The Political Thought of the Ante-Bellum Fire-Eaters.

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CHAPTER I.

THE FIRE-EATERS.

In the United States the story of the years before the

Civil War centres around the growing divergence between the

Northern and Southern states. These sections had been character-

ized by different economic and social conditions even before

the creation of the Union, for the South was traditionally a

distinct section. Although the South was made up of diverse

regions, its weather, climate and staple crops and such distinc-

tive social characteristics as negro slavery and the plantation

system gave it a certain over-all unity, even in colonial days. During the Philadelphia convention, some compromises, over

representation for instance, were necessary because of the

peculiar interests of the South, and under the first Washington

administration Hamilton's economic programme led the South to

consolidate its opposition under Madison and Jefferson. In 1796

the South voted solidly against the Federalist candidates, and

the Virginia and Kentucky resolutions of 1798 provided an example

of southern opposition to federalist practices. In 1800 the

South won control over the federal government, but the opposition

of New England to the war of 1812 and the Hartford convention of

1814 proved that sectionalism remained a potent force. The growing

divergence between the North and South in the nineteenth century

was therefore not at all a new phenomenon, but merely a develop-

ment of that sectionalism whose roots reached back into colonial

days.

The growth of the cotton industry and the creation of the
new black-belt states tied the South more securely than before to the institution of slavery, for it was commonly believed there that only negroes could work the cotton plantations, and that negroes would only work well as long as they remained slaves. As the years passed cotton became more and more important until it occupied a position of absolute dominance in the southern economy. This meant that slavery became the lynch-pin of the South’s economic machine.

It was inevitable that as economic conditions carried their peculiar institution to such a peak of importance, southerners should stifle their earlier repugnance, and should create a defense for it at once intellectual and emotional. This natural re-action was strengthened by attacks on slavery which were leveled by northerners with growing intensity. The abolitionist movement was only one of many reform movements which swept the North and West before the civil war, but the peculiar circumstances of the time, particularly the clear division on the issue between North and South enabled a moral issue to be combined with economic and political ones so as to render continued equivocation impracticable. Impracticable at least it proved because of the attitudes taken up by northern and southern leaders alike.

The lack of moderation displayed by many southerners on the question can be attributed largely to fear. For their defensive attitude on the slavery issue, adopted to repel attacks from their own consciences and from the North, was strengthened by the fact that the slave states were becoming weaker in the Union.
relative to the free states. The South had held its own until the Missouri compromise, but after that the North drew away. Its population increased more rapidly and it began to build up an industrial economy which far outdistanced the South. While its industry made the North stronger materially, the relative increase in population in the free states was a more palpable danger. For more population meant more representation in the federal government, and in 1850 the entry of California as a free state gave the North that ascendancy in the Senate which it already enjoyed in the House. This situation made the South fear that the North would use its power to dictate terms, and that without going outside the forms of the constitution, the North might be able to destroy the institution of slavery itself, and with it the whole distinctive southern way of life.

As early as the 1820s, some perceptive southerners had realised the direction North-South relations were taking, and had seen in the tariff issue that northern dictation which they so dreaded. While the issues at stake remained primarily economic, they were not grave enough to split the Union, and indeed the southern states could not be united in resistance to any particular northern acts. But in the 1840s and 1850s the sectional struggle was switched to slavery, and the complex of social, economic, political and moral considerations embraced in that question were inflammable enough to lead to the final break.

Aware of how things were going, a number of ardent southerners tried to unite their section in defense against the North, for they saw that unless some sort of resistance was organised,
the South's power to resist would be steadily undermined, until she would become a subordinate section in the Union, forced to accede to all northern commands.

The most ardent of these southern leaders were known as Fire-Eaters, a word defined colloquially as "a person of recklessly defiant disposition especially a persistent dualist; specifically in the United States before the civil war, a violent and bitter southern partisan."6

These Fire-Eaters were not all active politicians, but included university professors and professional writers, particularly pamphleteers in whose works some of the clearest declarations of fire-eating doctrine are to be found. Because the difference between Fire-Eaters and non Fire-Eaters is a difference of degree rather than of kind, it is extremely difficult to decide which particular leaders come into the category. Moreover some southerners acted like Fire-Eaters on certain issues but not on others.7

It does appear that one quality necessary to the true Fire-Eater was indifference to national position or reputation. Southerners who were concerned to obtain federal high office could not be genuine Fire-Eaters for they allowed their actions to be dictated by other than purely southern considerations. Henry Wise for instance although a violent southern partisan cannot be considered a true Fire-Eater because he

"was pre-eminently a politician consumed by a passion for high national office; not an out-and-out Fire-Eater. The true Fire-Eater despised the trading politician of the South. Men like Rhett and Yancey sacrificed brilliant national careers because of their austere devotion to the interests of the South."8
and Massey Gregg spoke with contempt of the way in which

"the rights and interests of the South are compromised away for the sake of preserving party ascendancy and as equivalents for honours and emoluments enjoyed by southern politicians." 9

Another difficulty in deciding who qualified as a Fire-Eater is that some southerners behaved like Fire-Eaters at one time, but not at another. In 1849 James Hammond thought that

"The sooner the South got rid of it (the Union) the better"..."he saw in the North and South two distinct social compacts and believed that inevitably they must separate," 10

but by 1857 he had

"laid aside his earlier secessionism and in speeches at home said that the South should submit to such degree of republican rule as was probably in store." 11

This case was typical of several.

The true Fire-Eater however was consistent in his views and made his decisions on all topics in the light of how best he could serve the interests of the South. While impossible to define, it is possible to characterise them with some accuracy.

All Fire-Eaters were ardent southern nationalists and vehement defenders of the southern way of life. They were all determined to resist what they thought to be northern aggression and to uphold the South's right to have an equal voice in national decisions. One of their most distinctive characteristics was the violent language which they normally employed, liberally tempered with denunciatory epithets levelled at the North, and
eulogistic apostrophes lavished on the South.

The central principle which dictated all their actions was that the Union should be maintained only as long as the South benefited from its retention. No considerations of sentiment or tradition should prevent the South from shedding its association with the North when the association ceased to be profitable. Debow, who first concentrated his efforts on advocating industrial reform in the South and later became a disunionist, made this point in a rousing secessionist speech at the Knoxville commercial convention in 1857:

"The federal Union... is to be maintained by every patriotic exertion whilst impelled by the principle of equity and justice and a proper regard to the rights of all of its members. It is to be crushed by these same patriotic exertions whenever it assumes otherwise."

Debow put the Fire-Eating position very clearly in two resolutions which he offered in the same speech:

"1. That they (the people of the South) have rights more to be valued and defended than any theories or sentiments about Union, and a thousand times more important, because involving everything for which government or Union is at all to be valued.

2. That they have resources which though adequate to render them an important member of the federal Union, are at the same time sufficient to enable them to exist without that Union, and to maintain the rank of a first class power whenever it shall be deemed necessary to establish a separate confederation, and that it is the duty of the people of the South to develop these resources and to increase this sense of independence, security and power by opening up the avenues of intercommunication, by stimulating agriculture, by promoting commerce, by steamships and by steam-mills and more than all of these, by a system of home education, which shall save our children from the poison which infects the springs from which they have hitherto been in the habit of drinking."

While the Fire-Eaters had always believed that the southern
states should secede when the Union became more a burden than an advantage to them, they did not make the further decision that that time had arrived without long deliberation. Robert Barnwell Rhett, the "father of secession" and probably the most consistent and influential of them all had advocated open resistance to the laws of the Union in his Colleton address of 1828, and in 1833 he had asked whether

"if a confederacy of the southern states could now be obtained, should we not deem it a happy termination, happy beyond expectation, of our long struggle for our rights against oppression?"

But even later than this, Rhett was concerned rather to improve the position of the southern states in the Union than to agitate secession. His attitude was illustrated in the resolutions which he intended to present to Congress in 1838:

"And the constitution of the United States having proved inadequate to protect the southern states in the peaceable enjoyment of their rights and property, it is expedient that the said constitution should be amended or the Union of the states be dissolved.

Resolved—that a committee of two members from each state in the Union be appointed to report upon the expediency and practicability of amending the constitution, or the best means of peaceably dissolving the Union."

While Robert J. Turnbull (Brutus) has been described by one authority as the "Adam" of the Fire-Eating genus, because of his Crisis essays urging South Carolina to resist the tariff laws, Rhett was the most consistent of the early Fire-Eating politicians. But even he never claimed to have become a dis-unionist per se before 1844, and his biographer thinks that probably he did not become convinced of the necessity for dis-union until 1850, for he declared his purpose in the Blufion movement to be "not dis-
union, but the reform of the government."\(^{18}\)

Whatever may have been the case with Rhett, it was the issue of the disposal of the territories won from Mexico which brought most of the other Fire-Eaters into the secessionist camp. This question revived a problem which had received its official quietus in 1820. Was slavery to be carried into new territories acquired by the United States? Were southern slaveholders to be allowed an equal chance to settle the new lands with free soil northerners? The Wilmot proviso offered in 1846 would have forbidden southerners this equality, and it was the fearful possibilities to the South conjured up by this proviso which converted many southern leaders into Fire-Eaters. For they realised that if slavery were kept out of the territories, it would have no chance to expand—unless other lands to the South could be occupied—and the North would gradually acquire an over-whelming supremacy in the Union. And when this happened, no southern institutions would be safe.

And so from the introduction of the Wilmot proviso until the failure of the secession movement in 1851, the Fire-Eaters considered all aspects of secession. On January 4th, 1849 Twigfall wrote to Calhoun that "Texas would follow willingly and almost unanimously the lead of any other state" in opposition to the application of the proviso to the territories of New Mexico and California.\(^{19}\) Senator David Yulee, Florida's leading secessionist, wrote that unless an amendment could be passed checking the aggressions of the more powerful northern section of the states,

"I think the truerst and best policy is to take steps at once for a separation...we must abandon slavery or the Union at once (unless the terms of compact can be amended) for the attempt to maintain both will only be to whet a knife for the throats of our families and selves."\(^{20}\)
Yulee then went on to throw out some "very crude suggestions" which might "solve the difficulty." "The independence of the Pacific states...so far as the accession of those states to the northern power is concerned" which he was nearly prepared to say he would

"recommend and sustain in an independent organisation. This would relieve us of the Wilmot proviso question for the time and by crippling the northern power and arresting its unrestrained ascendency in the federal legislature postpone any dangerous collision, until by the division of Texas, and the possible acquisition of Cuba, we might be in a position to check any such increase of free states as would settle their preponderance in the government."21

Henry L. Benning, a leading secessionist from Georgia was "very extreme" in his opinions. He thought

"that the only safety of the South from abolition universal is to be found in an early dissolution of the Union...I no more doubt that the North will abolish slavery the very first moment it feels itself able to do it without too much cost than I doubt my existence."

He went on

"I think that as a remedy for the South, dissolution is not enough, and a southern confederacy is not enough. The latter would not stop the process by which some states, Virginia for example, are becoming free, viz. by ridding themselves of their slaves; and therefore we should in time with a confederacy again have a North and a South. The only thing that will do when tried every way is a consolidated republic formed of the southern states, that will put slavery under the control of those most interested in it and nothing else will; and until that is done nothing is done."22

Edmund Ruffin of Virginia, a passionate southern nationalist, governed largely by his hatred of Yankees, proposed to "submit no longer"...and

"dissolve the existing Union with the so-called northern brethren-actual enemies and predators. It was not a mad-dog proposal. The movers and abettors of the abolition crusade were the true
and only disunionists. They had always been the acting and assailing party; the South had always been passive."

These typically fire-eating expressions of views showed clearly that by 1850 southern radicals were anxious for secession. Faced with the prospect of a compromise settlement in congress, they tried to achieve a coup d'etat which should flip the southern states out of the Union.

The Nashville convention of 1850, originally proposed to express and consolidate southern opposition to northern aggression, was captured by conservative elements and failed to recommend secession. But on September 20th, 1850 when congress passed the last of the bills constituting the compromise, Governor Seabrook, the fire-eating governor of South Carolina, wrote to the governors of Virginia, Alabama and Mississippi, stating that while "there were satisfactory reasons why South Carolina should move cautiously in this matter" she would be prepared to follow the lead of any other two states in advocating whatever measures were considered necessary to "arrest the career of an interested and despotic majority." The governors of Alabama and Virginia returned unfavourable replies but Governor Quitman of Mississippi was an enthusiastic Fire-Eater and replied that

"having no hope of an effectual remedy for existing and prospective evils but in separation from the northern states, my views of state action will look to secession."

But despite the efforts of Seabrook, Quitman and their supporters the secession movement in 1850 failed, and the Fire-Eaters were obliged to hide their time, until the opportunity for agitation again presented itself.
The Fire-Eaters, once they had decided that the southern states should secede, supported everything that might assist the movement. Hett expressed the hope that the Wilmot proviso would be passed, for it would mean dis-union. Writing to Calhoun he admitted

"I am sorry to come to the conviction that there is no chance for the Wilmot proviso or the abolition of slavery in the District of Columbia at the approaching congress. Would to God they would do both, and let us have the contest and end it once and forever. It would then accomplish our emancipation instead of that of our slaves," while Beverley Tucker

"proposed to Hammond that the Nashville convention be used to demand impossible conditions for a continuance of the Union and thus force the withdrawal of the southern states." In their attempts to effect secession, the Fire-Eaters used every method they could to incite southern opinion in its favour. They threatened southern whites with horrific prophecies of what would happen if the South did not secede. Ruffin foresaw a time when the negroes would outnumber the whites in most places in the South and would turn the region into a Jamaica or a Haiti. Senator A.G. Brown, who vied with Quitman for the extra-legal office of Mississippi's leading Fire-Eater, prophesied the day when negroes would demand every sort of equality with whites. Mirabeau B. Lamar anticipated "the success of abolition" which "will throw the two races into a fearful conflict; a conflict which admits of no compromise with death—no quarters but in the grave." Henry Benning, speaking to the Virginia convention in 1860, said that slavery would be abolished and that the negroes would then take over all offices; the whites
would expel them by force, and the North would come to the aid of the blacks, so that ultimately, unless the South seceded, its lands would be possessed by the Yankees. 31

The Fire-Eaters also emphasised the differences between the North and the South, claiming that the inhabitants of the two sections were really two different peoples. Rhett, in his Nashville address, said that the people of the North and South were distinct nations, different in climate, in productions, but especially in the institution of slavery which set the South apart as a peculiar people for whom independence as to their internal policy was the condition of their existence. 32 In 1860, in his "Address to the Slave-Holding States" Rhett made the same point, that the constitution had been an experiment, an attempt to unite under one government two peoples of different character and different institutions and the experiment had failed. 33

William Yancey, the great orator of secession, normally employed violent language, particularly when discussing the North, and on this issue he displayed his usual characteristics:—

"The Creator...has made the North and the South; the one the region of frost, ribbon in with ice and granite; the other baring its generous bosom to the sun and ever smiling under its influence. The climate, soil and productions of these two grand divisions of the land have made the character of their inhabitants. Those who occupy the one are cool, calculating, enterprising, selfish and grasping; the inhabitants of the other are ardent, brave and magnanimous, more disposed to give than to accumulate, to enjoy ease rather than to labour." 34

and William Trescott not only distinguished between "two individual and inconsistent systems both of representation and taxation;"
but also showed how the principles of the foreign policies adopted by the two sections were irreconcilable.35

Yet on the other hand, and in defiance of their customary techniques, the Fire-Eaters could be moderate when circumstances called for the display of caution. Yancey who in 1851 had been saying:

"If you submit, behave like submissionists. Be quiet and peaceable, subservient to the will of your masters. If you resist at all, resist effectually and manfully; use swords not pins, cannon and iron balls, not paper pellets..."

played the moderate in 1860, while he was instrumental in breaking the democratic party, so that his more cautious companions should not take fright.37

Because the Fire-Eaters were determined to get the secession movement under weigh, they hoped for some overt act which would get the movement started, so that once one segment of the South had seceded, the rest would follow. Wigfall spoke of a "Wat Tyler to knock down the excise man" for when the blow is struck she (the South) would unite for defense and stand as one man."38 Yancey wrote in his famous "Slaughter Letter":

"But if we could do as our fathers did, organise committees of safety all over the cotton states (and it is only in them that we can hope for any effective movement) we shall fire the southern heart; instruct the southern mind; give courage to each other, and at the proper moment, by one organised, concerted action, we can precipitate the cotton states into a revolution."39

Following the example set by their ancestors before the revolution, Yancey and Ruffin in 1858 organised the League of United Southerners, an attempt to build up groups of men all through the South, who should conduct the agitation for secession.40 The same plan had been suggested by Langdon Cheves of South
Carolina in 1844, when the issue of Texan annexation was under discussion. In a letter to the Charleston Mercury he had written:—

"Let associations be formed in every southern state and let them confer together and interchange views and information; let leading men through committees and correspondence collect, compare and concentrate the views of like men in the respective states and when ripe, let them deliberate on the mode of resistance and the measure of redress... continue to enlighten the public mind, rouse the public feeling—excite the public shame for the degradation to which we have been brought. Let your exertions be...organised and incessant."^41

The Fire-Eaters did not want to await the formation of a united South before they acted, for as Yancey told the commercial convention at Montgomery it was only human nature that in any gathering there were bound to be some men who opposed radical action on such important issues as revolution and secession.^42

This meant that the Fire-Eaters usually tended to advocate separate state action, whereby one state would make the first move towards secession, and then after the plunge had once been made, the other states would follow. In 1850 Yancey had advocated separate state action by South Carolina, and so had Quitman, arguing that "so long as the several aggrieved states wait for one another, their action will be over cautious and timid"^43 and again in 1858 Quitman advanced the same opinion.^44 Rhett had urged separate state action in 1844, quoting the events of the revolution as a precedent:—

"All we want is that the tea shall be thrown overboard, that the issue shall be made. One state made the issue in our revolution and one I think will have to make it again with the general government."^45

In 1848 he also advocated separate state action and in 1860 he
was firmer than ever in his plea for secession by the separate states, for he had seen what happened when the South waited until it should become united. The lesson of the Nashville convention was not lost on the Fire-Eaters.

It seems certain that the Fire-Eaters urged secession by the separate states, as against co-operation in secession, not because of any theory based on states' rights, but merely as a practical technique which would achieve the desired goal of leaving the Union. In Rhett's case it is likely that the desire for separate state action was encouraged by his passionate belief in the sovereignty of individual states, strengthened by his past memories. According to one authority, Rhett's advocacy of separate state action was largely determined by his recollection of the action of South Carolina in 1832, and he based his proposals in 1844, 1848 and 1860 on what had then happened.46

It is probably significant that the most vehement advocates of separate state action came from the older states, particularly from South Carolina, despite the strong co-operationist opposition which existed in that state. Certainly a distinction can be drawn between the states "with an old and firmly established social order, where consciousness of the locality went back to remote time" of which South Carolina was an outstanding example, and "others newly settled, where conditions were still fluid, where the sense of the sacredness of local institutions had not yet formed,"47 states typified by Mississippi. South Carolinian Fire-Eaters were more likely to advocate separate state action because they believed so much more vehemently in the distinct rights and
virtues of their state, an attitude similar to that of Fitzhugh's, who hoped for "an independent Virginian nationalism which must be secured by political, economic and cultural autonomy," whereas Fire-Eaters in the newer states believed rather in southern nationalism and were therefore more willing to wait until the southern states should leave the Union together."Mississippians spoke the language of states' rights, but it was a mental weapon in political debate; it was not for them an emotional fact" as it was for South Carolinians.

One writer comments that

"In Mississippi the group that wanted to break up the Union advocated secession as a political device for preserving a social system which was believed to be in greater danger in the Union than out of it; there were few genuine states' rights types like Rhett, passionately devoted to the political independence of the individual states."

While also discussing the situation in Mississippi, another student states that

"Brown (of Mississippi) did not make any statement which favoured separate state secession without the co-operation of other southern states. Upon this co-operation it was clear, depended the success of the resistance policy. In fact, to a large extent, the name of the new states' rights party was a misnomer because its principles sought primarily not state but southern rights, and most of its leaders, including Davis and Brown were thinking in terms of sectional and not of state rights."

But this distinction must not be pressed too far, for while it seems probable that Fire-Eaters in the newer states were emotionally at least more inclined to favour the embodiment of southern nationalism in state co-operation before secession, while
Fire-Eaters in the older states were more inclined to let their underlying emotional loyalty to their states decide them in favour of separate state action, it is also true that Fire-Eaters on the whole tended to advocate whatever actions they thought were most likely to be effective in bringing secession about. Quitman, in contrast to Brown and Davis, was as warm an advocate of separate state action as Rhett himself.

This question of how far the Fire-Eaters genuinely believed in the states' rights doctrines many of them advocated so heartily illustrates the central factor which must be borne in mind in any investigation into the political thought of the Fire-Eaters. They were mostly men of action with a specific objective in view, and because they were so definitely men of action, logic and consistency of thought were perhaps to be expected of them even less than of the average politician. Because of this, because they were determined to lead their states into secession they used whatever arguments seemed best to justify their proposals, and they subordinated their theories to the situations with which they had to deal. But, on the other hand, they were also products of their age and mental climate, and the ante-bellum South was a veritable stamping ground for legal and political theorists. Partly because of the influence of Calhoun southern thinkers in the decades before the civil war were addicted to a marked degree to political and constitutional theorising.

And so the Fire-Eaters supported their actions not only through their empirical conclusions that the South was suffering under the Union, and would suffer more, but also by referring to
the theories of states' rights and limited government which they drew from the Founding Fathers.
Chapter I.

Notes.

1. Thomas J. Wertenbaker, The Old South (N.Y., 1942), pp. 1-16.
7. Compare for example the position taken by Benjamin, Slidell and Soule over southern expansion, Chapter 7, infra.
15. Laura A. White, op. cit., p. 27.


25. Letter from Governor Quitman to Governor Seabrook, J. F. S. Claiborne, Life and Correspondence of John A. Quitman (N. Y., 1860), II, 37.


28. Avery Craven, Ruffin, p. 112.

29. See Chapter IV, infra.


31. Address delivered before the Virginia state convention by the Hon. Henry L. Benning, commissioner from Georgia, February, 1861.


33. Laura A. White, op. cit. p. 188.

34. J. W. Dubose, The Life and Times of William Lowndes Yancey (Birmingham, Alabama, 1892), I, 301.


37. Laura A. White, op. cit. p. 168.


41. Miles Register, XLVII, 49ff.
42. Debow's Review, XXIV, 500.


45. Laura A. White, op. cit., p. 80.


CHAPTER II.

THE RELATIONSHIP BETWEEN THE STATES AND THE FEDERAL GOVERNMENT.

Although the attitude of the Fire-Eaters was determined by the situation of the South, and their fears that her position would continue to deteriorate as her influence in the Union decreased, they used the political doctrine of states' rights as a justification for the practical policies they advocated. During the decades immediately preceding the civil war, it became clear that the northern states were growing stronger, particularly in population, relative to the South, and that their authority in the federal government was certain to grow proportionately. Southern statesmen, confronted with this situation, realised that every addition to the power of the central government would mean additional power in the hands of the North, and this in turn meant that as far as the state-federal relationship was concerned, every gain in the control of the central government at the expense of the states would mean greater power in the hands of the North at the expense of the South.

And so the South resisted this potential threat, embodied in the steadily rising claims made on behalf of the federal government by proclaiming the rights of the states, for if the South could resist the encroachments of the federal government, the North could be prevented from obtaining greater political power over southern interests. Southerners in short resisted
trends to which they objected on the grounds that the federal government was exceeding its rightful powers, and must be prevented from undertaking activities which lay beyond its rightful scope.

That the South used the states' rights argument merely as a political buttress to defend itself against encroachments from the North is shown by the fact that the doctrine was but rarely advanced by southerners in the days when they possessed controlling influence in the government.

"The early assertions of states' rights were put forward by the party out of power, or by a minority group which felt that its interests were being threatened by the expanding power of the national government. It was not the theory of any particular party or section...after 1828 the doctrines of states' rights began to be more definitely the theory of the South...which was becoming hopelessly the minority section, because of the growing population and wealth of the North."  

and this change of policy can be studied in the career of Calhoun. The South, in fact, was determined to uphold its interests and used the most convenient instrument it could find to justify the position it adopted. The argument involved a legal and historical approach to the theory of government, as can be seen from a study of the Hayne-Webster debate in 1830, a debate which contained the genesis of all the arguments later advanced. The strength of Hayne's position lay in his constitutional arguments; Webster, more pragmatic, drew his strength from the social and economic forces on which political forms are based.  

Southern statesmen were therefore thrown back on legal and historical arguments to defend their position. Their theories
were founded on the sovereignty of the states, and to justify their protest against the constantly changing federal-state relationship, they were forced to assert at the outset that sovereignty cannot be divided.

The Fire-Eaters proclaimed this doctrine with great assurance. Chett, speaking in the Senate, said

"Sovereignty must be the supreme authority in a state. Who ever heard of two sovereignties in a state? One must be supreme; and that which is supreme is sovereign...sovereignty cannot be divided. There cannot be two supreme authorities; that is an absurdity." 4

Quitman, using the same argument in the House of Representatives, asserted

"Sovereignty is that high political power which can control all other political powers. It can have no superior and no equal...it admits of no rival. It cannot be limited; for limitation proves the existence of a controlling power...there cannot be in the same system two sovereign powers. This is in politics as great an absurdity as the existence in mathematics of two longest lines or two highest numbers. In the moral world there is but one sovereign-God." 5

Another reason to avow the indivisibility of sovereignty was suggested by Seddon of Virginia. He stated that as the federal government was supreme in its sphere, and could punish for treason, and the state government was supreme in its sphere equally and could enforce the same penalty, therefore

"in case of conflict the wisest and best, solicitous only for the discharge of duty must be traitors to one or the other, and be subjected to the imputation and penalty of this greatest of crimes."

But surely the founders could not have meant to subject the
subjects of the United States to such an impossible position, where either decision meant treason, therefore "allegiance can only rightfully be due to one sovereign-the state in its highest capacity."^6

This theory of the essential uniqueness of sovereignty, although necessary as a foundation of the southern argument, would appear to be rendered untenable by reference to the very constitutional arguments on which the southern thinkers normally relied. Madison was certain that sovereignty may be divided. "If it cannot" he urged, "then the political system of the United States is a chimera, mocking the vain pretensions of human wisdom." And again, "it is difficult to argue intelligibly concerning the compound system of government in the United States without admitting the divisibility of sovereignty."^7 The Supreme Court declared in Chisholm v Georgia that

"the United States are sovereign as to all the powers of government actually surrendered. Each state in the Union is sovereign as to all the powers reserved."

De Tocqueville "found in America 'that the rules of logic were broken' and that there were two separate sovereignties, one of the Union, and one of the states."^8 Moreover a contemporary authority discovers the essential characteristic of the federal system, demonstrated, he argues, most markedly in the United States, in "the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent." Within its sphere each government is sovereign, and sovereignty is therefore divided. This characteristic he
defines as the "federal principle."9

But the Fire-Eaters, having satisfied themselves that sovereignty cannot be divided, went on to place it in the states, and not in the federal government. Rhett said "the states have not surrendered their sovereignty. They are still supreme and may resume those powers whenever they think proper."10 Wigfall argued, by example,

"In 1781 the citizens of South Carolina confederated with these other states and in the Articles of Confederation they declared, in the second article, that they retained their sovereignty, freedom and independence. From that time to this, they have preserved all the paraphernalia of sovereignty and nationality."11 Turnbull wrote in the Crisis that a "sovereign state can never be presumed, in any compact which it enters into with another state, to yield inherent rights of sovereignty."12

The Fire-Eaters supported these assertions that sovereignty lay with the states by a series of distinct arguments, drawn mainly from historical processes, and intended to show that the states had not surrendered their sovereignty and therefore retained it.

Rhett used one historical argument and referred to the proceedings of the convention to show that proposals were made that the states be dispossessed of their sovereignty by positive decree, and that these proposals were rejected:

"There were two propositions which looked to disrobing the states of their sovereignty. The one was to make a state amenable to the Supreme Court of the United States; the other was to give to the general government the power to coerce a state, should she resist the constitutional enactments of congress."
What was the fate of these propositions? If either of them passed, it was clear that the states would not be sovereign, for the very essence of sovereignty is its entire supremacy. Both of them were voted down after discussion, and the states were left to be supreme—to be sovereign within their limits.

Another historical argument to show that the states had once possessed full sovereignty and had not sacrificed any more of it than they chose to admit, was drawn from the method of ratification adopted by the convention. Reuben Davis reminded the House of Representatives that the constitutional convention referred the constitution not to the people of the Union to be ratified, but to the people of the states:

"If the convention had referred it to the people to approve or reject it, it would have been an invitation to high treason against the states. The people of the states could do nothing towards forming an alliance or union without the permission of the states, and only then through the states as sovereign...the states then, having created the federal government, stand between it and its citizens; and in all questions involving the exercise of political power by the federal government over the citizen, is the arbiter, and it is her duty to decide how far she surrendered sovereignty to the federal government." 14

Turnbull adduced a similar argument, based on the method of ratification adopted:

"That the people of the United States were regarded as acting in their sovereign capacities as separate states when they ratified the constitution, clearly appears from the rule laid down in the instrument itself for its ratification. The assent of a majority of all the inhabitants of the United States was not made indispensable, which would have certainly been the case had the design been that the constitution should not emanate from the states. Under such a
view it might have so happened that the ratification might not have been complete, though nine states should have ratified... if ratification was the assent of the people, and not of the states, the convention is chargeable with the absurd proposal of having a government which is to bind all the people of the United States to be put into operation as soon as a minority of the same people should ratify it. Now, on the other hand, if we consider the constitution as emanating from the state sovereignties, and not from the people, there is no difficulty whatever, in any view of the subject. The mode proposed by the convention was not only the best mode, but it was the only mode by which the people, acting as the people of the separate states, could give their free and unbiased assent to the compact."

Wigfall, often ingenious, used two different arguments, both derived from a reading of the constitution, to show that the states were, and remained sovereign. He argued first that as treason could only be committed against a sovereign state, and the constitution provided for dealing with people who commit treason against a state, therefore the states must be sovereign. But treason could also be committed against the United States. Naturally, admitted Wigfall, anyone who committed treason against the United States committed it also against his own state, which is one of the United States. But

"if the inhabitants of the United States be one political community; if they compose a nation; if there are no states, but all the inhabitants together compose one state or nation, then it is utterly impossible that treason can be committed against any one of these geographical divisions; as impossible as that treason can be committed against a county."16

Wigfall's other argument to show that the United States was not a nation, but merely consisted of a group of nations, allied
for certain purposes, was even more recondite. He referred to
the clause in the constitution which declared that "no person
shall be a representative who shall not have attained to the
age of twenty-five years and been seven years a citizen of the
United States."

"Now senators," he argued,

"there is no man that I have ever seen who
denies that these states were free, sovereign
and independent under the Articles of Confed-
eration. They so declared and no-one that I
have seen pretends that they formed a single
political community, or were a nation at that
time. They all say that when they ratified this
constitution, and established a government,
they became a nation. If that is true, a
 citizen of the United States means a citizen of
the United States as a single political community.
Then it follows that for seven years after this
constitution was ratified by nine states, you
could have had no House of Representatives, because
the men elected, in order to be qualified, must
have been citizens of the United States for seven
years...I say then that the term citizen of the
United States meant citizen of some particular
state."17

And as no nation can exist without citizens, there is no such
thing as the American nation.

This doctrine that the states retained that essential
independence which had been recognised by Great Britain, and
could not be believed to have abandoned it, was supported also
by a rather optimistic argument of expediency, relying for its
strength on a belief in the essential common-sense of statesmen.
Reuben Davis, after claiming that the thirteen original states
each possessed complete homogeneity of interest, without possi-
Bility of conflict or antagonism, confessed himself unable to
believe that the founders had sacrificed that homogeneity so
necessary for the retention of internal harmony. Because the surrender of their sovereignty by the states would have resulted in the formation of a nation with unavoidable internal antagonisms, therefore such a surrender could not have taken place.

"Can it be supposed that those who adopted our present federal government intended to destroy this state of things, this homogeneity; this source of perfecting the civilization of separate communities; and unite under our government the greatest variety of antagonisms which ever existed in any government? Manifestly not...the federal government was given control over such subjects as were purely national and homogeneous in their very nature, such as peace and war, commerce between the states and with foreign nations and the common defense against foreign nations."

The same argument was advanced by Wigfall, in refuting the irrepressible conflict idea of Seward. No people would have formed a union, in which conflict would become irrepressible; the idea of a consolidated government involved the corollary of irrepressible conflict, because all the states were not homogeneous in outlook; therefore this was not a consolidated government..."the supposition that we are one people, have a national government...this is the fatal error." 19

That the states retained their sovereign powers was the premise from which the Fire-Eaters argued in deciding the status of slave property in the territories. The clash in Kansas which did so much to embitter relations between the northern and southern sections centred around the existence of slavery in that state. Could slaveholders take their slaves into Kansas? Were they entitled to have their slave property protected there? Did only a
state, through its convention, have the power to decide what could and what could not be property? All these questions the Fire-Eaters answered affirmatively.

The southerners founded these answers on their claim that territorial legislatures did not possess sovereign authority. Only states possessed sovereignty and therefore the representatives of territories could only exercise sovereign powers when they met as a convention to set up a state, with rights and privileges equal to all other states. Congress itself did not have power to decide what did or did not constitute property, and if this power did not reside in congress, it certainly could not reside in those instruments which, under congressional authority, governed the territories. And a further proof that the territories were not sovereign was advanced by Brown who argued that if a territory was sovereign and yet, not being a state, was outside the Union, then it could treat with the other states as a sovereign power. What, he asked, would be the situation "if a territory should want to attach itself to Great Britain?" The absurdity of such a situation was evidence that territories were not sovereign.

But if the territories did not possess sovereignty over themselves, in whom did this power reside? Having decided that the states alone could exercise the powers reserved to sovereignty, the Fire-Eaters argued that ultimately this sovereignty over the territories inhered in the States. But this appeared to conflict with the provision in the constitution that

"the congress shall have power to dispose of and make all needful rules and regulations"
respecting the territory or other property belonging to the United States,"

This led Brown to suggest that congress held power over the territories in trust for the states. Sovereignty in the territories was therefore in abeyance, held by the instrument of all the states until the territories were admitted into the Union as states. Therefore no decisions on questions requiring the authority of a sovereign could be made for the territories either by congress or by its instruments, the territorial legislatures.  

But if the territorial legislatures did not possess sovereign powers, a number of conclusions followed. No territorial legislature could pass laws as to what constituted property. For "the only institution that can establish or destroy property is the power which makes the government," in this instance the constituent assembly which forms the state. Only when the people of a territory had formed it into a sovereign state could they restrict property ownership.  

But if neither the territorial legislatures nor congress could decide what constituted property, and if a territory belonged equally to all the states, then the territorial legislatures had a duty to protect whatever any of the states considered to be property. And if a territorial legislature failed in its duty to protect property, the task of effecting this protection devolved upon congress. Iverson stated that congress had an implied power to protect slavery in the territories, a power derived from its power to govern them, and Clay agreed that congress had a duty to protect, in areas under its control,
property defined as such in the constitution. Brown quoted the Dred Scott decision in support of the southern contention that no discrimination could be made between different types of property.

Under pressure from Senator Bugh of Ohio who claimed that such discrimination could be and had been allowed, quoting discrimination against liquor property as an example, Brown admitted that the territorial legislatures could regulate property for the public safety and morals, but he insisted on the distinction between regulating and excluding property.

The Fire-Eaters' claim that if the territorial legislatures refused protection to slave property, congress should provide it, appeared to conflict with the views they had earlier expressed favouring congressional non-intervention, views enunciated to resist the passage of the Wilmot proviso. Clay, reconciling these apparently inconsistent attitudes claimed that while congress could neither establish nor prohibit slavery in the territories—the doctrine of non-intervention—it still had the duty of protecting there, property rights guaranteed by the constitution. Yulee agreed that congressional non-intervention was the true doctrine if it meant that congress could not set up or abolish property rights, but could only protect what the constitution established. It was therefore a false doctrine if it involved an implicit denial of slavery.

All these arguments led to the same conclusion. Because the right to decide what constituted property was a sovereign right, therefore it belonged only to the states, and not to congress or
to the territorial legislatures. And because the territories belonged equally to all the states, either they, or their master congress, had to protect whatever any state considered to be property.

But if sovereignty resided in the states, the question of the position of the federal government presented itself. Here again the Fire-Eaters were in general agreement. Turnbull described the federal government as a

"great trustee, under an irrevocable power of attorney to perform certain duties and to execute certain trusts prescribed to it by the states... the power of the federal government is a delegated power, and all delegated power we must admit is a trust."

Bryan claimed that the "federal government is therefore not a sovereignty, but the agent of a community of these sovereignties," while Debow wrote that the states delegated to the agency they created (the general government) the exercise of certain sovereign powers, and he drew a distinction between the delegating and surrendering of such powers, actions "essentially dissimilar."

The federal government occupied only a subordinate position, and whether defined as an agent or a trustee, could in either case, do only what the states allowed it to do within the area of the delegated powers.

After they had decided that ultimate sovereignty resided in the separate states alone, the Fire-Eaters were then concerned to decide exactly where in the states the actual supreme power rested. On this issue they achieved unanimity. Turnbull asserted

"it is only when the people are assembled in their conventions that they are exercising their utmost power of sovereignty. At no other time do they wholly act in their sovereign capacity; for it is then, that
they can take away what they before gave
and give up what they had previously retained."\(^{35}\)

Rhett, pleading in the "test oath" test case trials in South
Carolina in 1834, presented the theory of "supreme, absolute,
indivisible sovereignty which could be found only in the
people of the several states acting in convention assembled."\(^{36}\)

Quitman drew a distinction between state governments, which do
not possess the "high sovereign power," which are "merely the
agents through which the sovereign power is exercised and have
not that high attribute of themselves," and the states, which are

"separate political existences, each retaining
within itself the entirety of its political
sovereignty...exercising their highest
sovereign power only in convention, or such
other mode as their constitution or organic law
shall prescribe."\(^{37}\)

Yancey was vehement in his proclamation of the absolute powers
of the state convention:

"When that ordinance (of secession) shall be passed,
even if it be by the meagre majority of one, it
will represent the fullness and the power, and
the majesty of the sovereign people of Alabama...
the state is a unit in its sovereignty; the
people of the state constitutes a unit in
allegiance to its high decrees...if there shall be
found any who shall dare to oppose it...and dare
array themselves against the state...they will
become traitors and will be dealt with as such."\(^{38}\)

Later in this convention, protesting against a proposal to submit
the secession ordinance to ratification by a popular vote of the
people of Alabama, Yancey affirmed that the convention was not
only all powerful in its decisions over the people, it was itself the
people:

"it seems to me that the idea that there is
a difference between the people and the
delegate is an error...the people are here
in the persons of their deputies...all our
acts are supreme, without ratification, because
they are the acts of the people acting in
their sovereign capacity. As a policy submission of this ordinance to a popular vote is wrong. 39

It followed that if the states were sovereign, they must preserve all the powers necessary to the retention and exercise of that sovereignty. Opinions differed as to what these powers were, and how wide they needed to be, for whenever the Fire-eaters thought that the federal government was over-stepping its allotted bounds, they protested that the sovereign rights of the states were imperilled and urged the states to insist on the retention of these rights.

The first of these was complete control over their own territory, and this issue was raised when the federal government engaged in dispute with Texas over her boundaries. Seddon, arguing against the presidential message, that the proposed action of Texas for the establishment of her jurisdiction over territory claimed by the United States would be opposed by the force of the federal government, said that he wholly denied that power claimed by the executive to coerce the people of a state acting under its authority, and that such a power was not granted in the constitution to the executive:

"where then is the grant, express or implied of the power to this government to coerce a state? There is none whatever, either by veto, by judicial process, or by force? 40

Mason, discussing the proposition before the Senate for a suit to be brought by the United States against Texas, in order to settle its boundaries, denied that the United States could decide the states' boundaries without their consent: -
By what authority can we legislate to go behind the act of Texas, and inquire into her boundary line? How can we do this without denying in toto the right of the states, the members of this confederacy, to determine upon their own boundaries?41

Guiteau also declared his support for Texas, if she should resist:

"Will she, at any price, surrender a portion of her sovereignty, and especially under duress, which she is well able to resist? I hope not. Her title is indisputable... so soon as I shall be satisfied that a collision of arms is probable, I will convene the legislature on the shortest possible notice, and urge it to adopt measures to aid our sister state in the maintenance of her sovereignty against federal usurpation."42

But the most sweeping protest against federal control over public territory came from Wigfall, in his opposition to a homestead act. He argued that in creating new states, the fathers created a solecism, an imperium in imperio. They admitted the inhabitants of a territory to become a people, to establish a form of government, and to be confederated with them. But by keeping the eminent domain in its own hands, the federal government retained a power which robbed new states of their sovereignty.

"While this government continues to administer the public lands and control the sales of them, I say that the states of the Union have lost their autonomy; they have lost the right of self government."43

Wigfall accordingly proposed that the public lands should be disposed of to the states in which they lay, so that the states would be enabled to control the conditions of settlement within their territory, a power essential to true sovereignty.

In this context Wigfall was using exactly the same argument
which he resisted most violently when it was used in favour of the federal government, the doctrine of broad construction, of "necessary and proper" powers. No-one doubted that congress had the right to exercise control over public lands in the territories. As Brown, who supported the homestead bill in 1852, a support which grew naturally out of his democratic leanings, remarked

"Looking at the unlimited authority given by the constitution to dispose of the territory as property, I am free to confess that my mind... is free from any shadow of doubt as to the power (of congress over public lands)... the power to dispose of the public lands is just as clear as the power to declare war, and it is quite as unlimited."44

But this did not deter Wigfall. While he was prepared to resist the grant of additional powers to the federal government on the ground that they were not given in the constitution, whether or no such powers were necessary for the federal government to function efficiently, he was equally prepared to urge that the states be granted rights, given by the constitution to the federal government, if those rights seemed to be necessary for the states to function efficiently as sovereign, independent powers.

The authority to decide what constituted property was also claimed as an essential prerogative of sovereignty. Reuben Davis protested against congressional intervention in the "dynastical struggle between the two antagonistical systems of labour." He asserted that "the question of what shall and what shall not be property is one for the decision of sovereignty" and must therefore be left to the people of the several states to decide for themselves.45

Another power considered essential to the sovereignty of the
states was their control over the suffrage, and the Fire-Eaters claimed that this authority must be preserved by them. Brown, discussing the entry of Minnesota into the Union, said that although he was personally opposed to the suffrage provisions of the state, he would insist on their being upheld: -

"Congress has no authority to regulate the right of suffrage in any manner, shape or form within the limits of a state and if it had, I should protest that the last vestiges of states' rights had been surrendered...if this federal government may go within the limits of this state and determine who shall vote and who shall not, then the rights of this state become as sounding brass and tinkling cymbal...for instance, if congress should have the right to say who shall vote in the state of Tennessee, some of our Republican friends would be very willing either that the owners of slaves should not vote or that the vote of the slave should be equal to the vote of the master."

The sovereign rights of the states were proclaimed by Quitman when the question arose of the extension of the laws of Mississippi over the Indian tribes within its limits. In a letter to Claiborne he wrote: -

"Congress may regulate commerce with the Indians...the federal government may treat with an individual or a company within the limits of a state, but that does not release them from their allegiance to the state, nor from their obligation to its support...the idea of two municipal authorities in the same territory is absurd and irrational," therefore the state must retain its sovereign right to "tax and legislate for all persons within its limits."

Quitman was himself the central figure in another incident which raised the question of what rights the state must preserve in order to retain its sovereign powers. The Grand Jury of the
United States court at New Orleans found a bill against General Quitman for setting on foot the invasion of Cuba, and thus contravening the neutrality laws. The question arose could the Governor of a sovereign state be carried away to another state by the general government to answer a criminal charge. Quitman was at first disposed to resist on the grounds that if such a power rested with the federal government, the sovereignty of the states was lost, for the federal government could remove from office any state officials who resisted federal usurpations. The Hon. Jacob Thompson, writing to Quitman, urged him to resist:—

"...if a grand jury, at the instance of the United States could find an indictment against the governor of a state and arrest him...they can refuse bail, they can, without trial, take him away from his duty...and leave the state without a chief executive. This is an absurdity. The consequence of the power claimed annihilates sovereignty, and soon we may expect to see governors of states like Roman satraps, brought to the capitol in chains, if the power claimed is tamely submitted to."

Holt urged Quitman to resist. On the other hand, if state officials could defy the federal judiciary on the grounds that their retention in office was essential to the preservation of state sovereignty, then there might be thousands of people, all over the Union, who could break federal laws with impunity. In the event, Quitman resigned his office of Governor, and appeared before the federal court. There seems to be little doubt but that he was right to do so, for the right of habeas corpus is guaranteed in the constitution, and if this is lost, there seems little reason to believe that constitutional and legal arguments will any longer possess force.
Being sovereign, the states had to resist any attempt of the federal government, or the other states, to trespass on their sovereignty. Wigfall, holding this point of view, warned the northern states against their attempts to interfere with the domestic institutions of their partners in the Union:

"How long could the states hold together if the people of one section were to come to the conclusion that their institutions were better than those of the other, and straightaway set about subverting the institutions of the other?"

And Rauben Davis stated that the states, having created the federal government, stood between it and its citizens, and must prevent the federal government from interfering with the laws of property which obtained in the several states.

Guizman, moved to such considerations by his own case, wrote to Rhett that

"this prosecution has led me to reflect much upon the dangerous powers granted by congress to the district and circuit courts. I favour the entire abolition of both circuit and district courts, or the confining their jurisdiction to the trial of causes connected with the collection of the revenue."

He also advocated the "limitation of office of the federal judges, and their election by the people," to prevent the federal government from exerting too much power over the people of the states through its judicial branch.

Their attitude to the relations which held between the states and the federal government, and particularly their belief in the sovereignty of the several states led the Fire-Eaters to draw further conclusions.

Afraid as they were of the tendencies towards centralisation, they thought much of changing the organisation of government, to
defend the interests of their sections. But they insisted that such changes must be made by the states, and not by the national government, or national political organisations. Shett told the Senate that he despaired of reforming the government by the central government itself:

"The constitution can never be brought back to its original principles by the action of the central government here. It is the aggressive majority here which carries the aggressive policy and measures into action. There is no possible way to get an amendment of the constitution or distinct guarantees enforcing it, except by checking the sectional power through the states... the minority states asserting their sovereignty and arresting the usurpations of the majority."

A similar reliance on the states, a minority of the states if need be, was displayed by Turnbull in words which anticipated the later, and more detailed suggestions of Calhoun. He reminded his readers that if an object of general and primary interest should appear for which the constitution had not provided, the constitution had itself provided the means by which it might be accomplished—constitutional amendment. And

"If this assent of three-fourths of the state legislatures for this purpose cannot be obtained, it would prove that the power ought not to be exercised."

It is for the happiness of the people of the states that the federal government is ordained, and not for its own sake..."and the people are the best judges, whether any new contemplated measure will, or will not augment their happiness."57

If changes in or amendments to the government were to be decided on by the states, and not by the federal government, the Fire-Eaters were equally determined that the states were not to
be subject to the decisions of national parties. Brown asserted that "national parties and national conventions have nothing to do with state policy, and have no right to instruct a state."\(^{58}\)

while Rhett's faith in the Democratic party as the saviour of the South had been killed in 1844.\(^{59}\)

A further corollary which the Fire-Eaters drew from their doctrine that the states were sovereign was that their allegiance was due to their state alone, and not to any other power. Rhett asserted that allegiance to the general government was merely "a conditional allegiance and dissoluble, while that to the state was natural allegiance which could not be abrogated."\(^{60}\)

Again, in the "test oath" trials, he claimed that

"to South Carolina as a sovereign state allegiance was due...no allegiance being due to the general government, the oaths required by congress of numerous officers were 'foully unconstitutional.'"\(^{61}\)

Yancey explained that he had stopped agitating for secession when the people of his state declined to support him in 1851.

"From that day to this I have urged no measure of dissolution, but I have bowed in submission to the will of the state, to which I owe my allegiance."\(^{52}\)

And he said further

"Whatever course Alabama may take, that course I shall be bound by as a citizen...I shall acquiesce in all that my state may decide to do."\(^{53}\)

Brown justified his sudden conversion to the cause of unionism after 1851 by the same argument that he owed allegiance to his state, and was bound to do as she decided, but in his case it seems more likely that he had discovered that the better part of valour was discretion.
Wigfall, as usual, was blunt. He said in the Senate, "I owe my allegiance to the state which I here represent; I do not owe my allegiance to this government." In addition to being blunt, Wigfall on this issue was also consistent, and he justified his declaration on allegiance by reference to one of his favourite doctrines:

"there is no such nation as the people of America; there are no such people as the people of America; there are no citizens of any such single political community; a man could not be a citizen of the United States for the simple reason that it is impossible for one to be a citizen of a country that has no existence. The conclusion is perfectly satisfactory to me, however absurd it may seem to others."

That the Fire-Eaters regarded the separate states as sovereign powers, allied together by treaty, is further shown by the way in which they referred to them. Over and over again they spoke of inter-state relations as they would have spoken of relations between foreign nations. Wigfall, arguing that it was up to the states to restrain their citizens from hostile action against the other states said "there is no principle of international law better settled than that every state is responsible for the conduct of its citizens," and he justified this remark in another Senate speech:

"If you admit that the individuals who live between the two oceans and between the Gulf and the lakes do not compose a single political community...but compose separate, distinct, political communities...then at once you introduce the law of nations as the rule for construing...that compact binding between them.""
course ought to be adopted as would be proper between one friendly nation and another," while Bryan, arguing the pros and cons of secession, quoted Vattel as an authority to be followed.

Hett advocated that the same treatment be meted out to the northern states who refused to carry out their obligations in pursuance of the fugitive slave law, as "we have presented to Great Britain in the only two wars we have had with her." He also said that the northern states must agree to do "what the law of nations required of friendly peoples-restrain their citizens from plotting against the institutions of their 'allies'". Moreover Hett considered that senators were not so much agents of the federal government as ambassadors of their sovereign states:

"The duties of a senator are not confined to the business or interests of this government... a senator stands here a sort of ambassador, to superintend and carry out an agency which his state has in common with other states."

As the federal government grew stronger, its claims increased, and the Fire-Eaters were faced by the problem of deciding how disputes between the central government and the separate states as to their respective powers, should be settled. Their acceptance of state sovereignty and their denial of sovereignty to the federal government dictated the position which they adopted. They affirmed that in all cases of dispute, the decision must rest with the states, and that the central government, mere agency that it was, could not make decisions against the will of its masters. Turnbull asked "was it ever heard that the parties who create the trust are not to see that the purposes of the trust
and he objected that

"there is an inconsistency in admitting that the people of the states have certain acknowledged rights under the constitution, which are guaranteed to them, and yet that they are not to be regarded as having the right to complain of the usurpations of the government." 74

while for the states to

"consent that the United States tribunals should decide whether the federal government had or had not usurped its powers... would involve an absurdity. It is to make a party the sole judge in its own cause." 75

Bryan pointed out that "this government is not based on a compact to which it was a party. It was NOT PARTY to the compact. Being no party to the compact, it has no power OVER IT." 76

The anti-states' rights party claimed that the constitution had named the Supreme Court as arbitrator in disputed state-federal relations. Turnbull objected to such arbitration of the Supreme Court on the grounds that "it is the general government that appoints them, and to the government they must look for their promotion and their honour," 77 and that it was therefore inevitable that the judges would be prejudiced in favour of their masters.

Yancey was more open in admitting that the South refused to allow disputed questions of state-federal relations to be settled by the Supreme Court because they were afraid that the numerical power which was giving the executive and the legislature to northern control, would soon place the federal judiciary in the same hands. He described the proposal for Supreme Court decision as

"this monstrous doctrine...a revival of the
federalism of John Adams' day... when or where, in what clause of the constitution did the sovereign states... propose that any other but their own judgment should determine whether their reserved rights had been invaded and the mode and manner of redress for the grievance?... let us look forward a few years... when the North... shall control both the legislative and executive departments of the government... and the judiciary too will be composed of men sworn under the third degree to maintain the Union as the paramount political good."

Thus on grounds of both constitutionalism and expediency Yancey rejected the idea of court decision.

Quitman said that the states could not be supposed to have left such important decisions as those which involved the political rights of the states to be judged by one of the parties to the dispute, an agency of the federal government:

"It is absurd to suppose that the states, in the formation of the constitution, jealous of their great essential political rights, would have left them at the mercy of that very power against the encroachment of which they were erecting a barrier. It is yet more absurd to suppose that they would have left them, by construction, to one department of the government, and that department, both from its mode of appointment and its tenure of office, the least responsible to the people."

Seddon used arguments strictly drawn from the constitution to show that the Supreme Court did not have the power to decide between the states and the federal government. In the first place, he said, the judicial powers assigned to the court were specific, involving limitations and restrictions, and if the Court was entitled to construe its own powers, there would be no authority to enforce those limitations imposed on it by the
In the second place Seddon affirmed that the court's whole function is confined to "Expounding and applying what is law to cases in law and equity between litigant parties," and this did not include power to decide on questions of constitutionality.

But finally the Fire-Eaters' arguments reduced to the same point, that the states were sovereign powers, and one of the essential qualities of sovereignty is that of judging on its powers and maintaining that judgement. In fact a sovereign state can submit to no limitations other than those which it chooses to impose on itself. Therefore no external agency could decide on the limitations of state power, and in cases of disagreement between the states and their agent, the federal government, the states, in their capacity as sovereign political entities, had to decide whether or not they had chosen to give up the powers in question. The Fire-Eaters fully supported the doctrine of nullification, without which, it seemed to them, the states would no longer retain their sovereignty.

Behind the nullification question lay an even graver issue, that of secession. For if the states decided that their interests would be better served by leaving the Union, than by remaining in it, was there any reason why they could not do so?

The Fire-Eaters were in full agreement, not only that the southern states ought to secede, but that they had a full right to do so, and that there was no way by which they could be prevented from exercising their sovereign right to determine their own destiny. But while they agreed on the expediency of the move, and
on its political rectitude, they adduced a number of different and distinct theories to justify the action.

The first theory to justify secession was both historical and constitutional, based on the principle that any party could withdraw from a compact if reservations to that effect were made at the time of its inception. This theory was advanced by Senator Wigfall, who pointed out that Virginia had ratified the constitution with the reservation that

"the powers granted under the constitution, may be resumed by them (the people of Virginia) whenever the same shall be perverted to their injury or oppression,"

while the ratification of New York and Rhode Island had contained the provision that "the powers of government may be resumed by the people whenever it shall become necessary to their happiness."

These provisions, maintained Wigfall, inured not only to the benefit of the states which inserted them, but to all the other parties who signed the federal compact, for

"when parties come to sign an agreement, if any one of them specifies any additional stipulation, and is permitted to sign with that stipulation, it is as much a part of the compact as if it were written in the body of it; and it inures, not only to his benefit, but to the benefit of every individual who had either previously signed or who subsequently signed it." 

A second theory to justify secession, based on the tenth amendment to the constitution, asserted that because the states had not surrendered the power of seceding from the Union, therefore they reserved the right to do so. Fettt said that

"the right of secession is not a right derived from the constitution of the United States. The
right to hold legislative assemblies and of taxing our people and all the other powers connected with a sovereign government existed before the constitution and are not granted by it. The right to secede, like all these powers, is a reserved right. It is a necessary incident connected with the reserved sovereignty of the states."82

Another justification of secession was similar, but not identical with the position maintained by Pett; this was that the right to secede is an inherent right of sovereignty, and is accordingly retained by the sovereign states. Bryan wrote, paraphrasing the argument which a state might use, if states could speak:

"I am a SOVEREIGN...you must desist from this undertaking, or I must abrogate my contract with you. You will not desist? Then we are henceforth no longer connected. I cannot make you desist, but I can return to the state I was in before I bargained with you. I can secede."83

Quitman claimed that "the powers delegated by the states may be resumed by each sovereign at pleasure," but he admitted that there existed a moral obligation on the part of each not to resume the powers delegated in the federal compact, "unless the compact be violated by the other parties."84

This would appear to be a reference to yet another argument for secession, that a compact broken by one party ceases to be binding on the other signatories. The South held that the northern states had failed to keep their side of the bargain, and referred, among other things, to the personal liberty laws, passed by almost all the northern states, in violation of the constitution, and the compromise law of 1850. As the northern states had broken
the compact, the South was no longer bound to adhere to it, and could therefore rightfully secede.

Wigfall also employed the theory that the right to secede inhered in the states as part of their sovereign rights, but he combined his argument to this effect, with a reference to one of his favourite contentions, that the states of the Union stood to each other in the relation of foreign states, and that the constitutional compact was, in reality, a treaty. This view differs from all the other justifications of secession in that it derives from an analysis of the constitutional compact as a concept of international law, whereas the other opinions on secession were based on an interpretation of the compact as a business partnership concept. He compared the compact with any treaty made by the United States with a foreign nation:

"We (the United States) can declare war on any foreign power; we can break any treaty with any foreign power; there is no one to prevent it. When it is broken, all citizens of the United States are released from any obligation to obey it...I say then, that a state has a right, with or without cause, to withdraw (from the Union)."

Wigfall did not bother to discover reasons for secession. His attitude was that a state would not withdraw unless it had reason to do so, an obvious application of political commonsense, but that when it did decide to withdraw from the Union, it was not obliged to explain its reasons for doing so, or to justify them.

Another justification of secession, advanced by Senator Iverson of Georgia, was based on the fundamental Lockian right
of revolution. He admitted that the states might not possess any constitutional or legal right to secede:

"I do not place the right of a state to secede from the Union on constitutional grounds. I admit that the constitution has not granted that power to a state. It is exceedingly doubtful even whether the right has been reserved. Certainly it has not been reserved in express terms...but while a state has no power, under the constitution, conferred upon it to secede from the federal government or from the Union, each state has the right of revolution, which all admit. Whenever the burdens of the government under which it acts become so onerous that it cannot bear them, or if anticipated evil shall be so great, that the state believes that it would be better off out of the Union...than in it, then that state, like all people upon earth, has the right to exercise the great, fundamental principle of self-preservation and go out of the Union."[7]

In other words as there was no arbiter acceptable to both sides, to decide questions at issue between the states and the central government, the states had to retain the right to secede to preserve the interests of their people. This argument of Iverson's was identical in spirit with that advanced by Jefferson in the Declaration of Independence.

Nevertheless Iverson's declaration that the right to secede was founded on the right of self-preservation, and not on legal grounds, and was merely the right of revolution, was bitterly assailed by other Fire-Eaters. Yancey, in characteristic language, declared:

"The common rights of resistance to wrong which belong to the worm-those are not the rights which were meant to be secured by our fathers in the Declaration of Independence, when they cut themselves loose from despotism, and the despotic ties of the old world. The serf of
Russia has got the right of revolution. The hog has got the right to resist if you try to put a knife to his throat. (Incred and laughter). The right of revolution is only a poor serf's right. It is no right at all. It is only the last expiring throes of an oppressed nationality." (Tumultuous cheering)88

Rhett, with more moderation of expression, though hardly of thought, also attacked Iverson's interpretation of the right of secession:—

"I have heard of secession being a revolutionary right...but in my opinion such a pretended right is just no right at all—is mere nonsense... a right to be a right must carry with it the acquiescence of all persons to its exercise. I cannot have a right to do a thing, and another have a right to prevent me from doing it."89

Either a state can secede, and have the right not to be coerced, in which case the states possess a right of secession, and not a revolutionary right, or the federal government retains the right to coerce it, in which case the state does not possess any right of secession at all.

Other secessionists claimed that it was empire, not secession which involved disintegration. For secession preserves the atom, the unit, the state, and when the state remains free and prosperous and happy, in the nature of things it will seek union, and disintegration becomes possible only when sovereign states have been consolidated into an empire destined to be broken into fragments by the contention of forces generated within itself.90

Another debate connected with the right of secession centred around the right of the federal government to coerce seceding states, to prevent secession by force. This question divided into two parts. Was coercion a practical policy, and whether or not it
was practicable, did the federal government have the right to coerce a seceding state?

Quitman believed that coercion of a seceding state was not a practical policy:

"As this right of secession exists in the states, it would be as absurd on the part of the federal government to claim the right of using force to bring back a seceding state as to attempt by force to bring a neighbouring state, Mexico, for instance, into the Union."91

Bryan held a similar opinion:

"Then comes the cry of force, that most ridiculous of all absurdities. Force to bind a union of REPUBLICS? Why, bayonets might as well be used to quell the waters of the sea. A union of states, in these days, is founded in a common interest, common sympathy, common destiny, common rights, powers and privileges; not in force, not in soldiers, not in wars, not in VICTORIES."92

Governor Moore of Alabama wrote:

"If a state withdraws from the Union, the federal government has no power, under the constitution, to use the military force against her, for there is no law to enforce the submission of a sovereign state, nor would such a withdrawal be either an insurrection or an invasion."93

the only actions, according to the constitution, which entitle the federal government to employ armed force.

Iverson also was inclined to agree that the federal government had no right to coerce a seceding state. Agreeing with President Buchanan's message on this issue, he said:

"And while states may not have the constitutional right to secede from the Union, the president may not be wrong when he says the federal government has no power under the constitution to compel the state to come back into the Union. It may be a casus omisus in the constitution; but I should like to know where the power exists in the constitution of the United States to authorize the federal government to coerce a sovereign state. It does not exist in terms at any rate in the constitution."94
The most practical view however was taken by Wigfall, with his comparison of the situation to that which subsisted between foreign nations. A nation may break a treaty or go to war with another nation, as and when she sees fit, with or without cause; what the other nation does in return is entirely up to her. So to Wigfall the secession question was essentially a practical one. He justified it on legal grounds, but he realised that if the states decided to secede, they could and would simply do so. In return the federal government could and would do exactly what it thought its best interests required.

"I say then a state has a right, with or without cause to withdraw; that this government can, with or without cause, declare war. I say when a state has withdrawn, she is out of the Union, and her citizens cease to owe obedience to the laws of this government; and when this government has declared war, with or without cause, that war exists."95

In the last analysis, it is clear that the Fire-Eaters were agreed in regarding the states, as separate entities, as superior to their instrument, the federal government. This superiority involved, as a necessary corollary, the capacity to resume those powers which the states had delegated to the federal government. As the states retained all powers not delegated, and possessed authority to resume the delegated powers, the relationship between them and the federal government, as the Fire-Eaters saw it, was clear. Whenever there was disagreement, the final decision had to rest with the states.
Chapter II.

Notes.


5. Appendix to the Congressional Globe, 34th. cong., 3rd. sess., p. 120.


12. R.J. Turnbull, (Brutus), The Crisis; or essays on the usurpations of the federal government (Charleston, 1827), p. 166.

13. Appendix to the Congressional Globe, 32nd. cong., 1st. sess., p. 47.


19. Congressional Globe, 35th. cong., 2nd. sess., p. 73.

20. Appendix to the Congressional Globe, 33rd. cong., 1st. sess., p. 231.


23. Speech by Representative Reuben Davis, Congressional Globe, 35th.cong.,1st.sess.,p.856.
25. Speech by Representative Good, Appendix to the Congressional Globe, 33rd.cong.,1st.sess.,p.907.
34. Debow's Review, XXV, 129.
36. Laura A. White, Robert Barnwell Rhett, p.29.
37. Appendix to the Congressional Globe, 34th.cong.,3rd.sess.,p.120.
41. Appendix to the Congressional Globe, 31st.cong.,1st.sess.,p.1434.
42. Letter to General Henderson, J.F.H.Claiborne, Life and Correspondence of John A. Quitman,II,42.
43. Congressional Globe, 36th.cong.,1st.sess.,p.1659.
44. Appendix to the Congressional Globe, 32nd.cong.,1st.sess.,p.511.
47. Letter from Governor Quitman to Claiborne, J.F.H. Claiborne, op. cit., I, 163.
48. This argument is advanced in J.F.H. Claiborne, op. cit., II, 79-83.
51. This point of view is advanced in J. Hodgson, op. cit., p. 319.
52. Congressional Globe, 36th congr., 2nd sess., p. 1398.
53. Appendix to the Congressional Globe, 35th congr., 2nd sess., p. 67.
55. Article in the New Orleans Delta, J.F.H. Claiborne, op. cit., II, 265. It is interesting to observe that in a letter to the electors of Adams county in 1832, J.F.H. Claiborne, op. cit., II, 117, Quitman had opposed the popular election of judges, on the grounds that such a method of appointment would not place the best men on the bench. He later advocated the method of popular election of federal judges, not presumably because he approved of the method nor as, but merely as one device for restricting the powers of the central government.
56. Appendix to the Congressional Globe, 32nd congr., 1st sess., p. 62.
58. Appendix to the Congressional Globe, 32nd congr., 1st sess., p. 358.
59. Laura A. White, op. cit., p. 47.
60. Laura A. White, op. cit., p. 22.
61. Laura A. White, op. cit., p. 49.
62. Speech at the secession convention at Richmond, J. Hodgson, op. cit., p. 422.
64. Congressional Globe, 36th congr., 2nd sess., p. 1400.
68. R.J. Turnbull, op. cit., p. 110.
70. Appendix to the Congressional Globe, 32nd cong.,1st sess., p.47.
72. Appendix to the Congressional Globe, 32nd cong.,1st sess., p.63.
79. Appendix to the Congressional Globe, 34th cong., 3rd sess., p.121.
82. Appendix to the Congressional Globe, 32nd cong., 1st sess., p.47.
85. This distinction is also drawn by J.T. Carpenter, *The South as a Conscious Minority* (N.Y., 1930), p.207.
86. Congressional Globe, 36th cong., 2nd sess., p.12.
87. Congressional Globe, 36th cong., 2nd sess., p.11.
89. Appendix to the Congressional Globe, 32nd cong., 1st sess., p.48.
94. Congressional Globe, 36th Cong., 2nd sess., p. 11.
CHAPTER III,
CONSOLIDATED GOVERNMENT.

The same reasons which led the South to fear the growth of federal power in relation to the states, led it to fear any absolute increase in that power, for southerners realised that any such absolute growth would redound to their disadvantage in two ways. As in the case of increased federal influence vis-a-vis the states, a growth of federal power meant a growth of northern power, for the North was coming increasingly to dominate the federal government, and the South was afraid not so much of what had happened as of what might well happen.

But it must also be remembered that the economic conditions of the different sections of the Union were so arranged that consolidated government, extended control over economic matters for example, would serve the North and West to the detriment of the South. It was the manufacturing and commercial interests of the North which stood to gain most from tariffs, while the West and North-West stood to gain most from internal improvements, conducted under federal auspices and with federal assistance; homestead acts would mean the rapid peopling of the western areas with free-soil settlers. In fact, the South with an economic system out of touch with developing trends, and unable to compete with the fast-moving North, found its only hope in a continuing status quo. The rapid economic development of the continent, and most particularly the hugh improvements in transport
revolutionized the balance of sectional power, and it did so wholly to the advantage of the North and West. So the South was driven inevitably to resist any suggestions for hastening this economic revolution, and strove to keep the central government from using its power to aid the industrial juggernaut. While southern thinkers did all they could to stir their section into action to develop their own resources in order to compete with the North, they never suggested that such development be carried out by the federal government. For they knew, by bitter experience, that if the central government entered the economic lists, the North would capture the best part of the prizes. The South accordingly, with full consistency, urged that economic intervention by government should be state intervention. This theory, in full accordance with their arguments drawn from states' rights, meant that at least the rapidly developing northern section would have to rely on itself, and would not be able to plunder the South for its own advantage, as southerners accused it of having done.

The Fire-Eaters drew their first arguments against the growth of consolidated government from the constitution. Rhett explained that the United States, instead of following the example of other countries in being ruled by strong governments, were trying the experiment of a weak one

"fenced all round with the most careful limitations on its powers...these limitations can be preserved...only...by adhering to the plain letter of the constitution; and leaning in our constructions
whenever they must be made, against the
government in favour of those who made it,
and for whom it was made."1

They objected both to the stretching of the central govern-
ment's power and to the reasons advanced for doing so. The theory
of consolidated government rested on broad construction of the
ambiguous clauses in the constitution, and its advocates founded
most of their arguments on the opinion of Chief Justice Marshall
in McCulloch v Maryland that

"let the end be legitimate, let it be within the
scope of the constitution, and all means which
are appropriate, which are plainly adapted to
that end, which are not prohibited, but consist
with the letter and spirit of the constitution
are constitutional."2

This in turn depended to a considerable degree on the interpret-
ation of the "necessary and proper" clause as Hamilton had
interpreted it—"Necessary often means no more than needful,
requisite, incidental, useful, or conducive to."3

The dispute was an old one, dating back to the presidency
of Washington, but from the 1820s it became steadily more
vicious. The Fire-Eaters argued that the federal government
could only perform those duties imposed on it by the constitution,
that broad construction of those duties was inadmissible, and the
ensuing controversy involved all the doubtful provisions in the
constitution.

Keitt asserted that while the theory of the North that this
is a consolidated union of states "originates in the interest
and selfishness of the North" it rested upon "mere verbal criticism"
of the words with which the constitution began, and he presented a detailed argument to show that the Union under the constitution was different in degree only and not in kind from that which existed under the Articles of Confederation; that it was a "more perfect Union" only and not a "perfect Union" and that the argument for more government drawn from the belief that this was a consolidated government was accordingly invalidated.

Rhett discussed the power "to regulate commerce" granted in the constitution:

"One would suppose that here was what the logicians call a clear negative pregnant. The power being given to legislate on one of the three great departments of industry, and not on the other two, the inference would seem to be inevitable, that no power over the two branches omitted was intended to be conferred. Yet gentlemen rise up here and argue that...the power being given to regulate commerce...congress can therefore regulate both manufactures and agriculture. And what is the reason assigned? Why that commerce is intimately connected with manufactures...this is certainly true; but if it constitutes a just argument to empower congress to legislate in favour of manufactures, it makes the government omnipotent over all the varied interests of the country...for all branches of industry are intimately connected with commerce...such views fuse the whole constitution into a single clause."5

The most sustained and powerful criticism of the consolidated government theory was advanced by Turnbull in The Crisis, written in 1827 to rouse South Carolina to protest against the tariff laws, and responsible in no small degree for the nullification crisis which followed. These essays were at once a model of legal argument resting firmly on the constitution, and an incisive piece of
propaganda.

Turnbull contended that the federal government had been given power to do specific things, by a prescribed mode, and that if the prescribed mode does not "Exclude the power to promote it by a different or other mode, there is no truth in the law maxim, 'expressio unius est exclusio alterius." He denied the doctrine of the Supreme Court that "every power given to them (congress) was intended to be so sovereign that it necessarily carried with it every other appropriate power, which in the discretion of congress, it should regard as applicable to the end of such powers."

Had such been the case, he claimed, "there would not be found the useless provisions, with which, in such a view the constitution must be pronounced to abound." For instance the power to make war on foreign states would necessarily involve the power to raise armies and navies and thus there would have been no point in enumerating these powers. The fact was that "the sages did not intend the federal government to exercise any important power, as a means to other powers, which were not expressed in the enumeration." He denounced the use of the "general welfare" clause on the grounds that congress used it to "approach indirectly a subject for its legislation which it is admitted it has no power to approach directly contrary to that most excellent maxim of the law 'Cuando aliquid prohibetur fieri ex DIRECTO, prohibetur per OS LICUUM.'"

The Fire-Eaters further asserted that the constitution only allowed the federal government to do what the states could not
do separately, and that its actions must only involve those interests which the states possessed in common. Turnbull wrote that

"it is a government instituted expressly to do that to which each state is separately incompetent, to wit, the regulation of trade with foreign nations and between themselves, for their mutual benefit, and to the defense of all the states against a common enemy."

while Bhett explained to the Senate that

"the framers of the constitution proposed to give power to a general legislature only over those interests which were common and general to the whole confederacy."

Turnbull combined these qualifications in his remark that

"everything is national in its character over which by the terms of the constitution, the United States government can exercise exclusive sovereignty and NOTHING is national which the states may legitimately make the subject of their legislation."

Southerners protested against broad construction of the constitution, with its resultant grants of wide powers to congress, not only because they objected to broad construction per se, but also because they realised that the constitution was being stretched to cover policies which favoured the North. Fundamentally, the South's vehement opposition to consolidated government arose not from any abstract theory of government, but from a thoroughly practical realisation of what such developments entailed in the sectional battle. Yancey pointed out that

"the spirit of consolidation, over-riding the genius of our system and usurping the rights of the states and dominating in concerns outside of the federal jurisdiction brings to the surface those sectional antagonisms which naturally underlie great interests,
Turnbull claimed that it was not the purpose of the founders of the Union to transfer natural advantages from some states to others by means of government intervention; Goode of Virginia declared that other sections always cheated the South, while Senator Clay of Alabama, explaining his opposition to the homestead bill wrote:

"Our lands are generally poor; those of the North and West are generally rich. Settlers in southern states would thus receive a barren gift, compared with settlers in northern states. But sagacious self interest would prompt poor men, dependent on their manual labour for support to go north to the best lands. We would thus lose in population and the North would gain what we lost. Again the South pays at least three quarters of the duties of government, and we have to supply the deficiencies of a dollar in the treasury caused by giving a dollar's worth of land away; the South must pay 75% in taxes, while the North paid but 25% and yet gained more land, better land and more population.

A further southern objection to the economic policies of a sectional majority in Washington was expressed by W.R.H. Garnett in his pamphlet, The South and the Union:—

"In this government forcing system, the genial climate and luxuriant growth of the South are transported, beneath wintry skies, to the rocks of New England. The primal curse is partly obliterated for them by federal agency, and the command is changed into 'Thou shalt live by the sweat of the brow of the southern slaveholder.' The wages of southern labour and the profits of southern capital are swept northward by this current of federal taxation and disbursement as steadily and more swiftly than the Gulf stream bears the waters of our shores."
dictated by northern manufacturing interests. Tariffs and bounties all redounded to the benefit of the North, for the "favoured recipients of these bounties are all in one small section of the Union," while tariffs meant that the South paid more for the goods it needed, and was able to sell less of its produce abroad. Garnett said in congress that:

"the labour of all the rest of the Union is taxed for the almost exclusive emolument of New England and Pennsylvania...we have heard a great deal upon this floor and elsewhere of the oligarchy of three hundred and fifty thousand slaveholders. If that be an oligarchy what are these four thousand nine hundred manufacturing establishments, for whose benefit the whole revenue system of the government is regulated?"

Rhett, also discussing the taxing system, took higher and perhaps more flighty ground. He asserted that indirect taxation was the tool of despotism, for it meant that the people did not know what taxes they were paying. A fair system of taxation was vital to liberty, and for the people to remain truly free, they must be able to judge whether the taxes they paid were fairly imposed. But indirect taxation made such judgements impossible for the government adopted it to conceal the truth from the people. Moreover, he thought, arguing on the same grounds as Garnett, that:

"in addition to concealment in the collection of taxes by indirect taxation, we have had inequality in its exactions and expenditures...profligacy and waste, discontent and strife are its inevitable results...new powers must be assumed; and its('the government's') arm must be strengthened to suppress the murmurs and discontents which its injustice may excite. The road to consolidation in this government is through the money power."
they were paying under direct taxation, and

"regarded it as disgraceful and dishonourable that a fraud should be perpetrated upon the people by those appointed to protect their interests."18

Consistent in their opposition to the Whig, centralising programme, the Fire-Eaters supported the independent treasury system, and were firmly opposed to a national bank. Quitman favoured separating the government and the banks and proposed that the legislature should be absolutely prohibited from borrowing money or pledging the faith of the state for banking purposes.19 He stated explicitly:

"I am opposed to the establishment of a United States bank, or to the conversion of the national treasury, by ingenious modifications, into any other similar fiscal agent. The plan of collecting and disbursing the revenue by the simple machinery of the independent treasury seems to me best suited to the simplicity of our republican institutions, and best calculated to preserve honesty and purity in the administration of the public finances,"20

while peut opposed the national bank as part of his opposition to the entire Whig programme.21

The Fire-Eaters also opposed the appropriations allocated by the federal government. Brown objected on the grounds that they were unfairly distributed, accusing congress of not providing Mississippi with her fair share because her representatives did not approve of the principle which lay behind them:

"If you cannot appropriate money in my district out of respect for my constitutional opinions on the subject of these appropriations, then carry your respect a little further and quit taxing my constituents until I am satisfied that you are doing it according to the constitution."22

But generally the Fire-Eaters rested their case on principle rather than on immediate advantage, for they were consistent in opposing
high taxation and high expenditure. Senator Clay of Alabama for instance, "rampaged" against all subsidies, while Senator Mason of Virginia

"deplored the improvident waste of money which was promoting the 'unsettling, the loosening, the destroying of the fabric of the government itself; wasteful subsidies would debauch the morals of this people beyond recovery; eventually breaking down the confederate government or converting it into one of entire consolidation."24

During the presidency of Buchanan in particular, speculation and jobbery had reached such proportions that agitation against government spending could be justified as a campaign against dishonesty.

Complementary to the question of appropriations was that of internal improvements, and the Fire-Eaters were unanimous in their opposition to the growing disposition of the federal government to promote economic enterprises. As early as 1829 Rhett had introduced a resolution in the South Carolina legislature to oppose appropriations for internal improvements, particularly "any for the benefit of South Carolina or her citizens."25 Brown was not quite so consistent and sometimes evinced a desire to let his state have its dip into the pork barrel, but he fell back into the southern line with his protest against the Pacific railroad bill, on the ground that the

"federal government could not appropriate funds unless the military necessity was direct and absolute...leave your Pacific railroad alone, leave it to individual enterprise; let capital commence the road where it pleases to commence it, and construct it in its own way, and noiselessly and much more rapidly than by your interference, it will go on and go on to completion."26

Rhett was the most consistent of all the Fire-Eaters in his opposition to internal improvements. In the debate on the
Mississippi river and harbour bill, he refused to accept Calhoun's "discovery" that the Mississippi was a great inland sea, and voted against the bill. On this subject indeed, Rhett showed himself to be an out and out extremist, and "insisted that no appropriations at all for internal improvements were authorized by the constitution" and that the only proper method for congress to establish lighthouses and buoys and other such important undertakings was for it to authorise the states to levy tonnage duties for such purposes, while the same preference for state action was shown by Turnbull who wrote that the "business of internal improvements should be left to the states" a method that would be without "the possibility of objection."

The single most important dispute of a strictly economic nature between North and South was over the tariff. The Fire-Eaters opposed it for two reasons. They supported the classic position of the laissez-faire economists and paraded their arguments to show that protection to favour certain influential manufacturing interests operated to the detriment of the vast mass of the people, who had to pay higher prices than they would otherwise have done. This argument came straight from Adam Smith and Ricardo and owed nothing to the particular circumstances obtaining in America. Garnett, speaking on the tariff said

"I insist that...any change made...must be in the direction of free trade. I will not agree to a retrograde step toward protection," while Rhett described free trade theory as the

"theory of liberty...when gentlemen concede that the principles of free trade are just and right in themselves, they have granted everything I could desire."

Quitman flatly declared himself to be a "free-trade man, believing
that capital, industry, enterprise and intellect should be left as free as the air we breathe.\textsuperscript{31} From this point of view indeed the South supported free trade, and fought against tariffs simply as a factor in the traditional Jeffersonian theory of the best government being the least government.

But the Fire-Eaters resisted tariffs also as part of their sectional defense against northern encroachment. Protection, indirect taxation were devices aimed at achieving the benefit of the few at the expense of the many; the few were the northern manufacturers, and the many-while including all consumers of manufactured goods, subsidized by protection-were mostly in the South. It was because the tariff was the most effective instrument for favouring the majority North at the expense of the minority South, that the Fire-Eaters arraigned it as fiercely as they did.

To attack the tariff policy of the central government, Turnbull fell back on a legal argument which fitted in well with his states' rights doctrines. While national protection could not be imposed by congress unless it were a general interest for the whole Union, any sovereign state had the right to protect its industries if it wished to do so, provided that it was willing to pay the necessary price and not foist it off on to others, while preserving the benefits incurred for itself. The constitution allowed a state to impose protection, if it obtained the consent of congress to do so. This, said Turnbull, was quite as much as could be asked, for

"If Massachusetts is not content to have the full power to adopt the same measures which she could take were she sovereign and independent of the whole world, she had not right to complain."\textsuperscript{32}

The Fire-Eaters voiced further fears of what might result
from a continuance of consolidated government. They declared that one result of greater centralised power would be an increase in federal power, improperly exercised through patronage and the distribution of rewards to the faithful. Quitman said that:

"allured by the splendour of a government which dispenses fifty millions per annum and thirty thousand offices, few politicians are disposed to come to the aid of the Spartan band who are yet defending this last defile (of states' rights) against the hosts of consolidation."

Wigfall objected to the homestead act, because he did not want states to be built up on the patronage of this government, so that when they were admitted into the Union, their inhabitants would regard themselves as pensioners. It would be a "most unfortunate state of things if a people who were to administer one government should have a greater affection for another government than they had for their own."

Turnbull opposed more internal improvements because he felt that if citizens were "to look to Washington and not to Columbia for their honours, their preferment, or their employment...the general government will acquire by such means a moral power, that will set at naught all attempts in future to keep it within its limited sphere of action."

But if this argument has a modern ring, Quitman was even more in tune with one contemporary point of view when he stated that "we must strip the federal government of its power to prevent private enterprises from attempts to extend our institutions." For the Fire-Eaters must have realised that consolidated government was but the first step along the road leading to what we now call the welfare state, where the government organises and the people obey. What is never more prophetic than when he said in the Senate:-
"Instead of being dependent on the people-the masters-the matter has been reversed, and the people have been taught to be dependent on the government. They are too weak and silly to take care of themselves, and the government must therefore regulate and drill them into a fit state of prosperity."

From their objections to consolidated government on the basis of States' rights and sectional defense, the Fire-Eaters were led to at least a faint view of the most powerful of all arguments against strong government, that carried to excess, it involves the end of individual freedom, the complete subjection of personal choice to the decisions of those in control.

As the North grew relatively stronger in the Union, its demands increased and disputes over strictly economic questions took second place in importance—at least in the southern mind—to the struggle over slavery. And the slavery question was closely tied in with that of consolidated government, for the greater the powers of the central government, the greater would be its power to limit, and perhaps ultimately to abolish slavery. Southerners found themselves continually protesting against federal actions inimical to the existence of slavery, and these protests rested largely on a strict construction of the constitution.

Wigfall denied the validity of congress' action, prohibiting the slave trade in the District of Columbia. As congress did not possess the power to declare what was property and what was not, its duties were confined to protecting what the sovereign states declared to be property. Slaves were as much a form of property as land:

"if we were to provide by law that any man who offered his land for sale within the limits of this district should forfeit his title to it, I say there is no man on either side of this
chamber who would or could deny that we were exercising an authority which had never been invested in us."

But this was substantially what had been done in the case of slavery, and it was therefore unconstitutional.

The most surprising attack on congressional control over slavery came from Corliss and Rhett. Corliss, Calhoun's biographer and a vigorous defender of southern rights, wrote to Senator Hunter of Virginia that the states alone and not congress must be held responsible for the effective working of the fugitive slave law. "What power had congress to enforce the execution of its acts in this respect? None whatever."*40

Rhett attacked the fugitive slave law provisions in the compromise of 1850. He described the decision in Prigg v. Pennsylvania that the whole duty of fulfilling the article of the constitution in relation to the reclamation of fugitive slaves devolves upon the United States government as a "disastrous decision."

"No power is given to congress to legislate on these subjects of fugitive criminals and fugitive slaves...it will not be claimed that congress possesses the power to legislate on the subject of fugitive slaves as necessary and proper to carry out any expressly granted power...therefore congress has no such power."*41

This speech led Senator Clemmimg of Alabama to accuse Rhett of being an ally of the abolitionists, probably the most ironic incident in Rhett's career, but the reason for Rhett's apparently extra-ordinary attitude towards the fugitive slave law may be contained in a later part of the same speech, where he pointed out that for the law to be effective, it had to be supported by the people of the free states :-
"Every man in the free states must be bound, as a party to the constitutional compact, to deliver up to him (the slaveholder) his slave."

But experience had shown that the inhabitants of the free states would not support fugitive slave laws passed by congress, for it was their refusal to obey the law of 1793 which had impelled congress to pass this more severe measure. The South might as well realise, said Rhett, that this law will also be defied by the free states. The only way for slaveholders to get justice would be for the free-soil states to pass fugitive slave laws and enforce them. The states themselves should be forced either to ensure the delivery of run-away slaves or to pay for them.

It was a combination of strict constitutional logic and a clear-sighted realism which led Rhett to reject this sop to southern feelings.

The attitude of the Fire-Eaters towards congress and its powers over slavery can be seen summarised in a series of gag resolutions presented by Rhett to a democratic party caucus in 1838. These resolutions were:

1. Ours is a government of limited powers. Congress has no jurisdiction over slavery in the states.

2. Petitions for the abolition of slavery in the District of Columbia and the territories and on the inter-state slave trade are intended to affect slavery in the states.

3. Congress cannot do indirectly what it cannot do directly, so the agitation of the above subject is equally unconstitutional and beyond its legislative capacity.

4. The constitution rests on the principle of the equality of the states, so that congress has no right to discriminate between the institutions of different sections.

5. Therefore all attempts on the part of congress
to abolish slavery in the District of Columbia are in violation of the constitution and beyond the jurisdiction of congress. Therefore no petitions for such action shall be entertained or considered by this house."42

Although aimed only against the anti-slavery petitions which were deluging congress, these resolutions stated the entire southern case against the action of consolidated government on slavery.

The Fire-Eaters were also agreed that congress must not only not pass any laws restricting slavery in any way, but that it must also refrain from any expression of opinion on the subject. Turnbull, in true fire-eating language said that such expression of opinion would be an"IMPEPTMENT intermeddling with a concern peculiarly OUR OWN...an act of decided, unequivocal hostility. It will be a declaration of WAR and MUST be treated and resisted as such,"43 while Yancey, speaking in New York, said that his idea was

"that the government of the United States was instituted expressly to protect material interests alone, that it is not a school of ethical theories" and that he hoped his audience

"will entrust legislation upon morals and religion to the great ruler of the universe, and wont let Lincoln and Seward have anything to do with it."44

The Fire-Eaters realised that unless limitations over the powers of the central government could be maintained, the democratic system of majority rule which existed in the United States meant that the minority would be at the mercy of the majority, and this they declared to be despotism. Rhett said that

"the government of a majority, irresponsible to a minority is despotism, where representation is a mockery and oppression will be patriotism."
Sir, show me any legislation of this government which is partial and sectional in its bearing, and I will show you an unconstitutional law."45

In a letter to Hunter, he used equally vigorous language, declaring that although he held

"the constitution in politics as...the Bible in religion...if it (the Union) brings us to a consolidated government it must be one of the worst forms of tyranny."46

The Fire-Eaters in fact found themselves faced with that most difficult of all problems which result from any democratic system of government, the safeguarding of minorities. The metaphysical solutions of the German idealists were foreign to the American mind, and the Fire-Eaters reduced the problem to the simplest terms. They claimed that there were two sections with differing interests, and that if the majority legislated in its own interest, as the North was doing, the result would be despotism. Rhett said that

"liberty consists in self government; and the end of a republic or democracy is to secure this great privilege to all, to the minority as well as the majority...the truth is this notion of the arbitrary will of a majority producing liberty is not only inconsistent with democracy, but with the ends of all civil society and government."47

Holding this viewpoint, the Fire-Eaters searched for ways of defending their own, minority section.

Their first line of defense was reliance on the constitution. Rhett pointed out that the constitution was nothing but a bundle of limitations on power, "designed to protect those who, from position or weakness, may be exposed to injustice." There were only two ways in which a minority could safeguard itself against oppression from the majority. The first of these was to
have sufficient representation to protect itself against legislative aggression. But this was impossible under the American system for

"if any particular section or interest was given the majority to protect itself in the general legislature, it enabled it to legislate for itself at the expense of others."

That minority representation for the weaker section was worse than useless as a form of protection. Rhett illustrated by reminding the Senate of the refusal of "The Fathers" to accept Lord Howe's proposal for representation in the British parliament. "Such representation would afford the semblance of self-taxation without the least reality," and was therefore worse than no representation at all. The South had therefore to rely on the limitations on government imposed by the constitution.

Yancey said the same thing:

"With no constitution at all, the people of the North can protect themselves by a predominant vote...minorities, gentlemen, are the true friends of the constitution, because that constitution is their shield and their protection against the unchecked and unlicensed power of the majority."

Senator Yulee of Florida disagreed with Rhett about the impossibility of the minority section preserving sufficient representation to defend itself against majority domination. The Senate had been organised as a counter to popular representation, and since 1800, it had been tacitly understood that the slave and free sections should maintain equal representation therein. In pursuance of this understanding, Yulee opposed the entry of California as a free state, for this would give the free states a majority in both houses of Congress. He argued that ideally each
section should retain control over one legislative branch. The
North had a majority in the House of Representatives, so the
South should be allowed a preponderance in the Senate. Yulee
may not have felt that a majority or equality in one branch of
congress would place the South out of all danger, but he
regarded equality in the upper house as the absolute minimum
essential for southern safety against northern threats. His
insistence on the necessity of preserving at least equality in
the Senate revealed his belief, in opposition to Rhett, that
minorities could be safeguarded, to some extent, by adequate
representation. 50

Rhett with his broad generalisations about the uselessness
of minority representation, ignored the careful balance which
had been built up in the Senate. But in fact Rhett's sweeping
arguments were closer to reality than Yulee's careful analysis.
Yulee was blinking at facts when he urged continued equality in
the Senate, for rapid free-soil settlement was making the end of
this equality inevitable, and this meant that Rhett was right in
saying that the South had to rely on other means of defence.

In their determination to limit the federal government, the
Fire-Eaters sustained all the checks and balances established by
the constitution. Garnett demanded that the South

"have an absolute veto in every department of
government...to secure to each (different section
of the Union) its rights and its fair share of
the benefits of the Union."51

Rhett lauded the presidential veto as a guard to the constitution
and said that "all that there is of energy, life and liberty
springs from this power."52 Were the presidential veto to be
destroyed, he feared that the veto of the Senate would soon follow,
and then the country would be ruled by the caucus of the majority party in the popular house.

"I detest the dominion of one man, a king. I detest more the dominion of many because more heartless and irresponsible; but, above all, I fear and loathe and despise more than I fear, the dark, faithless, remorseless tyranny of a caucus majority."53

In describing the dangers which threatened, Khett went so far as to compare the possible future with the developments which had characterised the French revolution, and which, commencing with the destruction of the royal power, had culminated in the dictatorship of the Jacobin club. To avoid this, the veto power must be maintained. The various parts of the legislature, each representing the people, organised in a different manner, must continue to act as checks upon one another. Khett, rather like Jefferson, regarded government not as a positive instrument for doing good, and improving the conditions of the people, but as a permanent threat, which must always be closely controlled. Thus the fears of the Fire-Eater drove him to adopt a completely negative attitude to the central government.

- All these various issues and arguments show beyond doubt the importance attributed by the Fire-Eaters to the growth of consolidated government, and the dangers such growth portended. Wiggall thought that "nationalism is the disease really under which we are suffering" and that only a return to strict construction could save the Union.54 Khett argued that the "consolidated despotism" of majority rule, which was making the South a mere colony of the North, provided cause enough for secession quite independent of slavery,55 for

"the course of consolidation had destroyed the bond of peace and brotherly love that
had so long united us (the North and South) together."

During the twenties, thirties and forties the struggle over consolidated government had involved primarily economic issues, and while these had seriously embittered North-South relations, they were not grave enough to cause a final split. But when the North extended its attack on slavery, it became clear that the philosophy of consolidated government would enable the North, with its majority in congress and ultimately a northern President and Supreme Court to destroy southern institutions completely, either by broad construction of the constitution or by constitutional amendment. In the last analysis, it was the North's refusal to adhere to what the South considered the commands of the constitution which led to the civil war. The North used its majority in what it thought to be the cause of progress. The South, defending itself against the march of events, which were steadily reducing it to inferiority in the Union, and afraid of what the northern majority would do, seceded as a last defense of its way of life.
Chapter III.

Notes:

5. Appendix to the Congressional Globe, 27th. cong., 2nd. sess., p. 40.
15. Debow’s Review, XVIII, 444.
17. Appendix to the Congressional Globe, 26th. cong., 1st. sess., p. 653.
   Debow’s Review, XXIII, 315.
22. Congressional Globe, 32nd. cong., 1st. sess., p. 1907.


27. Laura A. White, *op.cit.*, p.93.


30. Appendix to the Congressional Globe, 27th.cong.,2nd.sess.,p.42.


34. Congressional Globe, 36th.cong.,1st.sess.,p.1658.


41. Appendix to the Congressional Globe, 31st.cong.,2nd.sess.,p.318.

42. Laura A. White, *op.cit.*, p.43.


45. Appendix to the Congressional Globe, 27th.cong.,2nd.sess.,p.607.

46. Hunter Correspondence, p.71.

47. Appendix to the Congressional Globe, 26th.cong.,1st.sess.,p.652.

52. Appendix to the Congressional Globe, 27th cong., 2nd sess., p. 606.
53. Appendix to the Congressional Globe, 27th cong., 2nd sess., p. 607.
55. Laura A. White, op.cit., p. 122.
56. Appendix to the Congressional Globe, 31st cong., 2nd sess., p. 320.
It is a truism that the political views of a people depend upon the social and economic conditions in which they live, and are usually evolved to help create or sustain that system of government best suited to those conditions.

It was therefore natural that in the decades before the civil war, the South should evolve the political philosophy best fitted to protect and uphold the slavery system, which had become the central factor in the southern way of life. For although slavery had existed in the southern states, as in nearly all the rest of the Union during the revolution, it had grown in security and importance in the South after the rise of the cotton growing industry, until southerners came to regard it not only as necessary as a solution of the problem of race relations, but also as essential to their economic prosperity. At the beginning of the thirties, the last great agitation for abolition of slavery in the South took place in Virginia, but agitation was reduced when the Nat Turner rebellion seemed to underline the necessity for the continuance of slavery. From 1830 to 1860 the comparatively new countries of the black cotton belt, heavily reliant on negro slavery, became relatively more powerful within the southern section, so that most southerners came to feel that the continuance of slavery was necessary for their domestic security and their economic well-being. Under these circumstances the political philosophy of Calhoun, accepting the existence of slavery as its basic premise,
took a firm hold on southern minds. Southern nationalists vied with each other in their discovery of new arguments to show that slavery was a natural state for inferior races, that the negro race was inferior, and therefore pre-destined for slavery, and that even if it were not, slavery was good for it.

Apart from evolving a political theory to buttress their existing social and political organisation, southerners were also driven by virulent attacks from northern abolitionists to justify their way of life. They had to harden their hearts against outside attacks as well as against their own consciences, and this provided an additional motive for them to grasp at the regurgitated Aristotelianism of Calhoun.

The attempt to defend slavery by justifying it was one of the two main factors in the evolution of southern political theory. It was the single most important reason for the swing of southern thought from the idealist democracy of Jefferson to the idealist aristocracy of Calhoun. Calhoun owed the adulation offered him to the fact that he invented a prima facie rational justification for a state of affairs which the South indulged because it suited its interests better than any other appeared to do.

The nineteenth century Aristotelianism adumbrated by Calhoun was fully supported by the Fire-Eaters, who as ardent southerners grasped at a theory which supported the distinctively southern practices. Some Fire-Eaters anticipated Calhoun; some followed him; all agreed with him in fundamentals, and after his death, the leading secessionists were his devout disciples.

The new southern theory that mankind should be regulated by a caste system, which traced its pedigree back to the Bible and beyond, involved as a first premise a flat denial of the principles
expressed in the Declaration of Independence. It denied the existence of natural rights owned by all men; it denied that all men were equal; it almost denied that all men were men. This at least appears to have been one of the attitudes adopted by Brown of Mississippi. Faced by the problem of reconciling the Declaration of Independence with the existence of negro slavery, Brown cut the knot by declaring that "negroes are not men, within the meaning of the Declaration." This was a position which forbade debate. All the arguments intended to show that slavery was wrong and that negroes were entitled to freedom, derived from the point of view which inspired the Declaration, that all men were equal. But if negroes were not men, obviously they could hold out no claim to the possession of any rights, except those which humane instincts grant to animals. Brown's explanation of his statement rested upon thin grounds. The framers of the Declaration had said that all men were equal; but they had been slaveholders and therefore had not regarded negroes as their equals. Therefore negroes were not men. But this syllogism required a naive faith in those framers which was too simple even for most southern thinkers.

Clay, more moderately, attacked the Republican platform of 1856 by asking :-

"where in the constitution is found this right of all men to liberty; or that to secure this right to all men, within the exclusive jurisdiction of the federal government was the primary object and the ulterior design of the federal government? Where in the constitution do you find evidence that it was the design of the federal government to secure liberty to negro slaves?" Brown himself offered another argument, legal instead of
psychological, to show that the Declaration of Independence, however noble its sentiments, had no binding force in the Union. The Declaration was merely a memorandum on which the compact entered into by the states was founded:—

"It simply formed a basis for action when the convention assembled to make the federal constitution...every lawyer knows that whatever may have been the basis of a contract, it is not binding on the parties when the contract itself has been written out, signed, sealed and delivered."

Therefore, thought Brown, there was no legal pressure on the South to follow the precepts of the Declaration if it happened to disagree with them.

There is no doubt that the Fire-Eaters did not accept some of those statements in the Declaration which had hitherto been widely accepted as mere truisms. Bryan claimed that men were naturally unequal. All men are equal only in the sense that

"every child is born with the right to live, and the privilege of living provided that it has the power of doing so."

But in all other respects

"society, the laws of nature and the universal voice of humanity gave each child the place among his fellows which his parents occupied before him...it is only necessary then in order to refute the proposition that all men are born equal, to show that there have been two parents in the world who were not equals; and to see such we have only to look upon the first two individuals we meet with."

The Fire-Eaters also rejected the theory that men possessed inalienable rights. This attitude was brought out clearly in the Senate when Senator Trumbull of Illinois declared that the inalienable rights of life and liberty belonged to everyone, negroes as well as whites, as laid down in the Declaration of
Independence.

Wigfall. "And therefore you have not a right to hang a man for murder?"

Trumbull. "No sir, I believe you have such a right."

Wigfall. "Or put him in jail."

Trumbull. "Undoubtedly."

Wigfall. "liberty is an inalienable right, you say?"

Trumbull. "Unquestionably in a state of nature it is, but society may deprive a man of a right which would be inalienable considering man as an individual."

Wigfall. "If you can deprive a man of an inalienable right, I am satisfied."

Trumbull. "I trust that the senator from Texas and myself both agree that there are natural rights which cannot justly be alienated or transferred.

Wigfall. "I do not think there are any inalienable rights. I think man was intended to live in society, and society has a right to regulate its own affairs in its own way, and hang those who commit crimes."

Undoubtedly Wigfall had the best of this brush, and Trumbull was at fault in claiming that man possessed rights in a state of nature, for the existence of rights pre-supposes the existence of a society, in which alone rights can be possessed and exercised.

Brown made explicit the utilitarian philosophy implicit in Wigfall's closing comment:

"The good of society requires you to hang a man, and you hang him. The good of society requires us to enslave the black man, and we enslave him."

This statement involved fundamental questions of moral philosophy. The Fire-Eaters denied that natural, inalienable rights existed;
all rights must be brought to the bar of the "good of society" for judgement. They realised that if one person claims that a right is natural and inalienable and another denies it, there is no criterion by reference to which the dispute can be settled. The "good of society" provides such a criterion; whatever subserves the interests of a particular society is to be upheld by that society. The only question which remains is the practical one, what constitutes the "good of society," and that can be decided by the society concerned and by no-one else. People must be assumed to be able to decide wherein their own good lies, otherwise all forms of social organisation are rendered useless. On this question, Brown and Wigfall left open the particular question as to who, in the society, should take the decision as to what constitutes its good. The only point they made, and correctly, was that any society must be free to make rules for itself and not be bound down by general principles to which they may not adhere. And certainly one principle which the South did not accept was that all men-assuming negroes to be men- are entitled to life, liberty and the Pursuit of Happiness, and in rejecting this dictum the South was rejecting the natural rights school in favour of the utilitarians.

Along with this rejection, the Fire-Eaters also rejected other liberal notions. Freedom of speech was one of them. In 1838 the gag resolutions including the famous twenty-first rule, ordering all abolitionist petitions sent to congress to be laid on the table, had enabled the North to suggest that the South was infringing the natural right of freedom of speech. As the
abolitionist campaign grew warmer, southern resentment against northern attacks grew proportionately. Moreover the southerners violently resented criticism, for slavery was an institution that required apology, and southerners did not enjoy having their consciences exercised by external criticism. This resentment, exacerbated by southern fears of servile uprisings, reached such a peak that radical southerners refused to allow freedom of speech, wherever they had control, to anyone attacking the peculiar institution.

Naturally the Fire-Eaters sustained this position, on the ground that no society could be expected to commit suicide by providing their enemies with the weapons to be used for their own execution. Brown refused to allow the propagation in the South of those doctrines on whose repression "our safety, our domestic quietude, our peace, the peace of our hearths depends." Thus, faced with one of the perennial problems which beset any democracy, as to how far a society should permit its enemies freedom to enunciate their creed, the Fire-Eaters took the antidemocratic, the anti-liberal view, and refused to allow anti-slavery speakers to pronounce their doctrines.

In their defense of slavery the Fire-Eaters also adduced a further argument which has been used repeatedly to justify all aristocratic and caste systems, an argument which derives from the Greeks. According to it, men are naturally unequal and this inequality is magnified by the caste system. Far from being an evil however, this development is instead a positive good, for it is the only way to acquire a true culture. Culture requires
leisure, which alone can allow its possessors to "cultivate mental improvement and refinement of manners," and leisure in turn requires that the many shall work, so that the few can devote their time to the acquisition of those intellectual and social qualities which are the real justification of a civilisation. The southern system embodied this felicitous condition, as its contribution to the Union showed. This at least was the opinion held by Ruffin who wrote:

"It is true that the intellect of the South in most measures of high importance has influenced and directed and controlled the much greater numerical power of the North. And it is also true that this superiority of influence is a direct consequence and one of the greatest benefits of the institution of domestic slavery."12

But despite their rejection of many of the tenets dear to some of the composers of the Declaration and particularly associated with the name of Jefferson, the Fire-Eaters were not unaware of the emotional effect which appeal to those thinkers aroused. Moreover they were naturally reluctant to reject completely views entertained by such distinguished southerners as Madison and Jefferson. The Fire-Eaters tried accordingly to save something from the wreck by rejecting the words of the authors of the Declaration in favour of their deeds. For the southern signatories of the Declaration of Independence had mostly been slaveholders. Clay of Alabama claimed that the framers of the Declaration could not have meant to pronounce negroes entitled to liberty and asked:

"How it was possible to reconcile with the personal integrity of the framers of the Declaration of Independence and the federal constitution their holding slaves and retaining them as slaves and distributing them as their
last will and testament amongst their children
with their declaration that those men were
entitled to life and liberty?"13

The other major factor in the formulation of southern
political theory was the position of the South as a minority
section in the Union, a position which led southern thinkers
firmly to resist absolute majority rule in the Union as a
whole. They denied that majority rule allowed the people to
enjoy self government, for under it only the majority got what
they wanted and this indifference to the wishes of the minority
constituted despotism. The only way to achieve true democracy
was to set up some scheme by which all sections would have a
share in government. Garnett remarked that:

"the mere majority of numbers is one of the least
authentic means of ascertaining the sense of
the people. It is only when you allow to all the
diverse interests and sections of the community
fair representation and a controlling voice in
their own protection, that you have truly an
expression of the will of the people."14

This suggestion that minority sections, geographical or economic,
should be consulted before the general government could act had
two attractions for the South. Not only would it reduce the
power which the possession of absolute control by a straight
numerical majority gave the North, but the division of control
among differing sections would be a move in favour of conser-
vatism, for power divided tends to act less rapidly than power
unified. And as has already been shown, the South dreaded those
changes which were steadily reducing its influence in the Union.

Other Fire-Eaters also made a general attack on rule by a
majority of the people. Ruffin believed in the superiority of
the few, and the necessity of granting them power. He objected to the "corrupting and poisonous theories of democratic perfection" which had come from Jefferson. He disapproved of universal suffrage because he thought that

"there is no greater fallacy than the supposition...that men will be generally directed in their choice of representatives...by considerations of superior competence and trustworthiness of the persons voted for. Only those with property to guard and much more of education and ability and virtue than the general mass could vote intelligently. A government based on universal suffrage will be government of and by the worst of the people."

Keitt spoke approvingly of Athenian democracy, where "political rights continued to be the appanage of an exclusive class, a real nobility de facto" and Garnett further attacked the northern acceptance of majority rule, which "cares more to strengthen the community than it fears to dwarf the individual" which "in its final word must be a despotism of mere numbers under a military dictatorship, after the French model."

Clay speaking on the admission of Kansas under the Lecompton constitution impeached the proposal to refer it to the people for ratification as a symptom of

"that growing spirit in congress and throughout the country to democratize our government, to submit every question, whether pertaining to organic or municipal laws, to the vote of the people. This is sheer radicalism. It is red republicanism of revolutionary France...not the American republicanism of our fathers... God forbid that the demagoguism of this day should prevail over the philanthropic statesmanship of our fathers."

The debates on the admission of Kansas under the Lecompton constitution were prolific of constitutional argument. The most
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comprehensive statement from a Fire-Eater was made by Keitt who produced an entire philosophy of government to support his contention that the constitution should not be referred to the people for ratification.

According to Keitt, society is the natural state of man and in its very existence negatives the idea of individual sovereignty and draws to itself the rights thus lost or abdicated by these various molecule. Government is one state beyond mere society and serves to refine it by collecting and using that "virtue, intelligence and wisdom above the mass which makes up society."

Advance in political organisation involves a progression from individualism through society to government. The reference of a constitution back from the convention, a form of government, to popular suffrage for ratification is :-

"the resolution of government into society, and society into the individuals that compose it. It is reversing the march of mankind, and blotting out the experience of ages...dissolving the ligaments of society and trampling down government beneath the barbaric tread of unorganised masses."

This leads on to Keitt's next point that every political system is founded upon forms, through which society lives and is expressed. A society organised under a government is more than the mere sum of its members, for the process of organisation introduces a new element into the situation. Forms of government are therefore necessary to represent this new element, whose creation renders the continuance of individual sovereignty inadequate. The whole-the society-which is more than the sum of its parts-the people-requires some new entity-the forms of government-to represent it. The more highly organised the society, the more
complex do the forms become; and it is this increasing refinement of political organisations which produces the best, because the most highly developed government.

The reference of constitutions back to the people emasculates conventions, in which "all interests and feelings are judiciously refined, secreted and weighed, " and abnegates forms of government.

"it is the striving for perfection through the rude agencies of barbarism...it is the aggravation of individuality into extravagance, through licentiousness and the stimulation of emulous rivals."

Such a backsliding can have but one result, for when the "individual is put above society, social stability and peace must yield to his wants." Thus a referendum, far from being an example of democracy in action, merely guarantees us a return to a Hobbesian state of nature, where life will be nasty, brutish and short. To adopt a referendum is to defy the laws of evolution.

But the proposed referendum is not only unwise and mischievous, it is also illegal. For the sovereign convention was not a "subordinate committee" but in fact was the people. To appeal from the convention, the legal embodiment of the people, to the mass of population, is to go outside the forms of law to ascertain the public will, and to do this is revolution. "The sovereignty of the people is an appeal to force against law, to revolution against order, to anarchy against society." After all this it is no surprise to find Keith turning to the theories of Aristotle which :-

"discountenanced the doctrine of mobocracy recently so popular under the insurgent title of popular
sovereignty, and exemplified in the red republican heresy of referring constitutions to popular ratification."19

Clay said the same thing, that a popular referendum is insupportable, adducing the further reason that it was un-American:

"...our governments are republics, not democracies. The people exercise their sovereignty, not in person, at the ballot box, but through agents, delegates or representatives."20

All these arguments might have carried more weight, had the Fire-Eaters not been so obviously concerned to keep the Lecompton constitution away from the people. The doctrines of Keitt and Clay and the idea of diverse minority representation alike enjoyed southern approval because government through forms is liable to be more conservative than government by the people direct.

In the particular issue of Kansas, the Fire-Eaters were concerned with the question of slavery, but their anxiety to avoid referenda and Clay's remark that American institutions were republican not democratic reveals the conservative proclivities of the South. Representatives are liable to be men of more conservative temper than those they represent, and the assertion that sovereignty is the prerogative of a government form, resting on representation is an assertion of conservatism. It is interesting to remark, as the Fire-Eaters did repeatedly that the framers of the federal constitution did not refer the constitution to the people as such, but to the people of the states, represented in conventions, for this constitution was a conservative instrument.

If the interests of property-holders in the constituent assembly...
are remembered, the comments of the Fire-Eaters on property make the comparison even more marked.

Koitt spoke of the "great truth that government is instituted primarily to protect property as well as person," while Clay went even further. He said that:

"property is the foundation of every social fabric. To preserve, protect, and perpetuate rights of property, society is formed, and government is framed. The primary, fundamental and inseparable idea of every social or political organization is to guard and secure to every member thereof in the freedom, use and enjoyment of his property." 

This indeed was a declaration of conservatism. The Fire-Eaters dreaded the "mobocracy" that a referendum would entail not because it would not represent the views of the people, but because it might endanger property, and because in Kansas it would certainly have endangered slave property. Clay was so insistent on the rights of property-holders that he claimed that neither the people as such nor the people represented in sovereign convention could interfere with private property. He argued that because the founders knew that giving up control over their property would have been fatal to their liberty, they formed a constitution which kept property out of the hands of the people's representatives. "The form, tenor and spirit of the constitution" he said

"all show a purpose to withhold from government sovereign power over property, either public or private, and to retain for the people freedom of property as well as of conscience and all other personal rights." 

In saying this, Clay may have been right, for the constitution framers were concerned, almost more than they were over anything else, to ensure property to its holders. But in his efforts to
defend the rights of property-holders, Clay contradicted the position which Keitt had earlier taken up. Now he was claiming that ultimate control over property, "the foundation of every social fabric" lay not with a convention, the highest "form" of government, nor with the mass of the people, which constituted a "mobocracy", but with individual property-holders. And to confer such power on individuals, however staid their possessions may have made them, was surely a retrogression from the forms of government, via society, back to that individual sovereignty which Keitt so abhorred.

It is difficult to resist the conclusion that both logic and moderation failed the Fire-Eaters when they were defending property in general and slave property in particular. They subordinated everything to their attempts to promote conservatism and to protect slavery. It might be suggested that had the Fire-Eaters been given a chance to re-write the Declaration of Independence, they would have erased the change instituted by Jefferson, and restored Locke's original phrase that all men have a right to life, liberty and property.

It was these two factors of defense of slavery and protest against majority rule which led southerners to formulate their aristocratic doctrines. These aristocratic doctrines comprehended two stages. All southern whites agreed that there was a clear line drawn between whites and blacks, with the whites, because of their superiority, entitled to rule over the negroes. There were also some southerners who advocated a further division between various classes of whites. On the purely political level, this belief that some whites were superior to others, and should have greater
powers in government was inherent in the attacks on majority rule made by Garnett, Clay, Keitt and Ruffin. But there were also social motives which led some Fire-Eaters to oppose democracy in government.

Keitt fought against electoral reform in South Carolina because he thought that numerical democracy would "undermine that planter-slave civilisation which was the basis of separate southern nationalism." Ruffin's objections to universal suffrage have already been noted, and they too indicated his appreciation of the aristocratic system. Ruffin indeed actually reached the conclusion that an hereditary ruler was better than one elected by the people. Beverley Tucker frankly revealed his prejudices when he bemoaned the passing of political control from the hands of southern gentlemen. In a letter to Gilmore Simms, he declared that Virginia was "sunk in the slough of democracy, which has no sense of honour."

These Fire-Eaters subscribed to the doctrine that the best government was government by the few for the many, a form of paternal despotism to be organised on the basis of a limited suffrage, best determined by property qualifications. The resulting semi-democracy was a virtual replica of the "virtual representation" theory of Burke—the very embodiment of eighteenth century England—from which the thirteen colonies had revolted.

This point of view gained strength from the glamour which attached to the great planters in the old South. Although there were comparatively few of them, the reputation and influence of these men were out of all proportion to their numbers. They were held up as an ideal, an ideal which exercised influence over the South, because the men in possession wanted to retain the system
through which they had attained success, while the have-nots, seeing how their fellows had risen from poverty to riches—particularly in the new states of the black belt—favoured the retention of that system, which might in turn attend their own success.

But there were exceptions to the sort of views held by Ruffin and Beverley Tucker. For the political leaders of the South were acutely aware that the southern way of life depended on the approval of non-slaveholders as much or even more as it depended on the men who actually owned slaves. The South was in so vulnerable a position that it had to be united. But such unification was difficult, for in the years preceding the civil war a democratic movement achieved growing strength in the southern states. This movement showed itself partly in the democratization of government institutions, and partly in the fact that an increasing proportion of southern leaders sprang from the lower class whites. This rise of the common man to political power meant that the aristocratic views of the ruling classes were seriously challenged, particularly in the newer states of the black belt, and by 1850, Alabama, Mississippi, Tennessee, Texas and Arkansas were completely democratic in political organisation, Georgia, Florida and Louisiana were nearly so, while only Virginia and South Carolina retained the old order, mainly unimpaired. The result was a split in southern opinion. The traditionalists proclaimed full aristocratic doctrines while the radicals proclaimed a semi-aristocracy, accepting natural distinctions only between blacks and whites. The influence exercised by the glamour of the great slave-holders
had to contend with the desire of the majority to impose majority rule in the South while resisting it in the Union as a whole. On this issue, the Fire-Eaters were typical of the split thought which existed in the South. Some of the Fire-Eaters were genuinely democratic in their views, either because of their origins or because of their principles. Rhett was an example of this divided political viewpoint for his biographer writes of "this incongruous mingling of aristocratic and plutocratic ideals with a democratic appeal which earned him the charge of demagoguery." Yancey, an aristocratic leader, showed democratic leanings in his support of free schools. But usually democratic views were voiced by those leaders who had themselves arisen from the ranks of the common people, and the leading Fire-Eater of this type was Senator Brown.

Brown was in some ways a politician in the worst sense of the word. He depended for his position on the support of the common men who had voted him into office, and principles and interest alike impelled him to advocate their cause, which he did by urging equal rights for all white men. He defended slavery on the grounds, amongst others, that it enabled all the white men of the South to be equal, whereas in the North the necessity of making white men do menial work rendered such equality impossible. "The poorest labourer in the South" said Brown

"If he had preserved an unsullied reputation is on a social level with all his fellows. The wives and daughters of our mechanics and labouring men stand not an inch lower in the social scale than the wives and daughters of our governors, secretaries and judges. This is because the line which separates menial from honourable is an absolute colour line, with the whites on top, and the blacks underneath. The slaves do the menial work...it would take you longer to find a
white man in my state who would hire himself out as a boot black or a white woman who would go to service as a chambermaid than it took Captain Cook to sail round the world. 32

This outrageous nonsense is well characterised by Brown's biographer who commented:

"This high-sounding bombast about the negroes placing all white men in the South on the same social level was contradicted by the status of the very classes upon whose support Brown had risen to prominence. A large minority, if not a majority of these farmers had to do their own menial work. It is doubtful whether they ever blacked their boots; surely they had no chambermaids. 33"

An investigation of the reasons which led Brown to talk in this manner is instructive in pointing out some of the problems which faced southern leaders. Democracy had played and still did play so great a part in American political thought that lip service of one sort or another had to be paid to it. Moreover southern politicians had to hold the support of the common men, whose votes kept them in office, and one way in which they could do this was to tell the poor that they were in some sense the equal of their superiors. 34 But a further difficulty was that the support of the non-slaveholders had to be retained for slavery. Brown assured southern workers that slavery did not antagonize free labour in the South, but actually elevated it and enabled it to secure higher wages for its labour than the free labour of the North. 35

Brown also showed the non-slaveholders that if slavery were abolished, it was the poor not the rich who would suffer, for the rich man in the last extremity could escape, while the poor man would have to stay, while

"the negro will intrude into his presence-insist
on being treated as an equal, that he shall go

to the white man's table and the white man go
to his; that his son shall marry the white man's
daughter and the white man's daughter his son."

This sort of reasoning, these appeals illustrate the southern
dilemma of making a caste system drawing much of its strength
and support from the glamour which it emanated palatable to the
poorer classes. For the poorer classes constituted a numerical
majority and were only partly satisfied by the idyllic prospect
of one day becoming great slave-holders themselves.

Southern leaders accordingly found themselves trying to
balance an exceedingly complex set of circumstances. To defend
themselves against the spirit of democratization of all institu-
tions which was sweeping the North; to uphold the aristocratic
plantation system; to protest against the absolute rule of the
majority North; to defend slavery; all these motives led the
South to the formulation of aristocratic theories, and a rejection
of Jeffersonianism. This showed itself in a frank attack on
those Founding Fathers, who had been distinguished for their
spirit of equality. Yancey said in the Senate that he intended

"to answer the twaddle about the Fathers. I am
sick and tired of the Fathers. There has been
enough of that sort of thing talked of. We are
wiser than they were...we are the old men and
they were the young men. I care not what their
age or experience was...it is twaddle to talk
about the wisdom of our ancestors...what nation
is there that...would consent to be governed
by the wisdom of the past century...they were
the boys; we are the men. They legislated for
themselves. We have to legislate for ourselves...
let us not rely upon their wisdom; but rather,
like wise men, act upon our experience."37

Yancey spoke of "Mr. Jefferson, imbued in the wild French theories
as to liberty and fraternity,"36 and Keitt described the Fathers
as "imbued with the influence of the French revolution and
affected by the abstractions of the Declaration of Independence."

But as has been shown, there was also a growing democratisation of political institutions, particularly in the black belt. Moreover many radical southerners were from the lower class whites, for they stood to lose a great deal if slavery were abolished, since in some cases it was their freedom which alone gave them a mark of superiority over the negroes. Many great plantation owners were not radical secessionists, because like many substantial men of property, they feared any sort of extremist action. This meant that radical southern nationalism relied for its support on all sorts of conflicting interests and people.

Although as radical southern nationalists, all the Fire-Eaters agreed in their approval of slavery, they differed as to the relationship which should exist between the divergent classes of whites. They split between the primarily democratic and the primarily aristocratic points of view. Most of them seem to have been more deeply moved by the considerations which led many southern leaders to aristocracy, although Brown certainly was a radical democrat. That the Fire-Eaters should not have supported the democratic movement does not seem to have depended at all on their radical sectional views, but on personal circumstances. Despite the grant of almost complete manhood white suffrage in most of the southern states, and the rise in power of the common man, the majority of southern leaders before the civil war were still drawn from the higher social classes, and this showed itself among the Fire-Eaters as among all other sorts of political leaders.
Chapter XV

Hoteo

This comparison between the political philosophy of Calhoun and that of the Greeks is made in V. I. Parrington, The Romantic Revolution in America (N.Y., 1927), pp. 99-103.


10. Congressional Globe, 36th, Cong., 1st sess., p. 64.


13. Congressional Globe, 36th, Cong., 1st sess., p. 56.


15. Edmund Ruffin, Diary, In Avery Craven, op. cit., p. 44.


18. Congressional Globe, 35th, Cong., 1st sess., p. 146.


22. Congressional Globe, 35th, Cong., 1st sess., p. 147.


25. Avery Craven, op. cit., p.45.


27. Clement Eaton, op. cit., p.28.

28. For a discussion of the democratisation of southern governmental forms, see the chapter "Movement Towards Political Democracy" in C.S. Sydnor, Development of Southern Sectionalism (Baton Rouge, 1948).

29. V.I. Parrington, op. cit., pp.99-100, discusses this difficulty of reconciling negro slavery and the rising spirit of white democracy. But his interpretation of the southern answer simply indicates the aristocratic division drawn between the two races, and by ignoring the views of such men as Ruffin, seems to me to over-simplify the situation.

30. Laura A. White, op. cit., p.53.


34. For a discussion of this situation, see W.J. Cash, The Mind of the South (N.Y., 1941), pp.34-42.


37. Congressional Globe, 36th cong., 1st sess., p.1658. Compare this statement with other statements in the same speech. "He is not a democrat who denies the doctrines of 1798'9; the party is committed to that theory of the government, and who would deny it must leave the party." Also, in eulogising Calhoun, Wigfall described him as the man "who brought back the government to its constitutional sphere of action; he resurrected and established again the principles of 1798 and 1799."


The acquisition of new territory from Mexico re-opened the old controversy, which had been set to rest by the Missouri compromise, the controversy between slave and free states as to the settlement of these new territories. Should slave-holders be allowed to carry their property into them? The Wilmot proviso, with its threatened danger had aroused the South to vehement protest, for southerners knew that if slavery were kept out of the new territories, they would be unable to sustain indefinitely their fight against northern aggressions on their way of life. The compromise of 1850 settled the dispute temporarily, to the satisfaction of southern unionists, and to the baffled fury of the Fire-Eaters. These southern radicals fought viciously against the acceptance of the compromise because they thought the terms of it unsatisfactory to the South, and because they had no desire to see agitation frustrated by amicable settlement. Popular elections however, in Georgia, Mississippi, Alabama and South Carolina left no doubt but that the overwhelming majority of the southern people thankfully accepted the compromise settlement. Even the most radical secessionists were forced to accept temporary defeat. Rhett resigned his seat in the Senate; Yancey temporarily abandoned his open agitation for secession, while Brown paid unctuous lip-service to the compromise and even denied having been a secessionist.
But the Fire-Eaters were only awaiting their chance to re-open the campaign. It came when the introduction of the bill to organise the Kansas-Nebraska territories raised once more the issue of whether slave-holders should be allowed to carry their slaves into the territories. In Kansas fighting actually broke out between supporters of slavery and free-soilism. At first the slave-holders with the connivance of the federal administration were able to do more than hold their own. But the rejection of the Lecompton constitution by Congress and the substitution of the compromise English bill, which in practice merely meant delaying decision as to the terms of the new Kansas constitution until the free-soil supporters should have a clear majority proved beyond a doubt that the federal government had no intention of allowing new slave states to enter the Union. It was this failure in Kansas which finally decided southern nationalists that they had no chance of extending the area of slavery within the territories belonging to the United States. They realised that the North was too strong and under the leadership of the Republican commanders in Congress was determined, and able, to keep slavery out of the territories.

It was this situation which led southern radicals to advocate extra-legal methods for extending the peculiar institution. For they knew that a social or political organism cannot successfully remain static; it goes forward or it goes back. The North thought that if slavery were confined within its existing boundaries, it would ultimately disintegrate. The Fire-Eaters were determined to counter this strategy, and as Kansas had shown
that they could not extend their institutions to territories in the Union, they turned south to see whether it would be possible to capture new territory for the Union, into which slavery could be introduced.

It was this attitude, brought to a head by the southern debacle in Kansas which led southern leaders in the late fifties to become ardent imperialists. This imperialism was by no means new, but it was more powerful and aroused less opposition in the years immediately preceding the civil war, because by then all defenders of slavery were coming to see that a purely negative attitude would mean the continued weakening of the institution:

"Her (the South's) appetite for expansion into Mexico and the Caribbean region increased in direct proportion to the preponderance of political power in the hands of the Black Republicans pledged to oppose further extension of slavery."5

While slavery was not only not able to expand in the Union, but was growing weaker relative to the North in population, due to rapid expansion of free-soil settlement, it was also growing weaker absolutely because some slave states showed signs of becoming free. The continued demand for cotton with the resultant high prices offered for negro slaves, had tempted many slaveholders in the border states, particularly in Virginia, to sell their slaves to cotton planters in the still prosperous black belt. This involved a danger that Maryland, Virginia, Kentucky and Missouri might be lost to the South.7

Politically therefore slavery was becoming a weakened force in the Union and the balance of representation in congress was swinging steadily over to the anti-slavery side. But economically
slavery was still a vigorous force. If anything it was more profitable than ever before in the years before the civil war; cotton prices were up; the price paid for slaves was rising steadily. Far from being likely to die a natural death, slavery was economically a thoroughly going concern.

All these circumstances virtually dictated action to the southern leaders. Politically the slavery institution was threatened by growing northern power relative to the South in the federal government. Economically slavery was thriving and remained the very hub of southern economic prosperity. It had to be preserved and strengthened. Such a process required more slave states to resist northern aggressions. But such expansion was not possible in the territories already possessed by the United States. Therefore new territories had to be acquired, in which slavery would be natural and irresistible.

The fundamental reasons which led the Fire-Eaters to become ardent jingoists were clear. The basic motive was political. More slave states meant more representation in Washington, and this representation was necessary to hold back the North. Furthermore true believers in the slavery system, and the Fire-Eaters were certainly that, had a natural propensity to advocate the extension of their way of life. Nearly all peoples who think they have discovered the best way of life become evangelists, and the more positive note that was creeping into the southern voice, as the superiority of its ways and institutions was asserted brought with it a demand for expansion. The spread of the peculiar institution would strengthen it, for the broader its basis, the greater the area in which it existed,
the stronger it was likely to be. And the Fire-Eaters were constantly afraid that slaves where they existed in territories south of the United States might be freed. The example of Haiti was constantly before their eyes, and they were particularly afraid that the freeing of slaves in Cuba would proliferate a malignant influence among slaves in the southern states.

The Fire-Eaters were therefore agreed in support of southern expansion to the south. Roger Pryor wrote to Douglas that

"the acquisition of Cuba is a question in which your friends in this region take an interest second only to that of congressional non-intervention."9

In 1848 Quitman had favoured taking the whole of Mexico, being "unable to perceive the very great evils to arise from adding to our confederacy one of the most beautiful and productive countries on the face of the earth,"10 and in 1854 he was enthusiastically supporting the acquisition of Cuba.11 In 1859 McRae of Mississippi presented the following resolution to the southern convention at Vicksburg:-

"That the interests and necessities of the South, as well as of the entire country, requires the permanent ascendency of the United States in the Gulf of Mexico, and to insure this end, the Gulf must be made an American sea, and the Isthmian transits to the Pacific placed under American control."12

Ruffin too accepted the conquest of Central America and the Isthmus of Panama as desirable objects.13

It was natural that the Fire-Eaters should be so agreed for while technically such expansion would be national and the newly acquired lands would become a part of the Union, it was clear that these new lands would be slave states and would become part of the southern block. Southerners only supported such expansion
because they did not doubt that the slave states would benefit from the new acquisitions. The Fire-Eaters supported the jingoist campaign as an example par excellence of militant southern nationalism. Imperialism is the most obvious of all aspects of nationalism, and as supreme nationalists, the Fire-Eaters were naturally to be found in the expansionist camp.

Many leaders, normally more conservative on other issues, supported the expansionist programme, and some were so radical in their demands as to qualify as Fire-Eaters on the question. "Slidell never rested in his quest of Cuban annexation" and he and Senator Benjamin joined with Brown in "panting for war with Spain over Cuba." The diplomatic contortions ofSoule in Madrid were notorious as an example of passionate expansionism which exceeded all normal diplomatic behaviour, while the Ostend manifesto was essentially a fire-eating document.

The main regions which occupied southern attention were Cuba, Mexico and parts of Central South America. All these were areas to which the Fire-Eaters hoped to see slavery extended. The reasons advanced for aggressive expansion were many, but the motive which really appealed to the Fire-Eaters was clearly the strengthening of slavery which would follow its expansion. This was admitted by Singleton of Mississippi who said:—

"There is but one mode by which...it(slavery) can be perpetuated for any considerable number of years...that mode is by expansion, and that expansion must be in the direction of Mexico...that is the only conceivable mode by which the institution can be preserved, unless the people of the North shall put down this republican party, open the territories to us...and give us the full benefits of our rights under the constitution...I have but little hopes that they will do this."
Brown said the same thing:—

"If I go for the acquisition of Cuba, or for any other territory to the south, let it be distinctly understood now, and through all time, that I go for it, because I want an outlet for slavery... we want it, we cannot do without it, and we mean to have it."17

But the Fire-Eaters advanced many other reasons to justify the aggressions they advocated. Reuben Davis claimed that expansion was an American mission, to go south was as much a part of Manifest Destiny as to go west:—

"Expansion is our mission and we must advance. Civilization and religion impel us to; and in despite of sordid consideration, we must and will go on."18

Quitman, most violent of all Fire-Eating imperialists, spoke of

"our evident duty to aid in the accomplishment of that high DESTINY which Providence has assigned to our republic of states."19

Brown compared the taking of lands in Central America which belonged to someone else to the taking of lands from the Choctaw Indians. He admitted that sentiments like these would set him down by many as a "regular fire-eating filibuster" but in extenuation he pointed to the stately mansions which now replace the wigwams and the railroads which take the place of the war-path. True we have treaties with the Central American states, but so we had with the Indian tribes, but they were mere scraps of paper "all fudge and fustian, signifying nothing when the white man came to spread civilization."20

Another reason impelling the South to take over these lands was that of self-protection. A first necessity was defense against aggression from the European powers. The taking of Cuba in particular was necessary for the defense of the United States on
both military and commercial fronts. Reuben Davis claimed that England and France were planning attacks in America, and the United States must prevent the possibility that Spain would allow them to use Cuba as a base. American annexation of Cuba would

"effectually prevent any interference by European powers with affairs upon this continent...Cuba is necessary to our commercial convenience and is a means of national defense, and being thus demanded by great commercial and national considerations, who can withhold his support of a measure that looks to its early acquisition?"

Quitman, after making a virulent attack on British colonial intrigues, said that :-

"paramount interests, involving the safety, the prosperity and the advancement of our beloved country...loudly urge us onward (to Cuba)"

and quoted Vattel in defense of his proposals :-

"a nation has a right to resist an injurious attempt and to make use of force and every honest means against the power that is actually engaged in opposition to it, and even to anticipate its machinations." 

Any European schemes for obtaining power in the Americas contravened United States interests for

"the natural advantages of the American continent...belong to us...not to Europe...we are the great power of this hemisphere; it is not only our right, it is our positive duty so to direct our affairs that European interests and intrigues may gain no permanent foothold upon our shores." 

The South was also driven to acquire Cuba to preclude the possibility of slaves being freed there, because of British pressure on Spain. Such action would seriously endanger discipline among the slaves in the southern states :-

"British statesmen...are pertinaciously engaged in...establishing throughout the whole of
in this event

"she will have the power to disturb at her pleasure the repose of the contiguous states, and... we should be recreant to our duty... should we permit Cuba to be Africanized and become a second San Domingo, with all its attendant horrors to the white races, and suffer the flames to extend to our neighbouring shores, seriously to endanger or actually to consume the fair fabric of our Union.**24

So prophesied Quitman.

The seizure of Cuba was also justified as an act of reprisal against Spanish anti-American activities. Davis said that the United States should seize Cuba as payment for the debt of £128,635.54 owed by Spain to America and also as reparation for all the outrages committed by the Spanish against American ships, sailors and citizens.25 Brown urged that Cuban land be secured in preference to any other satisfaction from Spain in a war which he thought should be declared against Spain over the Black Warrior affair.26

Moreover it was America's duty to take over Cuba, for the sake of its inhabitants. Quitman thought that Mexico

"wasted, plundered, and depopulated...can be saved only by the advancing flood of our enterprising citizens"

while

"the only hope of redeeming this beautiful country (of Central America)... rests in that patriotic band which has lately transplanted the principles of democracy from the United States to Nicaraguan soil.**27

and "Cuba has the most important claims upon our sympathy" and her people could be saved from their plight of having to suffer under Spanish tyranny only by its replacement by American
democratic institutions. Brown also found that his expansionist desires were motivated by generous impulses:

"Cuba, Tamaulipas, Potosi and one or two other Mexican states must also be secured...I would spread the blessings of slavery, like the religion of our divine master, to the uttermost ends of the earth."28

Having decided that expansion was necessary and justifiable, the Fire-Eaters were next concerned with the question of how it was to be accomplished. The easiest way would have been that of purchase, but the chances of this, always slight, were virtually obliterated by clumsy American diplomacy in Europe. Quitman went further and declared that the "hope of acquiring that island (of Cuba) by purchase was always a delusion."29 A second way was that of war, and the Fire-Eaters were unanimous in desiring war, on any pretext, which would enable the United States to seize Cuba. But their influence was not great enough to bring this about, for the North was solidly opposed to a war which would serve only to defeat its own purposes in hemming slavery about. This left only individual action on the part of Americans to seize the southern territories. Quitman was himself a would-be filibuster, for only his sense of responsibility as Governor of Mississippi had prevented him from joining the Lopez expedition, and in 1853 he engaged in gathering forces for a descent on Cuba.30 The solution he preferred to congress was therefore simple:

"Repeal your neutrality laws. If you can not or will not avert impending dangers, at least do not manacle the hands of your free citizens and prevent them from protecting themselves."31

Brown adopted a similar attitude, urging the repeal of

"our odious neutrality laws...the Clayton-Bulwer treaty must be set aside so that we may look
constantly to the ultimate incorporation of the Central American states into the Union or into a southern confederacy, 32 while in the Louisiana legislature Slidell and Benjamin had advocated repeal of the neutrality barriers against filibustering.33

All this meant that the Fire-Eaters approved of filibustering, while the neutrality laws were still on the statute book. McRae supported the resolution at the southern commercial convention at Knoxville that

"the cause of General Walker in Nicaragua has been highly meritorious...the convention...sympathizes with him in his attempts...to institute a new order of things in that unhappy and distracted country,"34

and Brown criticized President Buchanan for not condemning Commodore Paulding for the illegal seizure of Walker.35

But some Fire-Eaters argued further that the neutrality laws were unconstitutional, and should never have been passed at all. Quitman claimed that the laws exceeded the powers delegated to congress. For congress, which had the right to define and punish offences against the law of nations had declared to be crimes actions which were not against the recognized law of nations. For instance, it was no offence for the citizen of a state to take arms under a government at war with a friendly power, but by the neutrality laws of 1818, this was treated as a high crime. But he objected even more violently to the interpretation put on the sixth section of the act which forbade any person within the territory of the United States to make preparations for a military expedition against the territories of any foreign power with which the United States was at peace. According to Quitman this clause had been construed to apply to persons who left the country
and gathered abroad to organise expeditions against friendly powers. It seems that it was only by such a broad interpretation of the clause that General Walker could be held guilty of breaking this law. Brown presented the same point of view in defending Walker against arrest by Commodore Paulding, claiming that while it was true that the men and materials for the expedition to Nicaragua came from the United States, since the expedition was not actually organised within the territory of the United States, there was nothing illegal about it. Furthermore, thought Brown, Walker himself could not have violated the neutrality laws, because he had voluntarily expatriated himself.

This argument against the neutrality laws rested on a distinction drawn between the actions of an individual which did not commit the United States and those which did. According to Quitman, the power to "define and punish offences against the law of nations" was granted to Congress for the sole purpose of preventing individuals from compromising the neutrality of the United States. The Walker expedition and his own planned expedition to Cuba did not involve the neutrality of the government, and to prevent them was therefore to interfere with the individual's reserved rights, contrary to the spirit which lay behind the constitution.

But even if the laws were constitutional, Quitman claimed that they would still be "unwise, impolitic and against the genius of our free institutions." For they were "founded upon the false assumption that the government should direct the morals and control the sentiments of the people." They prevented the American people
from achieving that progress which was their natural heritage; and under them, the "good man Lafayette" would have been condemned as a criminal. Brown agreed with Quitman, saying that

"if our people chose to go to Cuba, they would not thereby become pirates any more than the French were when they came in aid of our cause."

All these fire-eating arguments led to the same conclusion, and rested on the same basic premises. The South needed new territory to which they could spread slavery, both to strengthen its basis by extending it, and to increase its relative power in the Union by the creation of new slave states, to balance the new free-soil states in the West. Such expansion would also serve the cause of humanity by extending the benefits of American civilization—particularly southern civilization—over barbaric peoples, who were at present backward and ill-governed. Moreover American commercial and military interests demanded that the possible aggressions of European powers be anticipated. In the face of such a combination of sectional, national and political interests, legal objections to interference in foreign countries, interference prejudicial to the interests of foreign governments with which the United States was at peace, must be overborne. The federal government should repeal its neutrality laws which were preventing the spread of its institutions by free individuals; or it should declare war on Spain and seize the opportunities thus offered to take over Spanish American territory. Failing such action by the federal government, its behests must be ignored, and filibusters supported. Salus populi suprema lex argued the Fire-Eaters. If
the federal government will not realize where the best American and southern interests lie, it must be defied.

In view of this agreement that the interests both of the United States and the people of Mexico and Central America would best be served by the enrollment of these southern lands in the Union, it is interesting to note that Yancey, an ardent expansionist while the southern states were still in the Union, told the secession convention of Alabama that he did not support the expansion of the confederacy by the addition of Mexican states, with their "ignorant, superstitious and demoralized population." Upon one point Yancey had no doubt, that "we should never extend our borders by aggression and conquest." 41

Apparently when the political advantages of creating more slave states to balance northern expansion was no longer an end to be sought, the Fire-Eaters became more doubtful about their duty to spread their institutions among backward peoples. Duty and destiny are adaptable words, and it would seem that they tended to change their form after a southern nation became an established fact.

The agitation to re-open the slave trade was complementary to the agitation for expansion, for it was impossible to extend southern institutions unless there were enough slaves to go into the new areas. Some southerners blamed the loss of Kansas on lack of slaves, and there was little doubt that it was the small supply of slaves compared to the demand for them that was responsible for the free-soiling movement in the border states. Shortage of slaves meant a rise in the prices that could be obtained for them and thus an added incentive for holders in the
border states to sell their negroes.

But the proposal to re-open the slave trade aroused a much greater difference of opinion than the various suggestions for expanding southern institutions had done, and the Fire-Eaters split on the question. Extremists though they were, some were unable to stomach the objections leveled against the re-opening of the trade. That the Fire-Eaters should have unanimously embraced the policy of expansion was only to be expected, for expansion was in the American tradition; Manifest Destiny was still a powerful philosophy in the American mind, and expansion southward could be advocated on the same grounds as expansion westward. It was possible to argue in its favor on national as well as on purely sectional grounds. Moreover expansion is a phenomenon natural to any society satisfied with its own institutions and was in accord with the mental climate of the age.

But re-opening the slave trade involved considerations far different from these. It involved a defiance of public opinion, an opinion unanimous in the remainder of the Union, and widespread even in the South. For while slave trading between states was unpleasant and objectionable, it did not seem as bad to the popular mind as slave trading with Africa, with all its attendant horrors of the middle passage. And on the more political level, the re-opening of the slave trade would mean frankly illegal action, for the federal laws against it were severe and explicit beyond question, and all the Fire-Eaters realised that there was no chance of congress repealing them.

The split in opinion among Fire-Eaters which developed over this question was however a split arising out of expediency and
not out of principle. No Fire-Eater objected to the re-opening of the trade because of the appalling conditions which would inevitably attend it. None of them raised moral objections to it, for if nothing else they had the courage of their convictions, and were prepared to accept any means best calculated to support that way of life which they advocated so whole-heartedly. The split arose on questions of expediency, for while some Fire-Eaters thought that the re-opening of the trade would benefit the South, both politically and economically, others opposed it partly as an economic disadvantage and partly because they thought it would so arouse public opinion against slavery as to more than off-set any political advantages which might accrue from it.

This split in opinion showed itself even in the extremely radical commercial conventions held at Montgomery in May, 1858 and at Vicksburg in May, 1859. Both these conventions were little more than gatherings of dis-unionists, who hoped to consolidate southern feelings and harmonize the local differences between different parts of the South. The Montgomery delegates were thus described by the Montgomery Daily Confederation:

"Every form and shape of political malcontent was there present, ready to assent in any project having for its end a dissolution of the Union, immediate, unconditional, final."

But despite this fact that their delegates were nearly all disunionists together, these conventions were split by fierce debate as to whether or not the slave trade should be re-opened. The debates on this subject occupied nearly the whole time of these conventions, and opinion was divided not only upon the expediency of re-opening the slave trade, but also as to whether or not agitation for the repeal of federal laws prohibitory of
the slave trade would promote or injure the cause of dis-union.44

Although both conventions passed resolutions favouring the re-
opening of the trade, there was at no time anything approaching
agreement even among Fire-eaters on the subject.

The story of the agitation for re-opening the foreign slave
trade is largely the story of L.W. Spratt of Charleston, dubbed
by Horace Greeley "the Philosopher of the New African Slave
Trade," who led the campaign. He had started the agitation in
1852, and continued it consistently as editor of the Charleston
Standard and as a member of the South Carolina House of Repres-
entatives.45 Gradually the idea began to take hold on southern
minds, particularly when the Kansas battle showed southerners
that they were failing to extend their institutions, and shortage
of slaves was suggested as a contributory factor of this failure.

The "philosopher" won his first victory in 1856, when Governor
Adams in his inaugural message to the South Carolina legislature
supported re-opening the trade, saying that

"our true purpose is to diffuse the slave population
as much as possible and thus secure in the whole
community the motives of self-interest for its
support."46

Spratt then carried his campaign into the southern commercial
conventions, and at the Knoxville convention in August 1857 was
appointed chairman of a special committee appointed to

"collect information upon the condition of the
African nation (and) upon the wants of the South
in respect to population and labour."47

This report on the slave trade presented by Spratt to the
Montgomery convention advocated its re-opening, supporting the
proposal with a considerable number of economic and political
Spratt began his report by stating that "if we affirm this union of unequal races, we must affirm the means of its formation" viz. the slave trade and "affirmance of slavery therefore is in principle and effect an affirmance of the foreign slave trade." 48

Following this assertion he turned to the political argument for re-opening the trade. More slaves would mean a greater population and therefore more representation in the federal government:

"For every five slaves that come we acquire the right to a representation for three persons in the national legislature and it thus therefore will directly and necessarily increase our relative representative powers." 49

But more than this, more slaves would provide a basis for more white population and thus an influx of slaves would add not only their own representation to southern strength in congress, but also that further representation which an influx of more whites would bring.

With more slaves the South would be able to extend its institutions over greater areas of the United States. The South could have taken Kansas, argued Spratt, with 10,000 more slaves. If more slaves were brought into the South now, the South could form an extra state in Texas, and other states in Arizona, New Mexico and Lower California, and might also take perhaps

"Nebraska, Utah and Oregon...and it is even possible that with slaves at importers' prices, we may stop the hungry mouth of free society in older states, and lull it to repose as far back as the sterile regions of New England." 50

Moreover if more slaves were brought in, their price would fall, and this would enable many whites who were not slave-holders to become so. This would tie them more effectively to the support
of the slavery institution, for while as non-slaveholding southerners, they supported slavery, it was only to be expected that their support would be firmer when they themselves had a vested interest in its preservation.\(^5\)

Economically he thought the South would benefit from the lifting of barriers on the importation of negroes, for greater population would mean an increase in land values, and thus the re-opening of the slave trade would mean a rise in the value of real property.\(^6\)

Finally Spratt answered objections to re-opening the trade based on humanitarianism. He painted a sombre picture of the life led by Africans in their native habitat, and explained that the negroes brought over would actually benefit from the trip:

"It were idle to express concern about the interests of the African in his translation to a life of service in a civilised community."\(^7\)

This report, prepared by the committee, a report incidentally which some members of the committee did not see before it was submitted to the convention, ended by recommending resolutions favouring the re-opening of the foreign slave trade.

The main objections to the report were expressed by Roger Fryar, a Fire-Eater from Virginia, who led the opposition to the re-opening of the trade. He began his reply to Spratt's statement by saying, in language befitting a Fire-Eater, that at first he had been captivated by the "tone and attitude of defiance congenial to his own ardent and impulsive spirit,"\(^8\) but more careful thought had convinced him that the re-opening of the trade would be inexpedient, and that "high considerations of reason and state policy" led him to oppose it. This opposition did not rest on the
basis of humanity, for if only he could convince himself that the people of the South would benefit from a re-opening of the trade, he would support it partly because of the benefits it would bring to the African negroes brought over to the United States.

Pryor’s arguments against re-opening the trade were in fact political and economic. He disagreed flatly with Spratt’s analysis of the southern position and the remedies he suggested. Instead of the South wanting more population, they were best off by keeping it down, and if they did want more people to give them more representation in the federal government, they should obtain whites rather than negroes, for they would bring greater representation.

Pryor disagreed that the basis of slaveholding had to be enlarged in order to ensure support for the system from all whites in the South. He asserted that non-slaveholders supported the institution of slavery just as enthusiastically as slaveholders, and it was a mistake to believe that the South was not united in support of its way of life.

Spratt moreover was wrong in suggesting that diffusion of slavery would strengthen it; in fact concentration was strength and diffusion weakness. To prove this, Pryor claimed that slavery was much more secure in South Carolina where it was concentrated, than in Missouri where it was diffused. Thus to increase the area of slavery would weaken the institution.

Another argument, advanced by the Virginian was that a re-opening of the trade would reduce the price of negroes, and this reduction would in fact be necessary if large numbers of men, at
present non-slaveholders, were to become owners of them. But such a reduction in the value of negroes was nothing but "abolitionism in its worst form; for if you can...reduce the price of the slave one-half or one-third, you can abolish it altogether."57

Such a reduction in the value of slaves would occur pari passu with a reduction in the price of cotton, caused by greater production. Spratt had favoured such a reduction, but Pryor opposed it, arguing that such a lowering of values and prices could mean nothing but harm to southern economic interests.58

His last arguments against re-opening the trade were political.

The agitation would lose the South its remaining friends in the North; it would shock the moral sentiment of Christendom; it would involve a defiance of the federal government, for there was no chance of having the anti-slave trade laws repealed, and simply to break the laws would be an act of bad faith, for "we have agreed to the constitution of this country, and as long as we remain in the Union, we must uphold that constitution."59

But it was his closing argument which probably contained the kernel of Pryor's opposition to the committee's recommendations. The proposal to re-open the slave trade was in fact a proposal to dissolve the Union, because it could not be carried out while the Union lasted. But there were many better reasons for dissolving the Union; Virginia, he said, was not prepared to dissolve the Union on

"a proposition to kidnap cannibals upon the coast of Congo and contend with the King of Dahomey, in the parts of wild Africa, for the purchase of slaves there."

This proposition would divide instead of uniting the South. Virginia wanted to leave the Union, if at all, only with a united South,
and this inferior issue of the slave trade could not bring about such a situation. ⁵⁰

This reply from Fryor brought Yancey into action to denounce the chicken-heartedness of a southerner who would adapt his actions to suit our "friends" in the North. The northern democracy did not need our consideration, for they "have power to protect themselves." ⁵¹

Economically Yancey flatly opposed all the arguments which Fryor had advanced. He was not sure that a re-opening of the trade would result in a reduction of the price of slaves, but even this would be a good thing, for the South's interest lay in raising its produce at as low a price as possible, and it was unfair, incidentally, that a slave-holder in New Orleans should have to buy his slaves in Virginia when he could get them more cheaply elsewhere. ⁵² The price of slaves should be settled by the basic economic laws of supply and demand. ⁵³ Yancey also disagreed with the idea that the South should restrict its output of cotton, or should restrict the size of its population. Land values would rise if population increased. The more cotton produced, the greater would be the payment received for it. ⁵⁴ Moreover he asserted bluntly that "if you increase the number of slave-holders, you increase the basis of the institution." ⁵⁵

It would appear that on all these subjects, Spratt and Yancey on one side and Fryor on the other were making assertions and prophecies which could neither be proved nor disproved. On the whole Yancey and Spratt were probably more accurate in their judgements than Fryor, particularly in their view that if more slaves were imported, more whites would become slave-holders and
more loyal in their support of the institution. It is difficult to accept Fryer's assertion that a reduction in the price of slaves was a form of abolitionism. Economically both sides argued superficially. Yancey and Spratt were too naive in their support of perfect competition, while Fryer carried his belief in the advantages of monopoly production to excessive lengths.

Another argument advanced in favour of the re-opening of the slave trade was that the law of 1808 making it illegal was unconstitutional. Yancey said that congress had no power to enact it:

"There is in the constitution no express grant of such power, and there is no express power there which cannot be executed, without implying the power to prohibit that trade...
the power to prohibit that trade lies alone with each state, and is a reserved right of each state."86

Spratt agreed with this view saying that:

"The clause under the operation of which those prohibitory laws had been passed... was a mere restriction, not any delegation of power."87

Thus, according to this argument, the 1808 law was rendered unconstitutional under the tenth amendment.

But it had been suggested that congress had power to pass the law under its explicitly granted authority to regulate commerce. The Fire-Eaters contradicted this argument on two counts. Claiborne, a radical editor and fire-eating ally of Quitman and Brown argued in his biography of Quitman that congress' power to regulate commerce with foreign nations was on a par with its power to regulate commerce among the several states. Thus if congress could prohibit the foreign slave trade, it could prohibit the inter-state slave trade, and it could exercise this power
because slaves were articles of commerce. But any such law
differentiating between one form of commerce and another had
been declared unconstitutional by the Dred Scott decision which
stated that

"no word can be found in the constitution which
gives congress a greater power over slave
property, or which entitles property of that
kind to less protection than property of any
other description."58

The Fire-Eaters were agreed that for congress to prohibit
the inter-state slave trade would be unconstitutional. Yancey at
one point seemed to assume as a matter of course that because
the derivation of the power to prohibit the foreign slave trade
from the power to regulate commerce would mean that congress
had the power to prohibit the internal slave trade of the South,
therefore such a derivation was inadmissible. For Yancey appeared
to think that an assertion that congress did have the power to
prohibit the inter-state slave trade was clearly inadmissible.69

Quitman who was doubtful about the alleged, power of congress
to prohibit the foreign slave trade,70 was certain that an
interference by congress with

"the free transportation of slaves from one
slave-holding state to another would be a
violation of the spirit of the compact...so
dangerous to the harmony of the whole, as to
demand the executive veto."71

Quitman was here arguing that a prohibition of the inter-state
slave trade would be a violation of the spirit though apparently
not of the letter of the constitution. Whether a prohibition of
the foreign slave trade would have been a similar violation
would appear to depend on purely subjectivist interpretation.

A contemporary scholar apparently disagrees with Yancey and
Quitman, for he argues that legally if the federal government
has any authority over slavery, it could use that power to destroy the inter-state slave trade; but if it had no authority, it could not maintain slavery in the District of Columbia, in the territories or on the high seas.72

But this interpretation seems to be invalidated by another of the arguments advanced by Yancey, who said that

"the power to regulate did not include the power to prohibit, as prohibition removed from the action of congress the matter to be regulated."73

At this point Yancey was arguing that legally congress did not have the power to prohibit the foreign slave trade, but elsewhere he said that he had not claimed

"that these laws rendering the foreign slave trade illegal were technically unconstitutional, that he had said was that the effect of those laws had been violative of the spirit of the constitution."74

This was because while the North retained the power to import as much labour as it wished, the South was robbed of its power to do so. 'It is a principle of construction " said Yancey

"that in construing the meaning of the constitution, you shall not destroy any of its plain and palpable principles. One principle of the constitution was the equality in the Union of southern states with northern states; which equality this law destroyed."75

Freston of Virginia contradicted Yancey's analysis. He quoted Mr. Pinckney of South Carolina to show that he and others from the South in the convention understood it to grant the power to prohibit the importation of African slaves after the year 1808. As for Yancey's protestations that these "laws were discriminating against the South and constitute a degrading badge, a dishonourable mark upon the South," he reminded the convention that the law of 1808 was passed by a democratic congress,
"sanctioned by the administration of Thomas Jefferson, in which was James Madison, one of the original framers of the constitution... the law of 1812, authorizing the employment of a naval force upon the coast of Africa to suppress the traffic in African slaves... was passed by a democratic congress, with James Monroe in the executive chair, and had William H. Crawford and John C. Calhoun in his cabinet to advise and counsel him."

He did not believe that the South had been betrayed by such men as these.76

Yancey replied that while these laws

"might not have been in opposition to the letter of the constitution, and were not intended by those who passed them to work injuriously to the South. Yet they might well have become, in their effects, repugnant to the spirit of the constitution."

And the fact that their constitutionality had not been questioned until recently was no sound argument:

"The Missouri compromise, approved by James Monroe and John C. Calhoun had been considered constitutional for more than thirty years. And yet in 1857 the Supreme Court of the United States had declared it to be unconstitutional."77

Yancey's attitude, despite its inconsistencies reduced to one principle. The laws passed by congress should be repealed, and the states should be left to regulate the matter as they saw fit. "I am for repealing those congressional laws" he declared, "and for leaving the matter to be regulated by the states themselves."78

This states' rights view fitted in neatly enough with standard fire-eating doctrines. But the curious confusion perceptible particularly in Yancey's arguments seems to indicate that he was concerned rather to find a cause for agitation than to establish the true constitutional interpretation of the debated
clauses. This suspicion is confirmed when it is remarked that after secession was achieved, Yancey supported the proposal to prohibit the foreign slave trade. This prohibition was carried out by the confederate government and the member states were not allowed to decide for themselves. Yancey arguing in the Union spoke a different language from Yancey arguing in the confederacy.

Yancey also inveighed vigorously against the law of 1820 which declared the foreign slave trade to be piracy. He damned it as a stigma on the South and further declared that it was not constitutional. The framers of the constitution must have known "what were piracies and felonies and the law of nations" when they gave power to congress to "define and punish piracies and felonies committed on the high seas and offences against the law of nations." It was inconceivable that the framers could have encouraged this trade by making a special provision in its favour had they thought it to be piracy or that congress would ever declare it to be so. Therefore congress had deliberately contravened the views of the framers of the constitution when they declared the trade to be piracy. The law violated both the letter and the spirit of the constitution.

But a study of further statements made by those Fire-Eaters who advocated re-opening of the slave trade seems to make it clear that many of them were not so much interested in re-opening the trade per se, as in using it as a further method of agitation against the South remaining in the Union. Yancey wrote that "in making this recommendation (to re-open the trade), my care was not so much for the African slave trade, but was to strip the southern ship
of state for battle."⁶²

Indeed his language at the Montgomery convention indicated clearly enough what Yancey's intentions were. Fryor had said that he was willing to go out of the Union with a united South.⁶³ Yancey dismissed this as nonsense: "It is folly to talk about a united South;"⁶⁴ it was human nature that there should always be some men in every body who were opposed to radical action:

"But one thing would influence one mind, another thing would influence still another mind, till at last all these influences would produce sufficient effect to enable the South to move forward from a Lexington to a Bunker Hill, and so go on until the foe had been driven from the land."⁶⁵

He did not propose that the South secede on this issue, but that it be reckoned as one more of the long series of wrongs perpetrated on the South by the North, which when added together justified secession.

Yancey and Spratt both dismissed as cowardly Fryor's argument that to re-open the trade would be a defiance of the law, and a violation of the Union under which the South was still living. Yancey said that if the North had power and would not repeal the laws, we should stand and resist them like men: "If a man spits in my face, I will strike him though he may thrash me."⁶⁵

Spratt who had supported his resolutions as "giving the moral strength of an aggressive attitude" to our belief in the benefit of slavery, went further than any other Fire-Eater in his proposals. After describing as "slavish" southern obedience to a federal government which it did not control, he went on to say that if the South approved of the re-opening of the slave trade,
"it will little matter what may be the course of Congress. The profits of the trade will compensate the risks of the adventure, and slaves will come despite the law against them... if this government shall send its agents to enforce the law, if they shall search our homes and seize our citizens for acts we recognise as right, the tea again falls overboard, the powder is seized again in Charleston Harbour, and as sure as the sun shall rise, it will rise upon the rocking plains of a southern Lexington and Concord."[87]

This was the doctrine of nullification again; a doctrine which in Spratt's hands may have been intended to support only the one action of effecting the re-opening of the foreign slave trade, but which was used by Yancey to quicken the spirit of secession.

Most of the Fire-Eaters were opposed to the re-opening of the trade despite the arguments adduced in its support, because they were afraid that it would handicap the cause of secession, by weakening the grounds on which secession appeared to rest.

Ruffin opposed the resolutions to re-open the trade[88] because of the strife it would create among southern states. His opposition was based on policy, not on principle and there is some evidence to show that he may later have changed his mind as to the advisability of favouring re-opening.[59]

Rhett agreed with the philosophy behind the proposal to re-open the trade when it was first agitated, but later he turned against it because the South could not be united on the question, and the subject should not have been agitated, when the great object was to achieve unity in the South for the purpose of secession.[90] He consistently refused to combine the slave trade and secession issues.[91]

In Mississippi the secessionist democratic party leaders
discouraged agitation of the slave trade question and focussed their attention upon those issues which were finally to disrupt the party at Charleston, because they provided better grounds on which to make the issue of dis-union. This opposition to slave trade agitation was based exclusively on party policy and not at all on principle. 92

But the master of agitation was Yancey. For despite all his arguments, so painfully concocted that they were constantly contradictory, he did not favour the re-opening of the trade as a distinct proposition. "On the contrary his judgement condemned it." 93 He used the agitation merely as a means of stirring up the South against northern tyranny and he seems to have disagreed with most of his fire-eating colleagues about the expediency of agitating the issue.

These disagreements and arguments make one conclusion clear. The Fire-Eaters were not particularly interested in the whole in the moral or economic aspects of the foreign slave trade. Some disagreed with it per se, but approved it as a method of rousing the South against the North. Others approved of it as a distinct measure, but disapproved of the agitation to re-open it, because they thought it would split southern opinion on secession.

Pryor and particularly Spratt seem to have been sincere in many of their arguments, though some of Pryor's economic reasoning was so thin as to make it appear that he was defending his section of the South rather than his arguments.

While the agitation to expand southern territory and to re-open the slave trade were in one sense complementary in the attempt to strengthen southern institutions, it is difficult to
resist the feeling that the expansionist arguments were much more honest. All the Fire-Eaters sincerely believed in expansion, probably because they thought it would benefit southern institutions absolutely, certainly because they thought it would benefit them in relation to the North.

But there was no such unanimity about the foreign slave trade. The arguments were confused and frequently sophistic. Expedience clashed with principle, and principle took a bad beating. It can be argued that the Fire-Eaters were not really aggressive in favouring a re-opening of the trade, for the proposal can be interpreted as merely a reprisal against the liberty laws of the free states. But an examination of the statements made by the Fire-Eaters seems to indicate that many used the agitation, sincerely supported by some for its own sake, merely as a stick with which to beat the Union, and they supported or opposed the proposal according to their estimate of the strength of the stick.
Chapter V.

Notes.


2. Laura A. White, Robert Barnwell Rhett, pp. 132-133.


4. Appendix to the Congressional Globe, 32nd.cong., 1st.sess., p. 357.


16. Appendix to the Congressional Globe, 36th.cong., 1st.sess., p. 53.


19. Appendix to the Congressional Globe, 34th.cong., 1st.sess., p. 668.


22. Appendix to the Congressional Globe, 34th congr., 1st sess., p. 668.


27. Appendix to the Congressional Globe, 34th congr., 1st sess., p. 668.


32. J. B. Ranck, op. cit., p. 171.


34. Debors Review, XXIII, 312.


36. Appendix to the Congressional Globe, 34th congr., 1st sess., p. 672.


38. Appendix to the Congressional Globe, 34th congr., 1st sess., p. 672.


41. W. R. Smith, History and Debates of the Convention of the People of Alabama, p. 351.


46. Harvey Wish, loc. cit., p. 572.
47. Debow's Review, XXIII, 317.
49. L.W. Spratt, loc. cit., Debow's Review, XXIV, 482.
50. L.W. Spratt, loc. cit., Debow's Review, XXIV, 482.
52. L.W. Spratt, loc. cit., Debow's Review, XXIV, 484.
59. Debow's Review, XXIV, 582.
60. Debow's Review, XXIV, 582-583.
61. Debow's Review, XXIV, 584.
63. Debow's Review, XXIV, 586.
64. Debow's Review, XXIV, 586.
69. Debow's Review, XXIV, 599.
72. J.S. Sydnor, Development of Southern Sectionalism.
73. Debow's Review, XXIV, 599.
74. Debow's Review, XXIV, 597.
75. Debow's Review, XXIV, 597.
76. Debow's Review, XXIV, 594.
77. Debow's Review, XXIV, 598.
83. Debow's Review, XXIV, 583.
84. Debow's Review, XXIV, 587.
85. Debow's Review, XXIV, 600.
86. Debow's Review, XXIV, 587.
87. Debow's Review, XVII, 212.
89. Avery Graven, op. cit., p. 164.
90. Laura A. White, op. cit., p. 141.
91. Laura A. White, op. cit., p. 148.
92. F.I. Rainwater, Mississippi, Storm Centre of Secession, p. 82.
The previous chapters of this study have shown that the political thought of the Fire-Eaters arose out of the conditions obtaining in the United States before the civil war and was intended to provide a defense of southern interests. That their thought should have reflected the interests of their section does not of course embody criticism of the Fire-Eaters. Few political opinions are hazarded in vacuo; nearly all are aimed at defending an existing situation or at promoting changes, and in either case, the argument will, at least to some extent, serve that body which enjoys the support of the theorist.

In the years preceding the civil war, the situation of the South drove it to adopt a defensive attitude. Because the movement towards greater federal power involved greater northern power, because the tendency towards tightening unification of the sections meant more control of free states over slave states, the South looked back longingly to the days when the central government had been weak, and had been unable to prevent the distinct sections going their own way. It seemed to ardent southerners that most, if not all, changes in the powers of government were changes for the worse, and their natural reaction was to resist change, and to be constitutional conservatives.

This meant that southern thinkers cast their minds back towards the ideas of the framers of the constitution, whose
theories were so well suited to the southern situation. For the constitution had only been drawn up and ratified under great difficulties. The thirteen states, proud of their independence, had tended to view with suspicion the efforts of Federalists to mould them into one great state, and the constituent assembly had been forced to proceed warily lest the reduction of state powers, which the formation of one Union necessarily involved, become so great that the states would have refused to ratify it. The assembly had been careful to guarantee to the states their continued sovereignty over domestic matters, and had restricted the federal government to national concerns. The whole constitution breathed that spirit of compromise which, among other things, led to a restriction of the powers of the central government. These restrictions had been achieved by the mechanism of states' rights, which meant that the main body of governing authority was reserved to the states by the tenth amendment.

The philosophy behind these restrictions on federal power was thoroughly acceptable to the Fire-Eaters, for if maintained it would secure their way of life to the southern states, who were defending themselves against federal encroachments. Because the Fire-Eaters evolved their thought at a time when the South was a minority section, they seized eagerly on all those aspects of the constitution which could be interpreted as a defense of minority rights. This defense was founded on two arguments, which alike in consequence, were distinct in derivation.

The first argument drew its force from the clauses in the constitution which limited the power of the central government. For this government reflected a national majority, and in so far
as its powers were restricted, the powers of national majorities were also restricted.

This involved us a corollary a second argument for minority rights. For the obverse side of restriction of the federal government was the possession of wider powers by the states. And as states might form minorities inside the national organisation, this involved the possession by minorities of greater rights of resistance to national majority decisions. These arguments, while arising out of peculiarly American circumstances, are capable of wider interpretation and reference.

For while the actual states' rights argument was a mechanism possible only in a federal system, it illustrates the problem of minority rights, as it appears in all democracies where there are different sections with distinct interests. In the period before the civil war, states' rights were a defensive weapon for minorities not because the arbitrary lines dividing states in the Union were peculiarly sacrosanct, but because different states made up sections, each with its own cause to serve.

Normally where minorities have interests distinct from those of the majority, it is possible to achieve a satisfactory settlement, provided that the clash of interests is not over issues which either side regards as fundamental. For example, where sections are split along party lines, and the parties are alternating in power, the majority party will limit its exercise of power, in return for a similar concession when it in turn becomes a minority. A majority party will frequently allow the minority as much freedom as is consistent with its safeguarding of its own basic interests. There will be attempts to reach
settlement between conflicting parties or sections by means of peaceful persuasion. But in the end, in practice, where there is a fundamental clash and where compromise settlement proves impossible, the minority must expect to be overborne.

This is the way in which democracies have worked, and in fairly homogeneous states, the overriding of minority opposition does not involve the disruption of peaceful relations between conflicting sections. But in the United States, with its widely differing sections, and particularly in the ante-bellum United States, this situation was gravely aggravated by the fact that the North and South regarded themselves as two different peoples. Because the two major sections held such divergent views on economic and social questions, the Fire-Eaters were prepared to leave the Union rather than to undergo northern domination.

Under these circumstances, the argument for minority protection became altogether more violent than it usually does, a violence attested by the fact that it finally led to the civil war. It was settled in the end in the way that such problems have normally been settled, by the victory of the stronger.

The Fire-Eaters’ proposals to deal with this problem of minority rights, fell into two broad categories. Firstly, the powers of the federal government should be limited to the duties specifically assigned to it by the constitution. This argument was opposed by supporters of "Broad construction" who claimed that while the general principles underlying the constitution should be obeyed, their application in practice must be decided by each successive generation in accordance with changing conditions. And if changing conditions required that one section receive
preferential treatment over the others in what the majority considered to be the general interest, then the appropriate action must be carried out. On this issue there was no possibility of agreement, for the two sections were talking at cross purposes, starting from different premises. The southerners were arguing on the basis of history and constitutional law, the northerners on what they conceived to be the requirements of progress.

A second argument, most fully developed by Calhoun, but anticipated and repeated by some Fire-Eaters was that major federal decisions should only be taken if a decisive proportion—for example three-quarters—of the differing sections supported them. This meant adopting a system of minority veto in all major issues of general concern.

In terms of strict political theory, the Fire-Eaters had a strong case in this suggestion for protecting minority rights, stronger than that of most minority groups. For the American federal system had been specially designed to protect minority sections. This was done by reserving the vast body of governmental power to the states. Not only did the states preserve the reserved power in everything which affected their domestic concerns, as distinct from national affairs, but in addition the amending process in the constitution implied that no major changes should be made without the consent of at least three-quarters of the states. The use of the elastic clause, the entire system of broad construction violated this process, and as far as actual constitutional interpretation was concerned, the South's objections to broad construction were firmly based. By 1850
the northern section was claiming powers which the framers of
the constitution probably did not intend should belong to a
section which boasted only a simple majority, even if that
majority were a constant one.

It is at this point that the majority-minority problem as
exhibited in action between South and North shifts on to a
plane which is no longer to be judged by purely American
conditions. For the question of how far a minority group can
prevent a majority group from adapting the constitution to assist
its own purposes, is the same problem in essence of how far a
minority group can prevent the majority from doing anything it
wishes to do. Where fundamental issues are concerned, the
answer seems to be that the minority is helpless. The majority
is limited only in so far as it must avoid doing anything which
will lead to its losing its majority position.

For this reason, while it is possible to argue both for and
against the Fire-Eaters' theory, that major changes should be
made only with the consent of three-quarters of the states, it
is difficult to believe that in practice it could ever have been
effective. For a decision has to be taken one way or the other
on national issues, and under the American system, this decision
must inevitably be—within some qualifications—a majority decision.
The tariff, for instance, was a national issue, for varying
rates in different sections was not a practicable proposal. What
was this tariff to be? Inevitably it had to be what the majority
wanted it to be. Minorities, particularly in the confused American
situation before the civil war exercised much influence. The
South, although it did not possess a national majority in 1846,
succeeded in winning the Walker tariff. But the general tendency was for tariffs to rise, for as a national question, it could not avoid majority decision.

In the same way, when the accession of new territories to the United States raised the issue of whether slavery could expand into these territories, the question became a national one. It proved impossible to control it through separate sectional decisions. And in so far as it did become a national issue, the decision of whether or not slavery should be carried into the territories was bound to be made as the majority of the nation, through its representatives, decided.

This was where the sectional defense theories of the Fire-Eaters broke down. For whatever safeguards would have been written into the constitution, a constant northern majority could have avoided them. An inspection of the way in which constitutional provisions have been interpreted will show to what extent constitutional limitations are effective against a constant majority, employing the weapon of broad construction.

For the blunt truth has to be faced. Any law, even a constitutional law, is effective only as long as the people want it to remain effective. In some cases in American history a specific constitutional amendment has been necessary, but the modification of the constitution which has been effected without the use of amendments shows how in fact the law becomes what the majority wants it to be.

It is because of this, because majority decision is the ultimately decisive factor, that the fine-spun theories of the Fire-Eaters broke down. No theory is of value as an intellectual
abstraction. Theories are valuable only in so far as they deal with realities, and the grim reality is that on clear-cut fundamental issues, a minority in a state must give way to a determined majority.

During the last years before the civil war, the Fire-Eaters realised this, and while they were enunciating their theories of minority defense, they were also taking action of their own. Typical of this defense in action were the agitation for southern expansion, for the re-opening of the foreign slave trade, and most important of all, the agitation for secession. These movements revealed the true fire-eating spirit, and they grew in strength as their supporters realised the inadequacy of minority rights theory to resist a determined North.

But leaving aside the relation of theory to practice, the political thought of the Fire-Eaters should be judged by the criterion of how far it justified the activities which the Fire-Eaters advocated. That it did provide such a justification there can be little doubt. The North behaved as its interests led it to do; the South had to behave in the same way; neither side displayed altruism. It may be that it was selfish, bigoted leadership which made the civil war inevitable, though this is highly questionable. Certainly the Fire-Eaters helped to bring war on. But from their point of view, their actions were fully justified by their reasoning. They thought that the northern states were breaking the compact of Union, and it therefore was up to the South to do all it could to avoid persecution. This policy, in the circumstances which obtained, could best be promoted by preserving the constitutional status quo ante. In
In this situation, fire-eating thought was basically a defensive instrument, an argument for conservatism and against change.

It has not been the purpose of this study to make ultimate value judgements on the conclusions which the Fire-Eaters reached. It has been shown that the main body of fire-eating thought was consistent. They adopted certain premises on what should have been the correct relation between the North and the South, and the correct relation of both sections to the Union and to its fundamental instrument, the constitution. If the validity of these premises be granted, then the conclusions which they reached were also justified. The question of how far, if at all, these premises were acceptable and accurate involves issues wider than those with which this study has pretended to deal.
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