolina under martial law. 

Martial law, if unmodified, meant military control and an end to all civil jurisdiction of the courts. The War Department did, however, order that the courts be allowed to take cognizance of the probate of wills, the administration of the estates of deceased persons, and the qualifications of guardians; to enter decrees and orders for the partition and sale of property; to make orders concerning roads and bridges; to assess county levies, and order the payment of county dues.  

Attorney General Thomas Watts explained the effect of General Kirby Smith's proclamation of martial law in east Tennessee: "There can be no doubt about the construction to
be placed on the Proclamation. No civil jurisdiction of the Courts . . . except that allowed under General Order No. 107 can be expressed until the Proclamation is modified." Six days later in affirming the suspension of all civil jurisdiction in Richmond, the Whig Attorney General, presently to become governor of his native Alabama, discussed the nature of martial law in a manner exemplifying the attempt to balance necessary war measures against the governmental philosophy of the Southern people.

In my judgment true wisdom dictates that, even in war, the ordinary business of life should be disturbed as little as the success of military operations and the safety of the Republic will permit. Our people are justly jealous of their liberty, as the present contest abundantly proves. They willingly submit to almost any amount of privations and restraints imposed by their chosen Government, necessary to establish on a firm basis our Republican Institutions, and to free them from the vandal tyranny of the North. But it ought never to be forgotten that the exercise of the extraordinary powers necessarily vested under Martial Law, in a single Military Commander, is contrary to the normal theory of Republican Government, and is frequently made offensive and oppressive by the want of wisdom, or by the passions or prejudices of such Commanders. In all such cases . . . the affectionate regard to the government, so essential to success, becomes weakened. The common mind rarely distinguishes between the cause and the men, who administer the functions of Power, and hence Liberty may suffer for the sins of its ministers.

Every departure from the accustomed channels, in the administration of justice, is an evil to be deprecated. 8

Watts was right. A growing feeling against martial law prompted by overzealous Confederate military officers in various parts of the land often resulted in a protest to Richmond authorities. For example, Major General Earl Van Dorn's proclamation of martial law 9 caused Governor Thomas O. Moore
of Louisiana to complain to Davis in righteous indignation:

I do not propose to discuss at this time how far the principle of submission on the part of the separate States to the illegal exercise of authority by the Confederate Government or its agents is necessary to harmony of action in carrying on the common defense. . . . No free people can or ought to submit to the arbitrary and illegal usurpation of authority embodied in the order referred to. As the chief Executive Officer of this State I will not permit "the will of the Commanding General" to be enforced as the fundamental law in any portion of her territory. 10

Having called the Confederacy to task for the sins of its agents, the Governor presently assured Davis that he intended an attack neither upon him nor upon his direction of the war effort. 11

Under criticism the Administration sought to curb its generals by means of orders explicitly denying them the authority to suspend the writ. 12 There were, of course, a good many persons such as Senator Williamson S. Oldham of Texas who questioned the authority even of the President to suspend the writ and attacked the administration for ignoring state rights. 13 Because of this attitude Davis carefully sought to achieve a balance between Confederate and state governments. He resisted attempts to declare a general suspension of the writ throughout the Confederacy and endeavored to preserve both liberty and law in all parts of the country. 14 He strove for considerable authority to preserve the nation's war powers in a manner always designed to harmonize with the nature and tradition of the people. In singling out the dangerous areas and proclaiming martial law there—and nowhere else—
Davis well illustrated his policy of conservative nationalism. Congress also undertook to circumscribe the suspension of the writ by authorizing it only in "arrests made by the authorities of the Confederate Government or for offenses against the same," and by providing that the authorization should expire thirty days after the next session of Congress began. ¹⁵

When Congress reconvened in August, 1862, Mississippi Representative Ethelbert Barksdale introduced a bill to extend the President's power to suspend the writ. The Mississippi nationalist assumed suspension in time of crisis had become a settled Congressional policy. But he was wrong. A Virginia representative, Muscoe R. H. Garnett, requested that the entire matter be referred to the House Judiciary Committee and attacked what he regarded as the propensity of the military to arbitrary proclamations of martial law. Others, such as Peter W Gray of Texas and long time Davis opponent Henry Foote of Tennessee, joined in to denounce martial law. In reply John Perkins of Louisiana and Milledge Bonham of South Carolina quickly pointed out that military necessity made martial law imperative. After heated debate ringing with charge and countercharge the House referred the Barksdale bill to committee. ¹⁶

The same problems troubled the upper chamber. In September, Senator Landon C. Haynes of Tennessee moved three resolutions condemning military proclamations of martial law. Haynes explained to his colleagues:
Martial law was now proclaimed by first one brass buttoned officer and then another, and the civil power was in many cases overturned. Senator James Phelan of Mississippi... says martial law does not stand up, and, therefore, you can't knock it down. But it does stand up. It rears its horrid front everywhere with bristling bayonets, and citizens are seized by it, tried and punished.

The Senate, however, buried Hayne's resolutions in committee and refrained from further consideration of the subject. 17

The nature of the debates at this time demonstrated that the opposition to suspension of habeas corpus sprang from a concern to maintain civil authority and from a desire to subordinate the military to civilian government. Opponents of suspension directed their attacks at individual cases of abuse of power—not at the Confederate government itself. The protests in Congress mainly reflected the shock of the Southern people adjusting to a modern war program which brought the national government to their very doorsteps.

While men of the Henry Foote stripe railed against the increase of power by the general government, others, more nationalistic in outlook, wanted increased power for the central government. Typical of the nationalist reasoning is a letter from former Representative Alexander M. Clayton of Alabama:

When a power is granted, you grant the means necessary to carry the power into effect—When you grant to Congress the power to declare War it is mockery unless you grant the means to carry it on in the most efficient and energetic manner... . . .

I have seen enough here to convince me that the civil authorities are wholly unfit to deal with a large class
of offenders. . . . To say that the military shall not punish them is virtually to say that they shall go unpunished. 18

In the fall of 1862, Congress once again turned its attention to suspension of the writ. Since the previous March the House Judiciary Committee had studied the threat to the preservation of personal liberty because of martial law and suspension of the writ. 19 On September 12, the day before the committee gave its report, General Order No. 66 annulled all proclamations of martial law by military commanders. 20 Coming as it did on the eve of Congressional consideration of the subject, the general order appears to be an attempt to lessen criticism and to persuade Congress once again to extend to the President the right to suspend the writ.

The committee's report praised Davis for exercising the authority granted him with "exemplary moderation." 21 The committee, however, feared the unchecked powers of the military. The report reviewed the history of martial law and then went on to distinguish between what the military can do by necessity of war (for example, destroy property) and a "power in a commander, or in the President, or in Congress to declare martial law, and then, by virtue of martial law, to exercise arbitrary, absolute, and unlimited power." The committee posed the question: "But conceding for a moment that in any sense martial law can be established, by whom can it be established?" It answered:
Since it has long been well settled that Congress alone can authorize a suspension of the writ of habeas corpus, it might have been inferred that the personal liberty of the citizen can never be invaded without legislative authority; and the truth seems axiomatic that the laws can be suspended only by the law-making power.

The report then considered the problem in relation to the Confederacy:

But as to our own citizens and within our own country, no authority in the name of the Confederate Government ought to be tolerated except that which is regulated by the Constitution and laws. If martial law over the people be necessary in any case, it should be regulated and defined in a sense consistent with the Constitution by distinct enactments.

The committee recommended, in accordance with restrictions which had been imposed by the bill passed in April, that Presidential authority to suspend the writ be limited to arrests for crimes against the Confederacy. In debating the committee measure, George Washington Jones of Tennessee, disclaimed any power of Congress to declare martial law, but at the same time affirmed the legislature's right to authorize presidential suspension of the writ. Edmund Dargan of Alabama agreed. Most representatives conceded Davis' right to suspend the writ but feared military abuses of power. They agreed with Texas' Franklin Sexton: "There are cases in these times when . . . [the writ] should be suspended, yet it is a dangerous thing to tinker with. I am willing to give the power to the President, but not anybody else."22

Both House and Senate passed the bill recommended by the House Judiciary Committee, and Davis signed it into law on October 13, 1862. The new law gave the President power to
suspend the writ in all parts of the country for "arrests made by the authority of the Confederate Government, or for offences against the same." The bill expired on February 13, 1863. In granting Davis this power, Congress acted cautiously in hope that the measure would prove adequate both for the preservation of the governmental philosophy of the Southern people and for the organization of the Confederate war effort. This effort demanded centralized power in an expanding national government and meant that the government and its agents would necessarily come into direct contact with the people.

Applications for the writ of habeas corpus often involved the Confederate government in jurisdictional disputes with state courts. The most numerous cases were those in which the petitioners appealed to state courts for writs of habeas corpus to restrain Confederate conscription officers from enrolling them in the army. In court, the case often involved the issue of whether the state or Confederate government had jurisdiction. The Attorney General spoke for the Confederacy:

When, therefore, it is ascertained, in proceedings under the writ of habeas corpus issued by a State Judge or State Court, that the prisoner is held by a Confederate Officer, under the Authority of the Confederate States, for any matter over which the Confederate laws operate, the State Judge or State Court can proceed no further.24

Some state courts agreed. Chief Justice A. J. Walker of the Alabama Supreme Court reasoned:

One government cannot thus control the officers of a co-ordinate government. If it can, the two governments are not co-ordinate and equal within their proper sphere—
the latter is subordinate and inferior to the former. ... If it be understood that the State judges cannot discharge persons held under the authority of the Confederate States, perfect harmony in the operation of the two spheres is preserved.²⁵

Georgia and North Carolina courts did not always concur in this interpretation. Associate Justice Charles J. Jenkins of the Georgia Supreme Court, while upholding the constitutionality of the conscript laws, held that the state court had jurisdiction to issue writs of habeas corpus in cases involving Confederate laws.²⁶ Associate Justice William Battle of the highest North Carolina court agreed:

The question presented for the consideration of the Court is whether the courts and judges of this state have the right to issue writs of habeas corpus for the purpose of inquiring into the legality of the detention of persons held in custody by officers of the Confederate States. ... My opinion is decidedly in favor of the jurisdiction of the State courts.²⁷

The greatest thorn in the side of the Confederacy in North Carolina was Chief Justice Richmond M. Pearson who continually employed the writ to discharge men from enrollment.²⁸ Pearson also issued the writ while it was suspended, because, he reasoned, the act suspending the writ was "in derogation of common right."²⁹ His colleagues on the court, William Battle and Matthias Manly, disagreed and argued that the suspension was "binding upon all judges, both of the Confederate and State courts," and that they were "not at liberty to issue the writ, or if issued, to proceed under it or in any other cases specified in the act."³⁰ Manly saw suspension as a "high exercise of legislative power" but not "beyond its
In most cases, the courts upheld the Confederacy in the suspension of the writ. Pearson and Confederate District Judge James Halyburton, however, did prove annoying to the Confederacy, and later legislation sought to restrain their powers.

By Congressional limitation, the President's authority to suspend the writ expired in February, 1863. Despite attempts by Mississippi Representative Ethelbert Barksdale, Congress refused in the spring of 1863 to extend further Davis' power to suspend the writ. Elections were at hand and Congress was sensitive to criticism. In Georgia, the Augusta Chronicle happily noted the "indications leading us to believe that Congress will refuse to clothe the President with power to suspend the habeas corpus." In Mississippi, Judge William L. Sharkey grumbled "with Mr. Barksdale as guardian of our personal liberty and Mr. Philan [sic] as guardian of our property we are about to be placed in the condition of serfs."

The summer of 1863 was not a happy time for the Confederacy. Its people increasingly felt the pangs of hunger and war enforced hardship. Spiraling prices, transportation problems, hoarding, inadequate wages, and lack of effective relief programs combined to create a severe morale crisis in many parts of the land. The people naturally turned to a criticism of their government, and often suspension of habeas corpus bore the brunt of popular wrath.
Despite popular indignation it became increasingly apparent to Davis as the summer of 1863 wore into autumn that another suspension bill was imperative. For one thing, conditions in North Carolina challenged the internal security of the nation. The editor of the _Standard_, William Woods Holden, led the disaffected of the Tarheel State in a demand for peace conventions. By July Davis was well aware of this movement, which bordered on treason.\(^{36}\) Shortly after the opening of the fourth session of the first Congress in December, the President met the members of the North Carolina delegation, confronted them with evidence of traitorous activities in their state and informed them of his intention to urge a suspension of the writ to meet the threat. Newly appointed Unionist Senator William G. Reade, Representatives W. N. H. Smith and Burgess Gaither indignantly denied the President's information; Representatives J. R. McLean, Archibald Arrington, and William Lander, on the other hand, agreed that treasonable activities with reconstruction overtones were indeed afoot in North Carolina.\(^{37}\)

From his home in Crawfordsville, Georgia, Vice President Stephens, by now an open opponent of Davis, advised that an act authorizing the President to suspend the writ would "be exceedingly unwise & impolitic."\(^{38}\) Davis nonetheless asked Congress for authority to suspend the writ. Without specifically mentioning North Carolina, he pictured a situation dangerous to the internal security of the Confederacy: treason-
able meetings, open avowals of disloyalty to the Southern cause, and spies who gave away important information. He also noted that several judges used the writ to deprive the army of much needed personnel. To counteract these evils, Davis urged "a remedy plainly contemplated by the Constitution." He told Congress "a suspension of the writ when demanded by public safety is as much a duty as to levy taxes for the support of the Government." The President's message set Congress to work drafting a bill embodying his recommendations. Virginia's Robert Baldwin opposed suspension of the writ because his state constitution forbade it, but few agreed with him. David Funsten, also a Virginian, met Baldwin's challenge to Congressional authority with an emphasis on the primacy of the Confederate Constitution: "Virginia took her place in the Southern Confederacy—the Constitution thereof authorized the suspension of the writ and Virginia would . . . abide by it." Opponents of suspension more generally shared Herschel V. Johnson's fear that the law would result in "greater evils than it is intended to remedy or prevent." Nevertheless both houses of Congress substantially supported a new bill authorizing suspension of the writ for arrests made upon the authority of the President, the Secretary of War, or general commanding the Trans-Mississippi Department in cases involving specific threats to the internal security of the Confederacy. Among the cases listed were those involving or inciting
insurrection against the government. It also ended the au-
thority of judges to issue writs of habeas corpus to men
held by the Confederate military authorities.\textsuperscript{42}

By the time this bill passed in February, 1864, the for-
tunes of war were running against the Confederacy, giving ir-
responsible men the opportunity of using the measure to arouse
popular feeling against the government.\textsuperscript{43} Hardship charac-
terized the South in 1864—scarcity of food, high prices,
speculation, and despair about the ultimate success of South-
ern arms combined to weaken substantially Southern morale
and the will to win the war. As morale collapsed, criticism
of the government grew correspondingly stronger.

Opposition to the latest suspension bill centered in
Georgia. The Augusta \textit{Chronicle}, which under the editorship
of N. B. Morse had become rabidly anti-Davis, cried:

The rapid deterioration of the tone of our people is
enough to fill any thoughtful man with apprehension. We
are in the midst of a revolution undertaken for the vin-
dication of our rights, and already every vestige of
popular liberty is destroyed. An overshadowing military
despotism has reared itself upon the reins of public law,
and private rights are dependent upon the will of the
Executive.

The late congress degraded the country . . . /The/ act
suspending the writ of \textit{habeas corpus} was simply shameful.
. . . The Congress voted to suspend the writ of \textit{habeas}
corpus because the President asked it? What a conjunc-
tion between a grasping Executive and a cringing Congress.
If the people submit to this, there is little hope for the
preservation of popular rights under our new Government.\textsuperscript{44}

Governor Brown, Vice President Stephens and Judge Lin-
ton Stephens joined forces in opposition to suspension and
planned to have the Georgia legislature condemn it. Brown wrote Stephens urging him to come to Milledgeville for "a few days at the opening of the session." The governor also agreed with the Confederate Vice President on the advisability of securing the aid of Georgia Senator Benjamin H. Hill in their concerted struggle against the Confederate government. Hill refused, however, to take part in the movement against the government: "I voted against the Act suspending the writ ... Nonetheless I have good reasons to believe that Mr. Davis will use the power conferred by the suspension very sparingly and with great caution." Herschel V. Johnson, Georgia's other Confederate Senator and also an opponent of suspension, wrote the President: "In my judgment the popular mind can be more easily & extensively excited upon this, than upon the subject of conscription ... [It] touches the right of personal liberty; the popular mind is sensitive & there will not be wanting those who will use diligently all elements of strife in order to organize a party." Subsequent events were to confirm Johnson's dire forebodings.

Governor Brown led the attack in a message to the special session of the Georgia legislature which convened on March 10, 1864. The recent act suspending the writ was "but an attempt to revive the odious practice of ordering political arrests, or issuing letters de cachet by royal prerogative, so long since renounced by our English ances-
tors. . . ."48 Attacking the assumption of judicial power by the executive, the cantankerous governor asserted that "the main purpose of the Act seems to be to authorize the President to issue warrants supported neither by oath nor affirmation and to make arrests of persons not in military service, upon charges of a nature proper for investigation in the judicial tribunals only." Those responsible for the act were guilty of "bold strides towards military despotism and absolute authority" and it was the "duty of every patriotic citizen to sound the alarm . . ." Brown worried about the conduct of the war.

Can the President no longer trust the judiciary with the exercise of the legitimate powers conferred upon it by the Constitution and laws. . . .

. . . And what will we have gained when we have achieved our independence of the Northern States, if in our efforts to do so, we have permitted our form of government to be subverted, and have lost Constitutional liberty at home?

Next Linton Stephens joined the fray to move resolutions denouncing suspension. In final form they declared

That under the constitution of the Confederate States, there is no power to suspend the privilege of the writ of habeas corpus, but in a manner, and to an extent, regulated and limited by the express, emphatic and unqualified constitutional prohibitions.

The resolutions then denounced suspension as

an attempt to sustain the military authority in the exercise of the constitutional, judicial function of issuing warrants, and to give validity to unconstitutional seizures of the persons of the people.

In one final assault, they called the law

a dangerous assault upon the constitutional power of the
courts, and upon the liberty of the people, and beyond the
power of any possible necessity to justify it. 49

Vice President Stephens, next on the program, delivered
to the legislature a long, legalistic diatribe against the
suspension act. Calling it unconstitutional and "dangerous
to public liberty," Stephens sustained the speech of Gover-
nor Brown and his brother's resolutions, which he had helped
to write. 50 The legislature passed Stephens' resolutions,
but coupled with them one affirming confidence in Davis. 51
The opposition had achieved a hollow victory.

The action of the Georgia triumvirate is cited as an
example of the weakening of the Confederate government be-
cause of a devotion to state rights. 52 But there is another
side, for not all were in opposition. The Macon Daily
Telegraph noted:

The message of Governor Brown is the ground work of a
demonstration which has rallied in support of every dis-
affected and disappointed man in the country. Wherever
you meet a growling, complaining and sore headed man,
hostile to the government and denunciatory of its measures
and policy or a croaking, desponding dyspeptic who sees
no hope for the country, but, whipped himself, is trying
to make everybody else feel as badly as himself, you will
invariably find a friend, admirer and defender of Gover-
nor Brown. 53

Yet this again is not the whole story. The attitude and re-
action of much of the opposition is reflected more accurately
by the two Georgia senators, Benjamin H. Hill and Herschel
V. Johnson, both of whom voted against the suspension bill.
Noting that he disapproved constitutionally of suspension,
Hill nonetheless expressed confidence in Davis:
I have not agreed with him in many things. But I think his heart is right and that nothing could tempt him to be a dictator. He is tenacious of his opinion but does not seem to use power greedily. I admit the danger of acquiescing in such a law; but I confess I fear an issue, especially if not necessary, will weaken us in winning that victory which we both agree is indispensable to the success of the great movement for peace. I shall certainly vote however to repeal the law.54

Johnson, for his part, countered Stephens' and Brown's charge that suspension of the writ was the act of power hungry men and insisted that "patriotic purposes" motivated Congress to suspend the writ.55 Warming up in his disagreement with Stephens, Johnson later wrote the sulking Vice President: "I have not a shade of doubt of the constitutional power of Congress to suspend the Habeas Corpus." Johnson meant to stand by the government. "For the sake of harmony and the cause, I defer as a citizen to the action of Congress. . . . I think liberty is in more danger from the enemy."56

As to those who opposed the suspension,

. . . I know you are wrong. You have allowed antipathy to Davis to mislead your judgment. You will say no such thing. But you are not the best judge. You are wrong, in view of your official position: You are wrong because the whole movement originated in a mad purpose to make war on Davis & Congress.57

It may well be, as Johnson implied, that much opposition to suspension arose from personal political jealousies rather than from a strict adherence to the principles of state rights. Other opponents feared the growth of an uncontrolled military power in violation of the traditional American principle of subordination of the military to the civilian branch of gov-
ernment. Dissatisfaction came also from areas in which there was privation and war weariness. 58

Despite all vocal opposition to the suspension, the measure proved effective. Kentucky Representative B. M. Bruce observed that it "has accomplished the great object for which it was intended—suppressed the internal commotion if not insurrection and revolution." 59 President Davis himself also noted that the bill had strengthened the position of the central government in the country. 60

Wrangling about habeas corpus continued unabated, however, in the halls of the Confederate Congress. The issue divided members into those who feared the consequences of suspension and those who feared the consequences of trying to do without it. For example, Mississippi's newly elected Representative Jehu A. Orr introduced resolutions of his state legislature expressing a fear that suspension endangered personal liberties and subordinated the civil to the military authority. On the other hand, various members, among them Mississippi Representatives Otho Singleton and Ethelbert Barksdale, Senator Albert G. Brown, and Texas Senator Louis T. Wigfall, supported suspension as expedient and necessary. In the words of Wigfall, "Congress . . . has the undoubted right, during invasion or rebellion, and when public safety requires it, to suspend the privilege of the writ of habeas corpus." 61

Throughout the spring of 1864, Congress considered the
question of suspension. In response to a House resolution, Davis, on May 20, 1864, recommended a renewal: "In my judgment it would be perilous, if not calamitous, to discontinue the suspension while the armies of the enemy are pressing on our brave defenders." The day following the President's message the House Judiciary Committee presented a report on habeas corpus. After citing the historical background of the writ, the report clearly distinguished between the rights of a citizen in peace and war. "When the State is threatened with destruction by external or internal violence, the government, and especially the executive must often act with untrammelled energy." It sustained the constitutionality of the suspension and noted that the bill of February, 1864, did not as such authorize the President to make arrests. The report insisted that treasonable activities within the Confederacy made suspension necessary. In conclusion, it described the President as, "a patriot who needs no vindication before his countrymen," and recommended the continuation of suspension. But during the first session of the second Congress, the authority to suspend the writ was not extended.

In the last session of the second Congress three bills authorizing further suspension passed either the House or Senate. The Confederacy faded into history, however, with the two houses still not agreed upon a final bill. Two of the proposed measures would have permitted the President,
the Secretary of War, or the general commanding the Trans-
Mississippi to suspend the writ for a range of specific
crimes against the Confederacy.66

Thus suspension of the writ had continued as an issue
during the entire life of the permanent Congress. In voting
on the various measures to authorize presidential suspension,
Congress did not divide along former party lines—old Whigs
and old Democrats were found equally on both sides of the
question. A bloc of opposition to the measure did develop,
however, in the areas where disloyalty to the Confederacy
was strongest. Greatest support for suspension in the second
Congress came from regions which had been overrun by the en-
emy. Opposition centered in the newly elected delegations
from Georgia and North Carolina.67

Habeas corpus confronted the Davis government with one
of its most perplexing problems. The administration grappled
with the dilemma of preserving personal liberty and at the
same time establishing an effective program to run the war.
Davis appreciated that the usual guarantees of personal lib-
erties possible in peace time were impractical in a total
war for Southern independence. As a constitutionalist,
Davis naturally sought a constitutional solution of his prob-
lem. Reasoning that the authority to suspend the writ must
come from Congress, he asked for and received three separate
acts authorizing a suspension of the writ. That Congress
failed to grant him all he really desired is undeniable.
That the failure to gain this power substantially altered the course of the war is open to considerable question. That reluctance to grant the President the authority to suspend the writ was based on a firm adherence to the doctrine of state rights is even more questionable.68

Debate on the proposition of the suspension of habeas corpus always centered on the writ as a safeguard against despotic government. Most men equated the writ with the principle of the subordination of the military to civilian control. These principles are not peculiarly Southern; they do not belong exclusively to the state rights school of thought. Indeed they are typically American. State rights most often entered the debate when Georgians spoke. Their motives, however, stood challenged by fellow Georgian Herschel V. Johnson. Opposition to Davis for personal political reasons, and from those who were weary of war, brought forth a tirade of denunciatory rhetoric and editorial bombast which has confused the issue.

The suspension of the writ by the Confederate government was a significant step in insuring its authority to direct the war and to preserve the security of the nation. It aided the centralization of the war effort and brought Southerners under the direct jurisdiction of the Confederate government. The issue forced a choice between liberty and law and military necessity. Some, expressing a sincere concern for the preservation of personal liberty in a time of a vastly increasing
military establishment, questioned the wisdom of suspending the writ of habeas corpus. Others strongly defended the constitutional right of the government to suspend the writ in war time; still others accepted suspension as a necessity to achieve the higher goal of Southern independence. State rights played an insignificant role in the debate on habeas corpus. Those who defended the doctrine of state rights, for the most part, merely played on the lowering morale of a war weary people facing defeat and the end of their dreams in order to advance personal political ambitions. In applying to Congress for permission to suspend the writ, Davis protected the government's war powers without an undue sacrifice of personal liberty. It was the American way.
NOTES

1. For an analysis of the problem of disloyalty in the Confederacy, see Georgia Lee Tatum, Disloyalty in the Confederacy (Chapel Hill, 1934).


4. C. S. Congress, "Proceedings," February 27, 1863, SHSP, XLIV, 65; Journals, V, 34; Matthews (ed.), Statutes at Large, 1 Cong., 1 Sess., ch. 2, act approved February 27, 1862.


8. Watts to Davis, Richmond, April 25, 1862, ibid., 73-75.

9. The proclamation, issued on July 4, 1862, called martial law, "the will of the military commander." It also forbade trade with the enemy; called for imprisonment for those who refused Confederate money; prohibited publication of any editorial, "calculated to impair the confidence in any of the commanding officers the president may see fit to place over the troops. . . ." U. S. War Department, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (70 vols. in 128, Washington, 1880-1901), Series I, Vol. XV, 712.

11. Moore apologized for any offense which the letter might have given Davis and asked for permission to withdraw it from the public archives. Moore to Davis, Opelousas, La., September 12, 1862, and Davis to Moore, Richmond, September 29, 1862, *ibid.*, 13-15.


13. Memoirs of Williamson S. Oldham, Confederate Senator, 1861-1865, 157-61, typed copy, Williamson S. Oldham Papers, Archives Collection, University of Texas, Austin. Oldham wrote this shortly after the war, but his record in Congress indicates that he felt this way in 1862.


15. Matthews (ed.), *Statutes at Large*, 1 Cong., 1 Sess., ch. 44, act approved April 19, 1862.


21. *Journals*, V, 373-77. The members of the Judiciary Committee were Lucius J. Gartrell of Georgia, Charles W. Russell of Virginia, Edward S. Dargan of Alabama, James M. Moore of Kentucky, August H. Garland of Arkansas, Joseph B. Heiskell of Tennessee, Peter W Gray of Texas, Thomas S. Ashe of North Carolina, and James P. Holcombe of Virginia.


24. Watts to Davis, August 8, 1863, Patrick (ed.), Opinions of the Confederate Attorneys-General, 314.

25. Ex parte Hill, 38 Ala. 499 (1863).


27. In re Bryan, 60 N. C. 1 (1863).

28. For example, see In re Huie, 60 N. C. 165 (1863); In re Boyden, 60 N. C. 175 (1863); In re Kirk, 60 N. C. 186 (1863); In re Prince, 60 N. C. 196 (1863); and Ex parte Walton, 60 N. C. 351 (1864).

29. In re Roseman, 60 N. C. 369 (1864).

30. Justice Battle, In re Long, 60 N. C. 535 (1864); see also McLane v. Manning, 60 N. C. 609 (1864).

31. In re P. Rafter, 60 N. C. 537 (1864).

32. James D. Halyburton, Confederate District Judge for the Eastern District of Virginia, also freed men from enrollment by issuing writs of habeas corpus. See Decisions of Hon. James D. Halyburton in the Cases of John B. Lane and John H. Leftwich (Richmond, 1864).


34. Augusta Chronicle, April 16, 1863; F. Gavin Davenport (ed.), "The Essay on Habeas Corpus in the Judge Sharkey Papers," Mississippi Valley Historical Review, XXIII (September, 1936), 244.


36. Davis to Zebulon B. Vance, Richmond, July 24, 1863, Zebulon B. Vance Papers, North Carolina Department of Archives and History, Raleigh.


38. Stephens to Davis, Crawfordsville, Ga., January 22, 1864, Alexander H. Stephens Papers, Manuscripts Division, Duke University.


42. Matthews (ed.), Statutes at Large, 1 Cong., 4 Sess., ch. 38, act approved February 17, 1864, was to remain in force until ninety days after the next meeting of Congress.

43. Robinson, Justice in Gray, 411-12, characterized the opposition to the suspension bill: "Disgruntled politicians hiding behind State's rights, disappointed seekers of favor from the government, editors whose opinions had not been accepted by the Administration . . . and other contemptibles, raised hue and cry from one end of the Republic to the other, calling the suspension unconstitutional . . . uttering a variety of mis-statements, some honestly made, but most deliberately calculated to deceive the uninformed."

44. Augusta Chronicle, March 10, 1864.


46. Hill to Stephens, La Grange, Ga., March 10, 1864, Stephens Papers, Emory.

47. Johnson to Davis, Sandy Grove, Ga., March 10, 1864, Jefferson Davis Papers, Manuscripts Division, Duke University.


50. Cleveland, Alexander Stephens, 761-86; Bryan, Confederate Georgia, 96.

51. Acts of the General Assembly of Georgia ... Session in March and April 1864, approved March 19, 1864.

52. For example, see Owsley, State Rights, 176-202 and Alexander C. Niven, "Joseph E. Brown, Confederate Obstructionist," Georgia Historical Quarterly, XLII (September, 1958), 233-57.

53. Macon Daily Telegraph, April 13, 1864. The "dyspeptic" is an obvious reference to Vice President Stephens.


55. Johnson to Stephens, Sandy Grove, Ga., March 9, 1864, H. V. Johnson Papers.

56. Johnson to Stephens, Sandy Grove, Ga., March 19, 1864, ibid.

57. Johnson to Stephens, Sandy Grove, Ga., April 6, 1864, ibid.; this passage printed in Percy S. Flippin, Herschel V. Johnson of Georgia, States Rights Unionist (Richmond, 1931), 253-54.

58. For the areas of disaffection in the Confederacy, see Tatum, Disloyalty in the Confederacy.

59. E. M. Bruce to Robert McKee, Richmond, June 7, 1864, Robert McKee Papers, Alabama State Department of Archives and History.

60. Davis to the Confederate House of Representatives, May 20, 1864, Richardson (ed.), Messages and Papers, I, 452.


62. Marcus Cruickshank of Alabama and J. T. Shewmake
of Georgia introduced resolution condemning the suspension of the writ, and Henry Chambers of Mississippi offered resolutions inquiring whether suspension was still expedient. C. S. Congress, "Proceedings," May 3, 13, 16, 19, 20, 1864, SHSP, LI, 9, 70-71, 77-80, 101-5, 109-14; Journals, 80.


64. Report of the Committee on the Judiciary upon the Suspension of Habeas Corpus /Richmond, 1864/ (Crandall, #590).


67. This conclusion is based upon a correlation of the votes on the bills discussed in this chapter with information in Appendixes I and II relative to the membership of the Confederate Congress and the voting record of the several congressional districts in the presidential elections of 1840-1860.

68. Owsley in State Rights, 176-202, feels that both Congressional and popular opposition to further suspensions of habeas corpus arose from a firm adherence to the doctrine of state rights. He argues furthermore that failure to suspend the writ seriously crippled the Confederate war effort. On the other hand, Robinson, Justice in Grey, 415, concluded his study of martial law and the suspension of habeas corpus with the observation: "There is ample evidence that the army did not permit itself to be wholly checkmated in the handling of disloyal and suspect cases simply because it was denied the more effective modes of dealing with them under martial law."
CHAPTER IV

CONSCRIPTION

"The Congress shall have power . . . To raise and support armies . . ."

Article I, Section 8

Americans went to war in 1861 with a deep devotion to the citizen soldier, to the Minuteman tradition of raising armies. Both South and North shared the belief that citizens would cheerfully flock to arms in defense of hearth and home. Southerners, especially, felt that their gallant men would rush to the colors to preserve the "Southern way of life." The rash of enthusiasm which initially filled gray ranks further solidified belief in the citizen soldier tradition. This noble tradition, however, could not satisfy the demands of modern war. It gave way to reality and to centralization in the direction of a total war effort. The Confederate Congress broke with the past by enacting, in April of 1862, the first national conscription law in American history. Breaks with tradition have always been difficult for Americans, but Southerners, for the most part, greeted conscription more calmly than their foes across Mason and Dixon's line; certainly no bloody draft riots such as those in New York City occurred any place in the Confederacy.

Nevertheless, conscription produced a great debate in
the South—a debate which focused on the nature of Confederate government and its relationship to the "sovereign" states. The consolidation of power in a system of national conscription conflicted with many Southerners' traditions of localism. There were those, for example, who insisted that the constitution prohibited the Confederate government from coercing military service from the citizens of the states. Only the state government could act directly upon the individual, they reasoned. On the other hand, many realized that war brought increased power to the central government, and pointed out that the necessities of the effort to establish Southern independence compelled national control of the economic, political, and military life of the nation.

Davis himself knew that the enthusiasm which produced the volunteers in the spring and summer of 1861 would not continue to satisfy the demands which a modern war would make on the manpower of the South. Specifically he worried that the army would disintegrate in the spring of 1862 when the terms of the volunteers expired.¹ His secretary of war, Judah Benjamin, urged upon him the necessity of both retaining these volunteers and centralizing the mobilization of Southern manpower.² But would Southerners tolerate a system of national military control? Would Congress enact the necessary legislation? These questions must have haunted the Confederate leader as Southerners in the winter and spring of 1862 frequently turned their attention to discussions of
Alabama's Governor John Gill Shorter, for example, recognized the justness of a system of drafting, but feared that if we are to depend upon that system to maintain the liberties of the South, I should almost despair of our ultimate triumph. It is not upon men who will insist upon what is strictly fair & just to themselves that we can rely, in such a contest and such a crisis. It is upon the men of deep devotion to Liberty, the generous, the unselfish, the self-denying, the Self Sacrificing—the spirit of martyrdom, in men and women, must characterize this Contest, or we will be overwhelmed by the huge power arrayed against us.³

Many plans were offered to meet the manpower requirement of the Confederate army. Some counseled a reliance on states to raise troops; others urged a system of conscription and still others, notably Mississippi Senator Albert G. Brown, called for a levy in mass—abolishing the privilege of volunteering—on the whole male population between the ages of eighteen and forty-five. Brown's plan envisioned a vast national army, called, organized, and administered by the central government.⁴

By March, 1862, Davis acted. The Confederate President urged Congress to pass legislation declaring "that all persons residing within the Confederate States, between the ages of eighteen and thirty-five years, and rightfully subject to military duty, shall be held to be in the military service of the Confederate States."⁵

Congressional reaction to the plan was, with several exceptions, favorable. Edward Sparrow, Louisiana senator,
praised it as a demonstration of the "energy of purpose on
the part of the administration in the prosecution of the war,
which, in the estimation of many, had not been exhibited
heretofore." Senator Louis T. Wigfall of Texas supported con-
scription because

The government has as much right to exact military service
as it has to collect a tax to pay the expenses of the gov-
ernment. The people will not volunteer to fill up the old
regiments. . . . We want trained troops and the only way
to bring an effective force in the field is to fill up the
skeleton regiments by conscription . . . The safety of our
liberty and our homes requires that we shall do this. It
will not do to talk about the justice of our cause, the
favour of Providence, or the aid of foreign nations. We
must have heavy battalions . . . . To those who sustain
this recommendation of the President the country will say,
"well done thou good and faithful servant."

Nevertheless Wigfall's Texas colleague, Williamson S.
Oldham, worried about state rights. He equated it with fun-
damental law and opposed conscription because "we can accom-
plish our deliverance without violating our fundamental law."
John Clark of Missouri disagreed and reminded Oldham and other
extreme state righters that "in times like these the sovereignty
of the States must be secondary to the sovereignty of the
people." 6

Clark's and Wigfall's reasoning represented the thinking
of most who supported national conscription: they simply
shoved aside considerations of state rights. Since conscrip-
tion was necessary to maintain the gray armies, it was there-
fore within Congress' constitutional power to pass the law.

In the lower chamber, Henry Foote of Tennessee, long-
time hater of Davis, strode to the front of the opposition. He played on the theme of state rights, seeking to give the state a veto power by requiring the consent of the governor, legislature, or state convention before the Confederate government could raise troops within a state. Some members, such as Thomas S. Ashe of North Carolina, a former Whig, feared conscription as the beginning of a strong military government.

Despite a certain amount of vocal opposition, the measure moved through both houses of Congress with little trouble. Its chief architects were Senators Wigfall, William L. Yancey, and William B. Simms. The sole attempt in the Senate to write state-rights theory into the law was by James L. Orr of South Carolina, who wished to have the Confederate army raised by requisitions upon state governors. Support for the bill, amounting to a margin of two to one in both houses, came from all quarters, old Whigs as well as former Democrats, and representatives from the border states as well as those of the cotton South.

Congress explained in the preamble to the act that it adopted conscription because of

the exigencies of the country, and the absolute necessity of keeping in the service our gallant army, and of placing in the field a large additional force to meet the advancing columns of the enemy now invading our soil...

The law retained the twelve-month volunteers, empowered the President to call all men between eighteen and thirty-five
directly into Confederate service, and provided that "persons not liable for duty may be receivable as substitutes for those who are . . ." As a concession to state rights, the law required that conscripts "shall be assigned to companies from the States from which they respectively come."\(^{11}\)

As the pressures of war mounted in the summer and fall of 1862, Congress sought more men to bolster the ranks of the Confederate army. Throughout August and September, the second session of Congress debated means to accomplish this task. Two distinct theories emerged. The first, or state-rights theory, sought to fill the ranks of the army by first establishing a quota of troops for each state and then relying upon the governors to call, organize, and officer them. This plan conceded only indirect control of the army to the Confederate government. The second, or nationalist theory, sought to create a truly national army in both its organization and its administration. Its advocates wished to continue presidential authority to call, organize, and officer the Confederate army.\(^{12}\)

The Committee on Military Affairs in the House, under the direction of William Porcher Miles of South Carolina, introduced a bill which for the most part favored the state-rights theory.\(^{13}\) Some extreme state rights advocates, however, rejected the principle of conscription altogether. Henry Foote, speaking for this faction, asked: "If the agents of the Confederate government . . . \[^{\text{Have}}\] the right to go into
any state and take therefrom the men belonging to the state, how... [shall] state rights and state sovereignty be maintained?" William R. Smith of Alabama and John W. Crockett of Kentucky, among others, joined Foote in questioning the constitutionality of the conscript laws. Other state rights men such as Burgess S. Gaither of North Carolina feared that conscription would promote conflict between state and Confederate authorities.\textsuperscript{14}

The defenders of conscription, while paying lip service to state rights, often rested their case on the higher ground of insuring Southern independence. Although William Porcher Miles, for instance, "yielded to no one on the sovereignty of State rights," he recognized the necessity of conscription in order to assure Confederate success. Because of this necessity Miles urged the states to accept "any measure" which was "designed to serve the country." Like Miles, Texas Representative Franklin B. Sexton also stressed necessity as his reason for supporting the law. He noted in his diary his response to an attack on conscription by fellow Texan Caleb C. Herbert:

I replied to him. Said I voted for the conscript law with some doubt as to its constitutionality--& with regret because of the imperious necessity which required its enactment. I believed that it had saved the country--That the people of Texas acquiesced in it & I had found at home no serious dissatisfaction with it.

While some stressed necessity as the basis for adopting conscription, Edward S. Dargan of Alabama argued that the law
conformed strictly to the Confederate Constitution. Other representatives, though few in number, were not troubled with constitutional considerations. Mississippi's R ethelbert Barksdale, for example, affirmed his readiness "to throw aside the constitution rather than that the South should be subdued and brought under the dominion of the North."^{16} Senators wrangled over the same problems that divided the House. William L. Yancey of Alabama sought to lessen the prospect of disagreement between state and Confederate governments by relying upon the states to fill the ranks of the Confederate army. Wigfall, whose nationalism seemed to be increasing, questioned the wisdom of employing state agencies to fill the ranks of the Confederate army. Instead of creating new regiments he wished to give the President authority to fill existing ones. The constitutional question still troubled him:

It is insisted that the power conferred upon Congress to raise and support armies is without restriction or limit, as to the mode and manner of its exercise. . . . I contend that the power is not only limited and restricted by other provisions of the Constitution, but the manner in which it is attempted to be exercised, is in conflict with the whole theory and spirit of our federative system of government.

According to the plain and obvious meaning of the Constitution as I understand it, Congress has no power to coerce the performance of military service.^{17}

The bills which came from the Senate and the House were products of conflicting theories. The Senate bill, by placing direct control of recruiting and organizing the army in
Confederate hands displayed the influence of the nationalists. The House bill, on the other hand, directed the President to fill up the ranks of the army by making requisitions upon the various state governors. Vote on the House bill cut across old party affiliation and produced no significant pattern of support of opposition to the measure. 18

The bill which emerged from the conference committee and became law on September 27, 1862, was based upon the Senate bill and represented a substantial triumph for the nationalist philosophy. Known as the Second Conscription Act, it strengthened the position of Davis and the Confederate government in the organization and supervision of the army. The draft age was extended to forty-five, and the President was empowered to call out troops under the provisions of the first conscription act, passed the previous April. In deference to state rights, the act continued the provision that new troops be assigned first to existing regiments from their own state. 19

Having placed the President and the Confederate government in a strong position to direct the mobilization of Southern manpower, Congress, realizing that certain occupations were essential to maintain the economy of a country at war, sought to exempt those men necessary to the war effort. As a rule, congressmen were in agreement on the principle of statutory exemption, and only the question of conscripting state officers created disagreement. State rights men were particularly touchy on the subject. When North Carolina
Senator William Dortch sought to make justices of the peace liable to conscription. Yancey and Oldham howled in protest. Power to take justices of the peace, they screamed in righteous indignation, meant power to destroy state governments. Thomas J. Semmes of Louisiana warned that the Confederate government could not oblige a State officer to perform military service. It cannot, for the simple and sufficient reason that no man can serve two masters. The State officers are already in the service of the States and cannot be forced to serve the Confederate Government without the destruction of the State government.

The state rights adherents pictured the Confederate government as a mere agent of state government. Senator Edward Sparrow of Louisiana, objecting to this interpretation, lectured Semmes and his followers on the nature of Confederate government. First, because of its war power, Congress could lawfully declare every man subject to its authority; furthermore because it existed as a separate entity from the states, the Confederacy conferred a citizenship of its own as was evidenced by the fact that only Confederate citizens were entitled to seats in the Senate.20

The bill which finally passed both houses by wide margins detailed a series of occupations exempted from Confederate service. It conceded the state rights position with respect to state officials by exempting all except those not exempted from militia duty under state law. The most controversial section of the bill exempted one overseer on every
plantation with at least twenty slaves. 21

During the spring, summer and fall of 1862, conscription was a widely discussed topic in the land. The Richmond Enquirer held that in the present state of affairs conscription was extremely advantageous, if not indispensable, to the public interests. That consideration silences all objections to it as a present policy. . . . Our business now is to whip our enemies and save our homes;—we can attend to questions of theory afterward.22

The Southern Recorder regarded conscription as a "military necessity" and saw nothing in it derogatory of state rights.23 Others accepted the argument from necessity only with great reluctance. For example, George A. Gordon introduced resolutions in the Georgia Senate calling the acts "a violation of the Constitution of the Confederate States, and an infringement upon the sovereignty of the several states." Nevertheless, he counseled Georgians not to impede the operation of the law in the Empire State of the Confederacy.24

Joseph E. Brown of Georgia became the foremost gubernatorial critic of conscription. He engaged Davis in a long, legalistic dispute on the nature of Confederate government and the unconstitutionality of conscript laws. Damning conscription as a policy subversive of the state's sovereignty "and at war with all the principles for the support of which Georgia entered into this revolution," Brown challenged the authority of the Confederacy to conscript Georgians. The power to declare war, Brown cried, did not include authority
over the militia of the state and the right to organize and appoint officers of a national army. Davis retorted coldly with a lecture on constitutional interpretation:

The true and only test is to enquire whether the law is intended and calculated to carry out the object; whether it devises and creates an instrumentality for executing the specific power granted, and if the answers be in the affirmative the law is constitutional. No one can doubt that the conscription law is calculated and intended to "raise armies." It is, therefore, "necessary and proper" for the execution of that power, and is constitutional. . . .

Brown complained to his friend and ally, Vice President Alexander Stephens, "It seems to me that the government of the Confederacy can only raise an army by voluntary enlistment, and . . . it has no power to raise them by draft or conscription, but must make requisitions on the states." Another Georgian, Herschel V. Johnson, soon to become one of the state's Confederate senators, feared and opposed conscription because it ignored state rights, clothed the executive with more power than is compatible with popular liberty, and put the entire country at the mercy of a huge military organization "which is answerable to no earthly power." After two years in the Confederate Senate facing the problem of supporting a total war effort, this same Herschel V. Johnson condemned Stephens' and Brown's attitude toward conscription as based on a "mad plan to make war on Davis . . ." Wartime experience wrought changes in many solons as well as soldiers.

Brown and Johnson did not reflect the thinking of all
in Georgia. Senator Benjamin H. Hill reported to Davis that the tone of public opinion in the state supported conscription. Editor J. Henly Smith decried Brown's stand as "ridiculous." The Governor was a "cranky and very unsafe man--governed as much by vindictiveness and other bad impulses as by patriotic or correct views." The Southern Recorder, in a vehement denunciation of Brown, made the standard retort to constitutional objections to conscription:

The present is no time for discussions which can be attended with no practical results. We fully concur in the remark which has been well endorsed and made conspicuous by the press, that "the question of State rights can be easily adjusted, after we shall have established the right to have States." Until then we regard all speculations on the subject as entirely useless, and calculated to engender strife and division at a period when perfect harmony among ourselves is essential to the common cause.

The reactions of Governors John Milton of Florida and John Gill Shorter of Alabama portray more accurately than those of Brown the gubernatorial attitudes toward the Confederate government. Milton told his legislature:

I did not consider . . . [Conscription] a question of political power between the Confederate and State Governments. Moreover, in the existing conditions of political and social affairs, concert of action between the State Government and the Confederate Government was and is necessary to the successful maintenance of the War with the United States. . . . The unity of interest between the States is such that I entertain no serious apprehension of permanent detriment to the rights of the States. . . . I consider it much more important during the existence of war to watch and baffle the purposes of the enemy than with skeptical apprehensions to criticize and defeat the purposes of the Government or our choice, administered by statesmen of our selection.

In Alabama, Shorter counseled that "Harmony between the
State and Confederate authorities is a matter of the utmost importance. . . ."32

The Carolinas gave Richmond some trouble in the enforcement of conscription. The Governor and Council of South Carolina disagreed with the Confederacy on the subject of Confederate exemptions, insisting that they extend to all whom the state exempted from militia duty. A strong letter from Davis quieted the Governor and Council so that conscription functioned smoothly in the state until the last years of the war.33

The editor of the North Carolina Standard, William Woods Holden, labeled conscription "inexpedient, unnecessary, oppressive and unconstitutional."34 His motives were presently called in question, however, by the Raleigh Register which claimed that a desire to promote political party ends, rather than a desire to preserve the integrity of states, motivated opposition to conscription in the Tarheel State. The Register charged that Holden, after deserting to the Whig party in an unsuccessful effort to be elected governor, was now rabble-rousing against conscription as a means of seeking the favor of "conservatives" such as William A. Graham and John Gilmer.

Holden knew from the beginning that in the absence . . . of conscription our army would be disbanded and our country left at the mercy of the Yankees, but for this he cared not a "marked sous." In his estimation, his own ends and aims were first, and the country's nowhere. Acting on this principle, he has done more mischief in
this state than he could repair if he lived to the age of Methuselah and worked hard all the time.35

Whatever the merit of the Register's denunciation, it struck one note always true of the South: relations with a central government must be viewed in the context of state and local politics.36

In practice the greatest support for conscription came from courts, usually state courts. Conscription cases raised two fundamental questions: the constitutionality of the law and the relation between state and Confederate governments. On both problems judges rendered decisions favorable to the nationalist viewpoint.

In the fall of 1862, many eyes in the Confederacy turned to Georgia as its all-Whig Supreme Court—Justices Joseph H. Lumpkin, Richard F. Lyon and Charles J. Jenkins—heard the case of Jeffers v. Fair. In the decision the highest court of a state whose governor became famous for opposition to Richmond unanimously affirmed the constitutionality of the conscript act. Jenkins spoke for the court:

Let the phraseology be fixed in the mind of the inquirer. The Congress shall have power to raise armies, etc. Language could not express a broader, more general grant of a specific power. We look in vain for the limitation to voluntary enlistment as a means. Is there any difference between a grant of "power to raise armies?" We think not. Yet had the latter form of expression been used, who would have affirmed the existence of the limitation now insisted on? We understand the rule of construction in such cases to be, that "an unqualified grant of power gives the means necessary to carry it into effect."

The court further alienated state righters by declaring, in
a closing statement, that it reached its decision without "any lingering doubt," and that it was pleased to be able "in perfect consistency with the obligations of official duty, to 'stay up the hands' of our Confederate authorities in the wise and timely exercise of a power expressly granted."^{37}

In Texas the highest state court also upheld the constitutionality of the act. Associate Justice George F. Wheeler delivered the court's opinion which acknowledged the Confederate government's right to compulsory conscription. "The origin of this grant of power to raise armies shows most conclusively that it was not intended to leave the government dependent upon the will either of the citizen or the state to carry it into effect." After settling this point, the court discussed the relationship between state and Confederate governments:

In fact, however, nothing is better established than that neither of these governments is inferior or superior to the other. While both possess some of the powers which are called by law writers, in distinguishing different forms of government, "sovereign powers," neither of them are themselves sovereign, but each of them represents the sovereign and both have within their mutual spheres of action just such powers and functions as have been conferred upon them by the constitution creating them.^{38}

The third major decision on the conscript acts came from the high court of Alabama. After Chief Justice A. J. Walker affirmed the supremacy of the Confederate government in the exercise of its delegated powers, Associate Justice G. W. Stone upheld the constitutionality of the conscript laws:
The Confederate government, being engaged in war, has the unquestioned right to call the male resident of the Confederacy into service.

Stone further held that the magnitude of the war renders it necessary that the government put forth its greatest strength for the protection of our liberty and our property. This, I am satisfied, could not be accomplished by any means short of compulsory enrollment; and hence I hold that the conscription acts are constitutional.39

Often courts did not stop merely with an affirmation of the general government's right to conscript. Some maintained that the just exercise of national war power placed the states in a subordinate position. In Mississippi, Chief Justice Alexander H. Handy observed that

concurrent powers in the States are not independent and absolute, but subordinate powers, subject to be defeated or postponed whenever the Federal government shall exercise the power granted to it in a manner incompatible with the legislation of the state upon the subject.

He continued,

These principles are applicable with peculiar force to the war-power of the Confederate Government. From the nature of the subject the war-power in Congress must be for the most part exclusive, in case of public war.40

Courts also held that when both the Confederacy and states conscripted an individual, the claim of the Confederate government took precedence on grounds that "the Constitution of the Confederate States, and the laws made in pursuance thereof, are the supreme law of the land."41

Thus, the judiciary, for the most part, upheld conscription and supported the centralizing program of the Confederate government in its fight for independence. Judges freely
quoted from United States Supreme Court decisions, especially those of John Marshall, and, apparently interpreting the Confederate Constitution as a direct descendant of the Federal Constitution, quoted the Federalist and the authors of the American Constitution on the nature of the federative system of government. All seemed to find themselves within the tradition of American jurisprudence. All were particularly anxious to define the nature of the delicate balance between state and national powers in the complicated system of American federalism. All justified the extension of the authority of the national government on the basis of the war power clause. This, in their opinion, was in strict conformity with the American—-and Confederate—-way.42

As governors, courts, and newspapers of the Confederacy debated conscription, Congress wrestled with the troublesome issue of exemptions and substitutes. Abuse of the system resulted in popular indignation against exemption. For example, many changed jobs in order to enter an occupation freed from conscription. The twenty-slave exemption for overseers probably aroused the greatest wrath among the people. Dubbed the "twenty-nigger law," it, and the policy of substitution created among many the idea that the struggle for Southern freedom was a "rich man's war and a poor man's fight."43

Attempting to stem the tide of criticism and bolster the rapidly declining morale of the Southern people, Congress found itself on the horn of dilemma in dealing with exemptions.
Despite popular criticism there were good reasons for each provision and each had its supporters. For example, Governor Milton of Florida was an outspoken advocate of the overseer exemption. The South, an agricultural nation, he reasoned, depended on the labor of slaves for its wealth. And, he concluded, it is a well known fact that slaves would not labor without the supervision of overseers.44

During the first four months of 1863, Congress maneuvered, accepted, amended, rejected, tabled, and referred to committee five versions of bills to modify or change exemption laws. Although Congress considered various measures to abolish exemption or to alter the entire system, the net result of its effort was the act of May 1, 1863, which dealt only with exemptions for overseers and state officials.45

The "twenty-nigger" exemption which had originally applied to all plantations was modified to embrace only the plantations of minors, imbeciles, a femme sole, or men in Confederate armed service. On such plantations one white man for each twenty slaves was exempted provided he was employed as an overseer before April 16, 1862, and provided further that the owner of the slaves paid the Confederate treasury $500. The new law also increased the number of state exemptions. In addition to executive and legislative officers, who were exempted by the October, 1862, act, the new law excused all officials whom the governor of a state claimed to be essential for the administration of the government or laws of his state.46
The bill adopted on May 1 did not, however, "placate the sensibilities of the common folk," and criticism of exemption and the government "reverberated through the Confederacy." Congress adjourned in May and the problem continued during its seven months adjournment. Aware of the growing criticism of the exemption system as a whole and the genuine need for reform in conscription, Davis appealed to Congress when it reconvened in December, 1863, to revamp the entire conscription program. He called for an end to substitution, an extension of the draft age, and a system of details for men certified essential to the war effort.

In December and the first two months of the new year, Congress passed three measures which reformed the conscription program along the lines of Presidential recommendations.

Not only was the policy of accepting substitutes in the army ended, but also, by a separate bill, those who had furnished substitutes were made liable to conscription. In debate some senators had complained that this legislation represented a breach of contract. Ridiculous, retorted Mississippi Senator Albert G. Brown, who continually sought to extend the power of the national government. He explained:

When the states composing this Confederacy delegated to this central government the exclusive right and power to make war, they necessarily gave with it all the rights and powers incidentally necessary to make the war grant effective and efficient. It would be mockery to clothe Congress and the Executive with the power to make war, and then so trammel them with constitutional chains and bonds that they could not conduct the war to a successful termination.
In a desire to fill the ranks of the army, most congressmen managed to push aside constitutional objections to the bills.\textsuperscript{51}

The third measure passed by Congress, the bill of February 17, 1864, "An Act to Organize forces to serve during the war," extended the draft age from seventeen to fifty, reduced the number of exemptions and empowered the President to detail certain men to work in industries essential to the war effort.\textsuperscript{52} The law passed both houses of Congress with little opposition, and men from all parties and sections joined in its support.\textsuperscript{53} The act still troubled some; thus Herschel V. Johnson of Georgia supported it in order to sustain the war effort but still could not reconcile himself to the "paradoxical" policy of binding "the people in the chains of despotism to make them fight for their freedom."\textsuperscript{54} By this act the Confederacy sought the best means to utilize its manpower in a life or death struggle for existence. Unfortunately time was running out on the Rebels.

Many of those whom the new legislation rendered liable to conscription challenged its constitutionality in courts, pleading breach of contract. Justice Jenkins in Georgia rejected the plea. Congress had withdrawn "an exemption previously granted by itself, alleging as a reason, that the altered circumstances of the country forbid its longer enjoyment." This, Jenkins argued, was clearly within the sphere of power of the Confederate government because the constitutional clause requiring protection of the states from invasion
gave the Confederate government power "over the entire population of the state capable of bearing arms for the common defense."\(^55\)

Justice Reuben A. Reeves in Texas delivered a strongly nationalistic decision supporting the right of the Confederate government to repeal substitution. The power to raise armies, he observed, was conferred in express terms; but who shall compose the army, or how it shall be raised or what number shall constitute it, must to a great extent be left to the wisdom and discretion of congress.

The object was, no doubt, to confer a real and substantial power, and its exercise is not to be restrained by any rules which are merely technical, and which are applicable as such to questions affecting the rights of property or contracts relating to property, or arising by implication from legislative action; but the clause must receive such interpretation as will accomplish the object intended by the framers of the constitution, so far as can be ascertained.

Reeves, in a later part of the decision, stated an interesting interpretation of the nature of the Confederate government (an interpretation which must have come as a distinct shock to those who maintained that the sovereign states created the Confederate government):

The government of the Confederate States, like the government of a state, is derived from the same source, the people, and founded on their authority; the constitution and laws of the Confederate States are the supreme law of the land, and not in any sense dependent on the constitution of a state for their authority. . . . And we must look to the instrument which confers the powers to ascertain whether or not a law of congress in a given case, is constitutional or not. . . .

The right to take private property for public use is
founded on the idea that private rights must yield to public necessity. Each is the exercise of sovereign power—one relating to persons and the other to property. The right of eminent domain as applied to property is the same right, by whatever name it may be called, applied to persons when the exigencies of the country demand its exercise and require the services of persons for the common defense. . . . The sovereign power, wherever it may be lodged, must judge of the exigencies that will justify the exercise of the power, and in our system of government that power has been conferred on congress. 56

In Alabama, Associate Justice James Phelan equated the war power of Congress with a high trust, concluding in order to fulfill this high trust, it was the manifest right and imperative duty of the government of the Confederate States "to exhaust if it becomes necessary the entire military force of the country." 57

Marring the scene of nearly unanimous judicial approval of increasing Confederate nationalism was the figure of Richmond M. Pearson, chief justice of the North Carolina Supreme Court. A native of Asheville, in the heart of Unionist western North Carolina, Pearson thwarted the operation of conscription in the Tarheel State by issuing writs of habeas corpus to free men held by Confederate conscript officers. His obstructionist tactics became so great that even Governor Vance hoped to check his influence. 58 The most effective reversal of his power occurred when Associate Justices William H. Battle and Matthias E. Manly overruled Pearson in the case of John Walton. Under the provision of the first conscript act, Walton had avoided service by furnishing a substitute. When Congress abolished the privilege of substitutes, conscript
officers sought to place Walton in the army. Pearson intervened to free Walton, alleging that the act ending substitution constituted a breach of contract. In reversing the decision of the Chief Justice, Battle and Manly concluded:

The unlimited extent of the war power conferred by the Federal Constitution upon the Government of the United States has never been called into question. An inspection of the Constitution of the Confederate States will show that the same unlimited war power has been conferred, and in almost the same terms upon the Confederate Government. . . . The Confederate Government must also possess, as an inseparable incident of its sovereign power to declare war and raise armies, the right to command the service of all its citizens capable of bearing arms.59

As the judiciary of the land continued to support the Confederate government in its effort to achieve independence, one might feel that the opinions handed down sounded increasingly like those of John Marshall on national powers.

Despite stringent legislation supported by the judiciary, the Confederacy still needed more men. From late 1863, throughout 1864, and into the early months of the following year, conscription often broke down and failed. The act of February 17, 1864, had already extended the draft to virtually every able-bodied man in the South; still this did not fill the depleted ranks of the gray armies. Much of the trouble with conscription came from the chaotic administration of the acts. In an attempt to centralize recruiting, the Secretary of War created, in January, 1863, a Bureau of Conscription.60

Unfortunately, the Secretary also permitted a system of field recruiting. General Braxton Bragg, commander of the
Army of Tennessee, appointed Major General Gideon Pillow to supervise recruiting for the army in Alabama, Tennessee, and Mississippi. The vigor with which Pillow undertook his task—he dragged men into the army regardless of whether or not they possessed legal exemptions—brought reprisals from Richmond. He and two superintendents of conscription, Gabriel G. Rains and John L. Preston, continually quarreled over the administration of conscription. The two systems fostered duplication, inefficiency, and waste. Congress, in the last days of its final session, sought to bolster conscription by instituting administrative reforms. But administrative reform was not enough; the Confederacy still needed more men. Where would they come from? Slowly Congress paid more attention to a seemingly unthinkable scheme: arming the slaves. Negro soldiers? Impossible! The slave system was the cornerstone of the Southern way of life, and certainly placing slaves in the army would signal an end to the cherished system. Nevertheless, many chose to arm the slaves rather than face defeat. After all, they rationalized, a Union victory would destroy slavery anyway.

By the opening of the final session of the second Congress in November, 1864, the scheme was gaining supporters. The President hesitated:

A broad moral distinction exists between the use of slaves as soldiers in defense of their homes and the incitement of the same person to insurrection against their masters.

The subject is to be viewed by us, therefore, solely
in the light of policy and our social economy. When so regarded, I must dissent from those who advise a general levy and arming of the slaves for the duty of soldiers. Until our white population shall prove insufficient for the armies we require and can afford to keep in the field, to employ as a soldier the negro . . . would scarcely be deemed wise or advantageous by any. . . . But should the alternative ever be presented of subjugation or of the employment of the slave as a soldier, there seems to be no reason to doubt what should then be our decision.65

As Grant hammered at Lee and gray lines around Richmond grew thinner, calls for Negro troops became correspondingly stronger. Some representatives who saw this hoped to stifle the growing sentiment. William Swan, Henry Foote, Henry Chambers, Thomas S. Gholson, James T. Leach, and John D. Atkins all offered resolutions condemning the use of Negroes as soldiers. Their resolutions characterized the proposal as unconstitutional, impractical, hazardous, impossible, and in violation of both property rights and the Southern social system. Friends of the proposal, however, continued to defend it as a necessary expedient to save the Confederacy.66

By February, 1865, Lee, the army, and Davis had joined the growing list of those urging Congress to arm slaves. Consequently Senator Williamson S. Oldham of Texas and Representative Ethelbert Barksdale of Mississippi introduced bills to provide for 300,000 Negro troops. The Senate quickly buried Oldham's bill in committee, but a special committee in the House, chaired by Barksdale, reported favorably on his bill.67 A minority of the select committee—William Porcher
Miles, Gholson, W. N. H. Smith, Julian Hartridge, and Stephen Darden—disagreed:

We dread the effect of the measure upon the country. It will tend to dishearten it as an evidence that we are reduced to the last extremity and compelled to try a doubtful and dangerous experiment as a dernier resort. . . .
We dread the effect of the measure upon the army. . . .
The minority of the Committee, therefore, recommend the adoption of the following resolutions:

Resolved, That the employment of any portion of our slave population as soldiers is unnecessary, inexpedient and unwise.

Resolved, That the States alone have control over the status of the slave, and that the Confederate Government has no power whatever to modify or change it.

After a week's debate in secret session, the House narrowly approved the measure.

Introduced in the Senate, the House bill faced an uphill battle. Credit for its passage must go to the Virginia legislature, which instructed the state's senators, Hunter and Caperton, to support it. The bill then passed by a margin of a single vote and was signed by Davis on March 13, 1865, five days before the final adjournment of Congress. It authorized a call for 300,000 slaves but did not promise freedom in return for their military service.

Thus in an eleventh hour effort to preserve the nation’s existence, Congress extended its arm to the inviolable: the slave system. Faced with the alternative of subjugation, many readily chose to jeopardize the "cornerstone" of Southern society. The South had traveled a long road in war.
It entered the conflict with a firm belief in a volunteer
army, but four years of war brought compulsory military service first to all able-bodied whites and then even to the slaves.

Conscription to some was the antithesis of Confederate government because in bypassing the states it gave the central government power to act directly on the individual. It promoted nationalism in a land of localism. Yet men who had staunchly championed "state sovereignty" quickly and as staunchly supported a policy which was in many respects its undoing. Why? Congressmen, for example, justified the policy as a war necessity; judges upheld it as a lawful exercise of the war power of the national government. Engaged in a life or death struggle, many willingly extended to the Confederate government direct coercive power over individuals. Supporters of conscription--former Whigs, old-line Democrats, men from the deep South as well as the border states--were unwilling to stop short of any measure to insure Southern independence. They did not allow constitutional scruples or "state rights" to compromise their ultimate objective. In supporting conscription they demonstrated that Confederate leadership was equipped to face the reality of modern war.
NOTES

1. Thomas Bragg Diary, Southern History Collection, University of North Carolina, November 30, 1861.


7. Journals, V, 221.

8. Thomas S. Ashe to William H. Battle, Richmond, April 1, 1862, Battle Family Papers, Southern History Collection, University of North Carolina.


10. Conclusion based on Appendixes I and II.

11. Matthews (ed.), Statutes at Large, 1 Cong., 1 Sess., ch. 31; Moore, Conscription and Conflict, 15.


13. Journals, V, 296. For the text of the bill, see ibid., 344.


17. Speech of Hon. W. S. Oldham of Texas upon the Bill to Amend the Conscription Law; Made in the Senate, September 4, 1862 /Richmond, 1862/ (Crandall #2799).


21. Richmond Enquirer, April 18, 1862.

23. Southern Recorder, April 22, 1862.

24. Speech of Hon. George A. Gordon of Chatham on the Constitutionality of the Conscription Laws Passed by the Congress of the Confederate States; Delivered in the Senate of Georgia, on Tuesday, the 9th of December, 1862 (Atlanta, 1862).

25. For the exchange of letters between Brown and Davis, see Joseph B. Brown to Jefferson Davis, Milledgeville, April 22, 1862, Davis to Brown, Richmond, April 28, 1862, Brown to Davis, Milledgeville, May 8, 1862 (this is the letter quoted from in text), Davis to Brown, Richmond, May 29, 1862 (this is the letter quoted from in text),
and Brown to Davis, Atlanta, June 21, 1862, Official Records, Series IV, Vol. I, 1082-84, 1100, 1116-20, 1133-38, and 1156-68.

26. Joseph E. Brown to Alexander Stephens, Milledgeville, July 2, 1862, Alexander H. Stephens Papers, Emory; printed in Phillips (ed.) Correspondence of Toombs, Stephens and Cobb, 597-99. Brown kept up a running criticism of the Confederacy in correspondence with the Vice President; see, for example, Brown to Stephens, Milledgeville, May 7, 1863, Stephens Papers, Emory. Others in Georgia also echoed the same complaints; see, for example, Linton Stephens to a friend, Sparta, Ga., December 29, 1862, Stephens Papers, Emory, and Peterson Thweatt to Alexander Stephens, Milledgeville, May 11, 1862, Alexander H. Stephens Papers, Library of Congress. For further treatment of this controversy see Louise B. Hill, Joseph E. Brown and the Confederacy (Chapel Hill, 1939), 79-87, and Bryan, Confederate Georgia, 85-88.

27. Herschel V. Johnson to Alexander Stephens, Sandy Grove, Ga., April 6, 16, May 4, 1862, H. V. Johnson Papers; see also Flippin, Herschel V. Johnson, 253-54.


29. J. Henly Smith to Alexander Stephens, Atlanta, June 21, 1862, Stephens Papers, Library of Congress. Smith was editor of the Southern Confederacy.

30. Southern Recorder, July 1, 1862.


32. John Gill Shorter to Gideon Pillow, Montgomery, October 27, 1863, Shorter Letterbook.


35. Raleigh Register, October 1, 1862.

36. For a further consideration of the implication of North Carolina state politics, and its relation with the Confederacy, see below, Chapter 7.


38. Ex parte Coupland, 26 Texas 387 (1862). Chief Justice Royall T. Wheeler concurred in the decision, but Associate Justice James H. Bell dissented, claiming that power to raise armies did not convey power to raise them by compulsion. William P. Ballinger, Galveston lawyer, criticized Bell's decision: "I have been and continue strongly attached to Bell, but do not believe he has the proper feelings of a patriot. He had indulged in personal considerations & resentments, until they have clouded his judgment and swayed his feeling." William P. Ballinger Diary, typed copy, Archives Collection, University of Texas, January 17, 1863.

39. Ex parte Hill, 38 Ala. 429 (1863). The question as such never came before the North Carolina courts; but, in a decision on jurisdiction, the court assumed the constitutionality of the conscript acts, In re Bryan, 60 N. C. 1 (1863).

40. Simmons v. Miller, 40 Miss. 19 (1864).

41. Ex parte Bolling in re Watts, 39 Ala. 609 (1865).

42. For a further discussion of the courts and conscription see Moore, Conscription and Conflict, 162-90.


44. John Milton to Jefferson Davis, Tallahassee, February 17, 1863, Milton Letterbook.

January 21, 23, 1863, SHSP, XLVII, 171-72, 190, Journals, III, 295-97, VI, 268-72. See also Moore, Conscriptio and Conflict, 72-73.

46. Matthews (ed.), Statutes at Large, 1 Cong., 3 Sess., ch. 80.

47. Moore, Conscriptio and Conflict, 75.


49. Matthews (ed.), Statutes at Large, 1 Cong., 4 Sess., chs. 3-4, acts approved December 28, 1863, and January 5, 1864.


52. Matthews (ed.), Statutes at Large, 1 Cong., 4 Sess., ch. 65. The bill was drafted in secret session, therefore there is no recorded debate. For the vote on the bill, see Journals, III, 582, 768, VI, 756, 846. For the drafting of the bill, see Journals, III, 480-82, 517-19, 522, 524, 526, 554-56, 558-60, 567, 573-74, 580-83; /Senate Bill No. 158-- Secret Session/ A Bill to Organize Forces to Serve During the War /Richmond, 1863/ (Crandall #115); /House of Representatives--Secret Session/ Amendments Proposed by Mr. Clapp to the bill to organize forces to Serve During the War /Richmond, 1864/ (Crandall #402).

53. Conclusions based on Appendixes I and II.

54. H. V. Johnson to Stephens, Richmond, February 5, March 10, 1864, H. V. Johnson Papers.


57. *Ex parte Tate*, 39 Ala., 254 (1864).

58. Memory F. Blackwelder, *Legal Aspects of Conscription and Exemption in North Carolina, 1861-1865*, forthcoming article in the *James Sprunt Studies*, University of North Carolina; John A. Campbell to Peter Mallet, Richmond, May 11, 1863, Vance Papers; David G. Fowle to Richmond M. Pearson, Raleigh, May 22, 1863, Richmond M. Pearson Papers, Southern History Collection, University of North Carolina; John A. Campbell to Peter Mallet, Richmond, May 30, 1863, Peter Mallet Papers, Southern History Collection, University of North Carolina; North Carolina Standard, June 3, 1863; Daniel Harvey Hill to Vance, June 13, 15, 1863, Vance Papers; *In re Huirie*, 60 N. C. 165 (1863); *In re Boyden*, 60 N. C. 175 (1863); *In re Kirk*, 60 N. C. 186 (1863); *In re Prince*, 60 N. C. 195 (1863); *Ex parte Walton*, 60 N. C. 65 (1864).


60. For information on the administration of Confederate conscription, see Moore, *Conscription and Conflict*, 191-227 and Brooks, *Conscription in the Confederate State of America*, 426-31.


64. For reasoning of this kind, see Warren Akin to

65. Davis to Congress, November 7, 1864, Richardson (ed.), Messages and Papers, I, 495.


68. Minority Report on the Bill to Increase the Military Force of the Confederate States /Richmond, 1865/ (Crandall #596).


70. Ibid., Memoirs of Williamson S. Oldham, 44-45.

CHAPTER V

TAXATION

"The Congress shall have power . . . To lay and collect taxes . . ."

Article I, Section 8

The South was unprepared for modern war. Its wealth, primarily agrarian, was tied up in land and slaves. Its outlook, likewise agrarian, was largely shaped by the persuasive political maxim, "That government is best which governs least." Ill equipped at the outset to commit it economic, political, and social strength to the achievement of independence, the South in time struggled mightily with the problems of a wartime economy. Its policies began timidly in a traditional conservative manner and grew bolder and more nationalistic as the war progressed.

The tax program well illustrates the Confederate government's increasing nationalism. Originally, the administration planned to resort only to indirect taxation collected by state and local officials. Gradually this conservative policy gave way to a fullscale direction of the Southern economy by the Confederacy. Probably in no other area did the national government bear upon the people so directly and control them so much as it did in the field of taxation. Confederate taxation became all embracing; only those who re-
sided in territory occupied by enemy forces escaped it.

The administration did not resort to taxation early in the war because it realized that such a policy was never popular. Consequently it floated loans and issued non-interest bearing treasury notes before turning to a program of national taxation. The government's first important venture into financial legislation resulted in the act of February 28, 1861, which authorized a $15 million loan to be met by issuing bonds bearing an eight per cent interest. ¹ In order to stimulate support for the measure, commissioners, chosen from among the South's leading bankers, supervised the selling of the bonds throughout the land. The national government had not yet adopted the policy of sending its own agents among the people. The success of the first loan for the government resulted primarily from the support given it by banks. ²

As an agricultural nation, the Confederacy also planned to take advantage of its staple crop wealth. While the $15 million loan had been aimed chiefly at banks, the Confederate Congress passed a $50 million loan bill on May 16, 1861, directed at planters and farmers. Known as the produce loan, the bill authorized eight per cent bonds "to be sold for specie, military stores, or for the proceeds of sales of raw produce or manufactured articles." Planters subscribed a portion of their crops to the support of the loan. Under its first form the produce loan subscription meant not that the actual crops would go to the government but that the net
proceeds of the amount pledged, less all charges, were to be paid to the Confederate States in specie in exchange for twenty-year bonds. Several months later, on August 19, Congress increased the loan to $100 million, and made treasury notes acceptable in fulfillment of the subscription. Upon Memminger's recommendation, the permanent Congress, in April 1862, extended the loan to $250 million and allowed the Secretary to receive actual produce—not just the proceeds of the sale of produce—in payment of subscription to the bonds issued on the loan.

Many did not want Congress to stop with the produce loan. Its critics most often endorsed a plan supported by Vice President Alexander Stephens who urged the government to buy large portions of the cotton crop, ship it to Europe and then use it as the basis of Confederate credit. Although this plan fascinated many in the Confederacy, it had certain inherent weaknesses and never received the endorsement of Secretary Memminger.

Early in the war Memminger apparently recognized that loans could not meet the increasing financial burden upon the Treasury. Consequently as 1861 drew to a close the government was rapidly adopting a financial policy which met expenditures principally from the issue of non-interest bearing treasury notes. Memminger himself recognized this situation: "We are, therefore, constrained to resort to treasury notes as the only mode by which the requisite funds can be
raised. This resource has its limits; but it is hoped that with a reasonable economy ... plans already set in opera-
tion will extend those limits so as to reach the end of the war. 

In order to facilitate further the circulation of treas-
ury notes, many persons called for legislation making them legal tender.  Memminger disagreed, arguing that "Treasury Notes are now the accepted currency in our whole country and circulate at par with bank notes." The Secretary's atti-
tude did not end clarion calls for a legal tender bill:

Men have no right to create a Rebellion or Revolution & involve the people in it & then allow it to fail if it can possibly be prevented—such failure is a much greater crime than any violation of the mere letter to effect the object of the constitution. I know that men say it is not constitutional to make these issues a legal tender ... Don't be guilty of the folly of creating a Rebellion & involving the people in it & then by timid policy or folly put it out of the people's power to succeed. If you don't make your currency good you can't keep our army in the field.

In December 1863 Albert G. Brown of Mississippi, ardent Confederate nationalist, introduced resolutions in the Senate calling for a legal tender act. Memminger's counsel of the previous year prevailed, however, and Congress, after tabling Brown's resolutions, never again seriously discussed the is-
sue of legal tender.

Memminger, apparently believing that loans and treasury notes would not sufficiently supply the revenue needs of the government, supported tax legislation. "When war is waged upon a country, and its citizens are called to the defense
of their homes from foreign aggression, it is every man's duty to contribute of his substance to that defense." Because they "afford the only certain reliance under all circumstances," Memminger called taxes "the most certain and most enduring resource" to be sought out by the government during wartime. 13

Responding to Memminger's recommendation, Congress authorized, in August, 1861, a direct tax of one half per cent on real estate, securities, and a variety of personal property. Known as the war tax, the law encouraged the states to pay the tax from the treasury, rather than collect it from their citizens. 14 Because of this provision, Congress avoided the real issue of direct taxation and a centralized system of tax collection.

The issue, however, could not be avoided forever. In September, 1862, Duncan Kenner, Louisiana representative, urged Congress to discontinue the policy of financing the government through credit. Revenue from taxation, reasoned the Louisiana Whig, formed the true basis of public or private credit. 15 His colleagues hesitated.

When Congress assembled for its third session in January, 1863, Memminger recommended that "a tax be imposed upon property and upon the gross amount of incomes of every kind." 16 Two days later, Davis told the legislators:

The increasing public debt, the great augmentation in the volume of the currency, with its necessary concomitant of extravagant prices for all articles of consumption, the want of revenue from a taxation adequate to support the public credit, all unite in admonishing us that energetic and
wise legislation alone can prevent serious embarrassment in our monetary affairs. It is my conviction that the people of the Confederacy will freely meet taxation on a scale adequate to the maintenance of the public credit and the support of their Government.\textsuperscript{17}

Newspapers, particularly the \textit{Enquirer} in Richmond, had long called for taxes as the means of the country's salvation. The \textit{Enquirer} called taxation the truest test of Republican institutions, and asserted that the people would gladly bear its burden in order to support their government.

For both purposes: to relieve ourselves as well as to relieve our posterity; to avoid speedy national bankruptcy in the present as well as an intolerable National Debt in the future, to reduce prices of commodities now, as well as to establish a fair national credit hereafter, we desire to see a large tax boldly imposed and cheerfully borne.

The Charleston \textit{Courier} urged a tax that "starts at one per centum on actual capital, and that rises with increasing ratio as the per centum of profits increase." These newspapers maintained that never before in history had a people cried so for taxation.\textsuperscript{18}

When Congress did at last respond, it left no stone unturned in its effort to raise tax revenue. The most controversial portion of the bill reported from the House Ways and Means Committee by Kenner on February 25 was a first section calling for a tax of one per cent on the value of "all real and personal property, moneys and credits."\textsuperscript{19} The Richmond \textit{Enquirer} pointed out that a uniform direct tax of this sort violated the long standing principle that direct taxation must be apportioned among the states according to population.
"The bill is framed on wrong principles and will produce no revenue; for some unpatriotic person will test its constitutionality, and having defeated its enforcement, the country will be left without a tax bill." 20

The House, after wrangling for several meetings over a resolution by Willis B. Machen of Kentucky declaring direct taxes constitutional, finally accepted the direct tax section of the bill by the narrow margin of one vote. 21 With the major battle over the first section ended, representatives set to work perfecting the measure. 22 After debate, the House finally approved the bill by a five to three margin. 23 Apparently most of the opposition sprang from continuing constitutional objections to the first section and from a feeling that the measure might prove cumbersome and impractical. 24 Others acquiesced in it as the best that could be managed. 25

The House bill ran into immediate trouble in the Senate, and especially the provision for a direct tax on property. 26 Realizing that the Senate would probably reject the measure as it stood, Memminger on April 2 wrote to Virginia's Senator R. M. T. Hunter advocating a tax-in-kind on agricultural products. Such a tax would afford subsistence for the armies and at the same time diminish the amount of currency that the Treasury must issue to buy supplies. 27 Four days later Hunter submitted a report of the Senate Finance Committee embodying the tax-in-kind. It would, said
the report, enable the government to "secure the means to maintain a protracted struggle and to carry on the war so long as our system of productive industry continues to be efficient." This report seemed to demonstrate the South's growing willingness to commit all its resources to the desired goal of independence.

The Senate consequently replaced the lower chamber's direct property tax with a tax-in-kind of one tenth of the annual produce of corn, wheat, rice, oats, rye, barley, sugar, molasses, cotton, tobacco, wool, peas, beans, cured hay, fodder, and pork. Mixed reaction greeted the daring scheme. For example, the Raleigh Register in North Carolina approved and urged its readers to study the Finance Committee report. But from South Carolina James Hammond wrote Hunter that

The House bill has excited universal indignation & the Senate bill will do the same. ... These crude and ignorant senatorial tax bills are the most preposterous absurdities that ever were presented to Legislative bodies. Besides your army of Tax Collectors you must have an army of Philadelphia lawyers ... to explain the law & then it would be restricted or evaded so you must add an army of government armies to enforce it & this would about absorb taxes.

Senator Robert W. Johnson of Arkansas called the measure "awful." On the other hand, Herschel V. Johnson of Georgia conceded that the "future depends upon persistent and heavy taxation." Despite the difficulties of administering the act, Johnson approved the tax-in-kind because he felt it would supply the army.
Both House and Senate accepted the tax-in-kind and Davis signed the law on April 24, 1863. The new act provided for:

1. A property tax of eight per cent on naval stores, salt, wine, spirituous liquor, tobacco, cotton, wool, flour, sugar, molasses, syrup, rice, and other agricultural products.

2. A license tax, ranging from $50 to $500 on various occupations such as bankers, auctioneers, wholesale and retail dealers in liquor, pawnbrokers, brewers, inn-keepers, etc. In addition to the license tax, the bill imposed a levy ranging from one quarter of one per cent to twenty per cent on the gross profits realized in these occupations.

3. A tax of one per cent on salaries from $1000 to $1500 and two per cent on those above $1500 and a progressive tax from five to fifteen per cent on income from sources other than salaries.

4. An additional ten per cent tax on profits from the sale or purchase of flour, corn, bacon, pork, oats, hay, rice, salt, iron, sugar, molasses made of sugar cane, leather, woolen cloth, shoes, boots, blankets, and cotton cloth.

5. The tax-in-kind. 31

With the passage of this act, the Confederate government extended to finances its policy of national control and consequently played an ever increasing role in the management of the lives of its citizens. The administration of a tax program necessitated an enlarged civil service. 32 Committed to this central policy, the Confederacy sent its own agents among
the people; the war tax had demonstrated the folly of relying on states agencies.\textsuperscript{33}

Congress responded to the need for centralization in Confederate tax gathering with an Act for the Assessment and Collection of Taxes.\textsuperscript{34} No longer relying upon the states or state facilities, the national government would now employ its own agents to collect taxes directly from the people. The act authorized the appointment of a commissioner of taxes to direct the Bureau of Taxation. Each state became a tax division headed by a state collector appointed by the President with the advice and consent of the Senate. States were to be subdivided into convenient tax districts with district collectors and assessors appointed by the state collector subject to the approval of the Secretary of the Treasury. The district officials assessed, levied, and collected the taxes of the Confederate government. The task of assessing and collecting Confederate tax's meant that agents of the central government's vast administrative organism were in frequent contact with most of the citizens of the Confederacy.

Collection of money under the tax act of April 24, 1863, fell far short of meeting the ever increasing needs of the government.\textsuperscript{35} The Commissioner of Taxes did not, however, view the act as a failure:

The aggregate amount of collections thus far reported to this office from these States approximates nearly to $80,000,000; and when we consider that out of four hundred and seventy-one collection districts one hundred and thirty-three have been so much interfered with by the public enemy
as to prevent any organization, and that the area embraces by these districts thus exempted is occupied by over two millions of population—or nearly one-third of the whole population of the States—the results of the execution of the law appear very satisfactory.36

Administration of the tax-in-kind fell not to the Treasury Department but to the War Department, more specifically to the Assistant Quartermaster General. A controlling quartermaster with a rank of major headed collections in each state. Directly under him in congressional districts of the state was a post quartermaster with the rank of captain. The post quartermaster subdivided his area and appointed agents to collect the tithe at more convenient locations throughout the district. The agents in turn collected from each farmer and planter the portion of his crop payable as tax. As quickly as possible after collection the produce was turned over to quartermaster or commissary officers supplying the armies, or, in the case of cotton, to agents of the Treasury Department.37

The tax bore harshly on the people and complaints were to be expected. The Southern Recorder accurately appraised the situation when it noted that the success of the act would largely depend on the "integrity and capacity of the Agents of the Government to whom the execution of the act shall be entrusted."38 The appointment of some of these agents caused a sizable complaint against the government.39 Congressmen on several occasions echoed a constituent's complaint against abuses by an overzealous or unscrupulous
quartermaster or tax collector. In general, however, the people supported the taxing program of the government, although certain elements, especially vocal in Georgia and North Carolina, continued to criticize the tax.

The pressure of an expanding war forced the Confederacy still further along the road of direct taxation. Six months after the tax act of April 24, 1863, J. D. B. De Bow reported: "Memminger is almost in despair about his currency which ... goes from worse to worse, but his only remedy must be taxation." The administration did not flinch from its duty. Memminger recommended an ad valorem tax on the value of all land and Negroes in the Confederacy.

The land and Negroes in the Confederate States constitute two-thirds of the taxable values, and if this objection prevailed it would establish the surprising conclusion that all the States which ratified the Constitution, while engaged in a war which put at hazard the lives and fortunes of all their citizens and their own independence, excepted from the contribution to maintain that war the very property for which they were contending. Such a construction is manifestly erroneous, and could never have been intended. The more consistent interpretation is that a principle was established which should operate as soon as the basis for its action was obtained.

Memminger argued that since war conditions prohibited a census, Congress could rely on its "general power to lay taxes" as authorizing a measure taxing land and Negroes.

President Davis supported his Secretary of the Treasury. The Chief Executive, who had earned a reputation as a strict constructionist in his days as a United States senator, reasoned,
None would pretend that the Constitution is violated because, by reason of the presence of hostile armies, we are unable to guarantee a republican form of government to these States or portions of States now temporarily held by the enemy, and as little justice would there be in imputing blame for failure to make the census when that failure is attributable to causes not foreseen by the authors of the Constitution and beyond our control. The general intent of our constitutional charter is unquestionably that the property of the country is to be taxed in order to raise revenue for the common defense, and the special mode provided for levying this tax is impracticable from unforeseen causes. It is in my judgment our primary duty to execute the general intent expressed by the terms of the instrument which we have sworn to obey, and we cannot excuse ourselves for the failure to fulfill this obligation on the ground that we are unable to perform it in the precise mode pointed out. 44

The administration proposals had an impact on Congress. Although no one concurred fully in all of them, the mood was decidedly in favor of heavy taxation. 45 Mississippi Senator Albert G. Brown urged a direct tax on every kind of property according to its value in Confederate treasury notes. "The tax may bear heavily on us; but that is our misfortune. . . . The salvation of the country is at stake, and I implore Congress to do its duty." Texas Senator Williamson S. Oldham objected to ad valorem taxation because it was unequal and unjust. 46

In response to Memminger's recommendation the Special Committee on the Currency in the House reported a bill which accepted the ad valorem principle and provided for a five per cent tax on the value of property of every kind. 47 A system of credits severely weakened the revenue raising potential of the tax by allowing the value of the tax-in-kind
to be deducted from the tax on agricultural property and the tax on property to be credited against the income tax. The bill also provided for an excess profits tax of twenty-five per cent on banking, insurance, canal, navigation, importing, exporting, telegraph, express, railroad, manufacturing, dry dock, and joint stock companies. The House passed the bill on January 22, 1864. The Senate accepted the ad valorem principle, and after adding a few unimportant amendments accepted the measure. 48 Davis approved it on February 17, 1864. 49

The new law continued the provisions of the act of April 24, 1863, and in addition levied a five per cent ad valorem tax on property; an excess profits tax of twenty-five per cent; a ten per cent tax on the value of gold, silver ware and plate, jewels, jewelry, and watches; a five per cent levy on the value of gold and silver coin, gold dust, and silver bullion; and a five per cent tax on all solvent credits, bank bills, and other paper issued as currency. In order to support this act calling for direct ad valorem taxation, many congressmen brushed aside constitutional scruples, and reasoned that support of the war and the achievement of Southern independence took precedence over all other considerations.

After the experience of vigorous taxation, Congress next tried to solve the currency problem of the Confederacy by reducing the amount of notes in circulation. As early
as January, 1863, Vice President Stephens recognized the need for reducing the tremendous amount of treasury notes in circulation and consequently advocated a stringent policy of taxing the currency. The Vice President noted that the currency could be appreciated "either by taking it up as taxation would do, or by getting it funded in bonds or some other shape of public debt."\(^{50}\) Missouri Governor Thomas C. Reynolds advocated a "most onerous taxation" on the abundant currency which the government desired to fund.\(^{51}\) By January 1, 1864, the amount of Confederate treasury notes had soared to $730,500,000.\(^{52}\)

In January, 1864, the House debated various measures to tax and limit the currency. The House Committee on Ways and Means reported to a secret session a bill which called for funding before April 1, 1864, all notes above $5 in return for six per cent Confederate bonds. After April 1 the notes would be fundable only in four per cent bonds; beginning June 1 there would be a tax of twenty-five per cent increasing each month until the notes were taxed one hundred per cent.\(^{53}\) Disagreeing with the majority of the committee, William Boyce of South Carolina recognized the depreciated value of treasury notes and wanted to reduce them from a face value of $800,000,000 to $40,000,000. He argued:

> It may be further objected that what I propose is bankruptcy of the State. If this be so, then I am not alarmed at even this horrible word. I put it on the ground of State necessity. We cannot stagger under a debt of $1,000,000,000 and carry on the war. . . . This currency,
depreciated to such an extent that it is worth only five cents in specie on the dollar, is now a millstone around our neck. We must get rid of it at once; we propose to deal with it according to its real value.\textsuperscript{54}

Florida's Robert Hilton objected to both plans and called for extensive taxation as the only means of reducing the currency. He proposed a twenty-five per cent tax on cotton, tobacco, treasury notes, and naval stores and a one per cent levy on land, slaves, Confederate bonds, and interest-bearing notes. He argued that the policy of absorbing currency rather than compulsory funding would retire four-fifths of it.\textsuperscript{55} The House chose the plan of the committee and passed in mid-January its measure "to tax, fund and limit the currency."\textsuperscript{56}

The House bill traveled a rocky road in the Senate. A report of the Senate Finance Committee, written by Thomas J. Semmes of Louisiana and R. M. T. Hunter of Virginia, objected to the House bill as a repudiation of government promises. The bill accompanying the report called for a tax of \(66 \frac{2}{3}\) cents per dollar on all non-interest bearing treasury notes of denominations of $5 and above outstanding on April 1, 1864.\textsuperscript{57} The decision in secret session evidently went against this bill, for on February 4, the Senate referred the tax question to a special committee of five. Two days later the committee reported a bill embodying the funding principle.\textsuperscript{58} The act which the Senate passed declared that no treasury note should be fundable or receivable in payment of public dues after May 1,
east of the Mississippi River, or after August 1, west of the river. Until those dates, however, treasury notes might be funded in twenty-year bonds bearing an interest of four per cent.59

Since House and Senate passed different bills, a conference committee consisting of Representative Francis Lyon of Alabama, David Lewis of Missouri, and Charles Conrad of Louisiana, and Senators R. M. T. Hunter of Virginia, Thomas J. Semmes of Louisiana, and James L. Orr of South Carolina sought to compromise the difference.60 The act of February 17, 1864, "to reduce the currency and to authorize a new issue of notes and bonds," resulted from the committee's efforts.61 "Expressed in simple terms, the act aimed to reduce the outstanding circulation of notes in 4% bonds or exchange them at the rate of $3 in old for $2 in new notes."62 As an unnamed Confederate Senator wrote Governor Reynolds of Missouri, the act was "a compromise among conflicting views," i.e., the funding and taxation principles, and consequently gave "entire satisfaction to no one."63

The act to reduce the currency and the tax act, passed on the same day, received widespread praise. The Richmond Enquirer called the measures "the machinery to provide the ways and means of supporting the army and promoting the cause." They represented "a sacrifice of the avarice of the people upon the altar of patriotism." The Augusta Chronicle thought the law "onerous and far reaching" but believed the govern-
ment would benefit greatly. The Southern Recorder took a strongly nationalistic view:

The common cause is paramount to all considerations of property. The struggle must be maintained at every sacrifice; and if as a people we can work out our deliverance from the Yankees who aim at our subjugation there should be no hesitancy on our part to give half we possess to the Government, whether it be in Confederate notes, bank bills, stock, lands, negroes or other property. Duty and interest enjoin patient submission to the laws which are framed to meet the emergency. 64

The currency act did in fact achieve an effect. Economist Eugene Lerner who has constructed a general price index for the Confederacy, finds that it "dropped dramatically in May, 1864, and stayed low through December." The decline occurred despite "invading Union armies, the reduction in foreign trade, the impending military defeat, and the low morale of the army," because, Lerner noted, "The currency reform was more significant than these powerful forces." 65

Memminger soon sought to shore up weaknesses in portions of the tax act of February 17, 1864, by recommending to the first session of the second Confederate Congress that it repeal that which deducted the value of the tax-in-kind tithe from the five per cent tax on agricultural property and that which credited the tax on property against the income tax. 66 The widening breach between the Secretary and Congress became evident in the failure of the solons to act on Memminger's suggestion. In May and June, 1864, Congress debated several schemes, but adopted nothing important except legislation relieving the banks of the tax on deposits and
increasing by thirty per cent the tax on profits made from buying and selling between February 18, 1864, and July 1, 1865. 67

By now it had become apparent that Memminger's effectiveness as Secretary of Treasury was at an end. Congress had constantly criticized him during the past months. In May, Henry Foote had introduced resolutions declaring that the "public welfare" demanded "some other individual of proper ability as a financier more likely to be successful in administering the affairs" of the Treasury Department and "more likely to command the public confidence" be appointed in Memminger's place. Mississippi Representative Bthelbert Barksdale attempted to have the resolution tabled, but the House ordered it printed. Three days later, however, upon motion of Francis Lyon of Alabama, the House by a vote of 43 to 37 sent a modified version of Foote's resolution to the Committee on the Judiciary from whence it never emerged. 68 Earlier in the year, Vice President Stephens had counseled that a resolution of want of confiscation in an executive officer should signal an end to that officer's performance of duty. 69 The vote against Memminger had not carried, and Davis stood staunchly by his Secretary of the Treasury, but Memminger, realizing that his effectiveness was at an end, resigned in July, 1864. 70 Davis selected George A. Trenholm to replace him. The new Secretary reported that in making the appointment Davis sought to select a person who held "opinions
that would lead him as far as possible to mitigate the evils that must inevitably result from the "vicious" legislation of Congress. 71

Trenholm received in October a report from the Commissioner of Texas, Thompson Allan, calling the existing scheme of general taxation a "good one" and that with a few alterations would "work well and satisfactorily to the public and produce a large amount of revenue." Allan did recommend, however, a renewed effort to secure repeal of the provisions in the previous legislation which allowed agriculturists the undue advantage, as Allan thought, of crediting their tithe on their ad valorem tax and their ad valorem tax on their income tax. Allan cautioned against extensive changes: "Tax laws should be free from doubt and permanent, and, at the same time, simple." Trenholm submitted a report to Congress based upon Allan's recommendations. 72

Congress acted slowly. Not until late January, 1865, did it consider the pressing need for greatly augmented revenue to meet increased war expenditures. Trenholm proposed that Congress extend taxation in answer to the need. 73 In the House bills were proposed by the Ways and Means Committee, by the minority of that committee, by a select committee of thirteen, by Robert Hilton of Florida, and by John Gilmer of North Carolina. 74 Leading provisions in one or more of the various bills called for a hundred per cent increase in taxation; the continuation of the tax-in-kind; the replacement
of the income tax with a twenty per cent tax on the gross amount of all incomes derived from property; a three and quarter per cent tax on all real and personal property; a ten per cent tax on gross annual incomes; the impressment of cotton and tobacco to be used by the government as it saw fit; a doubling of income and property taxes; and a ten per cent tax on all tobacco, cotton, wine, and liquor.

By March both houses had agreed upon a new bill. The act, "to levy additional taxes for the year 1865, for the support of the government," retained the tax-in-kind and the income tax; it declared, however, that these taxes could no longer be deducted from the ad valorem tax on property (here Congress followed the recommendations of Memminger, Allan, and Trenholm). The bill also levied a twenty per cent tax on specie and foreign credit; a ten per cent tax on gold and silver wares, jewelry, and watches; a five per cent tax on money, bank bills, treasury notes, and all solvent credits; a ten per cent tax on profits made by buying and selling merchandise, property, money, and gold (this was in addition to any tax paid on such profits as income); and an excess profits tax of twenty-five per cent on banking, insurance, canal, navigation, manufacturing, railroad, dry dock, and other joint stock companies. 75

The tax policy of the government brought a degree of centralization to Southern life which many, committed to belief in localism, found intolerable. Why, then did the
administration urge and Congress enact such legislation? The answer was necessity and expediency. The pressures of war coupled with a strong desire to achieve independence motivated most to support taxation. This is illustrated in the votes in Congress on tax legislation. Support for and composition to tax measures in Congress came from all sections of the Confederacy. Only on the vote for the tax-in-kind (the act of April 24, 1863) did any appreciable pattern emerge. If members were analyzed by party background, old Whigs demonstrated a tendency to support the measure. Identifiable Whigs split twelve to four in favor of the measure, while Democrats supported it by the narrower margin of sixteen to thirteen. In all other votes on tax legislation, support was evenly divided among sections and party background.  

Even as the country was collapsing, Congress sought additional revenue through taxation to finance the struggle for independence. Unfortunately more revenue was not to be had. The Confederacy and the South lay exhausted at the end of total conflict. Through four years of modern war, an agricultural nation had financed an all-out effort against one of the world's emerging industrial powers. In a very real sense, as gray armies increasingly met reverse, the financial structure of the Confederacy grew correspondingly weaker. In financing its struggle for independence, the Confederate government tapped every source of income. It disregarded constitutional scruples and levied direct taxation,
and in a land devoted to localism it created a centralized machine of agents who brought the arm of the national government to the doorstep of every Southerner. And still Confederate taxation did not avert ruinous inflation and financial collapse. It failed. Failure came, however, only after the system had dared, had innovated, and had by its very organization wrought a change in the nature of Southern life.
NOTES

1. James M. Matthews (ed.), The Statutes at Large of the Provisional Government of the Confederate States of America, from the Institution of the Government, February 8, 1861, to its Termination, February 18, 1862, Inclusive; Arranged in Chronological Order; Together with the Constitution for the Provisional Government and the Permanent Constitution of the Confederate States, and the Treaties Concluded by the Confederate States with Indian Tribes (Richmond, 1864), I Sess., ch. 21.


Military Operations Directed During the Late War Between the States (New York, 1874), 422-23. For a discussion of the weakness in the plan, see Rembert W. Patrick, Jefferson Davis and his Cabinet, 220.

8. Memminger to Congress, August 18, 1862, Official Records, Series IV, Vol. II, 59; Patrick, Davis and his Cabinet, 212; Schwab, Confederate States, 9-12. The first act authorizing treasury notes was approved on March 9, 1861 and followed by further acts on May 10, 16 and August 19, Matthews (ed.), Statutes at Large of the Provisional Government, 1 Sess., ch. 40, 2 Sess., chs. 20 & 24, and 3 Sess., ch. 23.


17. Davis to Congress, January 12, 1862, Richardson (ed.), Messages and Papers, I, 293.
18. Richmond Enquirer, February 14, 17, March 17, April 13, 19, 1863; Charleston Courier, March 14, 1863.


26. House Bill No. 3; Senate bill is in Journals, III, 246-53; Herschel V. Johnson to E. A. Cochran, March 4, 1863, H. V. Johnson Papers; notes of a speech in the Senate delivered by William L. Yancey objecting to direct taxation, William L. Yancey Papers, Miscellaneous File.

27. Memminger to R. M. T. Hunter, Richmond, April 2, 1863, Thian (ed.), Reports of the Secretary of the Treasury, 159-63.


30. Raleigh Register, April 29, 1863; Hammond to Hunter, Redcliffe, S. C., April 9, 1863; James M. Hammond Papers; Robert W. Johnson to Stephens, Richmond, April 8, 1863, Stephens Papers, Library of Congress; H. V. Johnson to Stephens, Richmond, March 25, April 3, 1863; H. V. Johnson Papers.

32. For a pioneering work on the Confederate civil service, including its size, see Paul R. Van Riper and Harry N. Scheiber, "The Confederate Civil Service," Journal of Southern History, XXV (November, 1959), 448-70.

33. Earlier, Thompson Allan, Commissioner of Taxes, had estimated the Confederacy had lost $1,000,000 by allowing the states to pay the taxes of their citizens. He strongly recommended that the Confederate government collect its own taxes. Allan to Memminger, Richmond, January 6, 1863, Official Records, Series IV, Vol. II, 324-32.

34. Matthews (ed.), Statutes at Large, 1 Cong., 3 Sess., ch. 67; Journals, III, 322, VI, 241-42, 441. See also Instructions For Collectors of Taxes... May 15, 1863 (Richmond, 1863) (Crandall #1140).

35. Todd, Confederate Finance, 145.

36. Allan to Memminger, Richmond, April 29, 1864, in Report to the Secretary of the Treasury, May 2, 1864, Thian (ed.), Reports of the Secretary of the Treasury, 284.

37. Instructions to be Observed by Officers and Agents Receiving the Tax in Kind (Richmond ?, 1864) (Crandall #1354); Todd, Confederate Finance, 146-47; Smith, "History of the Confederate Treasury," Southern History Association Publications, V (March, 1901), 117-18.


41. Augusta Chronicle, December 6, 1863; Richmond Enquirer, November 20, 1863; Schwab, Confederate States,

42. James D. B. De Bow to Charles E. A. Gayarre, Richmond, October 12, 1863, Charles E. A. Gayarre Papers, Department of Archives, Louisiana State University.


44. Richardson (ed.), *Messages and Papers*, I, 366.

45. Johnson to Stephens, Richmond, December 18, 19, 1863, H. V. Johnson Papers.


49. Matthews (ed.), *Statutes at Large*, 1 Cong., 4 Sess., ch. 64.

50. Stephens to R. M. T. Hunter, Crawfordsville, Ga., January 4, 1863, the Hunter-Garnett Correspondence, Manuscripts Division, University of Virginia, Charlottesville; Stephens to Thomas J. Semmes, Crawfordsville, Ga., January 17, 1863, Thomas J. Semmes Papers, Manuscripts Division, Duke University.


52. Todd, *Confederate Finance*, 111.


55. Robert P. Hilton Diary, v.d.

56. Journals, VI, 644.

57. No. 18—Secret, Report of the Committee on Finance on the Bill (H. R. 92) to Tax, Fund and Limit the Currency (Richmond, 1864) (Crandall #236); Senate—Secret, Amendments Proposed by the Committee on Finance to the Bill (H. R. 92) to Tax, Fund and Limit the Currency (Richmond, 1864) (Crandall #141).

58. Amendments Proposed by the Senate to the Bill (H. R. 92) to Tax, Fund and Limit the Currency (included with House Bill No. 92, Crandall #407).


60. Ibid., III, 762-63, VI, 842.

61. Matthews (ed.), Statutes at Large, 1 Cong., 4 Sess., ch. 63.


64. Richmond Enquirer, February 18, 1864; Augusta Chronicle, March 15, 1864; Southern Recorder, February 23, 1864; Edward Younger (ed.), Inside the Confederate Government: The Diary of Robert Garlick Kean (New York), 138; H. V. Johnson to Stephens, Richmond, March 10, 1864, H. V. Johnson Papers.


67. C. S. Congress, "Proceedings," May 20, 1864, SHSP, LI, 107; House Bill No. 107, A Bill to be Entitled An Act to Amend the Tax Laws (Richmond, 1864) (Crandall #433); Journals, IV, 192-93, 199-200, VII, 137-43, 147, 206-07; Matthews (ed.), Statutes at Large, 2 Cong., 1 Sess., ch. 44, act approved June 14, 1864.

69. Stephens to Semmes, Crawfordsville, Ga., January 27, 1864, Semmes Papers.

70. For further information on Memminger, see Patrick, Davis and his Cabinet, and Henry D. Capers, The Life and Times of C. G. Memminger (Richmond, 1893).

71. See Trenholm to ___, July 19, 1864, George A. Trenholm Papers, Library of Congress.


74. Ibid., 312-13; [House Bill No. 338], A Bill to be Entitled an Act to Levy and Collect Taxes for the Common Defence, and for the Support of the Government for the Year 1865, and to Repeal Certain Tax Laws [Richmond, 1865] (Crandall #519); Journals, VII, 634-37, 637-39, 640-41.


76. Voting conclusions based on information in Appendixes I and II.
CHAPTER VI

WAR AND THE ECONOMY

"The Congress shall have power ... To provide for the common defence and carry on the government of the Confederate States ..."

Article I, Section 8

The South in 1860 was out of tune with the emerging modern age. The pressures of total warfare made this fact painfully apparent to Confederate leaders as they sought to husband the strength of an agricultural nation and gird its economy for war. Modern conflict brought new, unheard of demands on the South. The logistics of sustaining huge armies dictated the necessity of national control of the country's economy. This control, however, conflicted with a deep adherence to free enterprise and a strong belief in the sanctity of private property. No doubt many Southerners believed that the creation of the Confederate government owed much to a determination to preserve the property rights of the individual.

The South began the war in a naive manner, largely unaware of the problems involved in supporting a modern army. For example, the first act of the Confederate Congress authorizing a volunteer army required each soldier to furnish his own clothing.\(^1\) The early naivete of the South is well
reflected in the words of Louisiana Governor Thomas O. Moore as he proudly described

with pride and pleasure the self denying efforts of our citizens and especially of the noble women of Louisiana in furnishing clothing and blankets. . . . Families stripped their own beds in the human and patriotic effort to make the soldiers comfortable. . . . The people are ready for any effort and every sacrifice in this, the holiest of causes.2

The Confederacy did not long continue to rely upon voluntary sacrifices to uphold this "holiest of causes." Within months the support of a voracious war machine forced the government into a vast expansion of its constitutional power to provide for the common defense and carry on the government of the country. This expansion resulted in impressment, stringent commercial regulations, and controls on manufacturing which virtually nationalized the non-agricultural economy of the South.

By late 1861, the government was regularly impressing supplies to equip and supply its armies. Impressment, never popular in any country, was bound to be resented in one that inherited a long tradition of guaranteed property rights. The Confederate government, aware of this attitude, cautioned that "Impressment must not be resorted to, except when absolutely demanded by the public necessities."3 A continuing stream of orders to officers in the field emphasized that only persons authorized by the commanding general should make impressments.4

Alarmed citizenry throughout the land worried about over-
zealous impressment officers. In most cases people complained about a particular officer and a specific abuse of power. Nevertheless, the central government often bore the brunt of the attack. Attorney General Thomas Watts had warned President Davis that "the common mind rarely distinguishes between the cause and the men who administer the functions of Power and hence Liberty may suffer for the sins of its ministers." When a Confederate agent acted indiscreetly, quite often the government took the blame.

Many in the South nevertheless affirmed the government's right to impress. In the words of the Augusta Chronicle, "All governments have the prerogative to take private property for public use—it is a right inherent in the very nature of Governments, whose duty it is to provide for the public defense at any sacrifice to private rights." The Confederate Attorney General in very much the same words went on to say that by virtue of its "exclusive right to make war and raise and support armies for the defense of the States and the people, the Confederate Government has the right to seize private property for the public use."

Despite this support, criticism of impressment continued. As conditions in the Confederacy worsened, people called for Congressional action. Congress, however, faced an unhappy alternative: impressment, however unpopular, afforded the only satisfactory means of supplying the army. The inflated state of the currency made many producers unwilling to sell
to the government because they feared, even at the beginning of the war, that the Confederacy would not redeem its notes at par. Speculators complicated the situation by buying up supplies and then re-selling them to the government at higher prices. It was becoming virtually impossible for the government to purchase on an open market.7

Congress therefore moved to regulate the policy of impressment. The argument in the Senate found Louis T. Wigfall of Texas heartily endorsing the government's "Undeniable right to take private property for the public use." But he did not speak for all his colleagues. Kentucky Senator William E. Simms, for example, challenged Wigfall's assertion and introduced resolutions which declared:

1. That the right of protection to life, liberty, and property is the right inviolable to every citizen of the Confederate States, and that this right is made sacred by the highest guarantees of the Constitution, and that neither Congress nor the Executive, nor any officer or agent of any of the Departments of this Government have power, in any manner, or under any pretense whatever, to impair, interfere with, or destroy this interest and inviolable right.

2. That the right to hold and possess property is a right guaranteed to every citizen of the Confederate States ... and that all seizures or impressments of any such property by an officer or agent of this Government are in violation of the plainest provisions of the Constitution, are destructive of the most sacred rights of the citizen, and an unwarranted breach of the plighted faith of the Government to the citizen thereof, and are therefore void.8

Thus by January, 1863, two things were clear: first, impressment was necessary; second, despite the reasoning of men like Wigfall, there were still those who held firmly to the
sanctity of private property.

The dilemma of necessity versus constitutional guarantees plagued Congressmen in the ensuing months as they sought to regulate impressment by specific legislative enactment. The House and Senate debated bills to define who could impress property and to establish statewide fixed prices for impressed goods. Impressment resulted in a hue and cry of protest. A Virginia representative, James P. Holcombe, worried "lest the public spirit of the people received in the house of its own friends a wound more deadly and more fatal than could have been inflicted upon it by all the swords of its enemies." Edmund Dargan of Alabama recognized the right of impressment, but wanted it strictly regulated. Others, however, disregarded any implied threat to private property rights. Hines Holt of Georgia, for example, worried that too much legislative restriction of impressment would "deprive the country of its war power."9

Other members of the House questioned the government's right to fix the price of goods impressed. This, they felt, represented a gross violation of the spirit of free enterprise and private ownership. Again came the retort of the supreme necessity of supplying the armies. None pleaded more eloquently for national power to direct the war than Florida's Robert P. Hilton.

Why is it that there is such an outcry against the impressment of property. We impress bodies, blood and bones of all men between 18 and 40 and do you pay them a just compensation? Is property in wheat and corn or grain more valued? ...
Either the army of Virginia must be fed or it must be abandoned. The farmers and speculators it seems are determined not to furnish provisions at such prices as any government on earth can pay without becoming bankrupt.

I must maintain however shocking it may appear to many gentlemen that the Government has a right to fix a price for its purchases and it would be ruinous to compete or pay the market price. . . . The government is the great purchaser. Let it fix . . . the market price.10

William L. Yancey warned in the Senate that general impressment by making farmers unwilling to produce goods would result in a decrease—rather than an increase—in supplies for the army. Others insisted—the words were Wigfall's—that the government could, if necessary, "take the last horse of the lone widow with as many helpless children as John Rogers left when he was burnt at the stake."11

After considerable maneuvering, referral to committees, and impassioned pleas, both houses of Congress overwhelmingly adopted bills to regulate impressment. The final measure, primarily the work of Senator Wigfall and a conference committee, became law March 26, 1863.12 Officers of the army might impress private property "Whenever the exigencies of any army in the field are such as to make impressments of forage, articles of subsistence or other property absolutely necessary." The law subjected all private property in the South, except that necessary for the support of the owner, his family or business, to impressment by government agents.13
The fifth section of the bill would give rise to much controversy. It called for two commissioners in each state (one appointed by the president, and one by the governor) to agree upon and publish the "prices to be paid by the government, for all property impressed or taken for public use." Thus with one piece of legislation Congress hoped to insure supplies for the armies, regulate the economy, and maintain the government without cut-throat competition from speculators who drove prices continually upward.

A case before the Georgia Supreme Court in the November, 1863, term, challenged Confederate authority to regulate prices. The court sustained congressional power to "authorize and direct . . . the accumulation of supplies for the future use of the army by impressment . . . provided that . . . provision be made for prompt and just compensation." The court went on to point out, however, that by allowing commissioners to fix prices, Congress violated the constitutional requirement of just compensation. Consequently all impressments made on the basis of commission set prices were illegal and impressing officers were subject to prosecution under state law. 14

Subsequent to the Georgia decision, Henry Foote of Tennessee in the Confederate House and Thomas J. Semmes of Louisiana in the Senate sought to change the impression act so as to deny government appointed commissioners the right to set prices. A Georgia representative, Augustus H.
Kenan, warned that if Congress accepted the decision of his state court it could not continue to feed the army for thirty days. Most members of Congress agreed with his reasoning though few went so far as Wigfall, who argued that the government did not have to provide commissioners to insure just compensation because "it belonged to the government itself to decide what constituted just compensation." Congress left the law as it stood in spite of the Georgia decision. In so doing it apparently followed the dictates of necessity as expounded by President Davis:

The disordered condition of the currency . . . has imposed on the Government a system of supplying the wants of the Army which is so unequal in its operation, vexatious to the producer, injurious to the industrial interest, and productive of such discontent among the people as only to be justified by the existence of an absolute necessity. . . . This necessity has resulted from the impossibility of purchase by contract or in the open market, except at such rapidly increased rates as would have rendered the appropriations inadequate to the wants of the army.16

Most persons in the country had already accepted the law of March, 1863, because "the army must be fed." The Raleigh Register, however, warned the government that "the greatest care should be taken that the impressment shall not exceed the public want or necessity." The Augusta Chronicle hailed the law as a just attempt to regulate the odious practice of impressment. The Richmond Enquirer informed its readers that impressment "being founded on the exigency of a state of war is really above all law, and has always, on that principle, been exercised by every Government on earth."17
The Alabama Supreme Court agreed with the reasoning of the newspapers. "Under all established government," said Chief Justice A. J. Walker, "it is a recognized principle that all property is held subject to an inherent right in the government to appropriate it to the public use, when the public good may require it to be done."^18

Impressment, nevertheless, produced a continuing debate in the Confederacy. Two themes dominated the discussion: property rights and abuses by government agents. Herschel V. Johnson, in July of 1862, equated personal and property rights, declaring that neither "can be touched by the hand of the arbitrary." He noted that "the same law protects property . . . that gives the liberty of the citizens."^19 None was more outspoken in denunciation of impressment and consequent violations of personal and property rights than Texas Senator Williamson S. Oldham who complained that the war, "originally undertaken by a free people, for the vindication of their rights," had been perverted by the mandate, "furnish the soldiers and feed them."^20

Among those who disagreed with Oldham, William P. Ballinger, lawyer of Galveston, Texas, stressed that "Property too is subject to the public exigencies, over and above its liability to use for compensation." He argued that "The public good is paramount—it is the supreme right & if the property otherwise would have been destroyed, its sacrifice is a duty to be owed the public."^21 Senator Albert
G. Brown strove to place in proper perspective the emphasis on property rights:

Among the most amazing things which this war has developed is the fact that whilst the people... have freely gone to or given their sons to the army, they are disposed to cripple the earnest efforts of the Government to feed and clothe those sons. No complaint is made at taking their sons, but if their corn is touched by an impressing officer they are clamorous against what they term this outrage upon their rights. "Take my son," they say, "let him be maimed for life, or fill a soldier's grave..." but if you go to their smoke house or granary, you will hear in loud acclaim: "I give you my son freely, but I'll let you know I stick to my bacon."22

Many more throughout the nation, however, subordinated theoretical or constitutional considerations to necessity. In the words of H. V. Johnson (after he had become a Confederate Senator), "As to impressments, I must say I believe them necessary... For the army must be fed..."23 Georgia Representative Lucius J. Gartrell deplored the necessity of impressment but defended it as essential for the successful prosecution of the war.24 As late as May, 1864, Governor Watts of Alabama counseled the people that "The necessity for feeding our brave soldiers... induces this call on the patriotism of the people of Alabama."25 The Richmond Enquirer wrote in February, 1865, that the people would give up all their possessions if necessary for the achievement of Southern independence.26

Repeated seizures of provisions and property by Confederate agents, however, prompted continued complaints against the Confederate government. Echoing his former
pronouncements as attorney general, Governor Watts recognized that the people rarely had the intelligence to "consider the differences between the cause and the agents who administer that cause." Therefore they continued to reproach the national government for the specific sins of its ministers.\textsuperscript{27} Louisiana Governor Moore, an ardent supporter of the Confederate cause, noted that the "misconduct of subordinate officers" occasioned much hardship which resulted in a feeling of animosity toward the national government.\textsuperscript{28} Another supporter, John Milton, Florida's chief executive, agreed, writing the state's congressional delegation that the seizure of provisions had an "unhappy" effect on Florida planters "especially when they reflect upon the immense destruction of corn \[\text{etc.}\] caused by the mismanagement of reckless and incompetent Government agents."\textsuperscript{29} In reality it appears that what the government faced in attempting to supply the wants of the army was a severe administrative problem, and failure to solve this problem explains the cries of protest against the impressment policy of the Confederacy.

Eventually the popular clamor produced a change in the law. In December, 1864, a new Congress debated the government's impressment policy with special attention to the question of who should exercise the power and who should set the prices of impressed articles. The debate generally reflected the discontent prevalent in the country growing out of specific abuses of the impressing power. Senator Semmes of
Louisiana, for instance, did not object to authorizing the exercise of the power by generals partly because they would necessarily impress anyway. Complaints did not arise from the actions of the commanding generals but rather from "the conduct of the quartermasters and commissary agents acting under instructions from the Executive Departments, but not in the presence of any military necessity." In heated exchanges, Congressmen recounted outrages committed on the citizenry of their districts or states. Four months of debate finally led to the enactment of a law on the last day in the history of the Confederate Congress. The bill which Davis signed on March 18, 1865, defined "just compensation" as "the usual market price of such property at the time and place of impressment." The controversial fifth section of the previous act, the one which empowered commissioners to set prices for impressed goods, was repealed. Congress did not, however, end the authority to impress; it merely sought to limit the abuses of the system.

In order that individual abuses of the impressing power should not cloud the people's view of the ultimate objectives of the war for Southern independence, the Georgia Supreme Court had earlier lectured Confederates on war power, tyranny, and authority:

That the administrators of a limited government encounter many strong temptations to encroachment; that the war power, in all its bearings, is liable to abuse; and that extraordinary vigilance in guarding against both, is not only commendable, but necessary, we freely admit. But, on the other hand, we cannot shut out the proofs, that the public mind of this country is deeply imbued with excessive jeal-
ousy, which is ever trenching upon legitimate power, and seeking security against its abuse by imposing unreasonably rigid restrictions upon its use. Carefully threading our way through the mazes of litigation between citizens and agents of the Governments, both State and Confederate... our purpose is to avoid extreme opinions... We have frequently had occasion to consider the nature and extent of the war powers confided by our constitution to the Confederate Congress...

While the court found these powers extensive, it argued that it was

concession enough to Liberty... that the power is wielded by no usurping or hereditary despot... but by chosen Representatives of the people... Let us realize, at once, that war is an abnormal condition of society; and that where it obtains, whatever be the form of the Government, the status of the citizen or the subject, is more or less modified to meet its demands...

We are aware that there are, in these suggestions, no new ideas but only old familiar truths... Our purpose is simply to place them in the scale against the imputed usurpations and oppressions of our Government and to hold the balance up to view, that all may see where the preponderance is—whether on the side of tyranny or on that of conservative authority.32

The court might well have used the expression "conservative nationalism" to describe the administration's program which sought its objectives through limited, specific legislative enactments designed to conform to the Confederate Constitution. In weighing the ultimate objectives against reputed abuses of the system, it did not hesitate to seize property and risk the denunciation of the people. But as in other programs from the suspension of the writ of habeas corpus to taxation and conscription, impressment failed as the morale of the people withered under the hardships of war.
The Confederacy not only seized and controlled property, but it also increasingly regulated the commerce of the nation. Here as elsewhere it began timidly and grew bolder and more nationalistic as the pressures of war compelled resort to "state socialism."\(^{33}\) Innocent of the techniques of economic organization, the South faced many problems in converting its wealth to the support of a war effort.

From the beginning there was widespread sentiment in the South that cotton held the key to the nation's success in the war. Many, reasoning that if England were denied Southern cotton she would intervene on behalf of the Confederacy, urged an embargo on cotton shipment. Although widely urged by the press of the nation to declare the cotton embargo, Congress stopped short of such a measure partly because the administration was never won over to it.\(^{34}\)

In addition to a regulation of trade, many urged the government to limit the cultivation of cotton. In December, 1861, Alabama Representative Jabez L. M. Curry believed an act of Congress "prohibiting the planting of any cotton in the Confederacy until the end of the war" would assure the independence of the new nation.\(^{35}\) At this early date, however, Congress was unwilling to extend the hand of control to the agricultural interest of the nation.

The states themselves acted while the Confederate government hesitated. The major concern of the state legislation was to limit cotton production in order to assure an
ample food supply. In Alabama, Governor Shorter first appealed to the people on grounds of patriotism to limit the planting of cotton in the state. Later, when he realized that his appeal fell on deaf ears, he warned: "I shall urge upon the next session of the General Assembly the duty and sound policy of taxing all cotton beyond what may be needed for Home consumption." The legislature responded by placing a tax of ten cents per pound on all seed cotton gathered in excess of 2,500 pounds per field hand. This tax, Shorter and the legislature felt, would prevent the raising of all cotton beyond the quantity left free from taxation.

Georgia not only limited the cultivation of cotton but also urged other states to do so. The Arkansas legislature declared "That ... during the year 1862, it shall not be lawful ... to plant or to cultivate more than two acres of such farm, plantation, or land in cotton, to the hand." In Florida, Milton first appealed to the planters' patriotism to limit production. Rebuffed, he unsuccessfully sought to control production by discriminatory taxation. Finally, he persuaded the legislature to limit the planting of cotton to one acre for each hand owned or employed between the ages of fifteen and sixty.

The state governments sought not only to regulate agriculture but also to control the flow of commerce. Early in the war, Governors Moore of Louisiana, Milton of Florida, and Henry T. Clark of North Carolina made control of trade
an integral part of their war program. Most state legislatures and governors, for example, opposed the exportation of cotton and for several years "placed impediments both legal and extra-legal in the way of shipping cotton out." The Georgia legislature and the governors of Alabama and Florida urged the Confederate government to pursue a more active policy of commercial control. The Georgia legislature requested that Congress prevent "running the blockade" except "under the direct control and for the exclusive benefit of the Government of the Confederate States." Governor Milton urged that "No vessel should be permitted to enter our ports except such as shall be especially authorized by the Confederate or State Governments." Alabama's Governor Shorter agreed.

Although the Confederate government had at first been hesitant to regulate commerce (as in the case of the cotton embargo), by late 1863 a new policy was emerging. The Confederate purchasing agents and propagandists in Europe, Colin J. McRae, James D. Bullock, and Henry Hotze, urged the government to control all export and import trade and to purchase directly all its own supplies. In early 1864, Davis presented this plan to his cabinet and after its approval, the Confederate government moved ahead vigorously to control the nation's foreign commerce. The result was two bills which sped through Congress in February, 1864, with little debate or opposition. The first forbade the importation
of articles enumerated as luxuries or "not necessary or of common use." The preamble of the second said that it was adopted because the Confederate States found themselves in a war upon the successful issue of which depend the integrity of their social system, the form of their civilization, the security of life and property within their limits as well as their existence as sovereign and independent States.

Exportation of cotton, tobacco, military and naval stores, sugar, molasses, and rice was prohibited except under regulations issued by the President. Under these acts the Confederate government required shipowners to reserve one half of the tonnage of their vessels for the exclusive use of the Confederacy.

Shippers and state governors were aghast at this usurpation of power. Governor Brown of Georgia described it as "an utter disregard of every principle of State Rights and State Sovereignty." Shipowners refused, at first, to operate under the new regulations. Gazeway B. Lamar, president of the Importing and Exporting Company in Georgia, complained that the regulations were "highly unjust and unreasonable," and ruined his business. In an attempt to evade the restrictions, shipowners turned to governors and attempted to interpose state authority between themselves and the Confederate government. For example, Lamar leased four of his ships to the state of Georgia. When Confederate authorities refused to clear one of them because it failed to reserve half its cargo space for the central government, Brown
thundered his denunciation of the Confederacy. He protested with indignation that the "State vessel was doubly blockaded and threatened, by Confederate guns in the harbor and by Federal guns outside."^58

Brown next sought to marshal the governors against the President. In refusing to take part in the movement, Governor Milton of Florida scolded the troublesome Georgian and reminded him that when the war was over and independence achieved "the rights of the States and the constitutional powers of the Confederate Government will be adjusted."^59

Brown found a more receptive audience at the Southern governors' conference in Augusta, Georgia, in October, 1864. The chief executives of Virginia, the Carolinas, Alabama, Georgia, and Mississippi petitioned Congress "to pass laws removing all restrictions which have been imposed by Confederate authority upon such exports or imports by the states."^60

Earlier Congressional attempts to exempt state-leased vessels from Confederate regulations had met with a presidential veto. Davis refused to sign the bill because it is liable to a construction which would authorize the States, instead of chartering from the owners of vessels in the trade only that half which remains at their disposal under the regulations, and thus preserving equality with the Confederate government in this matter, to charter the entire tonnage of the vessels, thus depriving the Confederacy of a resource now at its disposal. . . .^61

Determined to wield a firm control over the nation's commerce in order to support a vigorous war program, Davis
explained to Georgia Senator Herschel V. Johnson that "the stringent wants of the Confederate government" led him to veto the legislation and to use his power to preserve the Confederate government's control of foreign commerce.  

The agitation of the matter by the governors encouraged Congress to return to an examination of Confederate commercial regulation. In December, 1864, joint resolutions asked Davis four questions about the regulations: (1) had any restrictions been imposed on the commerce of the states? (2) had the regulations caused a decrease "in the number of vessels engaged in foreign commerce?" (3) had the acts proved "beneficial in their effect on the success of our arms?" (4) had experience suggested repeal or modification of the acts of February 6? Davis replied, perhaps somewhat impolitely, that the two acts, passed in order to make commerce "subservient to the success of our struggle" were "eminently wise and proper."

My conviction is decided that the effect of the legislation has been salutary, that the evils existing prior to its adoption have been materially diminished, and that the repeal of the legislation or any modification impairing its efficiency would be calamitous.

It was proper that "for the benefit of the whole people" the government regulate the profits of commerce, profits that went mostly to foreigners while "our citizens were engrossed in the sacred duty of defending their homes and liberties." Despite Davis' convictions the determined opposition eventually succeeded in repealing the laws of February
6, 1864. By then the Confederacy's fate had already been sealed.

President Davis, his secretaries of war and treasury and historians have all hailed the success of the Confederate government's commercial regulations. At the very least, they contributed materially to the support of the country during the last year of its existence. A nation rich in the spirit of individualism, localism, and laissez-faire free enterprise had subjected its foreign commerce to a condition of virtual state socialism. Why? The answer was on the lips of everyone who sustained and supported the nationalizing measures of the Confederate government: war necessity.

War necessity also forced the government to play an increasingly active role in regulating Southern industry. Congress and the War Department often exerted strict controls in violation of the spirit and principles of free enterprise in order to manufacture and transport equipment for the armies. In this area of regulation, Congress usually played a secondary role to the War Department because "the supply of the army was regarded as solely a military problem." Congress was, however, comparatively active in regulating communications and in aiding the transportation industry of the country.

War meant that the railroad system of the South would bear the brunt of Confederate transportation. The South, unfortunately, lagged far behind its rivals across Mason and
Dixon's line in railroad mileage. The Confederacy counted 9,000 miles of track compared to 22,000 miles in the Union. Furthermore, the railroads terminating in various major cities such as Chattanooga, Tennessee; Charlotte, North Carolina; and Petersburg, Virginia, did not connect with each other. This caused bottlenecks as freight had to be unloaded, transported across town and reloaded on another train. Besides the failure of lines to connect in cities there were also gaps where there was no rail connection at all, especially, for example, between Danville, Virginia, and Greensboro, North Carolina, and across central Alabama east and west of Selma.

In grappling with this railroad problem, Congress found itself on the horn of dilemma. There was pressure, chiefly from Davis, to provide funds for filling the gaps between railroads in certain areas. But government aid to commerce violated the Confederate Constitution which stated unequivocally that the commerce clause could not be construed to "delegate the power to Congress to appropriate money for any internal improvements intended to facilitate commerce . . ." Davis, however, worried about the railroad gaps and urged Congress to play an active role in developing an effective transportation system for the Confederacy. His first specific recommendation urged Congress to provide funds for "a line of about forty miles between Danville, in Virginia, and Greensboro, in North Carolina." Congress debated the
question and despite determined opposition by strict constructionists, passed a bill on February 10, 1862, empowering the President to contract for the construction of the connection and appropriating $1,000,000 for the task. 72

The opposition screamed long and loud, however, and succeeded in having its protest spread on the pages of the Journal. The document, signed by Robert Toombs, Martin J. Crawford, Thomas M. Foreman, and Nathan Bass of Georgia, Robert H. Smith and Jabez L. M. Curry of Alabama, James B. Owens and Jackson Morton of Florida, Williamson S. Oldham of Texas, and Robert B. Rhett of South Carolina, argued that "The wishes of States . . . by this act, are made to fall before the fiat of the Executive." The representatives damned the "stupendous and dangerous powers" authorized "under the guise of military necessity." 73 Congress, however, continued to extend aid to the railroads. It appropriated $150,000 to connect Selma, Alabama, and Meridian, Mississippi; $1,500,000 for a connection between New Iberia, Louisiana, and Houston, Texas; and $1,122,480.92 for a railroad between Blue Mountain, Alabama, and Rome, Georgia. 74

Though ready to subsidize construction deemed essential, the Confederacy shied away from any direct control or seizure of the railroads comparable to its action with the telegraph lines which the second session of the Provisional Congress had empowered the President to control in order to "effectually . . . supervise the communications passing
through the same. In dealing with the railroads it sought to operate through contracts and agreements with the privately owned companies. Nevertheless, as the war progressed, necessity forced the government to exercise an increasing measure of control. By use of contracts the War Department slowly monopolized the lines until there was by mid-1863 little room for anything else on the roads except government traffic.

Charles W. Ramsdell noted:

Time-honored conventional theories about the limitation of the functions of government had begun even early in the war to give way before the pressure of imperious military necessity. As the responsible government officials had been led to interfere more and more in railroad affairs in order to sustain the armies at the home-front, it became increasingly evident that the railroad companies, if left to themselves, either could not or would not render the service which the government must have.

Some Confederate officials stressed the need of seizing the railroads. Frederick W. Sims, chief of the Railroad Bureau in the Quartermaster Department, wrote Quartermaster General A. R. Lawton in the spring of 1864:

That the railroads should come under military control I am becoming every day more satisfied. . . . Greater harmony could doubtless produce better results, but this I fear can never be obtained until a Government officer manages every road. . . . This question will press more heavily than heretofore from the extent of the demand which requires greater exertions, and its consideration should not be postponed.

Davis seems not to have considered the matter seriously nor did he urge it upon Congress.

It was not until February, 1865, that Congress took any major action to regulate the railroads. In that month a
bill sped through both houses which gave the Secretary of War the authority to control railroads for the transportation of "troops, army supplies, munitions of war, military property and stores." The measure came too late in the war to accomplish any effective reform. Indeed the Confederacy never really approached a solution of its railroad problem, and recent historians have suggested this failure as one of the possible causes for the Confederacy's collapse.

Besides struggling with the problem of transportation for the army, the Confederacy in the course of the war extended its control to the manufacturers who supplied the army. As Charles W. Ramsdell points out, the government controlled manufacturing in three ways: first, it enacted legislation which encouraged the manufacture of particular products; second, it managed the labor supply by exemption or detail from military service; and third, it checked the supply of raw materials by monopolizing the transportation of the country.

In the manufacture of textiles, for example, Congress permitted all machinery for the manufacture of cotton or wool to be imported duty free. It also granted superintendents and operators in wool and cotton factories exemptions from the draft provided the profits of products made by exempted labor should not exceed seventy-five per cent of the cost of production. Ramsdell noted the results of the combination of these factors:
When the raw material must be brought, under military orders, over an army-controlled railroad to a factory operating with labor detailed from the army, there was no way for the manufacturer to avoid selling to the government as much of his product as was demanded.\textsuperscript{84}

Not only did the government control manufacturing but as the war progressed, it also increasingly took over and operated the industry of the South.

Faced with bankruptcy and breach of contracts, private owners often had to sell out to the government. All supply branches of the War and Navy Departments were forced into manufacturing, and by 1864 large segments of Confederate industry had been nationalized.\textsuperscript{85}

Especially was this true in the field of ordnance where Pennsylvania-born "organizational genius," Josiah Gorgas, directed the efforts of the Confederacy's most successful department. The government established ordnance works in Texas, Arkansas, Louisiana and Mississippi; at Selma, Alabama; Atlanta, Columbus, Augusta, and Macon, Georgia; Fayetteville, North Carolina, and Richmond, Virginia. The leading student of Confederate ordnance notes that

these plants were adequate to an effort which exhausted resources, which yielded up unknown treasures of minerals and make-shifts, which gleaned window weights for bullets and church bells for cannons. Weak and mismanaged as the Confederate economy is reported, it maintained the most thorough mobilization of modern times.\textsuperscript{86}

In waging modern war, the Confederacy confronted major obstacles; it wrestled not only with the problems of its own industrial weakness, but also with its traditions of localism, laissez faire, and sanctity of property. The necessities and pressures of war provided the South with the answer to its problems. In order to meet the everyday needs
of its national army, the government, by Congressional enactment and War Department directive resorted to the impressment of property and regulated the commerce and the industry of the land. An agrarian nation with agrarian ideals battled for four years with the emerging industrial giant of the world. The result of the conflict brought total mobilization and nationalism to the South.
NOTES

1. Matthews (ed.), Statutes at Large of the Provisional Government, 1 Sess., ch. 26, act approved March 6, 1861.

2. Thomas O. Moore to the Louisiana General Assembly, November 1, 1861, Official Journal of the Senate of Louisiana, Session of November, 1861 (Baton Rouge, 1861).


5. Thomas Watts to President Davis, Richmond, April 26, 1862, Patrick (ed.), Opinions of the Confederate Attorneys-General, 75.

6. Watts to Stephens, Richmond, July 31, 1862, to George Randolph, Richmond, October 17, 1862, ibid., 128-29, 159-62; Augusta Chronicle, May 1, 1863.


15. C. S. Congress, "Proceedings," December 14, 21, 1863,


17. Raleigh Register, March 26, 1863; Augusta Chronicle, April 5, 1863; Richmond Enquirer, March 26, 1863.


19. H. V. Johnson to the editor of the Constitutionalist, Sandy Grove, Ga., July 11, 1862, H. V. Johnson Papers.


23. H. V. Johnson to Alexander Stephens, Richmond, December 29, 1863, April 4, 1864, H. V. Johnson Papers.


25. Thomas Watts to the people of Alabama, May 20, 1864, Thomas H. Watts Letterbook, Alabama State Department of Archives and History. Watts felt that the policy was unwise, but affirmed "Congress has the Constitutional power to authorize impressment ..." To John Dent, Montgomery, April 14, 1864, ibid.


27. Watts to Andrew G. Magrath, Montgomery, January 18, 1864, Watts Letterbook.


31. Ramsdell (ed.), Laws ... of the Last Session of
the Confederate Congress, No. 195.


33. The expression "state socialism" comes from Louise B. Hill, State Socialism in the Confederate States of America ("Southern Sketches," Series 1, No. 9; Charlottesville, 1936).


36. See Charles W. Ramsdell, Behind the Lines in the Southern Confederacy (Baton Rouge, 1944), 34-41.

37. Proclamation of March 1, 1862, Shorter Letterbook.

38. Shorter to the planters of Alabama, April 10, 1862, ibid.


40. Shorter to planters, March 14, 1863, Shorter Letterbook.

41. Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in November and December, 1862 (Milledgeville, 1863), No. 45.

42. Acts Passed at the Thirteenth or Special Session of the General Assembly of the State of Arkansas (Little Rock, 1862), approved March 21, 1862.


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47. Acts of the General Assembly of the State of Georgia
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48. Milton to Florida Senators and Representatives, Tal-
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71. Davis to Congress, November 18, 1861, Richardson (ed.), Messages and Papers, I, 140.


73. Journals, I, 781-82.
74. In acts approved February 15, 1862, April 19, 1862, and October 2, 1862, Matthews (ed.), Statutes at Large of the Provisional Government, 5 Sess., ch. 83; Matthews (ed.) Statutes at Large, 1 Cong., 1 Sess., ch. 36, and 1 Cong., 2 Sess., ch. 20.

75. Matthews (ed.), Statutes at Large of the Provisional Government, 2 Sess., ch. 69, act approved May 11, 1861.


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83. Ibid., 1 Cong., 2 Sess., ch. 45, approved October 11, 1862.

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CHAPTER VII

ELECTIONS IN WARTIME

"The House of Representatives shall be . . . chosen every second year by the people of the several states . . . "

Article I, Section 2

Against the background of shattering Confederate military reverses at Vicksburg and Gettysburg, a growing peace movement in many sections of the land, and a general dwindling morale throughout the nation, Confederates went to the polls in the summer and fall of 1863 to select congressmen and a host of local officials. In the elections Confederate politicians and voters did not entirely forget former political labels, but old party alliances were by no means the decisive or most important consideration. The state of morale, the Davis war program, the military vote, and personalities of public men all entered into the results of the elections in 1863.

Some studies of Confederate politics have pictured the former Whigs as the real gainers in the congressional and local elections of 1863. Daniel M. Robison noted that despite incomplete evidence "the trend towards the Whigs by 1863 seems unmistakable."1 A more recent student, Thomas B. Alexander, has elaborated upon Robison's earlier findings and declared that "Whig influence continued to exist within
the Confederacy and to oppose Democrats behind a facade of wartime solidarity." He finds "a general association of Whiggery with Unionism and Democracy with secession," and therefore see the elections, after the war began to turn for the worse, as a popular reaction against the makers of the revolution. "Since party politics remained alive in the South during the war, it comes as no surprise that the Democratic party was shattered by the debacle for which it bore chief responsibility. Most of the Whigs had advised against secession in the first place and could now pose as having been vindicated in their earlier judgment."^2 Alexander seems to have overstated his case. While it is demonstrable that the number of Whigs in local and national offices increased as a result of the elections of 1863, it is by no means so clear that "party politics" remained alive in the Confederacy on the basis of ante bellum political alliances. However much party influence helps explain the early politics of the Confederacy, especially the first elections and the organization of the government, party rivalry did not continue as a dominant theme during the war. Many a Whig success merely represented the protest of a war-weary electorate against an incumbent, be he Whig, Democrat, or political unknown. Various candidates did, of course, maintain an awareness of pre-war politics and employ former political organizations in their campaigns, but by the time of the elections of 1863—in contrast to those of 1861—the war had
reduced political alignment for the most part to an almost meaningless factor.

In further contrast to the first election in 1861 which had been generally devoid of issues, the measures of the Davis war program, suspension of the writ of habeas corpus, conscription, taxation, and impressment, gave candidates much to talk about in 1863. Many men, especially in North Carolina and Georgia railed against conscription, impressment and suspension; their denunciation, however, was only a surface issue. The war itself constituted the major issue in the congressional elections of 1863. As Robison and Alexander have pointed out, the Whigs made gains because they were identified with original opposition to secession. The Whigs registered their most significant successes in Alabama, Georgia and North Carolina, where opposition and war-weariness seemed to be the strongest.

Local conditions also affected the outcome of the elections in these states. In Alabama, federal occupation of the northern part of the state brought much suffering to the citizens; in Georgia, the personality of Governor Joe Brown and a general reaction against war measures dominated the political scene; and in North Carolina, a strong element of Union sentiment threatened the state's very continuation as a member of the Confederacy. In short, the elections in these three states demonstrate concisely the effect of the interaction of local conditions and general war-weariness.
For this reason the elections in these states will be given special attention.

A year-old political alliance in North Carolina was an important factor in the 1863 congressional elections there. In August, 1862, the North Carolina electorate had called Zebulon Baird Vance from a colonelcy in the Twenty-Sixth North Carolina Regiment to the state's highest office. Secession had precipitated a political crisis and divided the state's leadership into Secessionists and Unionists. This division continued throughout 1861, but by 1862 other factors had entered the political scene. For example, the progress of the war troubled many North Carolinians. Scarcity, high prices, conscription, and wartime taxation had produced a general feeling of discontent in the state. In light of these conditions, old Whigs and Unionists organized, under the leadership of William Woods Holden, editor of the North Carolina Standard, into the Conservative party. Their search for a gubernatorial candidate for the elections of 1862 led them to Vance. In his politics, Vance was a sober and cautious man, denying the legal right of secession, opposing the state sovereignty theory of the Democrats, and embracing the nationalistic doctrines of the Whigs. During the campaign of 1860, as did other prominent Whigs, he appealed to the people to avoid rash actions and, after Lincoln's election, he appeared on many platforms in an effort to prevent the secession of North Carolina. 3

Vance had much to recommend him to all groups. As a Whig and Unionist, he had taken no part in bringing about the war, but with the outbreak of hostilities he joined the army
to defend the state. He was the perfect candidate for the new political coalition. He could appeal to Unionists, to moderates, and because of his war record, to secessionists.

Therefore, when he assumed the governor’s chair in September, 1862, Vance owed his position to a political coalition. Hopes for continued success and re-election dictated a careful preservation of the newly constructed alliance of old Whigs and Unionists. The peace movement soon challenged the stability of the new party. It threatened not only Vance’s position and political future but also the course of North Carolina in the Confederacy as well. Holden seized upon the disaffection and Union sentiment, especially in the western part of the state, and fanned it into an opposition which became painfully apparent. The peace issue split the electorate and agitated the entire state. Adherents of peace wrote Vance explaining the movement:

Thousands believed in their hearts there was no use in breaking up the old government and that secession was wrong at the beginning and can hardly be made right by fighting. And furthermore believe that the longer the fight is continued and kept up the more and harder the difficulties to settle. That the South could have got a better settlement at the end of the first year of the war than she could at the end of the second—And further that a better settlement can be had now than can be had this time next year.

Obviously troubled over the growing peace sentiment in the state, Vance asked Whig editor Edward J. Hale to come to see him about "some matters seriously affecting the state of the party which elevated me to office and perhaps the
good of the Confederate cause itself. 7 Others in Carolina feared a "growing split in the Conservative party" would place Vance and Hale on one side against those "who love to thwart and scoff at the Confederate Government & the war." 8 Those who wished to prosecute the war vigorously and to support the Confederacy worried that Vance might actually agree with Holden's position. 9 Consequently, Hale advised the governor that if Holden persisted in his course of urging peace and separation from the Confederacy

there will be a necessity for your letting it be known on all suitable occasions & in all proper ways that you & your friends are not in any way connected with it but must exceedingly condemn its course. 10

In August, Vance clarified his position. Writing to John H. Haughton, the governor declared

The claim of the Southern States to withdraw from the Union and form a separate government for themselves was deemed to unadmissible by the Federal government that no proposition whatever to negotiate would be listened to. ... This was the issue plain and unmistakable, the terms of the North were lay down your arms & submit; those of the South, let us alone. ... Is it not the same today? If changed at all it is only that the North now demands submission and emancipation of our slaves, consisting of half the entire wealth of our country.

Vance continued by expressing his utmost confidence that the North "never can conquer us ... whilst our people are harmonious to resist." In conclusion, the governor explained that the Conservative party coalition

... was born as I conceive of the necessities of the time, and was intended to check the will and direct the true spirit of the revolution, to preserve the land from madly rushing into evils greater than those which it was necessary to escape; to maintain the rights and liberties
of the citizen and the prerogatives of our judicial tribunals. . . . Surely it was a noble purpose—Shall we forget it and unintentionally or otherwise inaugurate a still more terrible state of things?\textsuperscript{11}

In this political framework, the state went to the polls to elect its delegation for the Second Congress. Naturally enough the peace issue dominated the campaign. Although the Whigs increased their number in the delegation from six to nine, the party label played a role quite secondary in importance to the stands of the candidates on the peace question.\textsuperscript{12} In calling for an end to the war, some also criticized the war measures of the Davis administration.

Whig W. N. H. Smith in the first district was one of only three incumbents returned. He successfully overcame a three-man challenge in which one candidate, P. T. Henry, favored a "speedy termination of the war between the North and South, on terms just and equitable to all the rights, honor and dignity of the Southern people."\textsuperscript{13} Smith defended his record as a Congressman, decidedly anti-administration, and declared his support of pay raises for soldiers.\textsuperscript{14} The second district race presented a more clear-cut choice on the peace issue. Robert R. Bridgers, the incumbent and the lone Democrat who kept his seat, won a narrow victory over E. C. Yellowley, the choice of the Standard as an immediate peace candidate.\textsuperscript{15}

The third district found Whig James T. Leach replacing Whig Owen H. Kenan. The Standard supported Leach, who wanted peace, the freedom of the press, and reconstruction. He
opposed secret sessions of Congress, the tax-in-kind, and the twenty-Negro exemption. Leach promised not to set up "faccious opposition to the administration," but rather to support those measures which would be for the good of the people. 16 In the fourth district, Thomas C. Fuller, a war Whig, defeated incumbent Thomas D. McDowell, an original secessionist. Vance urged Hale to support Fuller in the Fayetteville Observer, recognized by many as the administration organ. This would gain Vance favor with the "old Conservative Whigs," who "are largely in the majority now and to lose influence with them is to lose your power to do good." 17 Vance apparently realized that in a showdown between peace men and himself, the original secessionists would necessarily chose him. Consequently he was free to seek the support of the conservative, moderate Whigs who had not been active secessionists, but most of whom would sustain the war effort. The governor evidently attempted with some success to use the congressional elections to solidify support for his coalition party.

A Holden-supported candidate won in the fifth district when Whig Josiah Turner, Jr., ousted the Democratic incumbent Archibald Arrington. 18 The Standard declared it to be "well understood that Arrington is the candidate of the Destructives [original secessionists]. This is seen by the manner in which he is taken up by the Confederate office holders and old party hacks of the Destructive organization."
On the other hand, Capt. Turner is a Conservative and will be supported as such. In the sixth district John A. Gilmer, expressing his "daily prayer and first wish" for peace, defeated incumbent John R. McLean. Gilmer seems, however, not to have been committed to peace and reconstruction.

The western part of the state, the area of most pronounced Union sentiment, turned out incumbents in the seventh, eighth, and tenth districts and replaced them with three men committed to peace, S. H. Christian, James G. Ramsay, and George W. Logan. The Standard had warmly supported Ramsay against his "destructive" opponent, William Lander; and one of the numerous Holden-sponsored peace meetings in western Carolina had nominated Logan. Voters in another western district, the ninth, returned Whig Burgess S. Gaither to Congress. Gaither considered himself a Conservative and a supporter of Vance. He was apparently not a peace candidate.

Thus the Congressional elections in North Carolina were fought out on the issue of peace and reconstruction and within context of Vance's carefully constructed political coalition. Apparently half of the state's delegation--J. T. Leach, Turner, Christian, Ramsay, and Logan--were chosen as peace candidates. The vote for these men represents a repudiation of the war itself--not a rejection of the Davis administration.

During and after the Congressional elections, Holden continued his course of urging peace and reconstruction.
Vance opposed this movement. Holden constituted an increasing threat to the governor's political future and the state's continuation in the Confederacy. In order to thwart Holden and check the growing peace movement, Vance had to maintain his coalition and appeal to the moderate element within the state. The influence of the coalition on Vance's action is seen clearly in the selection of a Confederate senator to replace George Davis, who resigned in January, 1864, to become Attorney General in Davis' cabinet.

Vance first planned to appoint former Governor William A. Graham to the short, unexpired term. Graham declined, however, and Vance thereupon appointed Edwin G. Reade, a Whig Unionist. Upset by the appointment of a Unionist, Hale protested to Vance that he would alienate the original secessionists and precipitate a "reorganization of our parties... into your party, the Holden party & a Democratic party. The latter... are sincerely anxious to be of your party. But some fear you will not let them. The appointment of Judge Reade has been a severe threat to them." Vance in reply candidly explained his course:

I don't agree with you about the Secessionists running the third man. They are as dead as doornails—they will be obliged to vote for me, and the danger is in pushing off too big a slice of the old Union men with Holden. By coming square out with the Secessionists this would be done and I should get little support except from them. I hope you understand my policy. I desire to lead my party friends into the support of the war if possible, and intend to try to show Holden to be unfit... for old Union Whigs... The old Union men are a large majority, and I humbly consider that the best way I
can save my country will be to preserve my influence over them, and hold them up to the war notch. To do this requires some tact of course, and I make no doubt but the Convention issue will force everything asunder and form a new-party—two of them rather. I do not wish this rupture to be upon any minor issue. In other words, and to make myself plain, I do not wish to fritter away any strength or lose a friend by fighting the ultra conservatives upon any but the main points. Let them abuse Jeff Davis and the secessionists to their hearts content so they but oppose this convention movement & keep to their duty on the war question. And whilst I would disapprove of all this as vexatious, I hold it would be bad policy to water my strength by quarreling with them.26

Vance realized that in order to keep North Carolina in the Confederacy he must have the backing of the moderate element in the state. In his loud complaints to Richmond about conscription, suspension of the writ of habeas corpus, and other Confederate policies he either shared or sought to conciliate the feelings of the moderates; at the same time he strove to keep North Carolina supporting the Confederate government. Viewed, then, in the context of North Carolina politics, Vance emerges as a decided friend of Davis and the cause; indeed his political ability was responsible for keeping North Carolina in the Confederacy.

The result of the elections in Georgia brought nine new men to Congress and continued Joe Brown, ardent foe of Davis, in the governor's chair. On the surface the results appeared to be a thorough rejection of the Davis administration. Candidates stumped the state castigating conscription, the suspension of the writ of habeas corpus, taxation, and impressment. As in North Carolina, however, the elections to be fully understood must be viewed in the context of state poli-
tics and local conditions. While the peace issue and the preservation of a shaky political coalition had dominated North Carolina elections and politics, the personality of Joe Brown in the governorship and Alexander H. Stephens behind the scenes dominated the politics and elections in Georgia.

The campaign for governor, not the Georgia congressional elections, attracted most of the state's interest in 1863. Brown had been a strong governor in Georgia. In 1861 he had smashed the two-term tradition winning an impressive third term. Since 1861 he had become the symbol of opposition to the Confederate government. He screamed the loudest and longest, for example, of any of the critics of conscription. But he did more than oppose the administration: he carefully built his popularity with the people of the state. Too shrewd a politician to base his appeal merely on a condemnation of Davis, Brown pursued a vigorous program to help Georgians endure the hardships of war.

As his third term drew to a close, Brown entertained thoughts of retiring. In January, 1863, he confided to his close personal friend, Vice President Stephens, that he did not intend to stand for re-election. Five months later, however, Brown decided to seek an unprecedented fourth term because "friends in whose judgment I have great confidence think that no other state rights man who will consent to run could carry the state." But he did not, he said, intend to
form an "anti-administration" party. His strategy was to be the same as in his successful campaign of 1861: "nomination by a few friends, early announcement of his candidacy, and emphasis upon his patriotism and warm support of the Confederate administration." Although an opponent of Davis, Brown apparently feared that the people would not re-elect him on an anti-administration platform. Instead he emphasized his support of the Confederacy and relied on his popularity with the people.

Thus it was in the midst of an election campaign that pitted Brown against Joshua Hill, a Whig Unionist, and Timothy M. Furlow, a state rights supporter of Davis, that Georgians also considered Congressional candidates. Georgia's position in the war effort was also a vital factor in the elections. Georgia had experienced so little contact with the enemy, that she was deprived of the political unity that invasion brings. This condition permitted the full enforcement of Confederate laws and nowhere were the conscription and the impressment laws more effectively applied.

This enforcement together with military reverses and wartime hardships turned the people to a criticism of their government. The incumbents often bore the wrath of an outraged citizenry. The Savannah Republican established the theme for the election:

Personal friendships should not and cannot conceal the fact that the public sentiment of Georgia demands, at least a partial if not an entire change, in our Congressional representatives. Whilst our soldiers in the field have nobly sustained the prowess, character and dignity
of the State in a hundred hard fought battles, in the coun-
cils of the country she has not been sustained. . . .
Whether this results from deficiency in intellect, or the
want of experience, it matters not; the fact is the same,
the people begin to look to the only remedy—change.33

The general attack on Congress was apparent in the sec-
ond district campaign where incumbent Charles J. Munnerlyn
defended both Congress and his record. Munnerlyn sustained
the constitutionality of the conscript acts and the necessity
of the tax legislation. In a message to the voters he argued
that a turnover in representatives for "the reasons indicated
by the opposition to Congress, would be prejudicial to the
country. . . . Changes of policy now would clog the Govern-
ment and be disastrous to our cause."34 His successful op-
ponent, W. E. Smith, criticized the present Congress. He
did not, however, promise an attack on the administration or
a drastic change in the government. On the contrary, he said
that "Those who oppose the operation of . . . [the] Govern-
ment at this time are but aiding the invader in his work of
subjugation," and promised that, if elected, "the Government
will receive my warmest support, and the army, navy and cur-
rency my constant attention."35 Smith won not because of
any drastic difference in view with Munnerlyn but apparently
because he was a new face.

In some races, a candidate who supported the administra-
tion lost, while in others those who counseled support of the
Confederate government won. In the fifth district, incumbent
David W. Lewis declared that the "policy of the government,
as exhibited in its Legislative and Executive measures, has been wise, statesmanlike, and as a whole a success without a parallel." He defended his support of conscription, exemption, and taxation. But yet he recognized the growing prejudice in Georgia against the actions of Congress:

What is to be gained then, by rejecting us for new men? Virginia, Alabama, Tennessee . . . have returned nearly every man of their old delegations who were candidates. How come is it that alone in Georgia is found this irritation and prejudice in the minds of the people against the action of Congress? This appeal did not prevent his defeat by John T. Shewmake. On the other hand, Warren Akin, who ousted incumbent A. R. Wright, in the tenth district, warmly endorsed the administration: "We should not only be friends and supporters of our great and good President, but we should be friends, true as steel, of our new Government." The difference appears to be simply that Lewis was an incumbent and Akin a new face.

State politics affected the race in the fourth district where Brown's friends engineered incumbent Owen R. Kenan's defeat. Kenan, thinking his re-election secure, opposed and attacked the governor. Brown's supporters in the district consequently persuaded Clifford Anderson to enter the race against Kenan. In his successful campaign Anderson promised to "advocate such measures as are best calculated to bring the war to a speedy and successful close." Although the election resulted in a tremendous turnover in the Georgia delegation, it is an over-simplification to
view the result as a vote against Davis' war program. Brown's behavior cannot be taken as demonstrating that the people of Georgia as a whole opposed the Confederate government; in fact, Brown himself, as previously noted, campaigned as a friend of the administration. War-weary Georgians simply reacted to hardships and voted against the men in power. Ofttimes they turned to war heroes to replace incumbents. William E. Smith of the second district, Mark Blanford of the third and George N. Lester of the eighth, all newly elected, had lost a limb in battle. Brown escaped the reaction against incumbents partly because of his criticism of Confederate policies but probably more because of his popularity cultivated in three terms and because of his consummate political skill.

The major anti-administration sentiment in the state flared up in the selection of a Confederate senator. A vocal element in the Georgia legislature criticized Davis and sought to replace Herschel V. Johnson with Robert Toombs, who shared their views. Recognizing the danger in such a selection, Johnson went to Milledgeville to block Toombs and insure his own re-election. Johnson went, so he informed Stephens, not out of any personal ambition but because to avoid disaster he had wished to ignore even the fact that there are men among us who desire to organize a warfare against the administration of the government. . . . Whatever may be the errors of the administration after candid & fair effort to avoid them, there is no course for patriots but to stand by the gov
& to endeavor to cause even unwise measures to yield the best results.

Johnson noted that Toombs and Brown had opposed impressment and the tax-in-kind; despite imperfections in these measures, Johnson intended to support them. Johnson carried his campaign to the legislature in an address that came "square to the support of the administration and defended the impressment law as a necessary measure for the subsistence of the army." He achieved re-election, an event that represented in effect a victory for the Confederate government.

The results in Georgia appear then not to be any doctrinaire devotion to state rights but rather an interaction of Brown's personality and political skill and the general war-weariness of the state. A Brown biographer concluded:

The power behind the throne in opposition to the Confederate administration was Alexander Stephens, who throughout the war, one suspects, waited and hoped for re-union with the United States. State rights formed a convenient camouflage for this desire... The election in Alabama produced several changes in the top offices of the state and in representatives and senators in the Confederate Congress. As in various other states, the congressional and state elections occurred at the same time, and generally the same considerations governed both elections. Students of Whig survival in the Confederacy have seen the results of the Alabama elections as a clear-cut Whig victory. Whig Thomas Watts ousted secessionist Democrat John Gill Shorter from the governor's chair; two Whigs, Robert Jemison and
Richard W. Walker, replaced two Democrats in the Confederate Senate, and Whigs claimed two of the three new men elected to the House of Representatives. Certainly this was an apparent return to Whig leadership in Alabama, but the cardinal fact was that Alabamians were reacting to the harsh conditions which war imposed upon them.

The war brought great suffering to North Alabamians in particular. The fall of Fort Donelson in February, 1862, and the Confederate defeat at Shiloh the following April, left North Alabama almost indefensible. The way was opened for Union forces to commit mayhem in the area; this they proceeded to do. Charges of brutality and war on non-combatants were constant. These war hardships, falling upon a population which had never been fully committed to secession, stimulated the rise of a strong peace society. "After the reverses of the Confederacy in 1863 the enthusiasm of the people for the Confederacy very perceptibly declined, because many believed the South could not win and dreaded the further sacrifices of war. As a result, not only the disloyal, but many of the loyal began to urge peace."47

In addition to the hardships imposed by the invading Federals, the controls and regulations of their own government became too much for many Alabamians. Governor Shorter's vigorous prosecution of a war program, especially the impressment of slave labor, was, he believed, what "carried the state so largely against me."48 Later he explained to General
William J. Hardee that "I have been striken down for holding up the state to its high resolves & crowding the people to the performance of their duty." Shorter's support of a policy of consolidating Confederate troops even if it meant the vulnerability of North Alabama also raised hostility against him. In answer to a protest from Representative Thomas J. Poster of the first district in northwest Alabama, Shorter explained: "Individual, local, & Sectional interests—however great & important—must be held subordinate to the grand idea of Confederate success. If the Confederacy fails, all is lost." However correct or heroic this argument may have been it was unlikely to quell the discontent among those who were "held subordinate." All of these facts then combined to send Shorter to a crushing defeat.

Actually the congressional elections produced changes in only three of the nine districts of the state, but the man whose name was outstanding in the Alabama delegation, Jabez L. M. Curry, secessionist Democrat, lost his seat to Marcus Cruickshank, Whig Unionist. Their district, the fourth, was in central east Alabama, an area which had originally opposed secession and contained much disaffection. Curry's whole position on secession and a vigorous prosecution of the war left him open to attack. In a speech a few days after the election, Curry gave what was evidently his own self-righteous explanation of his defeat:

In time of war, he who promises peace, exemption from
taxation, and denounces the powers that be, is almost sure to succeed over the men of ability, uprightness, information, experience and religion, such as to qualify him for position. . . . The malcontents are the majority and with envy and gullibility, are now shown to believe it a monstrous wrong that one should have while a thousand are poor. In critical times, popular votes will fail. . . . A statesman preaching patriotism, courage, endurance, taxation, plighted faith, national honor, falls a victim to any such Demagogue of the hour who flatters and cheats and betrays.

Both from Curry's own words and from the remarks of other commentators it seems reasonable to conclude that the vote against Curry represented a disposition to vent the wrath arising from wartime suffering upon those who had urged secession and support of war. W. T. Wathall, Commandant of Conscripts from Alabama, who recognized the importance of the peace movement in the Alabama elections, reported that Curry's defeat resulted from "his identification with the Government." Writing in his memoirs shortly after the war, Confederate Senator Williamson S. Oldham of Texas noted that it was because of conscription, taxation, impressment, and suspension of habeas corpus that Curry was swept out of Congress. The Texan described Cruickshank as an ordinary man who had ardently opposed secession.

Declining morale also seems to explain the two other changes made in the delegation. John P. Ralls, in the third district of northeast Alabama, lost to veteran Alabama politician Williamson R. W. Cobb. Cobb who had represented the area in the United States Congress was apparently quite popular with the people. Nevertheless he was so openly opposed
to the war that the Confederate House of Representatives expelled him. In the ninth district, southwest Alabama, Democrat secessionist Edward S. Dargan lost to Whig Unionist John S. Dickinson.

The Senate election also reflected discontent with the war. In August the legislature chose Robert Jenison to fill the unexpired term of the deceased Yancey. Jenison, a Union Whig, had attended the Alabama secession convention as a cooperationist but had voted for and signed the ordinance of secession. Alabama's other senator, Clement C. Clay, was up for re-election and did not take an optimistic view of his chances. Apparently as another result of Alabama's growing disenchantment with the war a large majority of new members—Clay called them men "who had never been in office before and of whom I had never heard"—had been elected to the state legislature in 1863. Clay believed that they were determined to defeat him. As he confided to Texas Senator Wigfall,

their acts indicate that they dissent from my views of public affairs & disapprove of my public course. They elected a Speaker of the House . . . & a President of the Senate & Chief Clerks of those bodies & a Senator in Yancey's place, all Unionists & against secession until our convention passed the ordinance & indicated a purpose to supplant me at the earliest practicable moment.

Clay later blamed his defeat on his opposition to the bill for soldier pay raises. Others blamed it on Clay's close identification with the administration.

Four other states, Virginia (excluding West Virginia),
South Carolina, Florida, and Texas, were free enough from military occupation to conduct relatively normal elections. The Richmond Enquirer described the Virginia contests for state officials, state legislature, and Confederate Congress as "unexciting, almost uninteresting." 63 Virginians returned William Smith, former governor and Confederate Congressman, to the governorship. He supported the Davis administration and strove to cooperate with Richmond authorities. 64

Although the Virginia congressional delegation of sixteen included seven new men (two incumbents had declined to run), the campaign did not evoke denunciations of the war, the war effort, or the Davis administration. Muscoe R. H. Garnett, incumbent from the first district, pledged warm support for Davis.

A time of war and invasion devolves unusual responsibilities and powers on the Executive, and it is our duty to sustain it with a generous confidence. All the world has admired the patriotism and ability which has distinguished the Administration, and while exercising an entire independence of action I have been happy in giving it a liberal support. 65

Although Garnett lost, his opponent, Robert L. Montague, evidently did not attack his support of the administration. Personal considerations seem in this case, and in others, to have been the deciding factors. According to Garnett, the only charge levied against him was that "I or my kinsmen have served long enough." 66

Apparently the liveliest disagreement of the campaign occurred in the tenth district where incumbent Alexander R.
Boteler and challenger Frederick W. M. Holliday exchanged sharp barbs over who had been the closer friend of Stonewall Jackson. Both could and did claim to have enjoyed warm friendships with and support from the fallen military leader. The result of the election, largely determined on the military vote, was victory for Holliday, a captain in the Thirty Third Regiment Virginia Volunteers of the Stonewall Brigade.67

The lack of issues and the demonstrated support for the administration in Virginia is explained by two local factors: "congressmen from western Virginia were elected largely by the soldier vote which was always strongly pro-administration; eastern Virginia was the center of the war effort and was reconciled to extreme measures."68

South Caroline had been a center of much criticism of President Davis. Barnwell Rhett and the Charleston Mercury led the opposition, and in 1863 Rhett decided to seek election to Congress from the third district. The incumbent, Lewis M. Ayer declined to step aside for Rhett, but rather made the old fire-eater's attacks on the administration an issue in the campaign:

Is it the desire of the people of this Congressional District to wage war against President Davis at all times, in and out of season, and to create, stimulate and urge on a factious and most mischievous opposition to his Administration? If such be the case I am most truly not the man for your purpose.

Ayer did not always agree with administration policies, but he did promise not to make war on the Confederate Chief
Executive. The people returned Ayer to Congress. His victory, hardly an endorsement of the administration, indicated that voters rejected Rhett's carping criticism as detrimental to Confederate success. South Carolina returned all incumbents except John McQueen of the first district.

The Florida election, involving one Senate and two House seats, resulted in the selection of one new Congressman, Samuel St. George Rogers. The state's relative isolation from the war effort made the contest there rather dull and quiet.

The Texas election brought three new men to its congressional delegation of six. At the same time Pendleton Murrah succeeded to the governorship in place of the administration's friend, Francis R. Lubbock, who was not a candidate. It is difficult to make out the decisive consideration in the Texas elections. In the third district incumbent Peter W Gray blamed his defeat on his support of the exemption for overseers of twenty slaves. The spirit of the people in Texas also had apparently begun to falter. William P. Ballinger, the Galveston lawyer, feared that military reverses would produce a decline in the morale of the people. "A common cause, sectional pride, patriotism, enthusiasm, contagion have led to a gallant war— as long as the war promises success the spirit of the people will be equal to it." When the spirit waned, Ballinger expected a reaction "against the leaders on the Revolution."

The six other states in the Confederacy, Mississippi,
Louisiana, Arkansas, Tennessee, Kentucky, and Missouri, were all wholly or partially occupied in 1863, rendering elections in the normal sense impossible. All held elections of some sort, however.

Mississippians elected two new members to the House and placed a conservative in the governor's office. The contest for governor involved A. M. West, a Unionist and old line Whig; Reuben Davis, a fire-eating Democrat; and Charles Clark, a Delta aristocrat and former Whig who had become a Democrat in the 1850's. Clark's victory by a substantial margin was viewed as a "triumph for the conservatives." The Democrat incumbent of the Senate seat, James Phelan, also fell victim to the state's new conservatism. Phelan's rivals for election were all Whigs, Walter Brooke, J. W. C. Watson, and Fulton Anderson. After several ballots, the legislature elected Watson.

Because of the extensive federal occupation of Louisiana Congress permitted the unoccupied area of the state to elect the congressional delegation. The entire Louisiana delegation, except Henry Marshall, who declined re-election, was returned to Congress. Arkansas, also largely occupied, returned every incumbent except Grandison D. Royston in the second district.

The army vote was the most important factor in the Tennessee and Kentucky elections. Congress allowed Tennessee to conduct its elections by a general ticket and permitted
soldiers to vote in their various army camps. The bulk of the vote went to men who supported both the Davis administration and a vigorous prosecution of the war.78

The army vote figured even more prominently in the Kentucky elections. Held in February, 1864, they resulted in a general support of the administration. Humphrey Marshall is typical of the candidates. He left the army to seek a House seat "because I feel disposed to render assistance to our cause wherever I can." He directed his successful appeal primarily to the army.79

As for Missouri, the figure of exile Governor Thomas C. Reynolds dominated the election. Reynolds strove to assure the election of candidates friendly to the administration.80 Congress aided his cause by permitting the refugee citizens of the state and Missourians in the Confederate army to vote for congressmen from each of the state's seven districts.81 The refugees evidently took little interest in the contest, and the army vote decided the election.82 According to Reynolds, no real issues developed; "the personal popularity, talents & habits of the candidates being mainly considered." The governor pronounced the results of the elections "quite satisfactory," by which he evidently meant that the delegation would be pro-administration.83

Because the Confederate government of Missouri was in exile in Marshall, Texas, and lacked a state legislature, the responsibility for appointing a senator fell upon the
governor. Reynolds was not happy with the incumbent, John B. Clark, because he believed him hostile to the Davis administration. Reynolds assured presidential aide, William P. Johnston, that he would appoint no one who would embarrass Davis. After much soul searching, Reynolds appointed L. M. Lewis, a "firm supporter" of the administration. When Lewis declined, Reynolds eventually elevated George Vest from the House to the Senate.

What do the results of the 1863 elections mean? A recent student of the Confederate Congress, Wilfred B. Yearns, has viewed the elections as a partial setback for the administration. Analyzing the subsequent voting records of the new men in Congress, Yearns finds congressmen from North and South Carolina and Georgia displaying considerable hostility to the administration and those from Alabama, Florida, and Texas "only slightly less antagonistic." Yearns concludes that "Only the nearly solid support from occupied districts enabled President Davis to maintain a majority in Congress until the last days of the nation."

This, however, does not fully explain the elections. It is difficult to view the results as a repudiation of Davis' war program. Too often local political considerations, as in North Carolina, personalities, as in Georgia, and war weariness, as in Alabama, North Carolina, Georgia, and possibly Texas, affected the outcome of the election. It seems more reasonable to argue that the elections reflected more than
anything else the war weariness of the Southern people. The disheartened Rebels consequently turned on incumbents to register their protest against enemy occupation of homeland, impressment, conscription, scarcity of food, and a host of other wartime hardships which led them to question the continuation of the war. Although it is appealing to see the elections in light of partisan politics and a return to Whig leadership or as a rejection of the Davis administration, these are only surface issues—the major issue of the 1863 elections was the war.
NOTES


4. Ibid., 16-18.

5. Raleigh Register, April 5, 1863.

6. Gash to Z. B. Vance, Claytonville, N. C., June 1, 1863, Zebulon B. Vance Papers; see also Tatum, Disloyalty in the Confederacy, 107-25.

7. Vance to Edward J. Hale, Raleigh, June 10, 1863, Edward J. Hale Papers, North Carolina Department of Archives and History; see also Yates, The Confederacy and Zeb Vance, 85-95.


11. Vance to John H. Haughton, Raleigh, August 17, 1863, Vance Papers.

12. See Tatum, Disloyalty in the Confederacy, 125.


15. Ibid.

16. James T. Leach to the voters of the third district,
September 17, 1863, printed circular letter, James T. Leach Papers, Southern History Collection, University of North Carolina; *North Carolina Standard*, September 9, 1863.

17. Vance to Hale, Raleigh, October 26, 1863, Hale Papers.


19. Ibid., October 14, 1863.


22. Burgess S. Gaither to Vance, Richmond, April 24, 1863, Vance Papers.


25. Hale to Vance, Fayetteville, N. C., February 8, 1864, Hale Papers.


28. Ibid., 121; Bryan, *Confederate Georgia*, 41.


32. Yearns, *Confederate Congress*, 55.


35. Ibid., August 25, 1863.
36. Ibid., July 7, 1863.

37. Augusta Chronicle, October 6, 1863.

38. Southern Recorder, September 8, 1863.


40. Southern Recorder, September 22, 1863.

41. Ibid., December 1, 1863; Hiram P. Bell, Men and Things (Atlanta, 1907), 108-10.

42. Johnson to Stephens, Sandy Point, Ga., November 29, 1863, Johnson Papers.

43. Augusta Chronicle, November 26, 1863.

44. Hill, Brown and the Confederacy, 263.


46. Fleming, Civil War and Reconstruction in Alabama, 62-63; Tatum, Disloyalty in the Confederacy, 55-56.

47. Tatum, Disloyalty in the Confederacy, 6-7, 60.


49. Shorter to W. J. Hardee, Montgomery, September 8, 1863, Ibid.

50. Shorter to Thomas J. Foster, Montgomery, June 11, 1863, Ibid.


52. "Political Quicksands," speech delivered on August 20, 1863, Jabez L. M. Curry Papers, Alabama State Department of Archives and History.


54. As Oldham remembered it Curry had in fact not consistently supported these measures, but Curry's voting record contradicts Oldham.


58. Southern Recorder, September 1, 1863.


60. Clement C. Clay to Louis T. Wigfall, Montgomery, September 11, 1863, Louis T. Wigfall Collection, typed copy, Archives Collection, University of Texas.


63. Richmond Enquirer, May 29, 1863.


66. Ibid.


68. Yearns, Confederate Congress, 53.

69. Charleston Courier, September 5, 1863.

71. Yearns, Confederate Congress, 55.

72. William P. Ballinger Diary, August 5, 1863.

73. Ibid., July 26, 1863.


75. Ibid., 74.

76. Matthews (ed.), Statutes at Large, 1 Cong., 3 Sess., ch. 79.

77. Yearns, Confederate Congress, 56.

78. Matthews (ed.), Statutes at Large, 1 Cong., 3 Sess., ch. 91; Yearns, Confederate Congress, 58.


81. Matthews (ed.), Statutes at Large, 1 Cong., 4 Sess., ch. 10.


83. Reynolds to Davis, Marshall, Texas, May 10, 1864, Reynolds Private Letterbook.

84. Reynolds to William P. Johnston, Marshall, Texas, May 24, 1864, ibid.

85. Reynolds to W. P. Johnston, Marshall, Texas, April 21, 1864, ibid.

86. Reynolds to W. P. Johnston, Marshall, Texas, April 27, 1864, Reynolds to Davis, Marshall, Texas, May 9, 1864, ibid.; Memoranda Relative to the Appointment of Senators from Missouri, Reynolds Official Letterbook.

As president, Jefferson Davis stands as the foremost symbol of Confederate nationalism. His responsibility as the highest elected official of the newly created Southern government forced him to change his outlook and to grow with his awesome and arduous task. This he did and his achievement stands as one of the outstanding Confederate accomplishments. In directing the military and civilian program of the Confederate government towards the goal of Southern independence, Davis rose above state considerations and saw the country's problems and challenges stretching from the Potomac to the Rio Grande—something that even the most renowned of Confederates, Robert E. Lee, never did. He prodded, cajoled, and led Congress to the enactment of laws which brought men into the army, which raised revenue for the nation, and which husbanded the resources of an agrarian land for modern warfare—certainly no small task, and ample proof of the soundness of his program of Confederate nationalism.

Although he had been an ardent ante bellum defender of state rights, Davis early recognized the necessity of nationalism as an indispensable ingredient for Confederate success. Acting almost invariably with a scrupulous regard for the constitution, Davis employed his extensive powers to build a strong central government. He called for conscription, direct
taxation, and national control over the commerce and transportation of the nation. He directed the organization of the South for modern war. But yet of all the men in the tragic drama of the Confederacy, Davis is probably the most maligned and most criticized. When causes for Southern defeat are given, Jefferson Davis stands high on the list. \(^1\) Why?

Davis' makeup lent itself to criticism. Although he had the vision and foresight to recognize the Confederacy's strategic problems and to draft measures and programs to meet them, he lacked—to use a modern expression—the ability to create a popular image. It was hard for Davis to unbend, to warm to the people, and it was likewise difficult for the people to warm to the President and rally around him as the symbol of the Confederate cause. Perhaps many Confederates themselves did not fully understand their own cause. Furthermore, it is one of the ironies of history that Davis was called to leadership along with one of the all-time masters of moving and inspiring the people, Abraham Lincoln. Davis is second best in a comparison with the Federal chief executive; yet it is but fair to ask what leaders can compare favorably with Lincoln?

Davis' personality and temperament led him to attend to many details of administration which probably should have been left to others. He may also be accused of destroying the confidence of the nation by his support of favorites such as Braxton Bragg in the army and Judah P. Benjamin and
Christopher G. Memminger in the cabinet. His virtuous determination to appoint the best men and to direct the war program of the country created many conflicts with congressmen who jealously guarded their right to share in the appointing process. Davis' most unfortunate controversy of this nature probably was his disagreement with Yancey over appointments in Alabama. Quite often the President's strong will conflicted with the strong wills of other Southern leaders.  

Inevitably much abuse was heaped upon the beleaguered President during the course of the war. Especially powerful in denunciation were his enemies among the press of the nation. Barnwell Rhett of the Charleston Mercury and E. A. Pollard of the Richmond Examiner were inveterate Davis haters. In the House, Henry Foote of Tennessee, foe of Davis from the days of their rivalry in Mississippi politics, also constantly complained about and attacked the President. And of course the continually sulking Vice President Alexander Stephens, proud and jealous and probably upset that he himself did not occupy Davis' office, attempted to set up a factious opposition to the President. These and other critics of the President have provided historians with an endless parade of sources with which to build a damning picture of him.  

It must also be remembered that Davis fought a losing battle. He directed the efforts of a nation that met total and complete defeat. For many it has been easier to explain
Southern defeat by employing Davis as a convenient scapegoat than by giving just weight to the people's loss of a will to fight. The elections of 1863 demonstrate that in many areas as disenchantment with the war grew the people increasingly turned to a criticism of the government and its chief executive. This war weariness and accompanying rejection of incumbents should not be confused with a repudiation of Davis himself or of Confederate civilian leadership.

Many have unfortunately accepted the contemporary view of Davis and turned their attention to the military aspects of the Confederacy. They glory in the heroics of the valiant Southern army while they neglect or minimize the performance of the civilian government. The historiography of the Confederate South has been for the most part a glorification of the military and Robert E. Lee and the denunciation of the Confederate Congress and Jefferson Davis. So generally accepted is the rejection of Confederate political leadership that Ezra Warner writes in the introduction to his study of Confederate generals:

> With few exceptions her civil officials were mediocrities; and in many respects the President himself was but ill-adapted to the gigantic problems with which he was confronted. Thus, in large measure, the story of that long-ago nation . . . is the story of its military leaders; and not of its President, its Cabinet, its Congress, nor of its dissident state governors and legislatures.  

This does a genuine disservice to Congress and to Davis. Both recognized the necessities of the times, disregarded old beliefs and narrow sectionalism, and girded the new nation to
meet the realities and challenges of modern war. When the nation needed men, Congress gave the Confederate government the power to raise a national army by compulsory conscription; when the nation needed more authority to enforce conscription and maintain order throughout the country, Congress gave the President permission to suspend the writ of habeas corpus; when the nation needed more money to finance the war, Congress—though slowly and hesitantly at first—tapped the wealth of the South by extensive taxation; and when the national army demanded still more supplies, Congress authorized impressment of private property and stringent control and regulations on the foreign commerce, the industry, and the transportation network of the Confederacy. Under the guidance of Davis and Congress, the Southern government adopted a program of nationalism to direct the war effort. In so far as it gave the agrarian South the men and resources to fight a modern war, the program of nationalism was a success—resources were still not exhausted when the South lost the will to fight.

Why was the program of nationalism adopted in a land of localism? Undoubtedly because Davis appreciated the imperative necessity of national control for the maintenance of Southern independence. He sought this control in the best American and Southern tradition: specific legislative enactments which were within the constitutional authority of the Confederate government. Why did the legislature enact almost every one of Davis' nationalistic requests? Was it composed
of men who slavishly followed the lead of a strong executive? No. Congress followed the President's lead because for the most part it, too, shared his overwhelming desire to achieve Southern independence at all costs. It also recognized that the times dictated harsh measures; consequently in order to win the war, it—along with many others in the South—subscribed to Confederate nationalism. Although such men as Governors Brown and Vance, Vice President Stephens, Representative Foote, and Senator Oldham have attracted much attention for opposition to Confederate nationalism, a whole host of others—Governors Moore and Milton, Representatives Barksdale and Curry, and Senators Brown and Clay to name a few—warmly supported the Confederacy's increasing nationalism. Even those who did not wholeheartedly endorse the administration's nationalism—Georgia Senators Johnson and Hill for example—counseled acceptance of the program to avoid discord and strife.

In quest of independence, the South created a strong national government. The fight for separation forced Southerners to think differently; it necessitated a commander-in-chief who saw the entire South and who thought in terms of the nation—not the state or community. The experience of modern war wrought changes in a rural and local South. It brought a national army which in turn acted as a catalytic agent in molding a nation and a national experience. Davis himself recognized this in speaking to a Richmond audience
in 1863; "This is a new government, formed of independent states, each jealous of its own sovereignty. It is necessary that it should be tried in the severe crucible in which we are being tested, in order to cement us together." Then he went on to say:

By the firm friendships soldiers from different States have formed and cemented by mutual hardships and dangers; by the glory in which all alike participate; by the congeniality of thought and sentiment, which united us at first in a common destiny, and the thousand events and associations which have since tended to render us more united—by all these causes the existence of jealousies and rivalries will be prevented and when peace and prosperity shall come to us, we will go on assisting each other to develop the great political ideas upon which our Government is based.5

Thus it was that eleven states of the Southern United States, possessing little concept of unity and nationalism when they seceded and established a new government in 1861, were molded by four years of modern war into a united nation. In the process they experienced a nationalism which in turn helped them earn a place in the "Modern Age."
NOTES

1. For a recent example of this, see David M. Potter, "Jefferson Davis and Confederate Defeat," in David M. Donald (ed.), Why the North Won the Civil War (Baton Rouge, 1960), 91-112.

2. See, for example, Lawrence Henry Gipson, "The Collapse of the Confederacy," Mississippi Valley Historical Review, IV (March, 1918), 449-54.


APPENDIX I

MEMBERSHIP OF THE CONFEDERATE CONGRESSES¹
PROVISIONAL CONGRESS
FEBRUARY 4, 1861–FEBRUARY 17, 1862

ALABAMA

Richard W. Walker (W)
Robert H. Smith (W)
Jabez L. M. Curry (D)
William P. Chilton (W)
Stephen P. Hale (W)
Colin J. McRae (W)

John Gill Shorter (D)
Thomas Fearn (D)
David P. Lewis (D)
Nicholas Davis, Jr.
H. C. Jones
Cornelius Robinson

ARKANSAS

Robert W. Johnson (D)
Albert Rust
W. W. Watkins

Augustus H. Garland (W)
Hugh F. Thomason

FLORIDA

James B. Owens (D)
J. Patton Anderson (D)
Jackson Morton (W)

George T. Ward
John P. Sanderson

GEORGIA

Robert Toombs (W)
Howell Cobb (D)
Francis S. Bartow (W)
Martin J. Crawford (D)
Eugeniuss A. Nisbet (W)
Benjamin H. Hill (W)

Augustus R. Wright (D)
Thomas R. R. Cobb (D)
Augustus H. Kenan (W)
Alexander H. Stephens (W)
Thomas M. Foreman
Nathan Bass

KENTUCKY

Thomas B. Monroe
Henry C. Burnett (D)
Thomas Johnson
John J. Thomas
Theodore L. Burnett

Daniel P. White
S. H. Ford
George B. Hodge
George W. Bwing
John M. Elliott

LOUISIANA

John Perkins, Jr. (D)
Edward Sparrow (W)
Alexander DeClouet (W)

Duncan F. Kenner (W)
Henry Marshall
Charles M. Conrad (W)
MISSISSIPPI

Wiley P. Harris (D)  
Walker Brooke (W)  
William S. Wilson  
William S. Barry  
John T. Harrison (D)  

Alexander M. Clayton (W)  
Jehu A. Orr (D)  
Alexander R. Bradford  
J. A. P. Campbell (D)  

MISSOURI

George G. Vest (D)  
Caspar W. Bell  
Aaron H. Conrow  
William M. Cooke  

Thomas W. Freeman  
Thomas A. Harris (D)  
John B. Clark (D)  
Robert L. Y. Peyton (D)  

NORTH CAROLINA

George Davis (W)  
William W. Avery (D)  
William N. H. Smith (W)  
Thomas D. McDowell (W)  
Abram W. Venable  

John M. Morehead  
Richard C. Puryear  
Allen T. Davidson (W)  
Burton Craig  
Thomas Ruffin  

SOUTH CAROLINA

Robert B. Rhett, Sr. (D)  
Robert W. Barnwell (D)  
Lawrence M. Keitt (D)  
James Chesnut, Jr. (D)  
Christopher C. Memminger (D)  

William Porcher Miles (D)  
Thomas J. Withers (D)  
William W. Boyce (D)  
James L. Orr (D)  

TENNESSEE

Robert L. Caruthers  
Thomas M. Jones (D)  
J. H. Thomas  
John F. House  

John D. C. Atkins (D)  
David M. Currin  
W. H. DeWitt  

TEXAS

John Gregg (D)  
Thomas N. Waul (D)  
John H. Reagan (D)  
Williamson S. Oldham (D)  

John Hemphill (D)  
William B. Ochiltree, Sr. (W)  
Louis T. Wigfall (D)
VIRGINIA

Robert M. T. Hunter (W)  Robert Johnston
William C. Rives (W)      Robert E. Scott
John W. Brockenbrough (D) Walter Preston (W)
Walter R. Staples (W)      James M. Mason
Gideon D. Camden           Thomas S. Bocock (D)
James A. Seddon (D)        John Tyler (W)¹⁰
William Ballard Preston (W) Alexander R. Boteler (W)
William H. Macfarland (W)   Roger A. Pryor (D)
Charles W. Russell (D)

ARIZONA TERRITORY

Granville H. Oury
PERMANENT CONGRESSES

First Congress  
February 18, 1862—February 17, 1864

Second Congress  
May 2, 1864—March 18, 1865

SENATE

ALABAMA

Clement C. Clay (D)
William L. Yancey (D)\textsuperscript{11}
Robert Jemison, Jr. (W)\textsuperscript{12}

Robert Jemison, Jr. (W)
Richard W. Walker (W)

ARKANSAS

Robert W. Johnson (D)
Charles B. Mitchel (D)\textsuperscript{13}

Charles B. Mitchel (D)
Robert W. Johnson (D)
Augustus H. Garland (W)\textsuperscript{14}

FLORIDA

Augustus E. Maxwell (D)
James M. Baker (W)

Augustus E. Maxwell (D)
James M. Baker (W)

GEORGIA

Benjamin H. Hill (W)
Robert Toombs (W)\textsuperscript{15}
John W. Lewis\textsuperscript{16}
Herschel V. Johnson (D)\textsuperscript{17}

Benjamin H. Hill (W)
Herschel V. Johnson (D)

KENTUCKY

William E. Simms (D)
Henry C. Burnett (D)

William E. Simms (D)
Henry C. Burnett (D)

LOUISIANA

Edward Sparrow (W)
Thomas J. Semmes (D)

Edward Sparrow (W)
Thomas J. Semmes (D)
First Congress

MISSISSIPPI

Albert G. Brown (D)
James Phelan (D)

MISSOURI

John B. Clark (D)
Robert L. Y. Peyton (D)
Waldo P. Johnson (D)

NORTH CAROLINA

George Davis (W)
William T. Dortch (D)
Edwin G. Reade (W)

SOUTH CAROLINA

Robert W. Barnwell (D)
James L. Orr (D)

TENNESSEE

Landon Carter Haynes (D)
Gustavus A. Henry (W)

TEXAS

Williamson S. Oldham (D)
Louis T. Wigfall (D)

VIRGINIA

Robert M. T. Hunter (W)
William B. Preston (W)
Allen T. Caperton (W)

HOUSE OF REPRESENTATIVES

District

ALABAMA

1 Thomas J. Foster (W)
2 William R. Smith (W)
<table>
<thead>
<tr>
<th>District</th>
<th>First Congress</th>
<th>Second Congress</th>
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<tbody>
<tr>
<td>3</td>
<td>John P. Ralls</td>
<td>Williamson R. W. Cobb (D)</td>
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<td>4</td>
<td>Jabez L. M. Curry (D)</td>
<td>Marcus H. Cruickshank (W)</td>
</tr>
<tr>
<td>5</td>
<td>Francis S. Lyon (W)</td>
<td>Francis S. Lyon (W)</td>
</tr>
<tr>
<td>6</td>
<td>William P. Chilton (W)</td>
<td>William P. Chilton (W)</td>
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<td>7</td>
<td>David Clopton (D)</td>
<td>David Clopton (D)</td>
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<tr>
<td>8</td>
<td>James L. Pugh (D)</td>
<td>James L. Pugh (D)</td>
</tr>
<tr>
<td>9</td>
<td>Edward S. Dargan (D)</td>
<td>J. S. Dickinson (W)</td>
</tr>
</tbody>
</table>

**ARKANSAS**

| 1        | Felix I. Batson | Felix I. Batson |
| 2        | Grandison D. Royston | Rufus K. Garland |
| 3        | Augustus H. Garland (W) | Augustus H. Garland (W) |
| 4        | Thomas B. Hanly (D) | David W. Carroll |

**FLORIDA**

| 1        | James B. Dawkins28 | Samuel St. George Rogers |
| 2        | John M. Martin29 | Robert B. Hilton (D) |

**GEORGIA**

| 1        | Julian Hartridge (D) | Julian Hartridge (D) |
| 2        | Charles J. Mungerlyn | William E. Smith (D) |
| 3        | Hines Holt (W)30 | Mark H. Blanford |
| 4        | Porter Ingram31 | Clifford Anderson |
| 5        | Augustus H. Kenan (W) | John T. Shewmake |
| 6        | David W. Lewis | John H. Echols |
| 7        | William W. Clark | James Milton Smith |
| 8        | Robert P. Tripe (D) | George N. Lester |
| 9        | Lucius J. Gartrell (W) | Hiram P. Bell (D) |
| 10       | Hardy Strickland (D) | Warren Akin (W) |

**KENTUCKY**

| 1        | Willis B. Machen (D) | Willis B. Machen (D) |
| 2        | John W. Crockett | George W. Triplett |
| 3        | Henry E. Read | Henry E. Read |
| 4        | George W. Ewing | George W. Ewing |
| 5        | James S. Chrisman (D) | James S. Chrisman (D) |
| 6        | Theodore L. Burnett | Theodore L. Burnett |
### First Congress

<table>
<thead>
<tr>
<th>District</th>
<th>Representatives</th>
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<tbody>
<tr>
<td>7</td>
<td>Horatio W. Bruce (W)</td>
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<tr>
<td>8</td>
<td>George B. Hodge</td>
</tr>
<tr>
<td>9</td>
<td>Ely M. Bruce (D)</td>
</tr>
<tr>
<td>10</td>
<td>James W. Moore (D)</td>
</tr>
<tr>
<td>11</td>
<td>Robert J. Breckinridge, Jr.</td>
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<tr>
<td>12</td>
<td>John M. Elliott</td>
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### Second Congress

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<tbody>
<tr>
<td></td>
<td>Horatio W. Bruce (W)</td>
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<tr>
<td></td>
<td>Humphrey Marshall (D)</td>
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<td>Ely M. Bruce (D)</td>
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<td></td>
<td>James W. Moore (D)</td>
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<tr>
<td></td>
<td>Benjamin F. Bradley</td>
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<td>John M. Elliott</td>
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### LOUISIANA

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<thead>
<tr>
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<th>Representatives</th>
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<tbody>
<tr>
<td>1</td>
<td>Charles J. Villere</td>
</tr>
<tr>
<td>2</td>
<td>Charles M. Conrad (W)</td>
</tr>
<tr>
<td>3</td>
<td>Duncan F. Kenner (W)</td>
</tr>
<tr>
<td>4</td>
<td>Lucien J. Dupre (W)</td>
</tr>
<tr>
<td>5</td>
<td>Henry Marshall</td>
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### MISSISSIPPI

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<tbody>
<tr>
<td>1</td>
<td>J.W. Clapp</td>
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<tr>
<td>2</td>
<td>Reuben Davis (W)</td>
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<tr>
<td>3</td>
<td>W.D. Holder</td>
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<td>4</td>
<td>Israel Welsh</td>
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<tr>
<td>5</td>
<td>Henry C. Chambers (D)</td>
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<tr>
<td>6</td>
<td>Otho R. Singleton (D)</td>
</tr>
<tr>
<td>7</td>
<td>Ethelbert Barksdale (D)</td>
</tr>
<tr>
<td></td>
<td>John J. McRae (D)</td>
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### MISSOURI

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<tbody>
<tr>
<td>1</td>
<td>William M. Cooke</td>
</tr>
<tr>
<td>2</td>
<td>Thomas A. Harris (D)</td>
</tr>
<tr>
<td>3</td>
<td>Caspar W. Bell</td>
</tr>
<tr>
<td>4</td>
<td>Aaron H. Conrow</td>
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<td>5</td>
<td>George G. Vest (D)</td>
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<tr>
<td>6</td>
<td>Thomas W. Freeman</td>
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<tr>
<td>7</td>
<td>John Hyer</td>
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### NORTH CAROLINA

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<tbody>
<tr>
<td>1</td>
<td>William N. H. Smith (W)</td>
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<tr>
<td>2</td>
<td>Robert R. Bridgers (D)</td>
</tr>
<tr>
<td>3</td>
<td>Owen R. Kenan (W)</td>
</tr>
<tr>
<td>4</td>
<td>Thomas D. McDowell (W)</td>
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<td>William N. H. Smith (W)</td>
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<td>Robert R. Bridgers (D)</td>
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<td></td>
<td>James T. Leach (W)</td>
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<td></td>
<td>Thomas C. Fuller (W)</td>
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<tr>
<td>District</td>
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<tr>
<td>5</td>
<td>Archibald H. Arrington (D)</td>
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<td>6</td>
<td>John R. McLean</td>
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<td>7</td>
<td>Thomas S. Ashe (W)</td>
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<td>8</td>
<td>William Lander (D)</td>
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<td>9</td>
<td>Burgess S. Gaither (W)</td>
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<td>10</td>
<td>Allen T. Davidson (W)</td>
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**SOUTH CAROLINA**

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<tbody>
<tr>
<td>1</td>
<td>John McQueen (D)</td>
<td>James H. Witherspoon</td>
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<td>2</td>
<td>William Porcher Miles (D)</td>
<td>William Porcher Miles (D)</td>
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<tr>
<td>3</td>
<td>Lewis M. Ayer (D)</td>
<td>Lewis M. Ayer (D)</td>
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<tr>
<td>4</td>
<td>Milledge L. Bonham (D) 38</td>
<td>William D. Simpson (D)</td>
</tr>
<tr>
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<td>William D. Simpson (D) 39</td>
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<tr>
<td>5</td>
<td>James Farrow</td>
<td>James Farrow</td>
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<td>6</td>
<td>William W. Boyce (D)</td>
<td>William W. Boyce (D)</td>
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**TENNESSEE**

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<tbody>
<tr>
<td>1</td>
<td>Joseph B. Heiskell (W)</td>
<td>Joseph B. Heiskell (W)</td>
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<td>2</td>
<td>William G. Swan (W)</td>
<td>William G. Swan (W)</td>
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<tr>
<td>3</td>
<td>William H. Tibbs</td>
<td>Arthur S. Colyar (W)</td>
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<td>4</td>
<td>E. L. Gardenhire</td>
<td>John P. Murray</td>
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<td>5</td>
<td>Henry S. Poote (D)</td>
<td>Henry S. Poote (D)</td>
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<td>6</td>
<td>Meredith P. Gentry (W)</td>
<td>Edwin A. Keeble</td>
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<td>7</td>
<td>George W. Jones (D)</td>
<td>James McCallum</td>
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<td>Thomas Menees</td>
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<td>9</td>
<td>John D. C. Atkins (D)</td>
<td>John D. C. Atkins (D)</td>
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<tr>
<td>10</td>
<td>John V. Wright</td>
<td>John V. Wright</td>
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<tr>
<td>11</td>
<td>David M. Currin</td>
<td>David M. Currin 40</td>
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<td></td>
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<td>Michael W. Cluskey 41</td>
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**TEXAS**

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<tr>
<td>1</td>
<td>John A. Wilcox (W)</td>
<td>Stephen H. Darden</td>
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<td>Claiborne C. Herbert (D)</td>
<td>Claiborne C. Herbert (D)</td>
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<tr>
<td>3</td>
<td>Peter W Gray</td>
<td>Anthony M. Branch</td>
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<td>4</td>
<td>Franklin B. Sexton (D)</td>
<td>Franklin B. Sixton (D)</td>
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<td>5</td>
<td>Malcolm D. Graham (D)</td>
<td>John R. Baylor</td>
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<td>6</td>
<td>William B. Wright (D)</td>
<td>Simpson H. Morgan</td>
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**VIRGINIA**

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<tbody>
<tr>
<td>1</td>
<td>Muscoe R. H. Garnett (D)</td>
<td>Robert L. Montague (D)</td>
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<td>2</td>
<td>John R. Chambless</td>
<td>Robert H. Whitfield 42</td>
</tr>
<tr>
<td>3</td>
<td>James Lyons (W)</td>
<td>William C. Wickham (D)</td>
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</tbody>
</table>
4 Roger A. Pryor (D)43
Charles F. Collier 44
5 Thomas S. Bocock (D)
6 John Goode, Jr. (D)
7 James P. Holcombe
8 Daniel C. DeJarnette (D)
9 William Smith (D)46
   David Funsten47
10 Alexander R. Boteler (W)
11 John B. Baldwin (W)
12 Waller R. Staples (W)
13 Walter Preston (W)
14 Albert G. Jenkins (D)48
   Samuel A. Miller49
15 Robert Johnston
16 Charles W. Russell (D)

THOMAS S. Gholson

CHEROKEE NATION

Ellas C. Boudinot

ARIZONA TERRITORY

Malcolm MacWillie

CHOCTOW NATION

Robert H. Jones

Robert H. Jones
NOTES


2. Resigned April 29, 1861.


4. Resigned May 2, 1861.
5. Resigned February 5, 1862.


7. Resigned December 4, 1861.

8. Resigned April 29, 1861.


10. Died January 18, 1862.


12. Elected in Yancey's place; took seat on December 28, 1863.


14. Chosen by Arkansas General Assembly to fill Mitchel's position.

15. Declined to serve.

16. Appointed by Governor Brown to fill Toombs' place, April 7, 1862.

17. Elected by Georgia Legislature to fill Toombs' place, November 18, 1862.

18. Died, December, 1863.

19. Appointed by Governor Reynolds to fill Peyton's seat, December 24, 1863.

20. Appointed by Governor Reynolds to the senate.

21. Resigned, November 1, 1863.

22. Appointed by Governor Vance to vacancy created by Davis' resignation, January 28, 1864.


24. Elected by Virginia Assembly to fill Preston's place, January 26, 1863.

25. Expelled November 17, 1864.

27. Replaced Garland, November 1, 1865.
30. Resigned January 12, 1864.
32. Died, December 28, 1864.
33. Replaced Hodge, December, 1864.
34. Resigned, January 21, 1864.
35. Replaced Davis, January 21, 1864.
36. Appointed Senator, January 13, 1865.
37. Although a member, he never took his seat.
38. Resigned when elected governor of South Carolina, January 17, 1863.
39. Elected in special election to fill Bonham's place, February 5, 1863.
40. Died May 14, 1864.
41. Replaced Currin.
42. Resigned March 7, 1865.
43. Resigned April 5, 1862.
44. Replaced Pryor, August 18, 1862.
45. Resigned March 1, 1865.
46. Resigned March 6, 1863.
47. Replaced Smith, December 7, 1864.
48. Resigned September 3, 1862.
49. Replaced Jenkins February 24, 1863.
APPENDIX II

CONGRESSIONAL ELECTION DISTRICTS¹
FIRST DISTRICT
  Population: 103,084; 53% free, 47% slave; Democratic from 1840 through 1860.

SECOND DISTRICT
  Population: 89,656; 74% free, 26% slave; Democratic from 1840 through 1860.

THIRD DISTRICT
  Population: 69,833; 84% free, 16% slave; Democratic from 1840 through 1860.

FOURTH DISTRICT
  Population: 77,706; 76% free, 24% slave; Democratic from 1840 through 1860.

FIFTH DISTRICT
  Population: 141,876; 38% free, 62% slave; Whig in the 1840's, Democratic in the 1850's.

SIXTH DISTRICT
  Population: 151,379; 40% free, 60% slave; Whig from 1840 through 1852, Know Nothing in 1856, Southern Democratic in 1860.

SEVENTH DISTRICT
  Population: 100,435; 48% free, 52% slave; Whig in the 1840's, Democratic in the 1850's.

EIGHTH DISTRICT
  Population: 98,464, 66% free, 34% slave; Whig from 1840 through 1852, Democratic in 1856 and 1860.

NINTH DISTRICT
  Population: 119,973; 53% slave, 47% free; Whig in the 1840's, Democratic in the 1850's
ARKANSAS

FIRST DISTRICT
  Population: 95,484; 92% free, 8% slave; Democratic from 1840 through 1860.

SECOND DISTRICT
  Population: 108,825; 75% free, 25% slave; Democratic from 1840 through 1860.

THIRD DISTRICT
  Population: 117,431; 56% free, 44% slave; Whig, 1840 and 1844, Democratic, 1848 through 1860.

FOURTH DISTRICT
  Population: 110,536; 77% free, 23% slave; Democratic from 1840 through 1860.
FLORIDA

FIRST DISTRICT
Population: 61,481; 61% free, 39% slave; Whig, 1848, Democratic from 1852 through 1860.

SECOND DISTRICT
Population: 78,996; 52% free, 48% slave; Whig, 1848, Democratic from 1852 through 1860.
GEORGIA

FIRST DISTRICT
  Population: 111,493; 53% free, 47% slave; Whig in the 1840's, Democratic in the 1850's

SECOND DISTRICT
  Population: 114,392; 50% slave, 50% free; Democratic, 1840 through 1860.

THIRD DISTRICT
  Population: 107,582; 48% free, 52% slave; Whig in the 1840's, Democratic, 1852, Know Nothing, 1856, Union (Bell) in 1860.

FOURTH DISTRICT
  Population: 112,086; 43% free, 57% slave; Democratic, 1840 through 1860.

FIFTH DISTRICT
  Population: 108,269; 44% free, 56% slave; Whig in the 1840's, Know Nothing, 1852 and 1856, Union in 1860.

SIXTH DISTRICT
  Population: 115,895; 51% free, 49% slave; Whig in the 1840's, Democratic, 1852, Know Nothing, 1856, Union in 1860.

SEVENTH DISTRICT
  Population: 103,499; 49% free, 51% slave; Democratic 1840 through 1860.

EIGHTH DISTRICT
  Population: 95,647; 73% free, 27% slave; Democratic, 1840 through 1860.

NINTH DISTRICT
  Population: 82,512; 88% free, 12% slave; Democratic, 1840 through 1860.

TENTH DISTRICT
  Population: 95,356; 79% free, 21% slave; Democratic, 1840 through 1860.
KENTUCKY

FIRST DISTRICT
  Population: 96,496; 81% free, 19% slave; Democratic, 1840 through 1860.

SECOND DISTRICT
  Population: 114,733; 71% free, 29% slave; Whig in the 1840's, Democratic, 1850's, Union, 1860.

THIRD DISTRICT
  Population: 94,892; 86% free, 14% slave; Whig, 1840 through 1852, Know Nothing, 1856, Union, 1860.

FOURTH DISTRICT
  Population: 90,284; 76% free, 24% slave; Whig, 1840-1852, Democratic, 1856, Union, 1860.

FIFTH DISTRICT
  Population: 82,294; 91% free, 9% slave; Whig, 1840-1852, Democratic, 1856, Union, 1860.

SIXTH DISTRICT
  Population: 90,160; 67% free, 33% slave; Whig in the 1840's, Democratic, 1852 and 1856, Union, 1860.

SEVENTH DISTRICT
  Population: 113,120; 83% free, 17% slave; Whig, in the 1840's, Democratic, 1852, Know Nothing, 1856, Union, 1860.

EIGHTH DISTRICT
  Population: 86,237; 89% free, 11% slave; Democratic, 1840 through 1860.

NINTH DISTRICT
  Population: 92,389; 80% free, 20% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

TENTH DISTRICT
  Population: 84,478; 91% free, 9% slave; Whig in the 1840's, Democratic in the 1850's.

ELEVENTH DISTRICT
  Population: 111,804; 63% free, 37% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

TWELFTH DISTRICT
  Population: 115,551; 92% free, 8% slave; Whig, 1840-1852, Democratic, 1856 and 1860.
LOUISIANA

FIRST DISTRICT
Population: 107,022; 83% free, 17% slave; Whig in the 1840's, Democratic in the 1850's.

SECOND DISTRICT
Population: 99,710; 88% free, 12% slave; Whig, 1840-1852, Democratic, 1856, Union, 1860.

THIRD DISTRICT
Population: 120,028; 42% free, 58% slave; Whig, 1840-1852, Democratic, 1856, split between Democratic, Union and Northern Democratic (Douglas) in 1860.

FOURTH DISTRICT
Population: 117,303; 35% free, 65% slave; split between Whig and Democratic in the 1840's, Democratic, 1850's.

FIFTH DISTRICT
Population: 125,305; 47% free, 53% slave; Democratic, 1840 through 1860.

SIXTH DISTRICT
Population: 132,819; 53% free, 47% slave; Democratic, 1840 through 1860.
MISSISSIPPI

FIRST DISTRICT
  Population: 132,864; 45% free, 55% slave; Democratic, 1840 through 1860.

SECOND DISTRICT
  Population: 107,793; 67% free, 33% slave; Democratic, 1840 through 1860.

THIRD DISTRICT
  Population: 102,467; 45% free, 55% slave; Democratic, 1840 through 1860.

FOURTH DISTRICT
  Population: 142,199; 26% free, 74% slave; Whig in the 1840's, Know Nothing, 1852 and 1856, Union, 1860.

FIFTH DISTRICT
  Population: 114,111; 36% free, 64% slave; Whig, 1840's Democratic, 1850's.

SIXTH DISTRICT
  Population: 111,583; 50% free; 50% slave; Democratic, 1840 through 1860.

SEVENTH DISTRICT
  Population: 89,408; 49% free, 51% slave; Democratic 1840 through 1860.
MISSOURI

FIRST DISTRICT
  Population: 190,524; 98% free, 2% slave; Whig, 1840-1852, Know Nothing, 1856, Republican, 1860.

SECOND DISTRICT
  Population: 154,887; 80% free, 20% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

THIRD DISTRICT
  Population: 180,244; 90% free, 10% slave; Democratic, 1840 through 1860 (Northern Democratic, 1860).

FOURTH DISTRICT
  Population: 148,342; 90% free, 10% slave; Democratic, 1840 through 1860 (Northern Democratic, 1860).

FIFTH DISTRICT
  Population: 166,626; 83% free, 17% slave; Democratic, 1840-1856, Union, 1860.

SIXTH DISTRICT
  Population: 181,419; 96% free, 4% slave; Democratic, 1840-1856, Union, 1860.

SEVENTH DISTRICT
  Population: 163,535; 92% free, 8% slave; Democratic, 1840-1856, split between Northern and Southern Democratic in 1860.
NORTH CAROLINA

FIRST DISTRICT
   Population: 103,093; 55% free, 45% slave; Whig, 1840-1852; Know Nothing, 1856, Union, 1860.

SECOND DISTRICT
   Population: 103,261; 51% free, 49% slave; Whig, 1840-1852, Democratic, 1856 and 1860.

THIRD DISTRICT
   Population: 98,367; 60% free, 40% slave; Democratic, 1840 through 1860.

FOURTH DISTRICT
   Population: 96,233; 61% free, 39% slave; Democratic, 1840 through 1860.

FIFTH DISTRICT
   Population: 109,490; 57% free, 43% slave; Democratic, 1840 through 1860.

SIXTH DISTRICT
   Population: 97,956; 68% free, 32% slave; Democratic, 1840 through 1860.

SEVENTH DISTRICT
   Population: 88,036; 73% free, 27% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

EIGHTH DISTRICT
   Population: 94,290; 75% free, 25% slave; Democratic, 1840 through 1860.

NINTH DISTRICT
   Population: 94,012; 84% free, 16% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

TENTH DISTRICT
   Population: 81,915; 89% free, 11% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.
SOUTH CAROLINA

FIRST DISTRICT
  Population: 122,472; 43% free, 57% slave; Democratic
  1840 through 1860.

SECOND DISTRICT
  Population: 70,100; 47% free, 53% slave; Democratic
  1840 through 1860.

THIRD DISTRICT
  Population: 136,608; 28% free, 72% slave; Democratic
  1840 through 1860.

FOURTH DISTRICT
  Population: 136,604; 41% free, 59% slave; Democratic
  1840 through 1860.

FIFTH DISTRICT
  Population: 110,976, 65% free, 35% slave; Democratic
  1840 through 1860.

SIXTH DISTRICT
  Population: 130,082; 38% free, 62% slave; Democratic
  1840 through 1860.
TENNESSEE

FIRST DISTRICT
  Population: 132,270; 55% free, 45% slave; Whig, 1840-1852, Know Nothing, 1856; Union, 1860.

SECOND DISTRICT
  Population: 94,682; 91% free, 9% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

THIRD DISTRICT
  Population: 103,040; 87% free, 13% slave; Democratic, 1840 through 1860.

FOURTH DISTRICT
  Population: 92,879; 89% free, 11% slave; split between Whig and Democratic, 1840-1852, Democratic, 1856, Southern Democratic and Union, 1860.

FIFTH DISTRICT
  Population: 107,347; 73% free, 27% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

SIXTH DISTRICT
  Population: 107,119; 64% free, 36% slave; split between Whig and Democratic, 1840-1856, Southern Democratic and Union, 1860.

SEVENTH DISTRICT
  Population: 93,068; 72% free, 28% slave; Democratic, 1840 through 1860.

EIGHTH DISTRICT
  Population: 103,769; 69% free, 31% slave; Democratic and Whig, 1840-1856, Southern Democratic and Union, 1860.

NINTH DISTRICT
  Population: 99,916; 75% free, 25% slave; Whig, 1840-1852, Know Nothing, 1856, Union, 1860.

TENTH DISTRICT
  Population: 100,513; 74% free, 26% slave; Whig, 1840-1852, Democratic, 1856, Southern Democratic and Union, 1860.

ELEVENTH DISTRICT
  Population: 109,913; 53% free, 47% slave; Whig, 1840-1856, Union, 1860.
TEXAS

FIRST DISTRICT (Presidio and El Paso in the first district, but are not on the map)
   Population: 86,808; 85% free, 15% slave; Democratic, 1848 through 1860.

SECOND DISTRICT
   Population: 115,773; 57% free, 43% slave; Democratic, 1848 through 1860.

THIRD DISTRICT
   Population: 108,730; 66% free, 34% slave; Democratic, 1848 through 1860.

FOURTH DISTRICT
   Population: 98,132; 68% free, 32% slave; Democratic, 1848 through 1860.

FIFTH DISTRICT
   Population: 91,881; 70% free, 30% slave; Democratic 1848 through 1860.

SIXTH DISTRICT
   Population: 101,512; 77% free, 23% slave; Democratic, 1848 through 1860.
VIRGINIA

FIRST DISTRICT
Population: 98,885; 52% free, 48% slave; Whig, 1840-1852, Democratic, 1856 and 1860.

SECOND DISTRICT
Population: 103,208; 63% free, 37% slave; Whig and Democratic in the 1840's, Democratic in the 1850's.

THIRD DISTRICT
Population: 108,614; 60% free, 40% slave; Whig in the 1840's, Democratic, 1852 and 1856, Union, 1860.

FOURTH DISTRICT
Population: 106,196; 45% free, 55% slave; Democratic, 1840-1856, Union, 1860.

FIFTH DISTRICT
Population: 108,612; 40% free, 60% slave; Democratic, 1840 through 1860.

SIXTH DISTRICT
Population: 106,746; 64% free, 36% slave; Whig in the 1840's, Democratic, 1852 and 1856, Union, 1860.

SEVENTH DISTRICT
Population: 102,143; 48% free, 52% slave; Whig in the 1840's, Democratic, 1852 and 1856, Union, 1860.

EIGHTH DISTRICT
Population: 103,144; 47% free, 53% slave; Democratic, 1840 through 1860.

NINTH DISTRICT
Population: 100,022; 71% free, 29% slave; Whig in the 1840's, Democratic, 1852 and 1856, Southern Democratic and Union, 1860.

TENTH DISTRICT
Population: 81,248; 83% free, 17% slave; Whig, 1840, Democratic, 1844 through 1860.

ELEVENTH DISTRICT
Population: 92,587; 84% free, 16% slave; Democratic, 1840-1856, Northern and Southern Democratic, Union, 1860.

TWELFTH DISTRICT
Population: 106,413; 77% free, 23% slave; Whig and Democratic, 1840-1852, Democratic, 1856, Southern Democratic and Union, 1860.
THIRTEENTH DISTRICT
   Population: 98,548; 90% free, 10% slave; Democratic, 1840 through 1860.

FOURTEENTH DISTRICT
   Population: 87,875; 95% free, 5% slave; Whig and Democratic, 1840-1852, Democratic, 1856, Southern Democratic, Union, 1860.

FIFTEENTH DISTRICT
   Population: 92,474; 98% free, 2% slave; Democratic, 1840 through 1860.

SIXTEENTH DISTRICT
   Population: 91,143; 99% free, 1% slave; Democratic, 1840 through 1860.
NOTES

1. The maps are adapted from Colton's Condensed Octavo Atlas of the Union (New York, 1865). The election districts were compiled from Ordinances and Constitution of the State of Alabama, With the Constitution of the Provisional Government and of the Confederate States of America (Montgomery, 1861), 178; Ordinances of the State Convention which Convened in Little Rock on May 6, 1861 (Little Rock, 1861), 78; Constitution or Form of Government for the People of Florida as Revised and Amended at a Convention of the People Begun and Held at the City of Tallahassee on the Third Day of January A. D. 1861; Together With the Ordinances Adopted by Said Convention (Tallahassee, 1861), 40; Journal of the Public and Secret Proceedings of the Convention of the People of Georgia Held in Milledgeville and Savannah in 1861; Together With Ordinances Adopted (Milledgeville, 1861), 392-93; Proclamation of Governor Hawes of Kentucky, December 30, 1863, printed broadside, Robert McKee Papers, Alabama Department of Archives and History; Proceedings of the Louisiana State Convention; Together With the Ordinances Passed by the Said Convention and the Constitution of the State as Amended (New Orleans, 1861), 283-85; Laws of the State of Mississippi Passed at a Called Session of the Mississippi Legislature Held in the City of Jackson, July 1861 (Jackson, 1861), 57-58; Laws of the State of Missouri Passed at the First Session of the Seventeenth General Assembly Begun and Held in the City of Jefferson on Monday the Thirteenth Day of August, A. D. 1852 (Jefferson, 1853), 98-99; Public Laws of the State of North Carolina Passed by the General Assembly at its Second Extra Session, 1861 (Raleigh, 1861), 4-7; Proclamation of Governor Pickens of South Carolina, December 7, 1861, printed broadside, Francis W. Pickens Papers, South Carolina Department of Archives and History, Columbia; Public Acts of the State of Tennessee, Passed at the First Session of the Thirty-Fourth General Assembly for the Years 1861-1862 (Nashville, 1862), 8-9; Laws of the Eighth Legislature of the State of Texas; Extra Session (Austin, 1861), 35-36; Ordinances Adopted by the Convention of Virginia in Secret and Adjourned Sessions, April, May, June and July, 1861 (Richmond, 1861), 44. Figures on free and slave population come from Eighth Census of the United States, Vol. I, Population of the United States in 1860 (Washington, 1864). The information on political background of the districts comes from W. Dean Burnham, Presidential Ballots, 1836-1892 (Baltimore, 1955). Political identification of a district is based on the vote in the presidential elections from 1840 to 1860. A majority of the counties in a district constitutes support for a particular party.
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