ABSTRACT

Title of Dissertation: CONFEDERATE FEDERALISM: A VIEW FROM THE GOVERNORS

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Examination of Confederate federalism to date generally has emphasized one of two interpretations: that the Confederacy either "died of state rights" or that the Confederacy, because of the war-time demands, created a government at least as centralized as the Union, if not more so. This dissertation argues that the reality was much more complex. Confederate federalism consisted of three phases. The first, or the cooperative, phase was represented by a high degree of cooperation between the states and central government and lasted from the formation of the Confederacy until the spring of 1862. The governors freely provided troops, arms, and equipment to both the Confederacy and each other with minimal conflict over constitutional lines of authority.

The second phase, from the spring of 1862 to the fall of 1864, was marked by conflict between the states and the Davis administration, with the differences

resolved through negotiated compromises. While conscription was a war-time necessity, compromises were negotiated between the governors and the Davis administration over exemptions, use of state courts in deciding the constitutionality of conscription, and changes in the law itself. Impressment and the suspension of the writ of *habeas corpus* were recognized by the governors as legitimate constitutional powers of the central government, but limitations were negotiated with respect to their enforcement. Lastly, fiscal policies were deemed by the governors to fall within the sphere of the Confederacy's constitutional authority and therefore beyond the scope of gubernatorial authority.

The final phase of Confederate federalism, from the fall of 1864 until the end of the war in the spring of 1865, witnessed the states struggling for survival and the collapse of the Confederacy. The governors sought to keep troops and supplies for their states and to suppress or control local peace initiatives in an unsuccessful effort to win the war.

CONFEDERATE FEDERALISM:

A VIEW FROM THE GOVERNORS

by

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For my children

Chelsea
Stephen
Annie

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TABLE OF CONTENTS

INTRODUCTION

This study examines federalism from the perspective of the governors of the eleven states of the Confederate States of America. The governors' position in the Confederacy provides a unique view of Confederate federalism. The main issue was the extent to which the office of governor would remain as it was in the United States constitutional order; certainly the possibility existed to reconstruct the governors' office, giving it greater, or even less, power. This proved to be a difficult issue to resolve. The Confederate governors ultimately led their states into a relationship with the Confederate central government that was very different than that in the United States. For the first year of the war, cooperative federalism dominated the relationship between the states and central government. With the competition for resources, a desire to win the war, and military losses creating friction between the states and central government, from the spring of 1862 to the fall of 1864, a period of negotiated federalism ensued. In the last months of the war, the relationship degenerated as the governors and the central government each sought whatever resources were available to survive the collapse of the Confederacy.

The state governmental structure, as compared to the Confederate central government, was already intact and functional in the spring of 1861. Chief executives of the various states logically assumed leadership of their states. Because the governors were the focal point of state interaction with the Confederate

central government, their roles are pivotal in any analysis of Confederate federalism.

While the title and authority of the southern governors remained relatively constant from the colonial era to the outbreak of the Civil War, their responsibilities generally were expanded. As chief executives, the southern governors under the first state constitutions after the Revolution were accorded limited power out of fear that they could exercise his power arbitrarily. Thus, the legislature was the dominant branch of government in the early years of the republic and through the ante-bellum period. And although it might be tempting to think of the governors as "little Presidents," James Fesler notes that governors fail to fulfill such a role largely because of their inability to "attract public attention and, if necessary, mobilize public support."[1] This is certainly true of the ante-bellum southern governors, although during the state secession crises and subsequent periods of state independence many governors were able galvanize public attention and support and, thus, function effectively as a chief executive.

Governors in virtually all of the southern states prior to 1861 were authorized to execute the laws, grant pardons and reprieves, issue proclamations, and command the militia. North Carolina was one of the exceptions by granting the governor only the constitutional power to grant pardons and commission justices of

[1] James W. Fesler, ed., *The 50 States and Their Local Governments* (New York, NY: Alfred A. Knopf, Inc., 1967), 290-291.

the peace as "recommended by the legislature."[2] It is clear that these powers under ordinary circumstances would not permit the governor to properly "check" the actions of the legislature. With the governor's command of the militia he could challenge the legislature, but then only under extraordinary circumstances. The constitutional limitations confronting the ante-bellum southern governors left them with weakened authority.

Almost all ante-bellum southern governors faced term limits. In Alabama, the executive was elected to a two-year term, to serve no more than four years out of six;[3] in Arkansas, the governor was elected to a four-year term, serving no more than eight of twelve years.[4] Under Virginia's 1776 Constitution, the governor was elected for a one-year term, eligible for re-election up to three successive terms. He could become governor for a fourth term only after a four-year hiatus. Virginia later amended the term requirement to one of three years, with a three-year period of ineligibility before being able to serve again, and in 1851 amended the term once more to one of four years, with a four-year period of ineligibility.[5]

As an additional limitation, all of the original southern states provided for election of the governor by the legislature, although only South Carolina retained this provision until the Civil War. Georgia provided for the popular election of the

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[2] Ralph A. Wooster, *Politicians, Planters, and Plain Folk: Courthouse and Statehouse in the upper South, 1850-1860* (Knoxville, TN: The University of Tennessee Press), 56.

[3] Alabama Constitution (1819), art. 4, sec. 4.

[4] Arkansas Constitution (1836), art. 5, sec. 4.

[5] Virginia Constitutions (1830), art. 4, sec. 1; (1851), art. 5, sec 1.

governor through a constitutional amendment in 1824,[6] North Carolina, in 1835,[7] and Virginia in 1851 amended its Constitution to allow for the popular election of the chief executive.[8] Mississippi,[9] Alabama,[10] Arkansas,[11] Florida,[12] all provided for direct election of the governor upon their entry into the Union.

For most southern states prior to the Civil War, further limitations of gubernatorial powers included either lack of a veto power or, in instances where the veto authority was granted, it could be overridden by a simple majority of the legislature. In South Carolina, Virginia, Tennessee, and North Carolina, the governors all lacked the veto power. This severely limited the power of the governor to check the legislature and thus contributed to the governors' subordination to the legislature. Florida[13] and Arkansas[14] permitted a governor's veto, but a simple majority of the state legislature could overturn his veto. The

[6] Georgia Constitution (1798), art. 2, sec. 2 (amended 1824).

[7] North Carolina Constitution (1776), sec XV (amended 1835, art. 2, sec. 1).

[8] Virginia Constitution (1851), art. 5, sec. 2.

[9] Mississippi Constitution (1817), art. 4, sec. 1.

[10] Alabama Constitution (1819), art. 4, sec. 2.

[11] Arkansas Constitution (1836), art. 5 sec 2.

[12] Florida Constitution (1845), art. 3, sec 2.

[13] Florida Constitution (1838), art. 3, sec. 17.

[14] Arkansas Constitution (1836), art. 5, sec. 16.

governor's veto capabilities were strongest in Georgia[15] Louisiana,[16] Mississippi,[17] and Texas[18] where the governor's veto could only be overridden by two-thirds of each house in the state legislature.

The governor of North Carolina was subject to stricter limitations than the other southern governors in that he had to share authority with the Council of State. The state legislature appointed seven persons to a one-year term on the Council, which was to

> advise the Governor in the execution of his office; … their advice and proceedings shall be entered in a journal to be kept for that purpose only, and signed by the members present; to any part of which, any member present may enter his dissent. And such journal shall be laid before the General Assembly when called for by them.[19]

The Council of State, along with the lack of a veto, left the state's governor without any substantive ability to counter the legislature.

Louisiana, early in the eighteenth century, accorded its governors more power than any other Southern state. Under the Constitution of 1812, the chief executive commanded the state's armed forces, could veto legislation (which could be overridden only by a two-thirds vote), and was authorized to appoint numerous

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[15] Georgia Constitution (1789), art. 2, sec. 10.

[16] Louisiana Constitution (1852), title III, art. 53.

[17] Mississippi Constitution (1832), art. 5, sec. 15.

[18] Texas Constitution (1845), art. V, sec. 17.

[19] North Carolina Constitution (1776), art. 16.

state officials.[20] The governor's authority was reduced, however, by the Constitutions of 1845 and 1852. His appointive powers were limited, and ultimately, these powers were removed altogether. By the 1850s, Louisiana's governor "retained the veto power but little else."

The cause for the governor's loss of power in Louisiana was the Jacksonian movement toward democratization and popular election of political officials.[21] And although this resulted in decreased gubernatorial power in Louisiana, throughout most of the South the governor's authority *vis a vis* the legislature was slightly increased through direct election, longer terms of office, and increased veto capabilities. Yet the governors' power remained subordinate to that of the legislature. This did not mean that the office was considered inconsequential, however. As Ralph Wooster noted, "…the office of governor was eagerly sought and contested for throughout the pre-Civil War period, and in part this was owing to the social prestige attached to the office, and in part because the post was view by many as a stepping stone to national office."[22]

When secession occurred, the Confederate governors' authority as delegated by the state constitutions remained unchanged, despite the revision of existing

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[20] As one political scientist has noted the ability of the governors to appoint department heads, create an executive budget, and coordinate services and administrative functions led to the "reorganization movement" in the first half of the twentieth century. Coleman B. Ransone, Jr., *The Office of Governor in the South* (University, AL: Bureau of Public Administration, 1951), 7-8. However, this movement began sixty years after the Civil War.

[21] Ralph A. Wooster, *The People in Power: Courthouse and Statehouse in the Lower South, 1850-1860* (Knoxville, TN: The University of Tennessee Press, 1969), 50-51.

[22] Ralph A. Wooster, *Politicians, Planters, and Plain Folk*, 122.

constitutions or adoption of new constitutions. Two states revised their constitutions in 1861,[23] but did not alter the powers of the executive. Four states[24] adopted new constitutions in 1861, with the only substantive change pertaining to the chief executives occurring in Florida where the governor's term was reduced from four years to two.[25] State constitutions at the time of secession in Mississippi, South Carolina, Tennessee, and Texas remained in force. Only Virginia ratified a new constitution during the war, but this 1864 constitution did not modify the governor's authority.

Even though the Confederate governors' constitutional authority was not expanded, the war, combined with the doctrine of state rights, thrust the Confederate governors into the foreground of state and national politics and provided them with the opportunity to assume leadership positions not possible earlier. Many of the Confederate governors would assert themselves in a myriad of issues, such as conscription, suspension of the writ of *habeas corpus*, and impressment, and would seek to define their relationship with the central government as a negotiation of equals. Yet the governors recognized that they were subordinate to the Confederate national government, particularly in the effort to win the war. It was this constant struggle of the governors in negotiation with the central government on behalf of their respective states to defend the interests of their states, while maintaining a

[23] Alabama and North Carolina.

[24] Arkansas, Florida, Georgia, and Louisiana.

[25] Swindler, William F., *Sources and Documents of United States Constitutions*, Vol. 2 (Dobbs Ferry, NY: Oceana Publications, Inc., 1973), 335.

constitutional system defined by dual federalism that characterized the expanded powers of the governors.

Furthermore, as executives of the respective states, the Confederate governors participated in a grand experiment: creating the second confederation in the American experience. Just as in America's first experiment with a confederated system of government, the heart of the constitutional conflict between the North and the South in the mid-nineteenth century was the issue of federalism. In forming a new national government, the Confederacy was confronted with the monumental task of deciding what kind of union it would create.

The relationship in America of two levels of government ruling a common people and land was not new to the mid-nineteenth century. Federalism as an issue in American politics dates from the colonial era when Americans, through their colonial experience, were forced to grapple with the issue of allocation of power within a multi-layered constitutional structure.[26] As a result of these experiences, Americans initially created a constitutional system in the Articles of Confederation that posited a great deal of power in the states and failed to provide sufficient authority for the central government to fulfill its mission. The critical issue, therefore, in the constitutional convention of 1787 concerned the proper allocation of authority between the state governments and central government that would

[26] Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge, LA: Louisiana State University Press, 1988). Also see, Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607-1788* (New York, NY: W.W. Norton & Co., 1986).

maximize liberty and yet allow for the prosperity and protection of the people. In other words, what kind of federalism would be best suited for the United States?

A commonly accepted definition of federalism, formulated by political scientist William Riker, holds that

> A constitution is federal if (1) two levels of government rule the same land and people, (2) each level has at least one area in which it is autonomous and (3) there is some guarantee (even though merely a statement in a constitution) of the autonomy of each government in its own sphere.[27]

The Constitution does not define the exact nature of federalism; in fact, it does not even contain the terms "federal union" or "federalism." To "create a more perfect Union," nationalists such as James Madison and Alexander Hamilton sought a federalism that would favor a strong national government and provide the stability necessary for liberty that was lacking under the Articles of Confederation. Other delegates, such as Roger Sherman, viewed a strong national government as a threat to "republican liberty."

Despite spirited debate both at the constitutional convention and during the ratification process, lack of consensus on this issue has allowed for a variety of interpretations of federalism over the years, including nation-centered federalism, state-centered federalism, dual federalism, and cooperative federalism. In a nation-centered federalism, the source of authority for the national government is the American people as a whole, as one people. To Hamilton and the Federalists in support of the new Constitution in 1788, the authority of the national government

[27] William H. Riker, *Federalism: Origins, Operation, Significance* (Boston, MA: Little and Brown, 1964), 11.

must extend directly to the citizens and not through the states. As Hamilton observed, "[the federal government] must carry the agency to the persons of the citizens. It must stand in need of no intermediate legislations, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions."[28] The people themselves must form the central government, for this is a fundamental distinction between a league, created by states, and government, which is formed by its citizens.[29]

In *McCulloch v. Maryland*,[30] the Supreme Court specifically addressed the issue of distribution of power within America's unique political framework and weighed in on behalf of a nation-centered federalism. Congress chartered the Second Bank of the United States in 1816, which renewed the criticism over the proper authority of the United States in sanctioning such an entity. Many opposed the Bank as unconstitutional, arguing that it was unauthorized by the Constitution and was not of economic necessity. Maryland's imposition of a tax on the federal bank was challenged and the issue was brought before the Supreme Court. According to the Court, "the government proceeds directly from the people [and] is 'ordained and established' in the name of the people."[31] Marshall continued, "…the government of the Union, though limited in its powers, is supreme within its

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[28] Alexander Hamilton, John Jay, and James Madison, *The Federalist Papers*, No. 16 (New York, NY: Mentor Books, 1961), 84.

[29] *Ibid.*, no. 15, 77-78.

[30] 17 U.S. (4 Wheat.) 316 (1819).

[31] 17 U.S. at 403.

sphere of action."[32] While alluding to some form of divided sovereignty, the Court also asserted that these limitations were few. It disposed rather easily with the Tenth Amendment[33] by stating that the Constitution allowed for implied powers. In the final analysis, while recognizing that the states were not powerless and without authority, Marshall did strengthen the national government and through the Court's application of the law allowed for a further consolidation of power in the central government.

Daniel Webster, the ante-bellum Whig politician from Massachusetts, articulated views supporting both Hamilton and Marshall. He observed that federalism was "the origin of this [the central] government and the source of its power. Who's [sic] agent is it? Is it the creature of the State Legislatures, or the creature of the People?"[34] As Webster noted,

> The People were not satisfied with it (the Articles of Confederation), and undertook to establish a better (sic). They undertook to form a General Government, which should stand on a new basis—not a confederacy, not a league, not a compact between States, but a *Constitution*; a Popular Government, founded in Popular election, directly responsible to the People themselves…[35]

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[32] *Ibid.* at 405.

[33] The Tenth Amendment reads as follows: "The powers not delegated to the Untied States by the Constitution, nor prohibited by it to the States, are reserved to the Sates respectively, or to the people."

[34] Herman Belz, ed., *The Webster-Hayne Debate on the Nature of the Union* (Indianapolis, IN: Liberty Fund, 2000), 125.

[35] *Ibid.*, 154.

Implicit in this formulation is the conception that a government which obtains its authority directly from the people is more accountable its citizens. The Union already existed prior to the Constitution and the people themselves are the source of authority for this new government, as illustrated in the preamble to the Constitution itself, which acknowledges, "We, the People of the United States, in Order to form a more perfect Union do ordain and establish this Constitution…."

Abraham Lincoln, too, embraced nation-centered federalism. By the outbreak of the Civil War, Lincoln explained in his first inaugural address that the "Union is older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776." To Lincoln, if the Union were older than the Constitution, then the states could not have been a party to creation of the Union. Lincoln continued that he had no recourse but to ensure that "the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part; and I shall perform it so far as practicable, unless my right masters, the American people, shall withhold the requisite means…" Lincoln, and by implication the central government, reported directly to the people, not the states. With these comments, Lincoln pointedly contested the southern position of a state-centered federalism. A number of twentieth century historians and political scientists, such as Samuel Beer, have maintained this perspective of nation-centered federalism.[36]

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[36] See Samuel Beer, *To Make A Nation: the Rediscovery of American Federalism* (Cambridge, MA: The Belknap Press of Harvard University, 1993).

State-centered federalism, or state rights,[37] emphasizes the sovereignty of the state, which entered into a compact with each other to create the central government. In this analysis, protecting the state governments against central government encroachment is essential. Paul Finkelman asserts that the term state rights was utilized in ante-bellum American in four broad categories. The most benign form of the definition was independent state power, where the state could claim concurrent jurisdiction with the federal government in such spheres as taxation, commerce, and economic regulation. The most severe form of state rights was secession, or the assertion that a state could leave the Union of its own volition. Two more moderate views include state denial of interstate comity (as in a state's refusal to return a runaway slave pursuant to the fugitive slave law) and state non-cooperation with, interference with, or nullification of federal law. From the founding, through 1861, these strains of state rights could be found both in the South and the North.[38]

[37] The term state rights was in common usage prior to the Civil War to describe state-centered federalism. It was only after the war that states' rights became the dominant term. I will use state rights in this dissertation because it was the term commonly used by southerners in the antebellum period and it most accurately reflects, grammatically, state-centered federalism.

[38] Paul Finkelman, "States' Rights North and South in Antebellum America," in *An Uncertain Tradition: Constitutionalism and the History of the South*, ed. Kermit L. Hall and James W. Ely, Jr. (Athens, GA: University of Georgia Press, 1989), 125-158.

Anti-Federalist arguments against ratification of the Constitution embodied state-centered federalism.[39] As noted by the Anti-Federalist "Agrippa" in criticizing the proposed Constitution,

> No rights are reserved to the citizens. The laws of Congress are in all cases to be the supreme law of the land, and paramount to the constitutions of the individual states. The Congress may institute what modes of trial they please, and no plea drawn from the constitution of any state can avail. This new system is, therefore, a consolidation of all the states into one large mass, however diverse the parts may be of which it is to be composed. The idea of an uncompounded republick, on the average one thousand miles in length, and eight hundred in breadth, and containing six millions of white inhabitants all reduced to the same standard of morals, of habits, and of laws, is in itself an absurdity, and contrary to the whole experience of mankind.[40]

Likewise, the Virginia and Kentucky Resolutions of 1798 reflected the importance of the state in federalism. Virginia, in its opposition to the Alien and Sedition Acts, passed a resolution asserting that the states were "parties" to the "compact" creating the federal government and that

> In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact [the states had a duty] to interpose, for arresting the progress of the

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[39] See Saul Cornell, *The Other Founders: Anti-Federalism & the Dissenting Tradition in America, 1788-1828* (Chapel Hill, NC: University of North Carolina Press, 1999); Cecilia Kenyon, ed., *The Anti-Federalists* (Indianapolis, IN: The Bobbs-Merrill Company, Inc., 1966); Jackson Turner Main, *The Anti-Federalists: Critics of the Constitution, 1781-1788 (*New York, NY: W.W. Norton & Co., 1961, 1974); and Herbert J. Storing, *What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution* (Chicago, IL: University of Chicago Press, 1981).

[40] Cecilia Kenyon, *The Anti-Federalists*, 134.

> evil, and for maintaining within their respective limits, the authorities, rights, and liberties appertaining to them.[41]

However ineffective the Virginia and Kentucky Resolutions may have been, they were a clear expression of the compact theory of government and the authority that accrues to the states.

By the 1820's, state rights was expressed less as resistance to federal authority than as minimizing the impact of the federal government on the states. As Andrew Jackson wrote, "Its [the federal government's] true strength consists in leaving individuals and States as much as possible to themselves…,not in binding the States more closely to the center, but leaving each to move unobstructed in its proper orbit."[42] While this conceptualization is closely related to the dual federalism mentioned below, Jackson's Maysville Road veto, Cherokee removal, and elimination of the National Bank all reflect the growing national emphasis at that time on leaving the state "unobstructed."

John C. Calhoun of South Carolina articulated the most significant expression of state-centered federalism. In response to the Tariff of Abominations (Tariff of 1828), Calhoun wrote *Exposition and Protest* where he asserted that the Constitution was a compact among the states, which did not surrender their

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[41] *The Virginia Resolutions*; quoted in Walter Hartwell Bennett, *American Theories of Federalism* (University, AL: University of Alabama Press, 1964), 93.

[42] Forrest McDonald, *States' Rights and the Union: Imperium in Imperio, 1776-1876* (Lawrence, KS: University Press of Kansas, 2000), 110-111.

sovereignty to the national government.[43] Likewise, the central government did not possess an exclusive right to determine the extent of its own power. The states could determine the constitutional extent of federal power through three mechanisms. First, the state could "nullify" a federal law's applicability within that state. Secondly, if the national government insisted on the constitutionality of the law, a convention or constitutional amendment would be required for the law to remain in force. And finally, if three-quarters of the states ratified the national law, the nullifying state could either accede to the majority or secede from the Union.[44] To Calhoun,

> …the government of the United States, with all its complication and refinement of organization, is but a part

[43] Congress passed the Tariff of 1828 to protect the nascent textile industries of New England. According to William W. Freehling, South Carolina, which was the only state with a black majority, was fearful that the federal government might abolish slavery by following the British, who were freeing slaves in their West Indies holdings at the time. South Carolina slaveholders, to fend off this possibility and limit the power of the federal government, selected the tariff issue to contest. When Congress refused to compromise with the southerners and passed an expanded tariff in 1832, South Carolina passed an Ordinance of Nullification. The concept of nullification, articulated by John C. Calhoun in his*The South Carolina Exposition and Protest*, harkened to the Virginia and Kentucky Resolutions and allowed a state to declare null and void a federal law. President Andrew Jackson opposed South Carolina to the extent that he was willing to utilize force, if necessary. A compromise tariff in 1833, which gradually phased out the tax, allowed both sides to settle the issue. South Carolina rescinded the Nullification Act. See, William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York, NY: Oxford University Press, 1965, 1966) and Richard B. Ellis, *The Union At Risk: Jacksonian Democracy, States' Rights and the Nullification Crisis* (New York, NY: Oxford University Press, 1987).

[44] David B. Walker, *Toward a Functioning Federalism* (Cambridge, MA: Winthrop Publishers, Inc., 1981), 47-48; Jesse T. Carpenter, *The South As a Conscious Minority, 1789-1861: A Study in Political Thought* (New York, NY: New York University Press, 1930; reprint Columbia, SC: University of South Carolina Press, 1990), 136-141 (page citations are to the reprint edition).

> of a system of governments. It is the representative and organ of the States, only to the extent of the powers delegated to it. Beyond this, each State has it own separate government, which is its exclusive representative and organ, as to all the other powers of government—or, as they are usually called, the reserved powers.[45]

The states as equal sovereigns enjoy a number of rights inherent to their sovereignty, including interposition, nullification and, ultimately, the state's right to secession.

In the United States, the South is identified with defense of state-centered federalism prior to the Civil War. As slavery became a constant issue confronting the nation from the close of the Mexican American War until the outbreak of hostilities in 1861, southern states looked to the federal government to protect their interests. Southerners supporting slavery could look to President Franklin Pierce, who in 1855, said that the federal government "was forbidden to touch this matter in the sense of attack or offense… [only] in the sense of defense."[46] This perspective was confirmed in 1857 when the Supreme Court, in *Dred Scott v. Sandford*, provided protection for slavery in the territories and held that Congress lacked the

[45] *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence, *A Discourse on the Constitution and Government* (Indianapolis, IN: Liberty Fund, 1992), 133.

[46] Quoted in Richard N. Current, "State Rights," *Encyclopedia of the Confederacy* by Richard N. Current, ed. (New York, NY: Simon & Schuster, Inc., 1993), 1534.

authority to interfere with slavery in the territories beyond the Mississippi River, thus repealing the Missouri Compromise.[47]

States rights' arguments were also employed by some northern states to assert their respective rights relative to slavery. Ohio, because of its location, encountered constant problems with slave transit. Salmon P. Chase, congressman and abolitionist who challenged the federal fugitive slave law numerous times in the 1840s and 1850s, asserted, "[t]he Constitution found slavery and left it a state institution—creature and dependent of State law—wholly local in its existence and character."[48] Likewise, Governor William H. Seward of New York refused to return a runaway slave to its owner in Virginia, basing his argument, in part, upon the sovereignty and laws of his state.[49] Thus state-centered federalism was utilized defensively by northern states to stave off the imposition of federal law enforcing the rights of southern slaveholders. Although most Americans today associate state rights with the South, the doctrine in ante-bellum America was utilized by whichever section, North or South, found it politically convenient.[50]

While nation-centered and state-centered federalism are at the extremes, dual federalism is a middle ground. It describes a system in which the Constitution

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[47] For a comprehensive account of the *Dred Scott* case, see Don E. Fehrenbacher, *Slavery, Law, and Politics: the Dred Scott Case in Historical Perspective* (New York, NY: Oxford University Press, 1981).

[48] Quoted in Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill, NC: University of North Carolina Press, 1981), 155-156.

[49] Paul Finkelman, "States' Rights North and South in Antebellum America," 1241-144.

[50] See Forrest McDonald, *States' Rights and the Union.*

"intended to mark off two mutually independent and fixed spheres of power—spheres that were to be changed only by formal constitutional amendment…"[51] Under this theory, the reserved powers clause in the Tenth Amendment serves as a limitation on the central government, and the "spheres of power" can be altered only through the formal procedure of amending the Constitution.

The Supreme Court articulated this new type of federalism in *Charles River Bridge v. Warren Bridge*.[52] In 1785, the Massachusetts legislature incorporated the Charles River Bridge Company and granted it the authority to build a bridge over the Charles River and collect tolls from the bridge's users. The original charter was later extended through 1862. The legislature subsequently authorized the Warren Bridge Company to erect a bridge over the river less than three hundred yards from the first bridge. The new bridge was to revert to the state after the corporation recouped its initial investment. Therefore, the second bridge ultimately could be toll-free, thus potentially destroying the value of the first bridge. In declining to extend the doctrine enunciated decades earlier in *Dartmouth College v. Woodward*,[53] the Court held that the Warren Bridge Company charter did not violate Charles River Bridge's charter since the states possess police powers which can be exercised for internal improvement, "which is so necessary to their well

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[51] Walter Hartwell Bennett, *American Theories of Federalism* (Tuscaloosa, AL: University of Alabama Press, 1964), 181.

[52] 36 U.S. (11 Peters) 420 (1837).

[53] 17 U.S. (4 Wheat.) 518 (1819). In *Dartmouth College*, the Courtheld that the New Hampshire legislature could not alter a charter of incorporation of the college since the institution was a "private eleemosynary institution" and any alteration of the charter would essentially constitute an infringement on a private contract.

being and prosperity."[54] In comparing the majority's opinion with Joseph Story's dissent, Kelly, Harbison, and Belz note,

> If the charter was like a royal grant [as Taney argued], then the state legislature was like a king. Possessing sovereign power, it had the right to determine the public good and the rights of individuals in order to obtain it. Story contended on the contrary that legislatures were not like kings; they were not sovereign. Rather, the people were sovereign, and the legislative power was limited.[55]

The Taney court, with the exception of the slavery issue, recognized the "exclusive power of the states in relation to the federal government."[56] Although the ante-bellum conception of dual federalism did diminish federal power, it did not deny the sovereignty of the federal government, nor did it assert the supremacy of the states. Rather the power of states exists and should be protected in relation to the national government, with each allowed their separate, respective spheres.

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[54] *Charles River Bridge*, 36 U.S. at 552.

[55] Kelly, Alfred H., Winfred A. Harbison, and Herman Belz, *The American Constitution: Its Origins and Development*, 7th ed. (New York, NY: W.W. Norton & Co., 1991), 226.

[56] With respect to slavery, the Taney court, through its divided vote, exhibited an ambiguity that reflected the sectional composition of the court. The national government was neutral toward slavery until the American victory over Mexico. However, the neutrality of the national government towards slavery ended by the Compromise of 1850 and the rise of the Republican Party in the 1850s when slavery became the dominant national issue. The Court then did restrict state actions on limiting or curtailing slavery within state boundaries. For example, see *Ableman v. Booth*, 62 U.S. (21 How.) 506 (1859). See Kelly, Harbison, and Belz, *The American Constitution: Its Origins and Development*, 223.

A fourth type of federalism, which challenged the conception of dual federalism, was formulated by Morton Grodzins and Daniel Elazar. In their articulation of cooperative federalism,[57] Elazar explains,

> In the years since the establishment of the Republic, intergovernmental collaboration has been progressively expanded to include virtually every governmental function. From public welfare to public recreation, from national defense to local police protection, the system of sharing has become so pervasive that it is often difficult for the uninitiated bystander to tell just who is doing what under which hat. The highly institutionalized system of federal-state cooperation that has developed has become part of the nation's constitutional tradition.[58]

The perspective of cooperative federalism is a unique conception of a political structure that emphasizes cooperation rather than competition between the state and federal structures.

Elazar applied cooperative federalism to the nineteenth century in his work, *The American Partnership: Intergovernmental Cooperation in the Nineteenth Century*.[59] Elazar's emphasis is less on the theoretical conceptualizations of sovereignty and divisions of governmental authority and more on the actions and behaviors of various governmental leaders and functionaries. In fact, formal governmental structure during the Civil War played an almost insignificant role with respect to the federal/state cooperation on nineteenth century antebellum issues, particularly banking reforms and land policy. Furthermore, according to

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[57] Morton Grodzins, *The American System* (Chicago, IL: Rand-McNally, 1966).

[58] Daniel Elazar, *American Federalism: A View from the States* 2d ed. (New York, NY: Harper and Row, 1972), 47.

[59] (Chicago, IL: University of Chicago Press, 1962).

Elazar, the Union enjoyed "federal-state cooperation that finally enabled the North to preserve the Union."[60] Elazar's treatment of the Confederacy is scant; he asserts that the Confederacy attempted to implement a dual federalist constitution, but due to the exigencies of war, "no real system of co-operation was developed…because of this [states rights] doctrinaire attitude on the part of the southern leadership. Case after case of state intransigence in the face of demands, requests, levies, and even cajolery on the part of the Richmond government can be found in the records of Confederate history." And who was to blame? Primarily the governors.[61]

Despite the state rights rhetoric of the "fire-eaters," dual federalism and cooperative federalism each present an analysis that is partially correct in an examination of Confederate constitutionalism and governors. The Confederate constitution was, in fact, a document based upon principles of dual federalism. The Confederacy was opposed to the nation-centered model of federalism that the Republicans were championing, but they were not prepared to approach the state-centered structure conceptualized by Calhoun.[62] The dual federalism analysis fails, at times, however, in an examination of the state and central governments in action

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[60] *Ibid.*, 333.

[61] *Ibid.*, 332-333.

[62] For example, James Chesnut, a delegate from South Carolina to the Confederate constitutional convention, prepared an amendment recognizing nullification as a right, but was voted down by fellow members of the Committee of Twelve, whose responsibility it was to present a draft of the permanent constitution to the convention as a whole. In addition, the convention twice entertained discussion on whether the Confederate constitution should include a paragraph guaranteeing the right of secession, but neither time did this proposal garner enough votes for its

during the Confederacy's brief existence. Elazar is incorrect when he asserts that the Confederacy does not fit his cooperative federalism model. In fact, cooperation within the Confederacy was pervasive through the first year or more of the war. The governors and the central government went to great lengths in assisting one another, frequently ignoring the structures and authorities which the Constitution created. Because of the exigencies of war, the states frequently acquiesced to the needs and demands of the central government.

Subsequent to the spring of 1862 until the fall of 1864, much more of a "give and take" occurred between the states and the central government in the Confederacy. The relationship between the governors and the Davis administration was more confrontational than the earlier period. New issues, such as conscription, increased Union military pressure across the Confederacy, and the problems of supplying a large modern army, created pressures and tensions in the relationship between the governors and the central government which did not exit in the first year of the war. The new arrangement between the states and the central government, termed negotiated federalism in this study, was the result of two primary issues. First, the centralization of the powers of the central government created very real and legitimate concerns to state authorities and, while many acquiesced to the needs and demands of the central government, they wanted to maintain the state's role in a dual federalism structure, which was a fundamental justification in fighting for their independence. And secondly, as scarcity of goods,

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inclusion. William C. Davis, *"'A Government of Our Own:' The Making of the Confederacy* (New York, NY: The Free Press, 1994) 228, 248, 250.

materiel, and men became more acute, the state authorities could not afford to continue giving to the central government; they had their own needs and demands. By the end of the war, there was so little left for the states to give, and the Union troops occupied so much Confederate territory, that the federal system became dysfunctional *de facto* if not *de jure*.

Negotiated federalism is based upon the traditional notion that federalism is competitive. In this regard, it is similar to state-centered, nation-centered, and dual federalism. Yet, there also can be an element of cooperation. Negotiated federalism consists of three components: (1) a disagreement which exists between the central and state government, (2) an issue is deemed of enough importance that one side, or both, will contest the issue, and (3) in order to reach a solution, either a compromise is reached or one side concedes, seeking redress in benefits or advantages in the resolution of other issues. The critical element is the negotiation. Competition exists; yet, in an effort to cooperate, a solution is negotiated. For the bulk of the war, the Davis administration and the state governors negotiated their conflicts in an attempt to implement the new government. But the federalism that resulted was, at times, quite different than that embodied in the Confederate Constitution and envisioned by the Confederate Founding Fathers.

During the war, the Confederate governors certainly played a significant role in Confederate constitutionalism and federalism. As chief executive officers of the states, governors were responsible for determining state policy within the context of a national war, enforcing state legislative decisions, and acting as the state's contact with the central government. Yet no study has fully examined the role and

involvement of the Confederate state executives in the development of centralized state building in the Confederacy.

Frank Lawrence Owsley, in his seminal work entitled *State Rights in the Confederacy*, states that, "If a monument is ever erected as a symbolic gravestone over the 'lost cause,' it should have engraved upon it these words: 'Died of State Rights.'"[63] He notes the centrifugal forces in the Confederacy, including divisive issues such as local defense, conscription, suspension of the writ of *habeas corpus*, impressment, and blockade regulations. Owsley, by and large, views the governors as essentially responsible for the Confederacy's defeat by refusing to cooperate with the Confederate central government in pressing the war effort. In fact, the state executives were more concerned about their own local, parochial interests rather than the Confederacy as a whole. But Owsley identifies the bulk of the blame as falling squarely upon the shoulders of Governors Zebulon B. Vance, of North Carolina, and Joseph E. Brown, of Georgia.

Owsley's interpretation dominated the historiography for over a generation; but this perspective was challenged in the mid-1960s. Curtis Amlund, in *Federalism in the Southern Confederacy*, contends that the exigencies of war forced centralization upon the Confederacy far in excess of what was intended by the Confederacy's Founding Fathers. He wrote that, "…in this ongoing process of change a governmental system evolved that revealed a striking resemblance to one

[63] Frank Lawrence Owsley, *States Rights in the Confederacy* (Chicago, IL: University of Chicago Press, 1925), 1-2.

from which the South had withdrawn."[64] While Amlund may have overstated his case, his chapter entitled "Confederate-State Relations" reveals a far more sophisticated approach to the role of the governors in Confederate federalism than Owsley's. Amlund examines the central government structure as a whole rather than isolated incidents involving the governors. Amlund notes, for example, that Governor Brown "remained a 'troublemaker' for Davis through most of the conflict, [his] intransigence was frequently more apparent than real, as there were times when he cooperated with the government."[65] As a whole, in Amlund's final analysis, the Confederate governors, including Brown and Vance, capitulated to the central government; if they wanted to "go beyond their public protestations, they had the legal opportunity to do so, but they took no such action."[66]

Yet Amlund never addresses the complexity of the relationship between the governors and the central government. He leaves unanswered such pertinent questions as how the governors, in the light of the ongoing war, were to take advantage of the "legal" opportunities and what exactly were the political "weapons" at the disposal of the governors? What Amlund, and his successors, overlook is that Brown, Vance and the other governors believed in, and supported, Confederate constitutionalism. To this end, many of the Confederate governors engaged in negotiation with the central government in balancing state and national interests.

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[64] Curtis A. Amlund, *Federalism in the Southern Confederacy* (Washington, D.C.: Public Affairs Press, 1966), v.

[65] *Ibid.*, 96.

[66] *Ibid.*, 114.

Subsequent historians have supplemented Amlund's study by examining specific aspects of centralization of the Confederate government. In 1978, Mario Luraghi published *Rise and Fall of the Plantation South*, which contends that the Confederate government essentially nationalized the manufacturing sector of the economy and, through conscription as well as control of the transportation network, could compel compliance by the industrialists.[67] Richard Bensel's *Yankee Leviathan*[68] goes even further than Luraghi by arguing that the Confederacy was a highly centralized government. In analyzing seven broad categories, Bensel notes that, "Based primarily upon conscription and impressment policies, Confederate controls brought the southern factory, railroad, and plantation into the war effort even where formal legal authority was lacking."[69] Furthermore, Bensel argues that Confederate state formation was even more pronounced than in the North because the proportional demands were greater in the Confederacy and because the South's agrarian economy demanded greater changes than the northern economy. Bensel's work is limited to an examination of the South's political economy and is based almost exclusively on secondary sources. And he, too, virtually ignores the role of the Confederate governors in his discussion of Confederate federalism. Were the governors politically powerless before the Confederate Leviathan? Or perhaps they

[67] *Rise and Fall of the Plantation South* (New York, NY: New Viewpoints, 1978).

[68] *Yankee Leviathan: The Origins of Central State Authority in America* (Cambridge, England: Cambridge University Press, 1990).

[69] *Ibid.*, 183.

were irrelevant? This study will argue that their role was more significant when perceived within the context of negotiated federalism.

While Bensel has been the most ardent proponent of Confederate government centralization,[70] other historians have recognized that the centralization occurred within a broader context and was not so one-sided. Richard E. Beringer, *et al.*,[71] in their assessment of the Confederate governors and Confederate constitutionalism, rely heavily upon the unpublished dissertation of John Brawner Robbins.[72] The authors contend that Robbins and Amlund stress that the Confederate Constitution creates a "very powerful central government, capable of positive action and not just negative obstructionism." They continue,

> Confederates, it is reasoned [by most students of Confederate history] created their strong government unintentionally. This conclusion, however, seems most unlikely. Every politically active Confederate was a walking constitutional commentary. Southerners had argued the United States Constitution so long and so thoroughly and had listened so intently while others did the same that to assume they did not understand the nature of the government they create seems to us absurd.[73]

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[70] Bensel argues that the Confederate government was one in which "… a central state [was] much stronger than either the antebellum or post-Reconstruction federal governments…. In fact, one of the great ironies of American political development is that a central state as well organized and powerful as the Confederacy did not emerge until the New Deal and subsequent mobilization for World War II." Richard Bensel, *Yankee Leviathan*, 13-14.

[71] Richard E. Beringer, Herman Hattaway, Archer Jones, and William N. Still, Jr., *Why the South Lost the Civil War* (Athens, GA: University of Georgia Press, 1986).

[72] John Brawner Robbins, "Confederate Nationalism: Politics and Government in the Confederate States, 1861-1865" (Ph.D. dissertation, Rice University, 1964).

[73] Richard E. Beringer, *et al.*, *Why the South Lost the Civil War*, 221-222.

Paul Escott also believes that a strong central government evolved during the Confederacy, but argues that Jefferson Davis was sensitive to the Confederate political ideology of decentralization and local control. As a result, and perhaps more than other historians, Escott recognizes that,

> As he built this southern-style leviathan, however, Davis exercised caution and restraint. Though he resolved to create a vigorous central government, he did not seek to destroy the states. Knowing that his proposals were very demanding, Davis tried to soften their impact. The Confederate president did what he thought was necessary but never was heedless of southern traditions or habits or mind.[74]

Yet Escott fails to appreciate the extensive cooperation by the governors, especially early in the war; he recognizes the self-imposed restraint of Davis but neglects the activism of the governors.

The historiography presents a clear demarcation. Prior to the 1960s, historians and political scientists relied heavily upon the work of Owsley in concluding that the Confederacy was a state-centered government with a central government that was too weak to ultimately survive. The governors, under this perspective, played a key role in inhibiting the successful functions of the central government to carry on the war successfully. Beginning in the 1960's, from Curtis Amlund to the present, historians view the Confederate constitution as creating a highly centralized government, that the Confederate government was, in fact, highly centralized, with the governors being at worst a nuisance but generally acquiescing

[74] Paul Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge, LA: Louisiana State University Press, 1978), 70.

to the needs and demands of the central government. It is almost as if two different governments are being examined.

The apparent dichotomy can be resolved if we examine the relationship between the state and central governments in light of dual federalism as the constitutional structure, and the working relationship between the governors and the Davis administration within the context first of cooperative federalism and, subsequently, negotiated federalism. The complex relationship between the governors and the Davis administration can not be adequately explained, as historians heretofore have attempted, using merely one model of federalism: either the state-centered or nation-centered. Federalism is not a static theory; the relationship between the states and the central government is constantly evolving and adjusting, even in the 21st century. This is particularly true in times of crisis—and with the exception of the first few months of its existence, the Confederacy existed only in times of crisis.

The nature of the relationship went through three distinct phases: from the creation of the Confederate constitution to the spring of 1862; to the fall of 1864; and to the end of the war. In each of these phases, the Confederate central government increased its powers. The state governors either struggled to maintain their respective state rights within the constitutional structure or submitted to the central government, reserving their right to engage in the constitutional struggles after the war. In any event, the negotiation between the states and the central government is the critical element that led to at least relatively functional solutions during most of the wartime crisis.

CHAPTER ONE:

SECESSION

Each southern state arrived at the crossroads of secession at different times and under different circumstances. Both national and local issues figured into the equation. So too did geography. Superimposed on these variations were the different personalities and characters of each state's governor and other politicians. Yet, despite their differences, eleven southern states found enough common ground to secede from the Union by May 1861. This chapter will examine how each of these states arrived at this decision and the role that the governors played.[1]

Common to all of the southern states was the conviction that secession was a legitimate solution to a perceived intractable political problem for which no compromise appeared possible. To Thomas O. Moore, governor of Louisiana, the anti-slavery stance of the North, and the North's hostility in attitude and behavior toward the South, had "deepened the distrust in the permanent Federal Government and awakened sentiments favorable to a separation of the states."[2] Mississippi's

[1] The eleven states that seceded from the Union between December 1860 and June 1861 were South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, North Carolina, and Tennessee. Two additional states were admitted to the Confederacy, Kentucky and Missouri, but under circumstances that raise significant questions about the legitimacy of their secession from the United States.

[2] New Orleans *Daily True Delta*, January 24, 1860, quoted in John D. Winters, *The Civil War in Louisiana* (Baton Rouge, LA: Louisiana State University Press, 1963), 3.

secession convention proclaimed that the national government threatened southern honor and property ownership,

> Utter subjugation awaits us in the Union, if we should consent longer to remain in it. It is not a matter of choice, but of necessity. We must either submit to degradation, and to the loss of property worth four billions of money, or we must secede from the Union framed by our fathers, to secure this as well as every other species of property. For far less than this, our fathers separated from the Crown of England.[3]

Jefferson Davis developed this constitutional argument further. In a farewell address to his fellow senators on December 21, 1860, Davis asserted that the North's attack on slavery transgressed the protected constitutional right in slave property. When constitutional rights are trampled, Davis argued, the state has the right to secede from the Union. In the *Rise and Fall of the Confederate Government*, published after the war, the former Confederate president spent considerable time defending the right of secession based upon state sovereignty. The states did not surrender their sovereignty when they entered the Union. They delegated specific powers to the central government, reserving all other powers to the states and the people through the Tenth Amendment.[4]

Contemporaries relied upon interpretations of the Virginia and Kentucky Resolutions, the Hartford Convention of 1814, the Nullification Crisis of the 1820s

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[3] State of Mississippi, January 26, 1861, *Journal of the State Convention* (Jackson, MS: E. Barksdale, state printer, 1861), 86-88.

[4] William J. Cooper, *Jefferson Davis, American* (New York, NY: Alfred J. Knopf, 2000), 7-8.; Jefferson Davis, *Rise and Fall of the Confederate Government*, Vol. 1 (Richmond, VA: Garrett and Massie, 1938, reprint New York, NY: Da Capo Press, 1990), 142-157 (pages are to the reprint edition).

and 1830s as well as the territorial debates subsequent to the Wilmont Proviso to legitimize their stands on secession.[5] The legality or illegality of secession aside,[6] and there are justifications for both positions, it is clear that the South moved toward secession neither speedily nor monolithically. As one historian has observed, secession had been discussed by Southerners for over thirty years prior to 1860 and

[5] For example, see Marshall L. DeRosa, ed., *The Politics of Dissolution: The Question for a National Identity and the American Civil War* (New Brunswick, NJ: Transaction Publishers, 1998), iii. DeRosa relies only upon Senate speeches on secession, noting that senators, being elected by the state legislatures prior to the passage of the Seventeenth Amendment in 1913, were uniquely positioned to their constituencies' concerns through their state legislatures.

[6] Literature on secession is scant. However, interest in secession has increased with the recent break-up of the former Soviet Union, the secessionist movements in Quebec, Chechnya, and the Kurds in Central Asia, and the devolution of power from Great Britain to Wales and Scotland. Two approaches currently dominate the secessionist perspective, the liberal view and the communitarian view. The liberal view, as defined by Allen E. Buchanan, is that one of the essential responsibilities of the state is the protection of the cherished civil and political rights as defined under the United States Constitution. See *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, CO: Westview Press), 4. According to this perspective, the right of secession exists, but the justification for such an extreme measure must be significant. To Buchanan, for example, secessionists must demonstrate an overriding need to separate from the existing political community, e.g., protecting political liberty, escaping discriminatory redistribution, and preserving cultures. Communitarians, such as Paul Gilbert, argue that secession is legitimate only where a real, and not an imagined or contrived nationalism-created, community exists within a larger political framework and this community possesses sufficient political institutions for self-identification. It is only with this "civic nationalism" that a community can justify secession. See, Percy B. Lehning, ed., *Theories of Secession* (New York, NY: Routledge Press, 1998), 208-226. Both of these perspectives are heavily value laden; Bruno Coppieters and Michel Huysseune in *Secession, History, and the Social Sciences* attempt to present a new approach: the empiricist. Their analytical and objective perspective would eliminate the "values, opinions, and concerns" of the other approaches, which they label as the normative approach, concerned with justice, liberty, and adjudication of rights. *Secession History, and the Social Sciences* (Brussels, Belgium: VUB Brussels University Press, 2002), 11-12 However, each of the essays in the Copieters and Huysseune work ultimately analyzes the recent secession movements in terms of their righteousness.

the final decision for secession by the southern states rested on a host of national, regional, and state issues.[7]

The November 1860 election of Abraham Lincoln to the presidency was, according to Dwight Dumond, the event precipitating "active measures for separation."[8] To immediate secessionists, the election of a Black Republican was not simply change of administration, but rather a victory of political principles which included support of a consolidated government that would lead to the extinction of slavery. For these southerners, remaining in the Union after Lincoln's election was no longer a viable option, since the national government had abandoned the principles of the Founding Fathers. Immediately following the election of Lincoln, Virginian Edmund Ruffin proclaimed to "my brother disunionists," if Virginia remained in the United States "under the domination of this infamous, low, vulgar tyranny of Black Republicanism, I will seek my domicil[e] in that State [which does secede] and abandon Virginia forever."[9] Lincoln's election also prompted Robert Branwell Rhett's Charleston (S.C.) *Mercury* to announce, "The tea has been thrown overboard—the revolution of 1860

[7] Eric H. Walther, *The Fire-Eaters* (Baton Rouge, LA: Louisiana State University Press, 1992), 1-8.

[8] Dwight L. Dumond, *The Secession Movement, 1860-1861* (New York, NY: The MacMillan Co., 1931), 113.

[9] Quoted in Eric H. Walther, *The Fire-eaters*, 264.

has been initiated…. ACT—ACT."[10] The New Orleans *Daily Delta*, which believed that a battle had been lost with the election of Lincoln, warned "of the day … when the slavery question shall cease to be a sectional question, and shall become a domestic question…."[11]

Cooperationists were opposed to immediate secession. There were three variations on this theme: those who were opposed to secession in principle and were in favor of remaining within the Union, those who were for delaying any possible secession until a convention of southern delegates could meet to discuss the crisis and agree upon a unified plan of action, and, lastly, those who supported entering into negotiations with the North and delaying secession until the North committed an overt, aggressive act.

Within weeks of the 1860 electoral vote, efforts at compromise were initiated by the President as well as both houses of Congress. Despite President Buchanan's assertion in his annual message on December 3 that secession was illegal and that he would enforce existing laws, he vowed not to "coerce" seceding states back into the Union. The President also called for constitutional amendments protecting slavery in the territories and declaring the northern states' personal liberty laws unconstitutional. Similar efforts at compromise were the substance of numerous congressional bills. The House of Representatives created a Committee of Thirty-three and the Senate a Committee of Thirteen to propose compromise

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[10] *Ibid.*, 154.

[11] November 1, 1860, quoted in Dwight L. Dumond, *Southern Editorials on Secession* (New York, NY: The Century Co., 1931), 203.

measures. John J. Crittenden of Kentucky, a member of the Committee of Thirteen, put forth several proposed constitutional amendments, including extending to California the Missouri Compromise line of 36 degrees and 30 minutes, guaranteeing slavery south of the line, and forbidding the federal government from interfering with the interstate slave trade. These constitutional amendments were to be permanently binding and unrepealable. Republicans, however, would have none of this. Claiming that these amendments, by allowing slavery in the territories, ran counter to one of the most important planks in the Republican platform, they defeated this compromise both in committee and on the floor of the Senate.[12]

While the Deep South states were seceding in December 1860 and January 1861, many states in the Upper South were calling for southern conventions to promote unified action and to guarantee constitutional redress of their grievances. John Letcher, Governor of Virginia, went so far as to call for a national convention with delegates from all of the states. While a number of his recommendations for compromise were ignored, the Virginia legislature did issue invitations for all states to meet in Washington, D.C. in a final effort at compromise. The convention opened on February 4, 1861 with twenty-one states sending delegates. The conference's proposals, strikingly similar to Crittendon's which had been rejected by the Senate a month earlier, were not accepted by Congress on March 2. With the formation of the Confederate States of America in late February, the time for compromise was fast ending. Finally with the bombardment of Fort Sumter, its

[12]*Ibid.*, 146-170.

surrender on April 14, and Lincoln's call for 75,000 men on April 15 to quell the "rebellion," the Upper South states moved quickly toward secession.

Eight of the Confederate governors were immediate secessionists. While not all were able to achieve independence as expeditiously as they had hoped for or anticipated, all eventually led their states out of the Union. The remaining three governors were cooperationists. Andrew B. Moore of Alabama sought joint cooperation with all of the southern states even though his state's legislature was anxious for secession. John Letcher of Virginia supported negotiations with the national government to resolve the outstanding differences, but announced that he would abide by the convention if it agreed upon secession. Lastly, Sam Houston of Texas spanned all of the cooperationists' perspectives. An avowed Unionist who perceived Lincoln's election as a threat to the South, Houston was opposed to secession, but stated that, if it occurred, he expected the southern states to leave together in a show of unity.

The governors who were immediate secessionists believed that the success of the Republican Party in the 1860 presidential election represented the victory of a consolidated, centralized government and the dominance of northern sectional superiority in Congress. However quickly they would have liked to act, these governors had to deal with the constraints of political considerations within their states. These constraints were removed, for the most part, by the firing on Fort Sumter and Lincoln's subsequent call for 75,000 troops.

No governor supported secession more than John Pettus of Mississippi. A distant cousin of Jefferson Davis, Pettus was described by a contemporary as one

who "(f)or years… hunted deer and trapped in the forest of the Far West, and lived in a Natty Bumppo or David Crockett state of life; and he was not ashamed of the fact when taunted with it during his election contest, but very rightly made the most of his independence and his hard work."[13] As early as his inaugural address in November 1859, the governor elect noted that the federal government had not been able, or willing, to defend southern interests. He called for a convention to which all slaveholding states would send representatives in an effort to protect southern interests.[14] Pettus' efforts fell short, however. Although Florida and Alabama selected delegates, Virginia, Tennessee, and Texas declined to participate, thus defeating any opportunity for a southern convention.[15]

While a South working together in unison did not come to pass in the first half of 1860, Governor Pettus embarked on a two-fold plan: prepare the state for a military confrontation with the United States government and speak out against its tyranny. To remedy a state shortage of arms and other weapons, the legislature passed a bill, at the governor's request, appropriating $150,000 for the purchase of military hardware and supplies. Pettus then placed an order for 4,000 muskets.[16] In

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[13] William Howard Russell, *My Diary North and South*, ed. Eugene H. Berwanger (New York, NY: Alfred A. Knopf, Inc., 1863, 1988), 195.

[14] Governor Pettus' Inaugural Address, regular session, November 21, 1859, *Mississippi Senate Journal* (Jackson MS: E. Barksdale, state printer, 1859), 101-109.

[15] Robert William Dubay, "John Jones Petus, Mississippi Fire-eater: His Life and Times, 1813-1867" (Ph.D. dis., University of Southern Mississippi, 1970), 56-80.

[16] Robert W. Dubay, " Mississippi," in *The Confederate Governors*, ed. W. Buck Yearns (Athens, GA: The University of Georgia Press, 1985), 111.

addition, the state Senate, again at the governor's request, passed a resolution encouraging a commercial non-intercourse bill with northern states as well as a bill strengthening the slave patrol laws.[17]

The military preparations continued. After the Mississippi delegates joined with other southern states in walking out of the Democratic convention in April 1860, Pettus ordered Adjutant-General Francis W. Sykes "to visit the Northern armories, arsenals and factories, and obtain several thousand stands of Mississippi rifles with bayonets attached." Shortly thereafter, the governor called a meeting of state militia generals and the captains of the state volunteer companies to discuss military issues of concern to the state. According to one historian, Pettus' intent in calling the meeting was to prepare for the state's defense, if the need arose in the immediate future, and to emphasize to the Democratic national convention meeting in Baltimore on June 18 that Mississippi's interest, and that of the South as a whole, must be protected.[18]

Lincoln's victory in November, however, assured that Mississippi would secede; the only question was whether Mississippi would leave the Union individually or in concert with other southern states. In the midst of the statewide excitement, Governor Pettus called for an extraordinary session of the legislature on November 26 to determine what course of action Mississippi should take.

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[17] State of Mississippi, extraordinary session, January 27, 1860, *Senate Journal* (Jackson, MS: E. Barksdale, state printer, 1860), 329-330.

[18] Dubay, "John Jones Pettus, Mississippi Fire-eater," 90, 94.

Pettus opened the session by reviewing the causes which compelled convening a special legislative session. He noted that the South could find no protection by remaining in the Union. In fact, to stay only "… adds weight and power to the arm that strikes us."[19] This anticipation that the rupture would be violent formed the basis for Pettus' next requests: additional appropriations for military preparedness, a bill staying lawsuits brought against the state during this crucial period, a bill forbidding slaves to be sold from the border states to Mississippi, and a request that a date be set for a state convention to decide whether Mississippi should remain in the Union. Lastly, Pettus requested that commissioners from Mississippi be sent to the other slave-holding states to convey Mississippi's position and urge them to follow in her footsteps. The governor was seeking coordination and cooperation with the other southern states.[20] But whether the South should secede in a united fashion or whether the Magnolia State were to secede alone, action must be taken, for "if we falter now, we and our sons must pay the penalty in future years, of bloody, if not fruitless efforts to retrieve the fallen

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[19] State of Mississippi, extraordinary session, November 26, 1860, *Senate Journal* (Jackson, MS: E. Barksdale, state printer, 1860), 7.

[20] Immediately prior to the opening of the legislative session, Pettus met with Mississippi's congressional delegation in seeking advice regarding the future course of action for the state. All members of the delegation were present but one. All concurred that a secession convention should be called. Significant debate centered over whether Mississippi should secede unilaterally or only follow after other states had already seceded. The last issue discussed was whether the state should recommend that South Carolina wait for her sister states to act in concert rather than unilaterally. This discussion was contentious as well. Despite significant disagreement behind closed doors, the delegation and the governor agreed to present a united front publicly, which they did. See Robert W. Dubay, *John Jones Pettus: Mississippi Fire-Eater*, 68-69.

fortunes of the State." If the legislators did nothing, the South would be "cursed with Black Republican politics and free Negro morals, to become a cesspool of vice, crime, and infamy."[21] Pettus, as other governors and politicians would do, invoked the imagery of the Founding Fathers and the conservative nature of the revolution in which they, the southerners, were involved; "prepare," intoned the governor, "to meet the spirit of '76."[22]

The secession convention agreed with Pettus and, on January 9, 1861, passed an Ordinance of Secession. In an accompanying document, "A Declaration of Immediate Causes which Induce and Justify the Secession of the State of Mississippi from the Federal Union," the Convention publicly articulated its rationale for secession. The document begins by stating, "Our position is thoroughly identified with the institution of slavery—the greatest material interest of the world….a blow at slavery is a blow at commerce and civilization."[23] The document continues by itemizing a long list of wrongs suffered by slaveholding states at the hands of the United States government. These grievances range from nullifying the Fugitive Slave Law to advocating black equality to inflaming public opinion against the South. Most of the grievances, in echoing Pettus' earlier statements, focus on the fears of what the new Republican administration would do: limit the expansion of slavery and eventually seek emancipation. By these actions,

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[21] State of Mississippi, extraordinary session, November 26, 1860, *Senate Journal* (Jackson, MS: E. Barksdale, state printer, 1860), 11-12.

[22] *Ibid.*, 8.

[23] State of Mississippi, called session, January 26, 1861, *Journal of the State Convention* (Jackson, MS: E. Barksdale, State Printer, 1861), 86-88.

the Republican victory "has given indubitable evidence of its design to ruin our agriculture, to prostrate our industrial pursuits and to destroy our social system."[24]

Although Mississippi was important among the Deep South states, securing the southern "Empire State" was critical to the Confederacy if it had any reasonable expectation of independence. The most populous state in the lower South in 1861, Georgia was also arguably its most economically powerful, with profitable plantations, relatively extensive railroad mileage, textile manufacturing, and a decreasing public debt.[25] In 1860, the state's aggregate wealth was almost $675,000,000.[26] Because of this, and because of opposition to the Davis administration by many of its political leaders, led by Governor Joseph E. Brown, historians' attention has been riveted on this state's role within the Confederacy. This attention is justified; Brown would be among the Davis administration's harshest critics in seeking to limit the increasing power of the central government during the war.

Governor for three years before the Civil War, Brown possessed the prescience to request an appropriation in his 1859 inaugural address of $75,000 for military purposes, which the legislature approved.[27] Concern over a possible

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[24] *Ibid.*

[25] T. Conn Bryan, *Confederate Georgia* (Athens, GA: University of Georgia Press, 1953), ix.

[26] Louise B. Hill, *Joseph E. Brown and the Confederacy* (Chapel Hill, NC: University of North Carolina Press, 1939; reprint, Westport, CN: Greenwood Press, 1972), 35 (page citations are to the reprint edition).

[27] *Ibid.*, 20-32.

conflict was not unfounded. Two days after Lincoln's election in November 1860, Governor Brown again addressed the Georgia legislature. Although the results of the election were not yet known in Georgia, to many, including Brown, it was a foregone conclusion that the Republican nominee would be the next president of the United States. The governor opened his address by referring to an invitation by South Carolina suggesting a convention of southern states to coordinate their action. In repudiating the invitation, Brown exhibited evidence of his strong belief in state rights; as Brown told the legislators, "each state [had the right] to decide and act for itself." To that end, Brown requested an appropriation of one million dollars for military defense, legislation authorizing the governor to seize property in Georgia owned by northerners, and legislation that would keep northern goods out of the Georgia market. Finally, according to Brown, a Lincoln victory would be sufficient grounds to call a state convention.[28] The legislature, after entertaining speakers for four days, did exactly what Brown had requested—it passed a million dollar appropriations bill and authorized the summoning of a convention. In addition, the legislature selected January 2, 1861 as election day for delegates to the state convention, which was scheduled to convene on January 16.

Nearly every prominent Georgia politician of the time was either a representative to the convention or addressed the convention. Georgia's decision was in some ways more crucial than that of most of the other southern states since Georgia was critical to the success of any future Confederacy. A strong compromise

[28] Allen D. Candler, ed., *The Confederate Records of the Sate of Georgia*, Vol. 1. (Atlanta, GA: C.P. Byrd, 1909-1911):19-57.

faction existed, led by former governor Herschel V. Johnson. But Governor Brown was able to seize the initiative and influence the direction the state would take by seizing Fort Pulaski at the mouth of the Savannah River on January 3. The day after the opening of the convention on January 16, a resolution was introduced to form a committee (to be called the Committee of Seventeen) to "fulfill the obligations of the State of Georgia to secede from the Union."[29] While Johnson and his faction were not opposed to secession, they attempted to effectuate one last compromise with the United States government when Johnson moved to present an enumerated list of demands which the United States could either accept or reject, *in toto*. In the event of rejection, Johnson's faction was prepared to support secession. Ultimately their compromise efforts failed to pass the convention.

At this point in the proceedings, the New York legislature sent Governor Brown a resolution promising to support the President of the United States in dealing with those states, such as South Carolina, which seized federal property, including forts and arsenals. Since Brown had ordered Georgian forces to take control of Fort Pulaski some weeks earlier, the New York resolution was a direct affront to the southern Empire State. In response, Georgia passed and forwarded to the governor of New York a resolution commending Governor's Brown action in seizing Fort Pulaski. Less than a month later another confrontation between the two Empire States occurred when a shipment of guns, purchased by the state of Georgia, was seized by authorities in New York City and held in a state arsenal. Brown's

[29] Ralph A. Wooster, *Secession Conventions of the South* (Princeton, NJ: Princeton University Press, 1962), 89.

demands for the arms were rejected, so, in retaliation, Brown ordered all vessels belonging to New York citizens in the Savannah harbor be seized, sold, and the proceeds distributed to the owners of the guns held by New York. Further confrontation was avoided when Brown rescinded his order upon receiving notification that New York released the arms.[30]

On January 19, the Committee of Seventeen issued its report, which called for the immediate secession of Georgia. In one last attempt at compromise, Benjamin H. Hill reintroduced Johnson's earlier motion. This motion was defeated and with it went the last hopes of those who opposed secession. The Committee of Seventeen's proposal in support of immediate secession was adopted. The convention then passed the ordinance of secession by a vote of 208 to 89 and, on January 19, 1861, Georgia left the Union. The convention spent the remainder of its session creating governmental apparati appropriate to a functioning, independent state. All laws of the United States continued to remain in full force and effect, unless otherwise specified by the convention or until otherwise amended or rescinded. Attention by the legislature was focused on the foreign slave trade, trade and commerce, and revenue collection/taxation. Lastly, the state was to assume authority and jurisdiction over former United States lands and buildings and provide appropriate compensation.[31] On January 29, the convention adjourned, agreeing to

[30] Louise B. Hill, *Joseph E. Brown and the Confederacy*, 4-43; Ralph A.Wooster, *Secession Conventions of the South*, 90.

[31] T. Conn Bryan, *Confederate Georgia*, 11-12.

reconvene on March 7 at Savannah to consider ratification of the Confederate Constitution, which was adopted by the convention on March 16 by a vote of 276 to 0.

Governor Brown did not remain idle. As the convention moved toward union with the Confederacy, the governor again seized the initiative in placing Georgia in a state of military preparedness. On January 24, Georgia troops, personally commanded by the governor, took possession of the United States arsenal at Augusta. Terms of surrender included safe passage of the federal troops via ship to New York City and a receipt for the property seized, to be included in a future adjustment between the United States and Georgia.[32]

Throughout the period between the election of Lincoln in November and the arsenal seizure at the end of January, Brown exhibited a forward-thinking aggressiveness that would come to characterize his relationship with the Confederacy. The governor purchased arms in both the North and Europe, appointed a commander of the Georgia forces, and appointed commissioners to both southern, as well as European, states.

While Pettus and Brown enjoyed significant popular support in leading their states out of the Union, other governors, particularly those of the Upper South, encountered much less enthusiasm for disunion. To overcome such resistance, these governors either engaged in political manipulation and/or exploited events to prod their constituents toward secession. And in classic Machiavellian fashion, the

[32] Reports of Capt. Arnold Elzey of the seizure of Augusta Arsenal, January 23 and 24, 1861, *Official Records*, series 1, volume 1, 320-323.

political calculation of when to prod and when to leave well enough alone was critical to the success or failure of the governors in leading the Upper South states out of the Union.

North Carolina was the last of the southern states in the east still in the Union by May, 1860. The Tar Heel state's internal divisions allowed for secession only after the firing on Ft. Sumter, Lincoln's call for volunteers, and the imminence of hostilities.

Planters in the coastal plain, a region dominated by plantations and the highest proportion of slaveholding in the state, were imbued with the state rights doctrine and a determination to protect their interests against the perceived overreaching by the central government. By 1860, this region was the wealthiest in the state, controlled by conservative Democrats but forced to recognize the growing power of the piedmont and western sections.[33]

The piedmont was a middle ground geographically and politically between the coastal plain and the western mountains. During the antebellum period, slaves constituted approximately thirty percent of the population in the piedmont as compared to forty-two percent in the coastal plain.[34] Although a number of plantations existed in the region, small farms dominated, with sufficient income to allow most of the white inhabitants to live comfortably. Together with the west, the piedmont forced constitutional reforms in 1835 to break the political dominance of

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[33] J. Carlyle Sitterson, *The Secession Movement in North Carolina* (Chapel Hill, NC: University of North Carolina Press, 1939), 1-10.

[34] *Ibid.*, 5, 12.

the coastal plain planters. Yet by 1860 the piedmont tended to support the coastal plain's opposition to "the anti-slavery movement, protective tariffs, and increased federal expenditures."[35] Because of its diverse mix of people and interests, however, it was not as unified as that of the coastal plain.

The western mountain region, dominated by the Whigs, cared little for constitutional issues raised by the eastern planters; the inhabitants there were far more concerned with internal improvements and democratic reforms in state politics. In 1860, this region of North Carolina was relatively isolated from the rest of the state and possessed the least population and economic output; its manufacturing was virtually non-existent, consisting only of the small businesses necessary to sustain isolated communities. Slaves comprised only ten percent of the population, which was dominated by the yeoman farmer. As one historian noted,

> As a section, it took little interest in the ordinary affairs of the remainder of the state and nation. Politically, it was strongly democratic in theory and practice. On state issues, it favored the democratization of the state government and state aid to internal improvements and education. On national issues, its position was similar to that of the piedmont, although it was less vocal in expressing it. There was little active defense here of the plantation-slavery regime…. (but the farmer) was insistent that the black man remain a slave. The theory of state sovereignty meant little to him.[36]

While the three regions of North Carolina were distinct, the response of the state's political parties to the crises from the late 1840's to 1861 found each party attempting to "out-Southern" the other. Therefore, according to one historian,

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[35] *Ibid.*, 11-18.

[36] *Ibid.*,, 18-21.

"…because of party competition southerners (e.g., North Carolinians) were clearly made more aware of the sectional threat than they otherwise might have been."[37] And when it came time to defend itself against the perceived threat from the federal government, the burden of leadership rested with the Democratic governor of North Carolina, John W. Ellis.

Ellis, first elected governor in 1858, was of decidedly secessionist leanings and articulated his fear that a Republican victory "would be followed by continued bloody raids…upon all the border Southern States; that such collisions would alone destroy that fraternal feeling between the sections, without which the Union cannot endure."[38] Although Ellis met opposition from former Whigs and some factions within the Democratic party, Lincoln's victory propelled the governor to recommend that the legislature call for a convention of the state as well as of other southern states to consider the next course of action. The legislature ignored Ellis' plea for a pan-Southern conference, but did create a committee to discuss calling a convention for the state. It also reorganized the militia and authorized $300,000 in appropriations for the purchase of weapons.[39]

For two months, North Carolina debated the issue of secession before the legislature finally authorized an election for the voters to decide whether or not to call a convention, and if so, elect the delegates. The February 28, 1861 election

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[37] Marc W. Kruman, *Parties and Politics in North Carolina, 1836-1865* (Baton Rouge, LA: Louisiana State University Press, 1983), 143.

[38] *North Carolina Standard*, March 14, 1860, quoted in J. Carlisle Sitterson, *The Secession Movement in North Carolina*, 162.

[39] Marc W. Kruman, *Parties and Politics in North Carolina, 1836-1865*, 201-202.

produced a victory for the Unionists, although by the slightest of margins, 47,323 to 46,672. The election results proved a temporary roadblock to the secessionists, but with the failure of the Washington Conference, the firing on Fort Sumter, and Lincoln's call for troops, the impetus in North Carolina shifted quickly toward leaving the Union.[40] The governor immediately undertook a number of measures to facilitate secession. First, he responded to Lincoln's request for two regiments of militia: "… I regard the levy of troops made by the administration for the purpose of subjugating the States of the South as in gross violation of the Constitution and a gross usurpation of power. I can be no party to this wicked violation of the laws of the country, and to this war upon the liberties of a free people. You can get no troops from North Carolina."[41]

On April 17, Ellis then called for a special session of the legislature to consider a response to the "tyrannical outrage" and "a spirit of aggression unparalleled by any act of recorded history."[42] In addition, after seizing federal installations in the state (Forts Caswell and Johnson as well as the armory at

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[40] Ralph A. Wooster, *Secession Conventions of the South*, 194. Unionism, however, remained strong in North Carolina, according to Marc Kruman, because of the state's viable two party system. Most of the other southern states, which were solidly Democratic and lacked a viable opposition party, feared that the Republican victory in November 1860 signaled only Republican victories in the future. However, North Carolinians could "see from their own experience that an opposition party might triumph." Marc W. Kruman, *Parties and Politics in North Carolina, 1836-1865*, pp.180-221.

[41] Governor John W. Ellis to Secretary of War Simon Cameron, April 15, 1861, *Official Records*, series I, volume 1, 486.

[42] Noble J. Tolbert, ed., *The Papers of John W. Ellis*, Volume 2, (Raleigh, NC: State Department of Archives and History, 1964), 621.

Fayetteville), the governor notified Jefferson Davis by telegram, "I am in possession of forts, arsenal, &c. Come as soon as you choose. We are ready to join you to a man. Strike the blow quickly and Washington will be ours. Answer."[43]

North Carolina had not yet seceded in fact, but it had done so in deed. Ellis sent muskets and ammunition to the Confederates in Virginia and Tennessee. Men were sent as well, but they retained their status as state troops.[44] In an April 25 letter to Jefferson Davis, Ellis stated, "You are at entire liberty to open recruiting stations, as you may desire."[45] With the military preparedness and cooperation with the Confederacy as a backdrop, the legislature called for an election of delegates and a convention to open on May 20. By this time, even many "old-line Unionists" now called for the state to leave the Union and, together with the secessionists, were able to reject several attempts at the convention by cooperationists to derail the secessionists. In the end, on May 20, a secession resolution was passed unanimously. On the same day, the convention voted to adopt the provisional Confederate Constitution.

Unlike Georgia and North Carolina, Arkansas was still a frontier state at the outbreak of the Civil War. As one state newspaper noted in 1857, outsiders perceived Arkansas as home to "the bloody bowie knife, assassins, cut throats, and

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[43] Governor John W. Ellis to President Jefferson Davis, April 17, 1861, *Official Records*, series I, volume 51, Part 2, 14.

[44] A series of letters exchanged by and between Governor Ellis, President Davis, and Secretary War Walker, April 22 to May 17, 1861, *Official Records*, series I, volume 1, 486-488; Governor Ellis to Secretary of War Walker, April 23, 1861, series IV, volume 1, 235.

[45] Noble J. Tolbert, ed., *The Papers of John W. Ellis*, Volume 2, 678-679.

highway robbers." And as one historian would later note, "politically, socially, and economically the state failed to transcend the image prior to the Civil War."[46] Arkansas never fully participated in the antebellum transportation revolution, had few factories, had a poor educational system, and all too often violence was the order of the day. And while the state flourished economically before the war, largely due to cotton and the impact of immigrants, Arkansas still consisted primarily of "crude, illiterate, violent, hard-fisted yeomanry, prosperous planters, and men looking for the main chance."[47]

Arkansas' first governor during the Civil War was an ardent secessionist, Henry Massie Rector. While holding state political offices prior to assuming the governorship in 1860, Rector was an inconsequential member of the Family, an informal political organization within the Democratic party which had dominated Arkansas politics for two decades prior to the Civil War. By the end of the 1850s, its influence was waning. The decline was due chiefly to the large number of newcomers to the state and the political involvement of some of these new residents opposed to the interest of the Family in maintaining its own power at the expense of aid to education and internal improvements. While the Family was still politically entrenched in1860, its control had become tenuous. And, ironically, Henry M. Rector was to be the one that would break the Family's dominance.

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[46] Michael B. Dougan, "Arkansas," in *TheConfederate Governors* , ed. W. Buck Yearns, 41.

[47] Michael B. Dougan, *Confederate Arkansas: the People and Policies of a Frontier State in Wartime* (Tuscaloosa, AL: University of Alabama Press, 1976), 10.

Passed over for the Democratic nomination for governor in 1860 by state convention selected by the Family, Rector surprised many with his announcement to seek the office. With no viable candidate in the opposition, the choice for governor came down to one of two Democratic candidates: the Family's hand-picked candidate, Richard H. Johnson, or Rector, who now began attacking the organization's domination of the state political scene and its corruption. Rector came out in support of a tax cut and state aid for railroad construction. On August 6, Rector won a stunning victory at the polls, defeating Johnson, 31,948 to 28,847.

Rector's November 15 inaugural address to the state legislature provided the new governor a platform in urging secession. Arkansas, according to Rector, was justified in leaving the Union since the northern states had "revolutionized the government" and since a president inimical to southern interests had been elected. Rector continued that secession was inevitable and any seceding state would have Arkansas' support. In conclusion, he urged a revision of the militia code in the event the state had to defend itself.[48]

The Arkansas legislature, however, did not embrace Rector's views; the legislature was heavily Unionist.[49] As a result, the secessionists' rhetoric and activity escalated. They flooded the floor of the legislature with petitions in support of secession, held mass meetings, and called for a convention to determine

[48] State of Arkansas, thirteenth session, November 15, 1860, *Journal of the Senate* (Little Rock, AK: Johnson and Yerkes, state printers, 1861), 92-101.

[49] Michael B. Dougan, *Confederate Arkansas*, 35-36.

Arkansas' continued statehood in the Union. The legislature scheduled a plebiscite on February 18 and the Unionists aggressively countered the secessionists' upsurge. With Governor Rector's apparent acquiescence in the seizure of the Little Rock arsenal by state volunteers, along with the news of Tennessee's rejection of a convention to decide secession, Arkansas' voters rejected secession. They did approve, however, the summoning of a state convention.

By the opening of the convention in Little Rock on March 4, the seven Deep South states had already seceded and formed the provisional Confederate government. For a brief period, national attention was focused on this frontier state as the struggle between the Unionist majority and secessionist minority was played out at the convention. South Carolina, Georgia, and the Confederate States of America sent commissioners urging Arkansas to join the Confederacy. Governor Rector exercised his considerable influence in attempting to convince the convention that secession was the proper, and legitimate, course of action. In a special message to the convention, the governor argued that the Union had already been destroyed by the secession of the first seven states. So anxious was Rector to support the Confederacy that he agreed, before Arkansas' secession, that the Confederacy could place a battery "near Helena, or any other eligible point…" overlooking the Mississippi River.[50] The only remaining issue for Arkansas to

[50] Governor H.M. Rector to Secretary of War L.P. Walker, April 29, 1861, *Official* Records, series I, volume 1, 689.

determine was where its allegiance lay. For Rector, Arkansas' interests were with the Confederacy.[51]

But the Unionists held firm. With numerous compromise resolutions offered by both sides, and rejected in close votes, the convention was deadlocked. The impasse eventually was settled on March 21: a referendum would be held on August 5 to allow the people to decide Arkansas' fate. The convention would then reassemble to carry out their wishes. In addition, it was agreed that Arkansas would resist any coercion if imposed.[52] Lastly, the president of the convention was authorized to reconvene the delegates under exigent circumstances.

National events would now dictate the pace and course of action in Arkansas. With the firing on Fort Sumter and Lincoln's subsequent call for 75,000 men, Arkansas swung decisively toward the Confederacy. Rector refused to comply with Lincoln's request for 780 troops. Meanwhile, pro-secession demonstrations were held across the state, with the exception of northwestern Arkansas. The governor ignored pleas by secessionists to call a special session of the legislature. He must have believed that the convention, if reassembled, would take Arkansas out of the Union more expeditiously than the legislature. In the midst of mounting pressure, the president of the convention called a second session to commence on May 6. An ordinance of secession was immediately introduced. After discussion

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[51] Governor Henry Rector to the Arkansas legislature, thirteenth session, November 15, 1860, *Journal of the Senate*, 99-100.

[52] Jack B. Scroggs, "Arkansas in the Secession Crisis" *The Arkansas Historical Quarterly* XII (Autumn 1953): 214-215; Michael B. Dougan, *Confederate Arkansas*, 56.

and an attempt by the chair to secure unanimity, the secession ordinance was passed by a 69-1 vote.[53] The convention then quickly ratified the provisional constitution of the Confederacy. Arkansas was out of the Union and a member of the Confederacy.

Unlike Brown, Pettus, and Rector, John Letcher of Virginia was a reluctant revolutionary. Hesitant to leave the Union, Virginia's governor was hopeful of a compromise until Fort Sumter and Lincoln's subsequent call for volunteers. As late as March 1861, Letcher warned, "I cannot believe that an all wise and just God, will permit these conspirators (secessionists), to succeed in overturning the best government, that the wit of man ever devised. They are doomed to certain and overwhelming defeat. Now mark that prediction."[54]

Virginia, however, was a state coveted by the Confederacy and one which could bring power and prestige to the newly created nation. As home to four of the first five presidents of the United States, and with a history of considerable political influence in the republic, Virginia was viewed by the South as providing continuity with the goals and vision of the Founding Fathers. In addition, the Old Dominion was one of the wealthiest and most populous of the slave states.

Letcher was elected governor of Virginia in January 1860. As the nation's intensity heated toward confrontation in the months following Harpers Ferry, the new governor of Virginia offered a voice of moderation. Although in his inaugural

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[53] Ralph A. Wooster, *Secession Conventions of the South*, 165.

[54] Quoted in F. N. Boney, *John Letcher of Virginia: The Story of Virginia's Civil War Governor* (University, AL: University of Alabama Press, 1966), 110.

message Letcher blamed the North for the ills which the nation faced, he urged that the legislature call for a national conference of all states to settle the outstanding differences between the increasingly antagonistic sections of the country. He also requested that the legislature send commissioners to the northern states to seek repeal of their personal liberty laws. Lastly, the newly installed governor, in anticipation of hostilities between the North and the South, proposed an appropriation for purchasing arms, a revision of the militia laws, an expansion of the Virginia Military Institute, and the creation of a "minute man" brigade.[55] While the legislature rejected Letcher's request to calls for a national convention and to send commissioners to the northern states, it did authorize $500,000 for the purchase and/or manufacture of arms.

As a result of Lincoln's victory later in the year, and South Carolina's subsequent secession, pressure in Virginia mounted for the summoning of a state convention. Letcher addressed the legislature a year to the day after his inauguration regarding this new crisis that faced Virginia and the nation. The governor again urged the convening of a national conference to resolve the ongoing disputes that now threatened to become more violent. He also urged the legislature to appoint commissioners to the northern states (except for "unreasonable" New England). Letcher's six-point plan for compromise included abolition of all personal liberty laws, protection of slavery in the District of Columbia, and free access of slavery into the territories. In conclusion, the governor defended state

[55] *Ibid.*, 92-93.

rights and the right of secession and vowed his allegiance to Virginia.[56] The legislature now responded to Letcher's request for a Peace Convention and issued an invitation for all states to attend the convention from February 4 through February 28 in Richmond. The legislature ignored the remainder of the governor's recommendations and on January 14 authorized the election of delegates to a state convention.

The results of the election certainly appeared to reflect strong Unionist support. Of the one hundred and fifty-two delegates, only approximately forty supported secession. The voters also decided overwhelmingly to refer any decision by the convention to the electorate. The convention met on February 13, 1861 and immediately created a Federal Relations Committee consisting of twenty-one members. But the committee would postpone any report until after a determination of the results of the Washington Peace Conference and Abraham Lincoln's inaugural address. When these two events failed to produce constructive measures of reconciliation, the Committee issued a report that essentially recommended the constitutional guarantees already rejected in the Crittenden Compromise.[57]

Letcher remained cautious and hopeful of a peaceful solution despite the growing momentum of the state's secessionist movement. Even by the end of March, Letcher was still optimistic that Virginia would stay within the Union. When it was announced that a shipment of arms would be sent from the federal arsenal at Midlothian to Fort Monroe, rumors abounded that the Virginia governor

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[56] *Ibid.*, 102-104.

[57] Ralph A. Wooster, *Secession Conventions of the South*, 145-147.

agreed to use state troops to guard the arms. On April 1, the legislature ordered the governor either to halt the shipment or intercept it, seize the arms, and pay the fair market value of the arms to the federal government. Letcher, of course, had no intention of providing a state escort. The federal government, which had ordered the shipment before the presidential election, suspended the shipment. But for Letcher, the incident reflected the deep public suspicions of his loyalty to state secession.[58]

The confrontation at Fort Sumter on April 12 and Lincoln's subsequent call for troops affected Virginia as deeply as the other upper South states. Secessionist sentiment swept through most of the state, especially Richmond. Demonstrations, newspapers, and broadsides all supported secession and were critical of Virginia's convention as moving too slowly. Letcher, rather unenthusiastically, spoke of adhering to the convention's decision. At the convention, meanwhile, moderate support was fading. On April 17, by a margin of 88-55, Virginia voted itself out of the Union. Pursuant to legislative order, an ordinance of secession was submitted to the people, who, on May 23, supported secession by a vote of 125,950 to 20,373.[59] Virginia, long coveted by the Confederacy, had left the Union despite her governor's moderate stance.

By 1861, and unlike Virginia, one of the thirteen original states in the Union, Texas had been a state for only sixteen years and its governor, Sam Houston, was a

[58] F.N. Boney, *John Letcher of Virginia,* 110-111.

[59] Unionism was particularly strong in thirty-three of the fifty counties that would secede from Virginia and enter the Union during the Civil War as the new state of West Virginia. Wooster, *Secession Conventions of the South*, 149, 151.

hero of the Texan independence movement. Texas had occupied the attention of Americans with respect to the slavery issue since it achieved independence from Mexico in 1836. Southerners had long coveted the vast frontier of Texas and valued the cotton production in the east Texas river valleys. Northerners feared the extension of slavery and the admission of another slave state to disturb the balance of power in Congress.[60] Yet it was there that the secession crisis created some of the worst turmoil in the South, with the legislature ultimately forcing the governor out of office.

Sam Houston, elected governor of Texas in 1859, had long been a staunch supporter of the Union. With the nation becoming increasingly sectionalized during the 1850's, Houston persistently advocated for the preservation of the Union. In fact, this position probably cost Houston the gubernatorial election in 1857, but he rebounded to win the governor's office in 1859.

But national events soon moved Texans further away from Houston's position. John Brown's raid in October 1859, the division of the National Democratic Party into northern and southern wings, and the report of possible slave uprisings during the summer of 1860 fueled the fire of the radicals. Until Lincoln's election, however, the moderates were able to maintain political control of the state.[61] While Houston admitted that Lincoln was potentially inimical to the South, he pointed out that Lincoln had done nothing yet to warrant such a drastic step as

[60] In fact, Texas was formally admitted to the Union on December 29, 1845 upon the condition that it could be divided into as many as five states, but by its own consent.

[61] Ralph A. Wooster, *Secession Conventions of the South*, 121-123.

secession. Instead, the governor argued for Lincoln's impeachment if, indeed, he violated the Constitution. On November 28, Houston also renewed a previous call for a convention of southern states "*To preserve the Equal Rights of the Such States in the Union.*"[62] But as the secessionists became more vocal and organized, the governor was under increasing pressure by the secessionists to call the legislature into special session. Houston finally relented and, on December 17, issued a call for the legislature to meet in January 21, 1861.

In the intervening period, any hopes for a compromise were extinguished. With a governor adamantly opposed to secession and sentiment for secession on the rise in the state, a crisis arose not only over the legitimacy of secession itself, but also over the legitimate method of seceding. Houston, although against secession in 1861, was not opposed to the idea in principle. But, as he wrote in a letter dated January 7 to J.M. Calhoun, Alabama's commissioner to Texas, "A fair and legitimate expression of (the people's) will, through the ballot-box, is yet to be made known. Therefore, were the Legislature in session, or were a legally authorized Convention in session, until the action taken is ratified by the people at the ballot-box, none can speak for Texas."[63] Already, to many Texans, the election of Lincoln warranted Texas' secession because the Republican president posed a perceived threat to their stability and constitutional order. And with South Carolina and the other Deep South states leaving the Union, Texas not only was becoming

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[62] Quoted in Janet E. Kaufman, "Sentinels on the Watchtower," 386.

[63] Sam Houston, *The Writings of Sam Houston, 1813-1863*, Vol. 8, ed. Amelia W. Williams and Eugene C. Barker (Austin, TX: University of Texas Press, 1938-1943), 226-227.

geographically isolated from the United States, but was unable to work towards a compromise when the Union was rapidly losing states. Lastly, the ties among the various Unionist factions within Texas—the Germans, the regions of North Texas and Austin, and the demise of an opposition party—were stretched and finally snapped by the end of 1860. As one historian observed,

> By 8 January 1861, when most delegates to the Secession Convention were selected, not only were the partisan and ideological props of the Union shaken, but so too were its cultural and pragmatic supports. An additional pressure that helped bring the temple tumbling down was supplied by the tactical success and organizational strength of the secessionists and the tactical failure and organizational weakness of the Unionists.[64]

Although Houston called a special session of the legislature for January 21, a number of state secessionists, *sua sponte*, issued a call for a secession convention to open January 28, with delegates elected at the county level. The governor, hoping to influence the convention, opened the legislative session by advising the legislators of their obligation to their constituents and urging cooperation with the other southern states. He also recommended against immediate secession. The legislature, through a joint resolution, ignored Houston's admonitions and quickly sanctioned the coming secession convention. However, out of deference to the governor, a provision was included that required any decision of the convention to be ratified by a plebiscite. Houston delayed approving the joint resolution until February 4.

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[64] Walter L. Buenger, *Secession and the Union in Texas* (Austin, TX: University of Texas Press, 1984), 138.

The 177 member convention met on January 28 in the Texas State House. On the following day, the convention voted by a 152-6 margin that "without determining how the manner in which this result should be effected, it is the deliberate sense of this Convention that the State of Texas should separately secede from the Union."[65] While awaiting a formal declaration of secession from the Committee on Federal Relations, the president of the Convention authorized, among other committees, a standing Committee on Public Safety, which was to have significant influence in the months following secession. In a letter to the legislature, Houston advised,

> I can assure you, gentlemen, that whatever will be conduce [sic] to the welfare of our people will have my warmest and most fervent wishes, and when the voice of the people of Texas have been declared through the ballot box, no citizen will be more ready to yield obedience to its will or risk his all in its defence than myself. Their fate is my fate. Their fortune is my fortune.[66]

On January 30, the Committee on Federal Relations presented its proposed secession ordinance to the convention. The first section of the ordinance declared that the state repealed its ordinance of 1845, which allowed for its annexation into the Union, and announced that Texas once again would become a separate, sovereign state. Justification for secession rested upon the federal government's violation of the compact; the specific violations were more fully explained on February 1 when the convention passed a declaration of causes to justify the state's

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[65] State of Texas, *Journal of the Secession Convention, 1861*, ed. E.W. Winkler (Austin, TX: Austin Printing Co., 1912), 28.

[66] *Ibid.*, 45-48.

secession. Section Two of the ordinance provided for a plebiscite to be held on February 23. Unless rejected by the voters, the convention's ordinance of secession would take effect on March 2, the twenty-fifth anniversary of Texas' independence from Mexico. The following day, the convention passed the secession report as reported by the Committee on Federal Relations by a vote of 166-8. The convention then adjourned after authorizing the Committee on Public Safety to serve while the convention was out of session.[67]

The February election resulted in an overwhelming victory for the secessionists. By a vote of 46,153 to 14,747, Texas voters favored leaving the Union. The convention reassembled and, in light of the popular vote, declared that Texas had left the Union. When the convention also passed measures to facilitate Texas' joining the Confederacy, Governor Houston alleged that the convention exceeded its authority. The governor's refusal on March 16 to take the oath of loyalty to the Confederacy, which the convention required of all state officials, led to his dismissal by the convention and the appointment of Lieutenant Governor Edward Clark as governor. Houston, although clearly dissatisfied with the turn of events, stayed loyal to his state and, in turn, his new nation. As governor, he even declined Lincoln's offer of federal troops to keep both himself in office and Texas in the Union.[68]

The convention quickly concluded its business in March 1860. On March 23, the convention ratified the Confederate Constitution and subsequently amended

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[67] Ralph A. Wooster, *Secession Conventions of the South*, 128-132.

[68] Walter L. Buenger, *Secession and the Union in Texas*, 174-177.

the state constitution to conform to the newly adopted Confederate Constitution. With these tasks completed, the convention adjourned.

Under different circumstances, all southern states were forced to confront the momentous issue of secession from December 1860 through May 1861. By the beginning of the summer in 1861, eleven southern states had made the decision to leave the Union. And for each state, the governor played a crucial role in that decision. Most of these governors were immediate secessionists. Fear that national dominance of Black Republicanism, represented by Lincoln's election, would destroy the underlying principles of the republic and threaten slavery pushed these governors into actively pursuing a policy of secession. Governors, such as Pettus, were in step with their constituencies and legislatures by leading their respective states toward disunion. Other governors, like Ellis and Rector, facing divisions within their states, were forced to wait for a majority to support secession, despite their enthusiasm for leaving the Union. John Letcher was so hesitant that he branded the immediate secessionists traitors. But Lincoln's call for troops in April 1861 swung Virginia, and Letcher, toward disunion. The only governor who remained unionist, and lost his office rather than compromise on principle, was Sam Houston. Despite the lack of unanimity of the governors with respect to secession, they entered the war in the spirit of cooperation with the newly created national government, and would exert their fullest efforts towards winning the war.

CHAPTER TWO

COOPERATION

The cooperative phase of the relationship between the Confederate central government and the governors spanned the period from the formation of the Confederacy until April 1862, when the First Conscription Act was passed. In this period, the governors' goals frequently coincided with those of the Confederacy. Foremost among them were attracting the states of the upper South to the Confederacy, seizing federal installations within southern states, raising and supplying troops, and providing for local defense.

To achieve these objectives, the state and central governments needed to effectuate some level of coordination. For the most part, such coordination occurred either through formal governmental structures or informally by reaching political settlements that were inconsistent with formal authority. Occasionally the coordination proved difficult, due largely to military and political considerations. At times the states acted wholly independently of the central government. In some instances, the Confederate government had to intervene to establish policies that superseded state interests. Yet this did not undermine the high degree of cooperation that existed between the two; maintaining military and political viability was a constant consideration of both.

This period of cooperation began with a celebration of secession and nation-making. Despite the lack of unanimity over the wisdom of secession, once a state withdrew from the Union, parades, speeches, toasts, and rifle and pistol salutes

marked the event.[1] While war was certainly a possibility, and even a probability, thoughts at the time were focused mainly on leaving a political entity which sought to oppress the South and on forming an independent nation which would protect southern interests.

The creation of the Confederate States of America was cause for rejoicing in the South. After Jefferson Davis' election as provisional president of this fledgling nation, enthusiastic throngs marked each stop of his journey from his plantation at Davis Bend in Mississippi to Montgomery, Alabama. These people were affirming not only Davis' election, but also the new nation he represented. Davis' inauguration on February 18, 1861 prompted a daylong celebration; as one historian noted, "Every new nation could dream of such a natal day."[2]

The birth of Confederate nationalism has been a source of controversy among historians, however. For some, there is no doubt that a Confederate nation existed. Frank Vandiver sees this nationalism in political and military structures: the recognition and acceptance of Confederate laws, money, administrators, and the army.[3] Emory Thomas sees defining events (e.g., secession, a newly created government, and a victory at Manassas) creating the Confederacy which was "in the

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[1] For example, see John E. Johns, *Florida During the Civil War*, 21; Michael B. Dougan, *Confederate Arkansas*, 63; T. Conn Bryan, *Confederate Georgia*, 14-15; James I. Robertson, *Civil War Virginia: Battleground for a Nation* (Charlottesville, VA: University of Virginia Press, 1991), 7-8.

[2] William C. Davis, *"A Government of Our Own:" The Making of the Confederacy* (New York, NY: The Free Press, 1994), 167.

[3] Frank E. Vandiver, *Their Tattered Flags: The Epic of the Confederacy* (New York, NY: Harper's Magazine Press, 1970), 156-157.

minds of its citizens at least … the confirmed expression of Southern nationalism."[4] To Gary Gallagher, Confederate nationalism existed after 1862, not in the government or its structures, but rather the Army of Northern Virginia, commanded by Robert E. Lee. Gallagher argues that "by the midpoint of the conflict Lee and his men had become the preeminent symbol of the Confederate struggle for independence and liberty."[5]

Other historians have emphasized the lack of nationalism in the Confederacy due to structural defects. Paul Escott found that Confederate nationalism failed because of class conflict; many of the planter elite preferred their privileges in society to sacrificing for the cause while the government ignored the critical demands placed upon it by the non-slaveholders, thus losing their loyalty.[6] Still other historians assert that Confederate nationalism foundered because of an unfulfilled ideological identity. Drew Gilpin Faust argues that "religion provided a transcendent framework for southern nationalism."[7] Reconciling greed (including hoarding and speculation) and the institution of slavery (which Faust insists was the

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[4] Emory Thomas, *The Confederate Nation: 1861-1865* (New York, NY: Harper & Row, 1979), 117. Thomas also notes that the Union victory "… eradicated the rebel nation." Emory Thomas, *The Confederacy as a Revolutionary Experience* (Columbia, SC: University of South Carolina Press, 1971, 1991), 136.

[5] Gary W. Gallagher, *The Confederate War: How Popular Will, Nationalism, and Military Strategy Could Not Stave Off Defeat* (Cambridge, MA: Harvard University Press, 1997, 1999), 85.

[6] Paul D. Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge, LA: Louisiana State University Press, 1978).

[7] Drew Gilpin Faust, *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South* (Baton Rouge, LA: Louisiana State University Press, 1988), 22.

"central component of the mission God had designed for the South") with the Biblical teachings to justify God's blessing the South in the war was crucial to southern nationalism.[8] The Confederacy failed in this mission, argues Faust. There was no Confederate nationalism, according to Richard E. Beringer, *et al.*because "…the people of the South had no widely accepted mystical sense of distinct nationality." The authors maintain that many Southerners became Confederates not because of a "sense of nationhood," but rather from white supremacy and a fear of a South without slavery.[9]

But on that warm February 1861 afternoon in Richmond, as the new president delivered his inaugural address, celebration of a new nation gave way to a sober assessment of the reasons for secession and the determination necessary to ensure the success of the Confederacy. Davis opened by harkening to the Declaration of Independence and the compact theory of government. He noted that the government rests upon the consent of the governed, that it is "the right of the people to alter or abolish [governments] at will whenever they become destructive of the ends for which they were established…," and that the "sovereign States" have the right to defend their inalienable rights as asserted in the Declaration of Independence. The Confederacy, therefore, was conservative in nature. Much like the Revolutionary patriots a century earlier, southerners in the Confederacy expected to recapture those principles abandoned by the ruling government. And

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[8] *Ibid.*, 60.

[9] Richard E. Beringer, *et al.*, *Why the South Lost the War* (Athens, GA: University of Georgia Press, 1986), 66.

Davis articulated a role for the states in this process. By asserting the states' legitimate authority to protect natural rights, Davis authorized the governors, as chief executives of their respective states, to assume a leadership role in defending against any perceived infringement of those rights by the central government. While the governors would decline Davis' offer throughout much of the first year of the war, they would increasingly be sensitive to this issue as the war progressed.[10]

In February 1861, however, the governors were not thinking about potential conflict with the Confederate central government; they were enthusiastic at the prospect of an independent nation with Jefferson Davis as its president. Even Governor Joseph Brown of Georgia, who would prove to be one of Davis' most persistent antagonists during the war, proclaimed that Davis' selection as president was "a good one, as his wisdom and statesmanship are known to all to be of the most profound and highest order."[11] This display of unity was consistent with not just the euphoria at leaving what was perceived as an oppressive government, or at the prospect of creating a new nation, but of the political culture early in the war. As one historian has observed, "The republicanism embodied in the Confederate

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[10] Richardson, James D., *The Messages and Papers of Jefferson Davis and the Confederacy* (New York: Chelsea House-Robert Hector, Publishers, 1966), 32-36. As Jefferson Davis himself noted, "The inaugural …in connection with the farewell speech to the Senate, presents a clear and authentic statement of the principles and purposes which actuated me on the assuming the duties of the high office to which I had been called." Jefferson Davis, *Rise and Fall of the Confederate Government*, Vol. 1 (New York, NY: De Capo Press, 1881, 1938, 1990), 200.

[11] U.B. Phillips, ed., "The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb," *Annual Report of the American Historical Association, 1911*, vol. 2 (Washington, D.C., 1913), 543, quoted in Kenneth Michael Murray, "Gubernatorial Politics and the Confederacy" (Ph.D. diss., Columbia University, 1977), 478-479.

Constitution looked back into the eighteenth century before the formation of political parties."[12] It was this republicanism that mandated placing community interests above individual interests and encouraged public demonstration of unity for the nascent government and its politicians without the rancor and divisiveness of party politics.

Despite the pressure for political unity, only South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana and Texas had seceded by February 1 and were poised to join the Confederacy when it was created later in the month. From December 1860 through April 1861, the Confederate central government, and several states already in the Confederacy, sent commissioners to slaveholding states still in the Union in an effort to persuade them to join the Confederate cause. Mississippi and Alabama each sent fifteen commissioners, one to every slave state. South Carolina appointed nine emissaries, one to each of those states which held secession conventions: Alabama, Mississippi, Georgia, Florida, Louisiana, Texas, Arkansas, Virginia, and North Carolina. Georgia, in turn, named commissioners to Alabama, Louisiana, Texas, Arkansas, North Carolina, Virginia, Maryland, Delaware, Missouri, and Kentucky. Lastly, Louisiana sent a commissioner to Texas, but he arrived in the capital after Texas passed its Ordinance of Secession.

Cooperation regarding this issue functioned on a more informal level. When, in October 1860, Governor Gist of South Carolina inquired of his fellow governors what course of action should follow if Lincoln were elected president, the

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[12] George C. Rable, *The Confederate Republic: A Revolution Against Politics* (Chapel Hill, NC: University of North Carolina Press, 1994), 63.

responses were noncommittal. Nor did the reality of Lincoln's election initiate any formal coordinated response among the governors. But the governors of the Deep South states, those that were the first to secede, did recognize the need for action to induce all southern states out of the Union. Their response, though uncoordinated and collective only in the sense that the Deep South states sent commissioners to other states, still constitutes cooperation because the states and central government were working together to achieve a common purpose: promoting the secession of the remaining southern states and their admission into the Confederacy.

The commissioners' essential arguments were three-fold: the ultimate right of a state to secede when its rights, however broadly defined, were threatened by the federal government; that slavery was a constitutionally protected right that was threatened; and that cooperation and unity of the southern states would provide the greatest likelihood of success. A recent work convincingly argues that race was a critical element in the commissioners' arguments.[13] But the core of the commissioners' presentations focused on constitutional issues. J.L.M Curry, Alabama's commissioner to Maryland, wrote to Governor Thomas Hicks explaining why Alabama was moving toward secession, justifying the right of secession and a withdrawal from the compact of states called the United States. Why did the Republican victory in 1860 pose such a threat to Southerners? Because, answered Curry, Republicans did "not recognize the right of the Southern citizen to property in the labor of African slaves." Owners would not be allowed to transport their slave

[13] Charles B. Dew, *Apostles of Disunion: Southern Secession Commissioners and the Causes of the Civil War* (Charlottesville, VA: University of Virginia Press, 2001).

property anywhere in the United States or its territories. According to Curry, "under the new Government, property which existed in every one of the States save one when the Government was formed, and is recognized and protected in the Constitution, is to be proscribed and outlawed. It requires no argument to show that States whose property is thus condemned are reduced to inferiority and inequality." This argument expressed a decidedly constitutional view in the protection of slaves as property. Curry continued by noting that the "radical idea" in the creation of the United States was "the equality of the sovereign States and their voluntary assent to the constitutional compact;" the Republicans threatened this agreement by creating a unitary, centralized, national government. While there was subsequent mention of non-specific social issues of slavery, the thrust of Curry's argument was one of constitutional protection of property and state rights.[14]

An examination of the other documents in the *Official Records* reveals the same concern by the commissioners regarding the federal government's perceived infringement of the southern states' constitutional rights. For example, the bulk of Commissioner Stephen Hale's letter to Governor Beriah Magoffin, governor of Kentucky, addressed constitutional issues of state rights and concern over loss of property rights, although Hale also mentioned the racial issues as well.[15]

Responses to the commissioners ranged from luke-warm to enthusiastic. The constitutional arguments by the commissioners, as well as the call for

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[14] J.L.M. Curry to Governor Thomas Hicks, December 28, 1860, *Official Records*, series IV, volume 1, 38-42.

[15] S.F. Hale to Governor B. Magoffin, December 27, 1860, *Official Records*, series IV, volume 1, 4-11.

cooperation by the southern states to maximize the opportunities for success, went unheeded by the border states of Delaware and Maryland. The governor of Delaware, William Burton, accepted a letter from Alabama's commissioner but refused to reply.[16] And the governor of Maryland ignored the pleas of the commissioners from Alabama, Georgia, and Mississippi "to secure concert and effective cooperation."[17]

Given the geographical locations of Delaware and Maryland, their governor's responses are not surprising. Although Delaware was less sympathetic to the Confederate cause than Maryland, both southern states lay north of Washington, D.C. Because such a significant segment of the population in Maryland supported the Confederacy, Governor Hicks was forced to walk a fine line between the southern supporters in his state and President Lincoln's need to keep Maryland in the Union.[18] Lincoln, for all practical purposes, had secured control of Maryland by April 30, 1861, but the Maryland legislature continued to show support for Confederates by its passage of Joint Resolution No. 4 on May 14, 1861 which stated that "the war now waged by the Government of the United States

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[16] David Clopton to A.B. Moore, January 8, 1861, *Official Records*, series IV, volume 1, 33-34.

[17] Curry to Hicks, December 28, 1861, *Official Records*, series IV, volume 1, 39.

[18] Delaware and Maryland were the only states in the Upper South to vote for the southern Democratic candidate John C. Breckinridge in the 1860 presidential election. This reflects the states' sympathy with southern interests. In addition, on April 19, 1861, southern sympathizers in Baltimore attacked the Sixth Massachusetts Volunteer Regiment as it was marching from President Street station to Camden station in response to Lincoln's call for troops to protect Washington, D.C. after the fall of Fort Sumter. This incident became known as "The Pratt Street Riot."

upon the people of the Confederated States, is unconstitutional in its origin, purposes and conduct; repugnant to civilization and sound policy; [and] subversive of the free principles upon which the Federal Union was founded…."[19] Whatever cooperation Maryland may have wanted to lend to her southern sisters was, for all practical purposes, impossible within thirty days after the fall of Fort Sumter.

The states that had seceded sought to augment their number. Joseph Brown of Georgia, in a letter to John Gill Shorter, Commissioner of Alabama, noted that Alabama's active progress toward secession "excited the just admiration of all her Southern sisters." Brown continued, "Let each State, as soon as its convention meets, secede promptly from the Union and let all then unite upon a common platform, co-operate together, and 'form a more perfect union.'"[20]

Texas presented a unique situation because the governor, Sam Houston, was caught between his loyalty to the Union (but not the incoming Republican president) and his state's movement toward secession. On January 7, 1861, in response to a communication from Commissioner J.M. Calhoun of Alabama, Houston noted that the legislature had been convened to determine the future course of the state. The

[19] Lawrence M. Denton, *A Southern Star for Maryland: Maryland and the Secession Crisis* (Baltimore, MD: Publishing Concepts, 1995); Carl N. Everestine, *The General Assembly of Maryland, 1850-1920* (Charlottesville, VA: The Michie Company, 1984), 114.

[20] Joseph E. Brown to John Gill Shorter, January 5, 1861, *Official Records*, series IV, volume 1, 18-19.

governor emphasized his preference for united action by the South,[21] but asserted that Texas would not shy away from taking unilateral action if it best suited her interests. The susceptibility of Texas' frontier to attack from both the Indians and the Mexicans, and Alabama's unwillingness to coordinate her actions with other southern states, compelled Houston to respond that, "(w)ere I left to believe that Alabama is disposed to second the efforts made to secure the co-operation of the South in demanding redress for our grievances, or that her course would in the least depend upon that of Texas, I would suggest such views as sincere and earnest reflection have induced."[22] Cooperation, to Houston, began with the southern states leaving the Union according to a coordinated plan, not piecemeal. While other states urged cooperation regardless of whether southern states left unilaterally or in a unified action, Houston alone suggested that Texas, already an independent republic once, could be one again.

Some of the commissioners arrived too late to their destinations to be of any consequence. William J. Vason, commissioner from Georgia to Louisiana, arrived in Baton Rouge on January 29, 1861, six days after Louisiana left the Union. Vason still was invited to address the convention, at which time he "invited the State of Louisiana to co-operate with her [Georgia], and all the seceding States to form a Southern confederacy upon the principles of the Constitution of the United States."

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[21] In November 1860, Houston, in fact, had corresponded with the other Southern governors requesting a convention to protect the interests of the South. See Janet E. Kaufman, "Sentinels of the Watchtower," 386.

[22] Sam Houston to J.M. Calhoun, January 7, 1861, *Official Records*, series IV, volume 1, 74-75.

Finding Louisiana "of the disposition and intention … to co-operate with Georgia, and the other seceding States in the formation of a Southern confederacy," Vason's task was much easier than many of the other commissioners.[23]

On April 25, 1861, President Jefferson Davis appointed Henry W. Hilliard of Alabama as commissioner to Tennessee in hopes of securing Tennessee's secession and admission into the Confederacy. After an initial meeting with Governor Isham Harris, who agreed to "heartily co-operate with me in accomplishing the objects of my mission," Hilliard addressed the legislature and, on May 7, concluded an agreement which governed Tennessee's troops as well the state's admission into the southern confederacy.[24] Without having formally seceded (which would occur on June 8, 1861), Tennessee authorized its entire military force to be placed under the command of the Confederate president and commander in chief Jefferson Davis, so long as its forces were treated as if Tennessee were a member of the Confederacy. In addition, the parties agreed that Tennessee would transfer to the Confederacy all "public property acquired from the United States" and the Confederate States agreed to reimburse Tennessee for any monies expended on behalf of the agreement prior to its admission.[25]

Efforts of these commissioners from the states and the central government of the Confederacy reveal the extent of cooperation at the executive level. Tennessee's

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[23] *Ibid.*, William J. Vason to George W. Crawford, March 15, 1861, 170-171.

[24] Henry W. Hilliard to Robert Toombs, April 29, 1861 and May 1, 1861, *Official Records*, series I, volume 52, part 2, 76-78 and 82-84.

[25] Isham G. Harris to Tennessee Senate and House of Representatives, May 7, 1861, *Official Records*, Series IV, Volume 1, 297-298.

agreement to transfer its entire military operation to the Confederacy while the state was still in the Union was absolutely unconstitutional. Although it was readily apparent that the state, with its strategic river system and its location, would be a major battleground, Governor Harris, as commander in chief of the state forces, possessed no constitutional authority to conclude such an arrangement with the Confederacy. In fact, the United States Constitution specifically forbids just such treaties.[26] However, Harris and the state ignored the constitutional and institutional prohibitions and fully cooperated with the Confederacy.

Governor Houston of Texas, meanwhile, was offended that Alabama and the other Deep South states were pursuing independent state secession movements rather than coordinating a unified southern action. Although anti-Republican, Houston was pro-Union and probably knew that the South was not capable of achieving such a level of sophisticated joint action given the limitations of time and circumstances. Most likely, he was seeking a delay to allow more time to sort out a solution to the crisis. And a united movement was not necessary, as long as the governors were willing to jettison constitutional strictures to achieve the same end, i.e., a Confederate nation.

This was quite apparent when the governors had to address the issue of federal property and troops on southern soil. Throughout the new Confederacy, one of the governors' first concerns was the status of federal arsenals and arms located

[26] U.S. Constitution, art. 1, sec. 10 reads, "No state shall enter into any treaty, alliance, or confederation [nor shall any state], without the consent of Congress, … enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

within their states. Governors across the South viewed the federal installations and troops stationed there as an obvious violation of state sovereignty.[27] States sought quickly to recover the territory and expel the federal troops. At the same time they had to provide for the defense of the state. Although a few states attempted to procure arms and materiel prior to leaving the Union, most lacked the arms, munitions, and equipment necessary for supplying an army. The governors were frequently forced to seek the assistance of their colleagues. Troops, arms, and even the arms factory in Harpers Ferry, Virginia were transferred from one state to another or from a state to the Confederacy. To the governors, concern about the defense of the Confederacy equated to the defense of their respective states. And to those states that were immediately threatened, the cries for assistance were particularly acute.

Most governors refused to take action against federal property and/or troops until their respective states left the Union. The reasons for this were threefold. The governor might have articulated the position, out of principle, that the state had no right or authority to seize the federal property/troops while the state remained in the Union. But a governor also could resist such a measure because of political expediency, with little regard for political or constitutional principles, if the political advantage of restraint outweighed the governor's desire for action. These reasons

[27] After the formation of the provisional government of the Confederate States of America on February 22, 1861, the central government also viewed federal installations on Confederate soil as a violation of national sovereignty. National attention focused on Forts Pickens, at Pensacola, Florida, and Fort Sumter, guarding the entrance to Charleston, South Carolina. The governors, however, spearheaded the effort to seize the installations even before the formation of a Confederacy.

were not mutually exclusive, and so the third reason for a governor's inaction was a combination of principle and expediency.

Governor John W. Ellis of North Carolina, despite being a secessionist, justified not taking measures to seize federal property and men both on grounds of principle and expediency. In October 1860, shortly before his own re-election, Ellis wrote to Governor William H. Gist of South Carolina that North Carolina was a divided state, "… our people are very far from being agreed as to what action the State should take in the event of Lincoln's election to the Presidency. Some favor submission, some resistance and others would *await the course of events that might follow*."[28] Even if Republican Abraham Lincoln should win the presidential election in November 1860, Ellis expressed doubt as to whether North Carolina would secede from the Union.[29]

But events forced Ellis' hand. After the election of Lincoln as president by the Electoral College and the subsequent secession of South Carolina, Governor Ellis received a wire on December 31, 1860 from a group of citizens in Wilmington concerned that Forts Caswell and Johnson would be reinforced with federal troops. Ellis denied their request that the forts be seized. In frustration, a delegation of citizens arrived in Raleigh on January 1, 1861 to urge reconsideration of his

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[28] Ellis to William Gist, October 19, 1860 in Tolbert, Noble J., ed., *The Papers of John Willis Ellis*, vol. 2, 469-470.

[29] William C. Davis, *"A Government of Our Own:" the Making of the Confederacy*, 6-7; John G. Barrett, *The Civil War in North Carolina*, 3-4.

decision. Again, Ellis refused, expressing concern that he lacked authority to order seizure of federal property since North Carolina was, after all, still in the Union.[30]

On January 9, 1861, upon learning that a federal revenue cutter manned by fifty men and outfitted with eight guns was heading toward Fort Caswell, the Cape Fear Minute Men, a local militia, took control of Forts Caswell and Johnson after signing a receipt for the ordinance and stores. Immediately, Ellis sent Colonel John L. Cantwell to order the Minute Men to return the forts to the federal troops. Ellis was keenly aware of the lack of political support within the state for secession and perceived that seizure of these forts could move North Carolina significantly against leaving the Union. Furthermore, Ellis recognized his authority as a governor in a state still a part of the United States. He informed President James Buchanan of what had transpired in a letter dated January 12, 1861:

> My information satisfies me that this popular outbreak was caused by a report very generally credited, but which, for the sake of humanity, I hope is not true, that it was the purpose of the administration to coerce the Southern States, and that the troops were on their way to garrison the Southern forts and to begin the work of our subjugation…. Your Excellency will therefore pardon me for asking whether the United States forts in this State will be garrisoned with Federal troops during your administration.

Despite Ellis' concern for constitutional limitations in relation to federal installations, he challenged Buchanan by inquiring whether federal troops could enter a federal military installation, an obvious right of the federal government. Ellis then informed Buchanan that unless he received assurances from the president

[30] John G. Barrett, *The Civil War in North Carolina*, 6-7.

that no additional federal troops would be sent to North Carolina, "I will not undertake to answer for the consequences."[31] The threat was ambiguous and vague, but a threat nonetheless: should Ellis not receive the demanded assurances, the state government may seize the forts or may take no action to stop a local militia from seizing the forts.

Ellis was corresponding at the same time with Governor Joseph E. Brown of Georgia. Acknowledging that the federal forts in North Carolina were indefensible, Ellis admitted that he did not believe that Buchanan had intentions of reinforcing Forts Johnson and Caswell. In fact, Ellis continued, he only returned the captured forts to the federal authorities because to do otherwise would have "an injurious effect upon the cause of Southern rights in this state." To allow the secessionists to gain the upper hand would provoke the Unionists in a state already divided over secession. Ellis believed the best chance for North Carolina's secession would come after a convention to form a general government.[32]

Ellis' sense of his constitutional responsibilities did not deter him from efforts to move North Carolina toward secession. He was actively seeking arms and ordinance for purchase, as were many of his fellow southern governors.[33] Ellis sent three representatives to a southern convention at the invitation of Alabama. He

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[31] Governor John W. Ellis to President James Buchanan, *Official Records*, series I, volume 1, 484-485.

[32] John W. Ellis to Joseph E. Brown, January 14, 1861, John W. Ellis Papers, MS #242, Southern Historical Collection, Wilson Library, University of North Carolina, Chapel Hill, NC.

[33] John L. Cantwell to John W. Ellis, January 15, 1861, in Tolbert Noble J., *The Papers of John Willis Ellis*, vol. 2, 559-560.

urged the cotton states to quickly establish a central government lest the Upper South be lost:

> We have submissionists here but the great heart of the people is right. You may count us in for we are determined to be with you Soon. We have beaten our opponents here on the Convention question…. (W)e have gained the victory. A convention is now certain Tell our friends in the Cotton States to Stand firm.[34]

Unlike Ellis, several governors acted in an unconstitutional fashion by seizing federal installations before their states had formally left the Union. They justified such preemptory action as necessary to protect the citizens of the state and to preserve the peace. Governor Andrew Barry Moore of Alabama in a letter dated January 4, 1860, informed President James Buchanan that, "by my order Fort Morgan and Fort Gaines, and the United States Arsenal at Mt. Vernon were … peacefully occupied, and are now held by the troops of the State of Alabama." He assured Buchanan that he intended to "avoid and not to provoke hostilities between the State and Federal Government." A convention would be held on January 7 to determine whether Alabama should leave the Union. All indications were that the convention would vote for secession. Convinced that the Federal government would reinforce the forts and station guards at the arsenal, Moore said he acted out of "self-defense." While presumptively acknowledging that he was acting without authority, Moore stressed that it "would have been an unwise policy, suicidal in its character, to have permitted the Government of the United States to have made undisturbed preparations within this State to enforce by war and bloodshed an

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[34] John W. Ellis to Isham W. Garrott, January 30, 1861, *ibid.*, 574-575.

authority which it is the fixed purpose of the people of the State to resist to the uttermost of their power."[35]

In Arkansas, by contrast, the governor not only authorized seizure of federal installations prior to secession, but also allowed the Confederacy to occupy strategic ground in the state prior to secession. In November 1860, a Captain Totten and sixty-five federal soldiers were sent to the unoccupied federal arsenal at Little Rock. When citizens in Helena complained of the troops' presence, Adjutant General Edmund Burgevin advised that "should the people assemble in their defense, the governor will interpose his official position in their behalf."[36] Governor Henry M. Rector notified Captain Totten that the state would not permit the removal of arms or the arrival of reinforcements to the arsenal. Meanwhile, volunteers from southern Arkansas arrived so that, by the end of the first week in February, approximately five thousand Arkansasians stood poised to take the arsenal. Unfortunately for Rector, political pressure between the Unionists and secessionists forced him to choose between attacking the arsenal or sending the men home. Rector avoided alienating either group when Totten surrendered the arsenal on February 8, 1861. Rector was applauded by the secessionists, but Unionism was still strong. A February 18 vote rejected secession, 23,626 to 17, 927.

Unionist sentiment in Arkansas quickly evaporated after the attack on Fort Sumter and Lincoln's call for troops. Many former Unionists believed that the

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[35] A.B. Moore to President James Buchanan, January 4 (?), 1861, *Official Records*, series I, volume 1, 327-328.

[36] Michael B. Dougan, *Confederate Arkansas*, 41-46.

United States government precipitated the crisis by attempting to reinforce Fort Sumter. Rector, along with other southern governors, refused the President's request for troops. Objecting to Lincoln's attempted subjugation of the southern states, he vowed that the citizens of Arkansas would "defend to the last extremity their honor, lives, and property against the Northern mendacity and usurpation."[37]

Rector also resisted Confederate Secretary of War Leroy P. Walker's request for one regiment of infantry on April 22, 1861. Even though Arkansas was still in the federal Union, the governor noted, "I have no power," and could do nothing until "our convention assembles on the 6th of May. Then we can and will aid."[38] However, in response to a separate Confederate inquiry, Rector allowed the Rebels to place a battery at Helena since "a battery on the Mississippi near Helena, or any other eligible point, is important to the Confederate States as to Arkansas, and meet my entire approval and consent."[39] Finally, upon hearing of potential federal reinforcements of Fort Smith in Pine Bluff, Rector moved Arkansas closer to secession by ordering the seizure of the fort, which was accomplished by approximately three hundred militia on April 23. His actions were critical in

[37] Governor Henry Rector to Simon Cameron, April 22, 1861, *Official Records*, series I, volume 1, 687.

[38] Governor Henry Rector to Secretary of War L.P. Walker, April 23, 1861, *ibid.*, 687.

[39] Governor Henry Rector to Secretary of War L.P. Walker, April 29, 1861, *ibid.*, 689.

swaying the convention to secede from the Union and linked Arkansas' fate with the Confederacy.[40]

From outward appearances, these southern governors did not appear to cooperate with each other to seize federal installations within their respective states. With the exception of Fort Sumter in South Carolina and Fort Pickens in Florida, they could, with relative ease, capture the federal forts. Yet cooperation existed informally. Recognizing the imperative of both securing the state's territory and creating a Confederacy, the southern states seized the initiative by capturing the federal installations. Many later transferred the forts and captured arms to the Confederacy. While nothing formal regarding a cooperative agreement in seizing federal installations and arms was concluded between the governors and/or the Davis administration, the state's actions resulted in a cooperative effort of removing federal installations and asserting sovereignty over state, and later Confederate, land.

Moore and Rector, like other Confederate governors, faced a dilemma. When was the right time to seize federal fortifications and arsenals? On the one hand, by waiting until after a state seceded, a governor could argue that the state had a sovereign right to control its territory and remove any foreign presence, for allowing a foreign power to maintain a military facility on state soil compromised the integrity of the state's sovereignty. Such was the position of North Carolina's Governor Ellis. This, however, would expose a state to the risk of federal reinforcements and resupply. And while President Buchanan assured Southerners

[40] See Jack B. Scroggs, "Arkansas in the Secession Crisis," 179-224.

that he would maintain the status quo, there were no guarantees that this policy would continue.[41] Also uncertain was the policy that the new Republican president would pursue.[42] For these reasons, a preemptive seizure seemed politically and militarily sound. And this is what happened. Most states were still in the Union when they seized federal property. By seizing federal property in anticipation of secession, however, the governors acted without apparent authority. This attitude reflected the governors desire to retake state land and, with a cooperative result, rid the entire Confederacy of the Union presence. And though Governor Rector was unique in that he actually allowed the Confederate military to fortify Arkansas territory prior to the state's leaving the Union, he justified it on the ground of preemption and protection of Arkansas, a right clearly possessed by the governors. Concerns of federal intervention were quite real.

As commanders in chief, the governors saw their duty to protect and defend the state against a potential threat, even if that threat was the central government, and yet limits on the governors' actions were self-imposed. After the war, Jefferson Davis defended state seizure of the forts and arsenals on the basis of a state rights

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[41] This policy was violated during the night of December 26, 1861 when Major Robert Anderson, the new commander at Fort Moultrie, moved his men into the more defensible Fort Sumter.

[42] In his March 4, 1861 inaugural address, Lincoln sent a clear message to the Southerners, "…there needs to be no bloodshed or violence; and there shall be none, unless it be forced upon the nation authority. The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government, and to collect the duties and imposts; but beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere." Thus Lincoln abandoned Buchanan's policy since December 1860 of non-action.

argument. Davis argued that the federal government accepted the land from the various states for the building and maintenance of the federal installation. Yet the "ultimate ownership of the soil, or eminent domain, remains with the people of the state in which it lies, by virtue of their sovereignty."[43] A state leaving the Union, continued Davis, could take all of its public land with it, but must reimburse the federal government for any loss pertaining to its installations.[44]

Moore and the other governors who seized federal property in effect acted on Davis' criteria.[45] All took inventory of the property and accepted responsibility for any items seized from the installation. In addition, the federal soldiers manning the installations were accorded safe conduct to the United States.

The lack of arms and munitions posed a significant problem for the Confederate governors as well. Mississippi Governor John J. Pettus' message to the state House of Representatives on January 15, 1861 is representative of the initial concerns faced by most of the state governors. After reminding the legislature that "you meet under perplexing and novel circumstances, such as never surrounded any former session of the Legislature of this State," Pettus urged them to confront and solve the "numerous, grave, and new questions growing out of the present relations of Mississippi with the surrounding States…." Noting various state seizures of

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[43] Davis, Jefferson, *The Rise and Fall of the Confederate Government*, vol. 1, 179.

[44] *Ibid.*, 181.

[45] The governments of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia all seized forts, arsenals, or other federal installations immediately before or after the respective state's secession from the Union.

federal installations, he emphasized the co-operation among the several states in sending troops, arms, and provisions when requested. And Pettus saw cooperation extending beyond the official state government. Private citizens, and even corporate entities, offered "pecuniary aid."[46] Commissioners were named, pursuant to a prior legislative resolution, in an effort to convince the other southern states to join Mississippi in leaving the Union and to urge co-operation among them. Pettus recommended measures to maintain the uninterrupted flow of commerce on the Mississippi River and the imposition of "more stringent laws" for the crime of insurrection.[47] Pettus, in the view of one historian "a genuine fire-eater,"[48] worked feverishly to co-ordinate his efforts with the Confederate central government and the other states.

Prior to Mississippi's secession, Governor Pettus, like almost all of the Confederate governors, explored with great urgency obtaining weapons and powder

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[46] As the governor noted, "Col. Jeff. Davis and Hon. Jacob Thompson have guaranteed the payment, in May or June, of twenty-four thousand dollars ($24,000) for the purchase of arms." At this point in time, Jefferson Davis had no way of knowing that, by May, he would be president of the Confederacy. State of Mississippi, January 15, 1861, *Journal of the Legislative House*, called sess., (Jackson, MS: E. Barksdale, state printer, 1861), 7.

[47] *Ibid.*, January 15, 1861, 5-9. With respect to this last proposal, Pettus asserted in a letter to Governor A.B. Moore of Alabama at about the same time, "The people of Mississippi are no longer divided. They are of one mind, ready to spend their fortunes and their lives to make good that which their delegates have ordained. As the minority of the delegates made no factious opposition, so the minority of the people are not inclined to make a seditious resistance to the sovereignty of the State." The governor was therefore probably proposing such legislation with a view towards slave insurrection. Governor John Pettus to Governor A.B. Moore, January 21, 1861, *Official Records*, series IV, volume 1, 77.

[48] Murray, Michael Kenneth, "Gubernatorial Politics and the Confederacy," 75-76.

from both within and outside of the South. In late 1860, he placed an order with the federal arsenal at Baton Rouge for 9,000 firearms, 200,000 cartridges as well as cannon powder and shot. In mid-December 1860, Senator Jefferson Davis was instructed to "contact New York or St. Louis munitions companies and have them send 15,000 pounds of gunpowder and between 30,000 and 40,000 pounds of lead. The supplies would be paid for by state treasury warrants, as tax dollars were not yet in hand."[49]

Sometimes it was difficult to distinguish between gubernatorial cooperation and self-interest. After the seizure of the federal arsenal at Baton Rouge on January 12, 1861, Pettus sent approximately seven hundred men to Louisiana to defend that state. When he requested 10,000 stand of arms from Louisiana, Governor Moore responded by sending eight thousand muskets, one thousand rifles, two hundred thousand cartridges, one thousand pounds of rifle powder, six 24-pounder guns and carriages, five hundred 24-pounder shot, and one thousand pounds of cannon powder.[50] While the Louisiana governor viewed this transfer as cooperating with a "sister state" in need, Louisiana's self-interest was also a factor. As noted by Governor Moore, "…I deemed it my duty, not only from considerations of courtesy to a sister State, but in further execution of my duty to Louisiana regarding the

[49] Dubay, *John Paul Pettus*, 67, 83.

[50] State of Mississippi, called session, January 15, 1861 *Journal of the Legislative House*, 6; Thomas O. Moore to Louisiana legislature, January 22, 1861, *Official Records*, series 1, volume 1, 495.

approaches of Federal troops from above, to comply with his (e.g., Pettus') request…"[51]

This perspective was not unique to Moore in Louisiana. Across the South, governors provided troops and arms for military assistance to other states to enhance their own state's security. No one was more succinct than Virginia's governor John Letcher in imploring Governor Ellis of North Carolina to send troops to Norfolk, "The defence of Norfolk is the defence of North Carolina."[52] North Carolina, Tennessee, Arkansas ultimately joined with the troops from Virginia in attempting to secure Norfolk harbor for Virginia and the Confederacy.

Likewise, Florida received the assistance of other states as well in her attempt to secure control over federal installations within her borders. After John Brown's raid, Governor Madison Starke Perry advised the Florida legislature to prepare for the "emergency of the approaching Presidential election" in 1860. In addition to reorganizing the state militia and the slave patrol system, the legislature authorized the governor to cooperate with other southern governors should Lincoln win the presidency.

Given the rapidly deteriorating political and military situation, such cooperation would be necessary before the winter of 1860/61 passed. Florida's senators, David Levy Yulee and Stephen Russell Mallory, realized by the end of December 1860 that Florida needed to be prepared in the event of war between the

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[51] *Ibid., Official Records,* 495.

[52] Governor John Letcher to Governor John W. Ellis, May 22, 1861, John W. Ellis Papers, MS #242, folder 11, Southern Historical Collection, Wilson Library, University of North Carolina, Chapel Hill, NC.

United States and the state when it seceded from the Union. To that end, Yulee requested that the Secretary of War John B. Floyd provide the names of the United States' Army officers from Florida. Floyd quickly responded. Four days later, Yulee and Mallory requested the number of U.S. troops stationed at "the various posts in the State of Florida, and the amount of arms, heavy and small, and ammunition, fixed and loose, at the various forts and arsenal in the State." The Secretary of War refused this request, stating that "the interests of the service forbid that the information which you ask should at this moment be made public."[53] Florida's senators were clearly anticipating the upcoming seizure of the federal installations and arsenals located within the state. On January 6, 1861, four days before Florida formally seceded, state forces under the orders of the governor captured the arsenal near Chattahoochee. The following day, Fort Marion at St. Augustine was seized, again by the governor's order. However, these paled in military significance to the federal installations at Pensacola, Tortugas, and Key West. The latter two were quickly prepared by federal troops for a possible assault; therefore attention was focused on Pensacola, which consisted of five federal installations, the largest of which was Fort Pickens.

Again, cooperation dominated the relationship between states when Governor Perry appealed to the governors of Mississippi and Alabama for

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[53] Secretary of War John B. Floyd to Senator D.H. Yulee, December 28, 1860, *Official Records*, series I, volume 1, 348-349; Senators D.L., Yulee and S.R. Mallory to Secretary of War Floyd, January 2, 1861, *Official Records*, series I, volume 1, 349; Yulee and Mallory to Floyd, January 7, 1861, *Official Records*, series I, volume 1, 351; Secretary of War Joseph Holt to Yulee and Mallory, January 9, 1861, *Official Records*, series I, volume 1, 351.

assistance in attacking Ft. Pickens; troops were immediately sent.[54] Men from Louisiana and Georgia also joined in. After the crisis passed in the spring of 1861, and Florida had a new governor in John Milton,[55] governors in adjacent states were still willing to assist Florida in meeting its troop needs. Even Governor Joseph Brown of Georgia agreed to permit Georgia companies "near the line" with Florida to serve in Florida regiments.[56] As Brown's aide-de-camp noted in subsequent correspondence with the governor of Florida, "…regarding the defense of Florida, a common cause with that of Georgia, he [Governor Brown] has no objection to your receiving into the service of Florida any volunteers from any of the Counties of Georgia, bordering or contiguous to the line dividing the two states.[57] Alabama,

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[54] Governor A. B. Moore to William M. Brooks, January 8, 1861, *Official Records*, series I, volume 1, 444; Governor A.B. Moore to William M. Brooks, January 12, 1861, *Official Records*, series I, volume 52, Pt. 2, 5.

[55] Florida's governors at that time were elected for one four-year term and not eligible for re-election. Therefore Madison Perry's term ended on October 7, 1861. John Milton, leery of secession, but a state rights Democrat, won the Democratic nomination and then the general election in October 1860 to succeed Perry as governor. Although Milton won an election marred by personal attacks, he did not take office until the first week of October 1861. William Lamar Gammon, III, "Governor John Milton of Florida: Confederate States of America," (MA. Thesis, University of Florida, 1948), 11-86; Yearns, *The Confederate Governors*, 61-62.

[56] Governor Joseph Brown to Governor John Milton, November 9, 1861, Papers of John Milton, RG 101, series 577, Box 1, folder 10, Florida State Archives, Tallahassee, Florida.

[57] *Ibid.*, D.C. Campbell to Governor John Milton, November 12, 1861. Of course, a key element missing from this correspondence was the ongoing boundary dispute between Georgia and Florida, which would not be resolved until years later. However, Brown could have maintained an intransigent position and ordered men on the Georgia side of his interpretation of the line only to Georgia units, but he chose to cooperate.

too, was willing to send additional troops by the end of 1861, despite the fact that Fort Pickens was still under federal control.[58]

The cooperative spirit extended still further to the command of state troops stationed in another state's jurisdiction and was maintained even when potential problems arose. Within the Confederate army, despite significant controversy involving strategic objectives, Confederate military leaders for the most part directed movement of the troops, tactics, and other military related matters, subject to the President of the Confederacy as commander-in-chief.[59] But where troops of one state were assigned by the governor to defend another state, the command structure was not as clearly defined. Was the governor of the "home state" commander of the troops or the governor of the state where these troops were assigned? Governor A.B. Moore of Alabama was forced to address this issue at the end of January 1861. In replying to a query by the state convention as to the advisability of maintaining Alabama troops in Pensacola, Moore noted that he had heard that a number of Mississippi troops were growing weary and desired to return to Mississippi. In responding to Governor Pettus' inquiry as to how long the Mississippi troops wanted to remain in Florida, Moore responded that only the governors of Mississippi and Florida "have alone the right to control the troops of

[58] *Ibid.*, Governor A.B. Moore to Governor John Milton, November 8, 1861.

[59] For example, see Thomas Lawrence Connelly and Archer Jones, *The Politics of Command: Factions and Ideas in Confederate Strategy*. Baton Rouge, LA: Louisiana State University Press, 1973.

Mississippi."[60] This situation, of course, was altered once the national government drew more and more men from the states into the Confederate army pursuant to an act passed on March 6, 1861 authorizing Davis to call up to 100,000 volunteers, which was expanded to 400,000 men on August 8, 1861, and culminated with the first Conscription Act passed on April 16, 1861.

Volunteers were numerous early in the war; arming and equipping them was a problem. The initial months of war were ones of optimism and high military expectations for the Confederacy. Southern men rushed to volunteer in an initial wave of euphoria. Many were confident that the war would be short and victory assured. As one historian noted, South Carolina politician James Henry Hammond's "original confidence that the North would not take arms against the Confederacy was replaced by a new assurance that the South would easily triumph on the field of battle."[61] The onslaught of volunteers, combined with an iron industry that was insufficient to meet the demands for arms and ammunition, created a crisis for many governors: too many soldiers and not enough weapons. Despite the seizure of federal arsenals, virtually every southern state suffered from a shortage of arms. With men volunteering by the tens of thousands, the states either could not arm them or could only provide antiquated firearms. In Virginia, many troops "carried

[60] Governor A.B. Moore to William M. Brooks, January 28, 1861, *Official Records*, series I, volume 1, 446.

[61] Drew Gilpin Faust, *James Henry Hammond and the Old South: A Design for Mastery* (Baton Rouge, LA: Louisiana State University Press, 1982), 364.

only bowie knives and old muskets without ammunition."[62] In order to provide for the defense of their respective states, the governors either had to accept that the men would be inadequately armed and/or seek arms elsewhere, either in the North or overseas.

Governor John Letcher of Virginia addressed the problem of too many volunteers and too few arms in a fashion similar to the other governors. In an accounting immediately after Virginia's secession on April 17, 1861, Letcher found that lessthan two -thirds of the estimated 18,500 available volunteers were armed. So deficient in arms was the state, Letcher issued a proclamation on April 24 that ordered all volunteers to remain at home until further notice. The governor advised volunteers that they could be accepted only if fully armed and equipped, which was the condition upon which the Confederacy would accept state troops as well.[63] Letcher quickly ordered the seizure of the federal arsenal at Harpers Ferry and the Gosport Naval Yard at Hampton Roads. While the fleeing Federals torched the naval yard and the ships in port, the Virginia volunteers were able to save the cannon and more than 300,000 pounds of gunpowder, as well much-needed machinery. At Harpers Ferry, the outnumbered federal troops burned the arsenal, but civilians were able to save much of the rifle-making and small arms machinery as well as many infantry weapons.

Realizing that Virginia was to be a battleground in the upcoming war, Letcher both received, and shared, arms and men generously with other states.

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[62] F.N. Boney, *John Letcher of Virginia,* 116.

[63] *Ibid.*, 120.

Once again, cooperation with the Davis administration defined the relationship of the governors. On the very day that Virginia seceded from the Union, Letcher accepted two fully equipped regiments that South Carolina had offered earlier. In addition, he sought, and received, troops from North Carolina and the Confederacy.

With the focus of the war in the east, troops from across the South flooded into Virginia during the late spring and early summer of 1861. Despite the prospect of immediate warfare on Virginia's soil and the acute shortage of weapons, Virginia sent three thousand muskets to pro-southerners in Maryland, which in April 1861 was teetering on the verge of secession. Likewise, Letcher ordered "some light artillery" to North Carolina and Tennessee.[64] Considering Virginia was ground zero of the eastern theatre in the upcoming conflict, Letcher's cooperation with the other southern governors was extraordinary.

Just as Virginia was vulnerable, and yet cooperating extensively with the other states and government of the Confederacy, so too was Texas. But unlike the other states of the Confederacy, Texas was concerned with invasion from other sources—Mexico and the Indians. With its extensive frontier, the Lone Star state was extremely vulnerable from the north, south, and west. And the east coast of Texas was subject to both the blockade and federal invasion. Edward Clark, who as Lieutenant Governor succeeded to the governor's chair after Sam Houston was removed from office, worked diligently with the Confederate authorities to protect Texas from invasion. He raised regiments requested by the Confederate authorities,

[64] *Ibid.*, 118-127.

provided for the local defense, and offered the Confederacy state-owned cannon which could be more effectively used by the Confederate army.[65]

After Francis Lubbock[66] won the August 1861 gubernatorial election by defeating the incumbent Edward Clark by the razor thin margin of 121 votes, he visited President Jefferson Davis in Richmond to determine, "from him, how I, when instated as Governor, could best aid the Confederacy."[67] Upon his return, Lubbock set forth the important issues he saw confronting Texas in a November 15 address to the state legislature. After initially confirming the grounds for Texas' secession from the Union, the governor observed, in an implicit recognition of state acquiescence to the central government in Richmond, that it was incumbent upon the legislature pass those measures that "…will enable Texas to perform her duty

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[65] Governor Edward Clark to President Jefferson Davis, April 17, 1861, *Official Records*, series I, volume 1, 626; Secretary of War Leroy Pope Walker to Governor Edward Clark, April 27, 1861, *Official Records*, series I, volume 1, 629.

[66] Lubbock, born in South Carolina but relocating as a young man to Houston, Texas, served as a delegate to the 1860 Democratic national convention and was temporary chairman of the southern Democrats who nominated John Breckinridge for president. After the election of Lincoln, Lubbock was a strong supporter of secession. His victory in the gubernatorial election of August 1861 was due in large measure to the Democratic organization for Lubbock and the voter perceptions of the candidates, since no politicking over policy was encouraged; solid support for the new government was deemed essential. Nancy Head Bowen, "A Political Labyrinth: Texas in the Civil War-Questions in Continuity." (Ph.D. diss., Rice University, 1974), 34-39; Yearns, *The Confederate Governors*, 198-200.

[67] Lubbock, Francis R., *Six Decades in Texas, or Memoirs of Francis Richard Lubbock, Governor of Texas in War Time, 1861-1863*, ed. by C.W. Raines (Austin, TX: Ben C. Jones Co., 1900), 321, 322, 329. While there is no record of the conversation between the two men, Jefferson Davis must have been satisfied in his relationship with Lubbock. After Lubbock decided not to seek re-election in 1863, he joined the Confederate Army as a Lieutenant Colonel and was appointed Davis' *aide de camp*. He served in this capacity throughout the remainder of the war and was with Davis when he was captured in May, 1865.

toward the Government of the Confederate States…" and enable the central government to successfully conclude the war.[68] To Lubbock, the central government was necessary in terms of providing sufficient troops to protect the frontier and the coastline from invasion. And from Lubbock's perspective, cooperation with the Confederacy `was essential in order to secure that protection.

Like Lubbock, every Confederate governor, as commander in chief of the state forces, was faced with the same problem: how to defend their respective states from invasion while contributing to the defense of the Confederacy as a whole. Most states encouraged volunteerism, appealing to the citizens' patriotism and need to protect family, hearth, and community. One state, Virginia, authorized a draft in February 1862, a full two months prior to the Confederacy's initiation of the bold measure. For some states, such as Virginia and Tennessee, the transfer of men and equipment to the Confederacy was concluded quickly and relatively smoothly. In Virginia, Governor Letcher noted in a June 17, 1861 address to the Convention,

> From every principle of duty and patriotism the executive department of the State has felt called upon to co-operate cordially and heartily with the Government of the Confederate States…. The great interests at stake demand the surrender of all questions of a subordinate character in a vigorous and united effort to maintain the common rights of the South. Nothing will be left undone to advance the interests of all, and the candor, frankness, and sincerity which have been exhibited by the President assure me that harmony and concert of action will be the result.[69]

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[68] Governor F. R. Lubbock to the Texas legislature, November 15, 1861, *Official Records*, series IV, volume 1, 726.

[69] John Letcher to Virginia Convention, June 17, 1861, *ibid.*, 393.

Letcher clearly did not differentiate between Virginia's success on the battlefield and the Confederacy's; he subordinated Virginia's interest to the Confederacy. In other words, Virginia's interest would be best served if the southern state rights were protected through the Confederacy. To that end, his administration would cooperate extensively with the Davis administration.

Likewise, Tennessee's Governor Harris wrote to the Confederate Secretary of War Leroy Pope Walker of April 20, 1861, "I beg to assure you that I will confer freely and co-operate most cordially, as far as may be within my power, in everything looking to a defense of our rights and an ample redress of any injuries that may be inflicted."[70] Governor Harris found little militarily that was not within his power; he transferred the entire state military operation to the Confederacy. Four regiments raised in May were transferred to the Confederacy. An additional twenty-one infantry regiments, ten cavalry companies, and one company of artillery were raised by the end of June; all were transferred to the Confederacy on June 29. By the fall of 1861, not only Tennessee's troops, but the federal installations captured by the state, as well as any stores, were transferred to the Confederacy. Tennessee's cooperation was so extensive that the governor was virtually willing to relinquish his constitutional responsibilities as commander in chief pursuant to the state constitution. In a highly unusual move, Harris wanted to "give up the entire

[70] Governor Isham G. Harris to Secretary of War L.P. Walker, April 22, 1861, *Official Records*, series I, volume 52, pt. 2, 63.

military jurisdiction and command of the State" to Confederate military authorities, including command of the Tennessee River.[71]

For most governors, particularly early in the war, the bulk of the fighting would occur in states other than theirs. Without the strong presence of the Confederate army in a state, the governor, as the official constitutionally charged with the state's defense, was in the position of competing with the Confederacy for manpower. Within the first year of the war, this presented little difficulty since volunteerism was high and the more important obstacle was arming the men.

Across the Confederacy, the states complied with War Department's request for troops. The states were expected to provide the men fully armed and supplied, and for the first year of the war, governors were able to comply with little difficulty. However, arms and supplies were in limited supply. Mississippi, for example, accepted too many volunteers. Governor Pettus, who lacked the authority to overturn a decision by the three-member Military Board to accept all who were willing to volunteer, found that the number of volunteers exceeded his ability to supply, train, and arm them. With the Confederate government requesting only four regiments in the spring of 1861, dissatisfaction soon affected these inactive soldiers. In attempting to solve this problem, Pettus forwarded the seven hundred troops requested by the respective governors to Fort Morgan in Alabama and Fort Pickens in Florida. He also sent twenty-three companies to Pensacola, Florida for training. To address the continued surfeit of enlistments, Pettus pleaded with Secretary of

[71] Quoted in Janet E. Kaufman, "Sentinels on the Watchtower," 200.

War Walker, and even his cousin President Davis, to request Mississippi troops. The result was a Confederate request for an additional two Mississippi regiments.[72]

Joseph Brown of Georgia was the most vocal governor in articulating the conflict between supplying troops to the Confederacy and maintaining sufficiently armed troops for the defense of the state. Although Brown formally cooperated with the Confederacy by tendering fifty regiments between spring of 1861 and the end of the year, issues of local defense and control over appointment of regimental officers would dominate Brown's attention in the early months of the war. Georgia's governor expressed concern that troops raised in the state and furnished with arms by the state, after being tendered to the Confederacy, would be used elsewhere in the country to the detriment of Georgia. In covering the governor's remarks to troops at Camp McDonald, the Atlanta *Intelligencer* paraphrased Brown,

> …they [the troops] were organized under a special act of the legislature for the defence of the State, and that they would be required to remain in the State subject to his orders, till he was satisfied that the season was so far advanced that the climate would protect the Coast…. He stated that they need not fear the imputation of being *only a home guard*, as they would be sent out of the state for service at the earliest day when the State could spare them, and would go to Virginia if the President desired them. *But as state rights men, they must remember their first duty when drilled by the State was to serve the State while their exertions were needed at home* [emphasis mine].

He noted that "state rights" was the basis for the revolution and that "he would never consent to see this vital principle ignored in practice, and the States reduced to the position of provinces of a great centralized consolidated Government,

[72] Dubay, *John Pettus Jones*, 99-106.

maintained by military despotism." Given Brown's future vitriolic attacks against Davis, it was ironic that the governor agreed that both he and Davis were "true States rights" men. But Brown lambasted Congress for passage of a bill which "placed in the hands of the President the power to accept the whole Volunteer military forces of the States, without the consent, and independent of State authority." In an effort to exert his authority, he would refuse to "acknowledge" any call by the Confederate government for Georgia men. Yet he would furnish every requisition for troops that Davis demanded, provided he did so only if made through the office of the governor. According to Brown,

> This was the old doctrine, the true doctrine, and the only doctrine that could carry us safely through the revolution and secure to us civil and religious liberty after the clouds of war had passed away.[73]

This confrontation exposed a threat that would inhibit state cooperation with the central government; how could one justify shipping armed troops out of the state when the state itself faced a potential attack? When the Confederate Congress authorized direct enlistments into the Confederate army, Francis S. Bartow, of the Oglethorpe Light Infantry, immediately offered his services, hoping that he and his men would be the first to enlist under this new law. To Brown's consternation, Bartow and his men would take with them arms that belonged to the state of Georgia. This could be devastating to the defense of the state. While Davis was responsible for the defense of the entire country, the governors struggled to find men and arms to defend their states. Brown, within the first few months of the war,

[73] *Atlanta Intelligencer*, June 15, 1861, J.E. Brown Collection Scrapbook, MS 85, Box No. 6, file 6.1, Main Library, University of Georgia, Athens, Georgia.

did turn over to the central government more than 22,000 arms seized in Georgia from federal forts and arsenals.[74] This left Georgia, like many other similarly situated Confederate states, bereft of arms necessary to defend its coast. An editorial to the Marietta *Advocate* accurately captures the dilemma facing the governors,

> We deny that Gov. Brown has unreasonably embarrassed the Confederate Government [and] we affirm that there has been a cordial cooperation on the part of Gov. Brown with the Confederate Government, in an effort to have things ready for our common defence.
>
> Would wisdom say, empty Georgia of her own arms while Confederate guns are still in store? Again, while our Sea Coast is yet almost defenceless, is it not the duty of the Governor to look to the means of repelling an invasion, although our defences are in the hands of the Confederate States? Certainly.[75]

The severe arms shortages continued to plague both the central and state governments. Despite the Confederate Arsenal at Augusta running at full production by the end of 1861, Brown resorted to arming a battalion with "Joe Brown Pikes." Over 12,000 of these obsolete weapons were manufactured in Georgia, which Brown distributed to both state forces and to the Confederate government.[76]

Other states in addition to Georgia experienced initial conflict with the Davis Administration over the issue of whether the Confederate authorities could bypass

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[74] T. Conn Bryan, *Confederate Georgia*, 23.

[75] Marietta *Advocate*, June 4, 1861, J.E. Brown Scrapbook Collection, MS 85, Box 6, file 6.1, Main Library, University of Georgia, Athens, Georgia.

[76] T. Conn Bryan, *Confederate Georgia*, 24-26.

the governor and accept troops raised by private citizens. Following a requisition for troops by the Secretary of War Walker on March 9, 1861, Governor Moore of Louisiana notified Walker that he had been "informed" that individuals in the state had been authorized to enlist men directly by the central government without the traditional request for troops to the governor. In expressing "astonishment and sincere regret" at having been treated in such a manner, Moore advised that the two companies being raised by the private citizens would constitute a portion of the 1,700 men requisitioned for the state. The governor then asserted a demonstration of his authority by stating that "…courtesy, if not right…" dictated that he should have been informed of Walker's order and that the Secretary of War should immediately countermand these authorizations. However, Moore did not threaten to disrupt raising troops by the Confederacy; he would cooperatively accept Walker's order if President Davis had authorized it.[77] Although the governor of Louisiana could have insisted upon the Confederacy's strict adherence to the traditional mode of raising troops through the governor, he ultimately acquiesced when Walker exceeded his authority. This was not an isolated instance by a governor, but a cooperative pattern of political behavior to achieve a common goal of the governors and the Davis Administration: winning the war.

While Moore limited himself to threats, Governor Rector of Arkansas allegedly attempted to frustrate Confederate officials by disbanding those state regiments to be offered to the Confederacy. After passage of legislation by the

[77] Governor Thomas O. Moore to Secretary of War L. Pope Walker, March 30, 1861, *Official Records*, series IV, volume 1, 194-195.

Confederate Congress authorizing its army to accept state troops, Rector offered troops to the Confederacy. Complying with national law, General William J. Hardee, Confederate commander of the District of Arkansas, refused to accept them because they were essentially unarmed and subject only to twelve-month enlistments, and not the three-year enlistments ordered by the Confederacy. To Hardee, who desperately needed the additional troops, hesitation cost him any troops; they disbanded before he could negotiate with the Confederate authorities about accepting them, despite their shortcomings. Cooperation in this instance was frustrated more to internal state politics than Rector's concern about the state's constitutional relationship with the Confederacy. Various state political and military officials pointed fingers at each other for the evaporation of the state forces.[78]

On numerous occasions Governor Rector did attempt to convince the Confederate authorities to accept state troops with one-year enlistments and provide arms for his state troops. On both counts the Confederate government declined, despite the state government's lack of procuring arms elsewhere and the failure, by the fall of 1861, to raise enough troops with three-year enlistments to fulfill the national government's requisitions.[79] Arkansas, more than many of the states, suffered from an inability to offer the Confederacy the numbers of armed men requested. What appears to be an almost constant antagonism with the Confederacy

[78] Michael B. Dougan, *Confederate Arkansas,* 77-79.

[79] *Ibid.*, 80.

was, in fact, virtual pleading from Rector because of his inability to comply with the central government's requirements.

Like Arkansas, Texas initially refused to forward state troops to the Confederacy; this confrontation with Confederate authorities was a result of Governor Sam Houston's antagonism with the state legislature over Texas' departure from the Union. Houston, long opposed to secession, accepted the convention's vote, although he believed that such a move was detrimental to the future of Texas. Expecting the convention to adjourn after its vote, Houston called for a new convention to initiate preparations for war. However, the legislature conferred upon the sitting convention the right to take whatever measures were necessary to implement secession. When the central government called for state troops on March 9, 1861, Houston refused, claiming that its delegates to the constitutional convention exceeded their authority in aiding "in the formation of a provisional government with other States." In addition, Houston asserted on March 9, that Texas was an independent republic, and therefore not responsible for providing the requested troops.[80] For this, and other reasons, the convention, by a vote of 102-2, ordered that all state officials, including the governor, must swear allegiance to the Confederacy. Houston's refusal led to his removal from office by the convention, to be replaced by Lieutenant Governor Edward Clark.

Now that Texas was unquestionably a part of the Confederacy, Clark's successor, Francis Lubbock, also experienced problems with the central government

[80] Janet E. Kaufman, "Sentinels on the Watchtower," 388-389; E.W. Cave to L. Pope Walker, March 13, 1861, *Official Records*, series I, volume 1, 611-613.

by-passing the governor in raising troops. Although Texas had difficulty affording camps of instruction and arming troops destined for the Confederate army, Lubbock complained to Secretary of War Judah Benjamin that the government was circumventing the governor by authorizing private individuals to raise regiments for the Confederate army. According to Lubbock, not only did this infringe on the governor's authority, but amounted to competition for men that the state required to fill its requisition. To further complicate matters, private citizens raising a regiment could frequently offer incentives that the government could not.[81]

Secretary of War George Randolph responded to Lubbock less than a fortnight before the first Conscription Act, which made moot the conflict between the two. Randolph explained that no authority was given the colonel in question to raise a regiment; but once a regiment was raised and offered, the Confederate army was authorized to accept them. There was no "remedy," short of not accepting the troops and having them count toward Texas' quota.[82] There was no resolution; there was merely the Secretary of War's recognition and legitimization of Lubbock's complaints. By the beginning of 1862, it was difficult for the governors to fulfill their quotas; likewise, most governors had already supplied more troops to the Confederacy than been requisitioned. It will never be known whether the

[81] Governor F.R. Lubbock to J.P. Benjamin, February 12 1862, *Official Records*, series I, volume 53, 783-785. F.R. Lubbock to J.P. Benjamin, March 7, 1862, *Official Records*, series IV, volume 1, 977-979; Lubbock to Benjamin, March 13, 1861, 995; Lubbock to Benjamin, March 15, 1862, 1001-1002; Lubbock to Benjamin, March 17, 1862, 1006.

[82] George W. Randolph to Governor F.R. Lubbock, April 8, 1862, *Official Records*, series IV, volume 1, 1050-1051.

Secretary of War in fact authorized private citizens in Texas to raise regiments. But Randolph's response to Lubbock allowed the Confederacy to accept the troops in question while simultaneously recognizing the legitimacy of the governors' traditional role as the conduit in supplying soldiers to the central government through the state. Whether Lubbock would have pursued this matter further is unknown and the introduction of conscription checked further correspondence between Lubbock and Randolph on this subject.

With few exceptions, the governors either did not perceive an infringement of their authority by the central government in permitting private citizens to raise regiments, thus bypassing the traditional venue of raising troops, or they kept their disgruntlement to themselves. The governors were too astute not to note the irregularity of the central government raising troops through private individuals. Their silence, therefore, must be interpreted as an unspoken affirmation of cooperation with the Davis administration. After all, the states, as well as the Confederacy, were fighting for independence; if achievement of this goal meant ignoring the formality of governmental structure and allowing the Confederate central government to overstep its bounds in isolated instances, silence would be the preferred response. That silence, however, would end with the imposition of conscription in April 1862.

The commissioning of officers in troops transferred from the state to the Confederate army was also controversial. To Joseph Brown, contention on this point was actually the intersection of three issues: the authority of the governor, the defense of the state, and aggrandizement of power by the president. These were

issues that would dominate the relationship between the governors and the Davis administration for the duration of the war, and Brown would unquestionably be the most vocal and articulate spokesman in defense of his authority as governor and against the centralization of power by the Confederate government.

Traditionally, officers in those militia units of regimental size and larger were either elected by the men or appointed by the governor, depending upon state law. Confederate law stated that in a non-militia regiment tendered to the Confederacy, the men would elect their field officers (e.g., colonel, lieutenant colonel, and major). If a company were tendered, it would be assigned by the Confederate authorities to a regiment. The men would elect the company officers (e.g., captain, first and second lieutenants), while the President would appoint the field officers. The President would always appoint the general officers (e.g., lieutenant, major, and brigadier generals) and the regimental staff officers.[83]

Brown's conflicts with the Confederacy on this issue began in March 1861 when Secretary of War Walker requested that Georgia send two regiments to Fort Pulaski and Pensacola. Despite the urgency of the circumstances, the governor took weeks to send the troops because, "I shall insist on Georgia having her rights and wishes respected."[84] This insistence continued throughout the first year of the war, when many of the governors were most cooperative. Over and again, he declared that his men had the right to elect their own officers. To take that right away when the men entered the Confederate army would be tantamount to breaching the men's

[83] Louise B. Hill, *Joseph E. Brown and the Confederacy,* 54-55.

[84] Quoted in T. Conn Bryan, *Confederate Georgia*, 81.

contract with the state. Invoking the Founding Fathers' notion of social contract, Brown declared to the state Senate,

> First, as to our power to transfer them: the troops in response to the call of the Executive of the State, have volunteered to serve the State as *State troops*; and have been mustered into the service of the State, and not into the service of the Confederacy. It was not part of the contract between the troops and the State, that they should be transferred to the service of the Confederacy; and the State has no right to make the transfer without their consent. They are not cattle to be bought and sold in the market.[85]

Not only did Brown deny that the central government had any relationship with the state troops in terms of calling them for service, he also demanded exclusive gubernatorial authority over all men called to service in the Confederate army. In a letter to Secretary of War Walker, Brown asserted that "tenders of troops to the President independent of State authority, I regard as a very dangerous infringement of State rights."[86] In a narrow sense, Brown, Lubbock, and Moore were insisting upon strict adherence to the traditional authority of the governor in raising troops for use in the national army. However, as was frequently the case with Brown, his objections reflected more concern than might appear on the surface. The right of the troops to elect their field officers was a right of the state; by assuming the

[85] Governor Joseph Brown to the Georgia legislature, annual session, December 7, 1861, *Journal of the Senate* (Milledgeville, GA: Boughton, Nisbet, and Barnes, 1861), 215-216.

[86] Governor Joseph E. Brown to Secretary of War L.P. Walker, May 17, 1861, *Official Records*, series IV, volume 1, 332.

prerogative of naming the field officers, either through statute[87] or by raising troops independent of the state, the Confederacy had interfered with the contract between the citizen-soldier and the state.

Not only was the executive authority threatened, according to Brown, but Georgia's ability to defend itself as well. What if the state troops designated for transfer decided to disband rather than be subjected to the perceived illegal act by the central government? This was not merely a rhetorical question, for some regiments adopted resolutions protesting the transfer of state troops to the Confederacy. According to Brown, "this … would drive from the field nearly ten thousand of Georgia's most gallant sons, and leave these exposed points at the mercy of the enemy." In the end, for the central government to pursue this policy was "not only unwise but suicidal, and must result in the most disastrous consequences to the State."[88]

Brown also raised the concern of possible presidential abuse of power. If, as Brown argued, the President were able to bypass the governor in raising troops and appointing its officers at the field level and above, without the consent of the state, he could be in a position to exercise unfettered power. The governor noted,

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[87] By virtue of an act passed by Congress on May 8, 1861, the president had the right to name all field and staff officers in regiments or battalions. "An Act to raise…," Chapter V, May 8, 1861. James M. Matthews, ed., *Statutes at Large of the Provisional Government of the Confederate States of America* (Richmond, VA: E.M. Smith, printer, 1864), 104.

[88] Governor Joseph Brown to the Georgia legislature, annual session, December 7, 1861, *Journal of the Senate* (Milledgeville, GA: Boughton, Nisbet, and Barnes, 1861), 218.

> …an able, fearless popular leader, if backed by a subservient Congress in the exercise of its taxing power, would enable [the leader] to trample under foot all restraints and make his will the supreme law of the land…. [However] such is my confidence in the present able Executive of the Confederate States, and so thoroughly am I convinced of his lofty patriotism and his purity of purpose, that I entertain but little fear that he would abuse even absolute power or subvert the liberties of his country for his own personal aggrandizement.[89]

Despite his professed belief that Davis would not work to accrue power to the presidency, Brown clearly was concerned with this issue. While not always articulating a clear understanding of whether the problem was a consolidated central government or a lack of separation of powers between the executive and legislative branches of the central government, the governor of Georgia expressed concern over the loss of his authority and Georgia's ability to defend itself. As Brown recapitulated in a November 6, 1861 inaugural address,

> To guard effectively against usurpation, sustain republican liberty and prevent the consolidation of the power and sovereignty of the States in the hands of the few, our people should watch, with a jealous eye, every act of their representatives tending to such a result, and condemn in the most unqualified manner every encroachment made by the general government upon either the *rights* or the *sovereignty of the States*.[90]

Yet the relationship between Brown and the Davis administration was not entirely acrimonious. The governor wrote often expressed the desire to cooperate with the Confederate authorities. And despite, or because of, Brown's frequent complaints regarding the lack of his state's defensive preparedness in 1861 and

[89] *Ibid.*, November 6, 1861, 14-15.

[90] *Ibid.*, 15.

early 1862, cooperation in the coastal defenses between state and Confederate authorities, as noted by one historian, was significant.[91] Reciprocity of soldiers and construction work was exchanged by both sides, especially after the Union captured Cape Hatteras on August 28, 1861. And, although strained at times, both sides eventually worked together in preparation of a military strategy for the defense of Savannah.[92]

Cooperation characterized the relationship between the state governors and the Davis administration from the beginning of the Confederacy to the First Conscription Act in April 1862. Whether the issue was attracting Upper South states to the Confederacy, seizing federal forts and installations, raising and supplying troops, or providing for local defense, the governors cooperated among themselves and with the central government. Frequently, lines of authority were blurred and, with few exceptions, the governors were quick to ask for assistance from, and to respond in offering assistance to, other states and/or the Davis administration. During this phase of the war, Elazar's model of cooperative federalism correctly describes the division of authority between the states and the Confederate government. Formal structures are cast aside. An analysis of the governors' actions reveals that even when conflict arose, such as the War Department by-passing the governors in raising troops, no governor resisted the Confederacy. While some of the governors may have objected, none sought to

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[91] T. Conn Bryan, *Confederate Georgia,* 84-85.

[92] Gilbert Sumter Quinn, "Coastal Defenses of the Confederate Atlantic Seaboard States, 1861-1861: A Study in Political and Military Mobilization" (Ph.D. diss. University of South Carolina 1973), 67-69, 115-128, 213-222, 293-310, 351-355.

disrupt the cooperative interaction that had developed between the Davis administration and themselves. This all would change, however, with the imposition of the first Conscription Act on April 16, 1862.

CHAPTER THREE

POLITICAL NEGOTIATION: CONSCRIPTION AND THE SUSPENSION OF THE WRIT OF *HABEAS CORPUS*

This chapter will examine the tensions and conflicts between the governors and the Davis administration over the issues of conscription and the suspension of the writ of *habeas corpus*. Beginning in April 1862 with the passage of the first conscription law, and intensifying with repeated suspensions of the writ of *habeas corpus,* as well as the continual efforts by the states to maintain an effective local defense against the Confederate authorities' demands for human and military resources, the relationship between the Confederate states and the central government underwent adjustment from the earlier phase of cooperation. The conflicts over these issues, in particular conscription and the suspension of the writ of *habeas corpus*, have been identified by historians as the key centralizing events in the Confederacy; the focus has been on the role of these conflicts in strengthening the central government's power at the expense of the states. Historians have neglected to note, however, that negotiation occurred between the central government and the states, a give and take exchange that usually resulted in compromise. A negotiated federalism, therefore, characterized the Confederacy from the spring of 1862 to the fall of 1864.

The governors, along with congressmen, businessmen, and planters in the states, were successful in exerting sufficient pressure that the degree of centralization was more limited than the politicians in Richmond intended. Acting

from personal beliefs, or in response to their constituents' pressure, the governors frequently assumed leadership in curbing the central government's power. Implementation of legislation was critical, because as chief executives, the governors could minimize the effect of an objectionable statute by implementing it in a way that resulted in reducing the actual that power accrued to the central government. The statute itself could be modified by the Richmond authorities in response to objections, or the state courts could impose limits on the power of the central government. In all these ways, the governors played a critical role in negotiating a position that would minimize centralization of the Confederate government. The centralization that occurred in the Confederacy was not simply the result of a strong central government imposing its will on the states, but rather was limited by the process of negotiation that existed between the central government and the governors.

The governors exhibited a range of public responses in the face of centralization, with some articulating their objections publicly, and others presenting a public persona of cooperation. Most, however, expressed concern over the centralization of the Confederate government which resulted from conscription, the suspension of the writ of *habeas corpus*, and the Confederacy's failure to allow sufficient resources for the state to defend itself. The criticism took two forms. First, it was aimed at the general, perceived threat that the Confederate government was consolidating power and moving in a direction contrary to state rights doctrine. This charge was alleged when the governors believed that their powers were infringed upon by the central government. A second criticism was directed at

President Davis himself for usurping power at the expense of the legislature, the states, and specifically the governors. The specific issue of the president's accrual of power, as compared to the broad allegation that the government in Richmond centralized power, was never fully developed by the governors and was frequently diffused into criticism of the consolidation of the central government.

At the beginning of the Confederacy, the idea of negotiating the relationship between the states and the central government during the exigency of war was not a priority for the Confederate leaders because they still hoped to avoid war with the United States. Jefferson Davis articulated in his inaugural address that "…our true policy is peace…The separation by the Confederate States has been marked by no aggression upon others…." Although hopeful of a peaceful separation, Davis clearly recognized the potential for armed conflict by noting "[f]or purposes of defense, the Confederate States may, under ordinary circumstances, rely mainly upon the militia; but it is deemed advisable, in the present condition of affairs, that there should be a well-instructed and disciplined army, more numerous than would usually be required on a peace establishment." [1] In an attempt to avoid a confrontation, the provisional Confederate Congress on February 25, 1861 passed legislation that permitted free navigation of the lower Mississippi River by the northern states. In addition, the Confederacy in February 1861 sent three commissioners to Washington, D.C. in an attempt to negotiate a peaceful settlement of the differences between the two sides. This ended in failure when Lincoln

[1] James D. Richardson, ed., *The Messages and Papers of Jefferson Davis and the Confederacy*, vol. 1, 32-36.

refused to meet with them or authorize any government official to negotiate on behalf of the government.

The failure to effectuate a peaceful separation resulted in war by the summer of 1861 and despite wide-ranging military cooperation by and between the central government and the governors, concerns surfaced by the spring of 1862 with respect to a possible manpower shortage in the Confederate army. The Confederate Congress authorized the president on February 28, 1861 "to assume control of all military operations in every State having reference to or connection with questions between said States, or any of them, and powers foreign to them." Furthermore, the President could receive into the Confederate military either state forces or volunteers for a period of not less than one year.[2] With the survival of the Confederacy at stake, its armies consisted not only of men who volunteered directly into the Confederate army but also of volunteers transferred from state service to national service. The cooperation of the states in the year immediately following the creation of the Confederacy in supplying troops to the Confederacy and sending their troops to other states did not yield sufficient numbers of troops, however. Jefferson Davis, along with others in the Confederate government, including the ante-bellum fire-eaters Louis Wigfall and William Yancey, were especially worried that the twelve-month enlistments, which would expire between April and June

[2] "An Act to raise provisional forces…," February 28, 1862, *Official Records*, series IV, vol. 1, 117.

1862, would be a serious blow to the effectiveness of the national army at a time when the enemy was approaching the outskirts of Richmond.[3]

The Confederacy faced other crises in addition to George McClellan's army moving up the peninsula from Fort Monroe toward Richmond. Through a coordinated army and naval attack, the Union threatened to take the key southern seaport of New Orleans (which, in fact, would fall to the Union forces on April 25). Confederate General Pierre G. T. Beauregard had retreated from Tennessee to Corinth, Mississippi, thereby vacating Tennessee and exposing the Confederate heartland to Union attack. And European recognition of the Confederacy, long hoped for by Richmond, still seemed distant.

The military pressure had placed stress on the cooperation that had existed between and among the states and the Davis administration in terms of competition for young men of service age. On March 28, 1862, Davis forwarded a special message to Congress requesting the enrollment of all persons eligible for military service between the ages of eighteen and thirty-five. His recommendation was based upon the belief that a national law would reduce the confusion and conflict of laws with the multitude of states, as well as allow the central government to provide, supply, and train troops. He continued that the strength thus far in keeping troops in field had been the result of the "entire harmony of purpose and cordiality of feeling"

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[3] William J. Cooper, *Jefferson Davis, American*, 384. According to Wigfall, " The government has as much right exact military service as it has to collect a tax to pay the expenses of the government….We want trained troops and the only way to bring an effective force in the field is to fill up the skeleton regiments by conscription." Quoted in Robbins, "Confederate Nationalism," 97. Also see, Albert Burton Moore, *Conscription and Conflict in the Confederacy*, 25.

which he and the governors had enjoyed. While no doubt engaging in at least some political hyperbole, President Davis was correct in describing cooperative relationship had existed up to that point between the governors and himself. And he was correct in asserting a unity of purpose in winning the war. Conflict, however, was looming between the states and the central government.[4]

On April 16, 1862, the Confederate Congress enacted the first Conscription Act, which essentially mirrored Davis' request of two weeks earlier and dramatically altered how men would be enlisted into national military service. It declared that all able-bodied white males between the ages of eighteen and thirty-five were subject to service with in the Confederate armed forces for a period of three years. Those within that age bracket already serving in the Confederate military had their terms extended to three years from their original enlistment date. This conscription act was of immense significance. It was the first national conscription in American history. Furthermore, it radically changed the method of raising troops in the Confederacy. Traditionally in American history, and for the first year of the Confederacy, the President was authorized by Congress to call upon the state governors for a quota of state troops. The governors would then issue commissions to individuals to raise the requisite regiments or companies. These troops were trained and equipped at the expense of the state and then supplied to the central government. The Conscription Act, however, removed the states as the

[4] James D. Richardson, *The Messages and Papers of Jefferson Davis*, vol. 1, 205-206.

conduit through which men would be received in the Confederate army.[5] Thus, in a nation imbued with the principles of state rights, the central government would bypass the state in its traditional role of supplying volunteers to the army and would have a direct relationship with the recruit in the new compulsory military service. Although this direct relationship between the national government and its citizens fit within the context of the dual federalism established in the Confederate constitution, it had not been made operational until passage of the first Conscription Act. Now the fears of those wary of centralization were realized.

The irony, and potential danger, of the Conscription Act was not lost on the governors. They believed conscription, although problematic constitutionally, was necessary to win the war. Governor John Letcher, of Virginia, noted in a letter to Alabama's Shorter that the Conscription Act was "the most alarming stride toward consolidation that has ever occurred."[6] Yet he would not oppose it. And to the Virginia legislature on May 5, 1862, Governor Letcher argued that the conscription law was unconstitutional, but he refused to question the government at that time. Letcher continued, "when the war is ended, we can discuss these questions, and so settle them as to preserve the rights of the states."[7] Winning the war was of paramount importance to the Virginia governor. As he further noted, "Harmony, unity, and conciliation are indispensable to success now…. Drive the invader from

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[5] Albert Burton Moore, *Conscription and Conflict in the Confederacy*, 16.

[6] Quoted in F.N. Boney, *John Letcher of Virginia,* 162.

[7] Governor John Letcher to the Virginia legislature, extra session, May 5, 1862, *Journal of the Senate of Virginia* (Richmond, VA: James E. Goode, Senate Printer, 1862), 16; Virginia State Library, A.la, VA, reel 7.

our soil, establish the independence of the Southern Confederacy, and then we can mark clearly and distinctly the line between state and confederate (sic) authority."[8]

Because Letcher relied so heavily upon Confederate armies to defend his state, he could ill afford to alienate the Confederate authorities. But his cooperation and acquiescence to the Confederate government would last only so long as the state of war existed, after which, according to F.N. Boney, he would "be the first to challenge [the Act] in the courts. This was his stand in a flurry of correspondence between the rebel governors, and his opinion doubtless encouraged some other governors to accept this revolutionary law."[9]

John Pettus, in contrast to Letcher, completely supported this newest Confederate initiative and exhibited such enthusiasm that he was seemingly oblivious to any constitutional concerns. In a letter to Secretary of War Randolph, the governor of Mississippi noted that he was going to rely upon volunteers until the President could devise a "mode of putting it (conscription) in operation." He then offered the state's full support, "You will please give me all the information necessary to put the [law] in full operation as soon as possible. Say to the President that he may rely on Mississippi to the last man."[10]

The governors of Virginia and Mississippi were not alone in their defense of the Conscription Act. Governor John Gill Shorter of Alabama also supported

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[8] *Ibid.*

[9] F.N. Boney, *John Letcher of Virginia*, 162.

[10] Governor Pettus to Secretary of War Randolph, April 26, 1862, *Official Records*, series IV, vol. 1, 1093.

conscription and believed it constitutional, but implied that there were potential limits to its application. The states, he argued, should recognize the "power of Congress to pass this law." The states in the Constitution, according to Shorter, delegated to the central government the right to raise armies in order to wage war, "reserving the right to call out troops to suppress insurrection or repel invasion."[11] Although Shorter didn't explicitly state his rationale, he implied that since the Confederate constitution grants Congress the authority "to raise and support armies…" through the "necessary and proper" clause, conscription was warranted to that legitimate end.[12] Interestingly, however, Shorter acknowledged that, despite the delegation of power to the Congress "to declare war and to levy armies to wage war," the state reserved the right to "call out troops" in the event of an invasion. Therefore the delegation of power was with a qualification that had the potential of seriously undermining the Confederacy's effort to raise troops for the defense of the entire country, rather than one state or another. Shorter never explored this possibility further; elsewhere he asserted that Alabama's interests were intertwined with those of the Confederacy as a whole,

> [The Confederate government] having assumed, as was its duty, the management and direction of the war, Alabama, cheerfully and trustingly committed to it the resources of men and means available for her own defense: [sic] and her destiny being irrevocably fixed with that of her sister Confederate States, she will respond, to the last, to every

[11] Governor John Shorter to the Alabama legislature, called session, October 27, 1862, *Journal of the House of Representatives*, Roll M367.5, 8, Alabama Department of Archives and History, Montgomery, Alabama.

[12] Confederate Constitution, art. 1, sec. 8.

> requisition which may be made upon her for the maintenance of the common cause.[13]

Governor Shorter was experiencing the dilemma of most Confederate governors: how to reconcile the need for men to fight for the central government with the growing dissatisfaction of the state's citizens over a host of issues, including the centralization of the government, threatening attacks from the enemy, the unanticipated length of the war, and the tax-in-kind. While usually an enthusiastic supporter of the Davis administration, Shorter, like the other governors, was forced to address the concerns of his own constituency, which grew increasingly critical of the central government as the war, and accompanying hardships, continued.[14]

No state governor was probably more paralyzed by his constituents than Francis Lubbock of Texas. A strong supporter of the Conscription Act of April 1862, Lubbock's position ran contrary to that of many in Texas. Resistance to conscription was so strong there that General Paul Hebert, Confederate commander of the Department of Texas, suspended the writ of *habeas corpus* and declared martial law on May 30. While Lubbock approved of Hebert's actions, a number of Texas politicians complained to Jefferson Davis, who ordered Herbert to rescind his orders. Lubbock lamented Davis' rescission; he believed that a "strong military

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[13] Governor John Shorter to the Alabama legislature, October 27, 1862, *Journal of the House of Representatives*, Roll M 367.5, 8.

[14] Kenneth Michael Murray, "Gubernatorial Politics and the Confederacy," 689-690.

government…would halt the rapid depreciation of Confederate currency, quiet disaffection, and, of course, help enforce the conscript act."[15]

In a February 5, 1863 message to the Texas legislature, Lubbock observed,

> viewing the law as constitutional, and convinced that the necessities of the country imperiously demanded its prompt execution, I stopped not to discuss the good or bad policy of its enactment, but at once accorded permission to the Confederate Commander of Texas for his employment of State officers to aid in carrying out its provisions.

While the state and individuals had rights to protect, the war made it such that "unity of purpose and action is completely necessary between the Confederate and State governments."[16] Thus Lubbock did not assert, as did Shorter, his state's right to retain troops for self-defense, nor did he suggest he would question the constitutionality of this act after the conclusion of hostilities. Lubbock's only concern was the immediate present, which necessitated and justified conscription; therefore, for him, the law was constitutional.

South Carolina's governor, Francis Pickens, wholeheartedly supported national conscription and had even authorized a state conscription prior to the Confederacy's. Pickens, one of five members of a governing Executive Council in South Carolina, sought a conference of governors to exchange ideas on the most efficient mobilization of resources to support the Confederacy. To that end, in early 1862, the governor sought input from his fellow governors on an array of topics,

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[15] Janet E. Kaufman, "Sentinels on the Watchtower," 395.

[16] Governor Francis Lubbock to the Texas legislature, February 5, 1863. In James M. Day, comp. and ed., *Senate Journal of the Ninth Legislature, First Called Session* (Austin, TX: Texas State Library, 1963), 13-18.

including conscription, and imploring his colleagues to continue the cooperation and cordiality that had characterized their relationship with the Davis administration to that point. While a volunteer army, according to Perkins, may have been acceptable initially, "if we are to have a protracted war, it is unjust that the more spirited and eager should do all the fighting, and leave those who are not so willing, to devote themselves to making money out of the difficulties of the country."[17] His only concerns focused on winning the war and limiting the financial gain of speculators who had stayed home and had not volunteered to fight. Pickens' failure to acknowledge any possible constitutional concerns was matched by most of the governors' responses. While Governor Lubbock complained that Texas was isolated and left to fend for itself,[18] others agreed to convene and discuss the matters at issue, but concluded that the national conscription law made moot any plan of the governors to lay the groundwork in the states for a national draft.[19] Only John Letcher of Virginia raised constitutional objections to conscription, but he agreed,

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[17] Circular from Governor Francis Pickens to other state governors, undated, Pickens Papers, Letters, and Telegraphs (551101), Box 1, Folder 45, South Carolina Department of Archives and History, Columbia, South Carolina.

[18] The governor observed, "…our men are rushing to Arkansas, Tennessee, and Virginia and with them, they take what arms and ammunition they can control. Under these circumstances, Texas cannot enter into any general arrangements with the state outside of her duties to the general government." Governor Lubbock to Governor Pickens, April 18, 1862, Pickens' Papers, Letters, and Telegraphs (5511001), South Carolina Department of Archives and History, Columbia, South Carolina.

[19] Governor Milton to Governor Pickens, April 10, 1862, Governor Pickens' Paper, Letters, and Telegraphs, Box 1, Folder 32, South Carolina Department of Archives and History, Columbia, South Carolina; Governor Shorter to Governor Pickens,

consistent with his previous statements, to set aside this "palpable violation of the rights of the States" for the duration of the war.[20]

Like Letcher of Virginia, John Milton, governor of Florida, has been considered by historians to be one of the more compliant ofthe Confederate governors in the face of the demands of the central government.[21] Again, like Letcher, he publicly supported the Conscription Act and was sensitive to the usurpation of state rights by the central government. But, unlike Letcher, Milton presented a constitutional defense of conscription that does not suggest simple compliance with Richmond's demands but rather was consistent with the dual federalism of the Confederate constitution.

A significant confrontation between Milton and the Davis administration revealed a combative governor during a period of cooperation between the governors and the central government. Shortly after assuming office in October 1861, Milton vehemently objected to the War Department's issuing commissions to private citizens, thereby bypassing the state.[22] According to Milton, if the Confederacy allowed private citizens to raise regiments for the army independently of the state, it would demoralize the men and create disarray in the state militia.

May 2, 1862, Governor Pickens' Papers, Letters, and Telegraphs, Box 1, Folder 23, South Carolina Department of Archives and History, Columbia, South Carolina.

[20] Governor Letcher to Governor Pickens, April 28, 1862, Governor Pickens' Papers, Letters, and Telegraphs, Box 1, Folder 32, South Carolina Department of Archives and History, Columbia, South Carolina.

[21] See W. Buck Yearns, "Florida," in *The Confederate Governors*, ed. W. Buck Yearns, 61-68.

[22] For a previous discussion of this issue, see pp. 108-109.

While not objecting to providing troops to the Confederacy, the governor protested to Davis that "the tendency of the assumption and exercise of such power by the Confederate Government is to sap the very foundation of the rights of the States and is to consolidation." The people of the United States vigorously defended their liberties for years, according to Milton, "yet where are they now? Their Constitution openly violated [and] their laws trampled under foot…"[23] Despite his professed reservations about the Davis government's accrual of power at the expense of the states, Milton never pursued the matter further. The issue of the central government offering commissions to private citizens may have passed quietly, but it belied Milton's response to the Davis administration over conscription.

By April 1862, the potential for an explosive confrontation between Milton and Davis was ripe. That month, the first Conscription Act was passed. Florida had essentially exhausted itself of men of serviceable age to the Confederacy and no longer had a state militia to defend itself or send troops to the Confederacy.[24] Milton abandoned his previous objections over Confederate centralization of power and explained to the legislature that "extraordinary circumstances" compelled Congress to pass a conscription act and that he would not object for several reasons.

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[23] John Milton to Jefferson Davis, December 9, 1861, *Official Records*. series I, volume 6, 342-343.

[24] In a January 1862 special session, the General Assembly of Florida authorized the transfer of all state troops to the Confederacy by March 10. The troops that refused the transfer were to be disbanded. This act essentially left Florida defenseless at a time when the Union was threatening on several fronts and the Confederate central government committed its troops to theatres deemed more essential. See John E. Johns, *Florida During the Civil War*, 114-115.

Of paramount importance, "God forbid! [sic] that you, or I should do, directly or indirectly, aught to impede the victory of our arms. Let us do all in our power to animate our brave and suffering soldiers, and to expedite the glorious triumph which awaits their deeds of generous daring." The governor then recognized the dual federalist claim of the central government by acknowledging that any determination of the act's constitutionality was not his to make. To Milton,

> …if the Act was not constitutional, it was a judicial question, which should be decided, if at all, by the proper department of Government, and that each individual whose rights are might be considered in jeopardy, would have the protection of an enlightened judiciary.

Consistent with his stated belief that this matter was a conflict between the individual and the central government, Milton rejected any role for the state, since it had no interest to protect in this situation. He continued that he did "not consider it necessarily a question of political power between the Confederate and State Government…. The unity of interest between the States is such that I entertain no serious apprehension of permanent detriment to the rights of the States…."[25] The governor of Florida clearly recognized the necessity for conscription; it would have been preferable to Milton for the states to have individually instituted conscription, but "the demand for immediate action in the premises was imperative. There was not time for argument or controversy."[26] His only expressed concern, which he

[25] Governor John Milton to the Florida legislature, twelfth session, November 17, 1862, *Journal of the House of Representatives* (Tallahassee, FL: Office of the Floridian and Journal, 1862), 29.

[26] *Ibid.*, 30.

noted privately, was that the draft would deplete the states of men for local defense.[27]

The most articulate critic of conscription among the governors was Governor Joseph E. Brown of Georgia. Brown should not be dismissed as either a mere opportunist or a political manipulator. His constitutional objections to conscription were based upon the ambiguity created by the Confederate constitution, and before that the American constitution, over the interpretation of the "necessary and proper" clause. At issue were the limits to the centralization of power by the national government, an issue that has been debated in American politics since the colonial era. Fundamental to negotiation over these limits was, and is, constitutional interpretation: whether to interpret the document strictly or broadly. To Brown, despite the war-time conditions, the constitution was to be read strictly, thus limiting possible expansion of the central government's powers upon the state's, and people's, sovereignty. His arguments, therefore, were consistent with a state sovereignty, strict constructionist position. Although forced to concede the constitutionality of the law to the central government, he continually would use his position as governor to obstruct implementation of conscription within Georgia.

Brown's first volley was fired within a week of the act's passage. Georgia, according to Brown, had supplied her quota of troops; ask for more troops, if the army requires them, and Georgia will furnish them. But "the plea of necessity, so far at least as this State was concerned, cannot be set up in defense of the conscription act." Furthermore, the state was deprived of men to defend itself.

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[27] John E. Johns, *Florida During the Civil War*, 116-117.

Brown then raised a fundamental issue that was as related to the separation of powers issue as it was to consolidation of power in the central government,

> This act not only disorganizes the military systems of all the States, but consolidates almost the entire military power of the States in the Confederate Executive with the appointment of the officers of the militia, and enables him at his pleasure to cripple or destroy the civil government of each State by arresting and carrying into the Confederate service the officers charged by the State constitution with the administration of the State government.[28]

For a man who prided himself on his constitutional exegesis, Brown's lack of clarity in this analysis is notable. He was objecting to the consolidation of power in the central government as well as to the power Davis, as president, was accruing in proposing and pushing the conscription law through Congress. But Brown's lack of analysis does lead to the conclusion that at least part of Brown's objections reflects the animosity Brown felt towards Davis throughout the life of the Confederacy.

Brown's failed to pursue the separation of powers argument further, but his opposition to conscription was founded upon sound constitutional interpretation and focused upon which men the central government could conscript. The governor claimed that the Constitution grants Congress the authority for "organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the Confederate States…."[29] With his state rights' perspective,

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[28] Governor Brown to President Davis, April 22, 1862, *Official Records*, series IV, volume 1, 1085.

[29] *Ibid.* Also see Confederate Constitution, art. I, sec. 8(15), which reads: "The Congress shall have power…To provide for calling forth the militia to execute the laws of the Confederate States, suppress insurrections, and repel invasions." Also see sec. 8(16): "To provide for organizing, arming, and disciplining the militia…."

Brown concluded that this authorized the Confederacy to conscript militia from the states, but not conscript men directly into the Confederate service.

Not so, responded Davis. The power of the Congress, argued the president, was derived from the power to raise armies, not just the militia.[30] Davis also offered a reading consistent with the view that the national government has direct involvement with the citizens in its sphere of delegated, constituted authority, namely, raising an army.

After several exchanges of correspondence, Brown claimed, in relying upon the literature of the Founding Fathers, that he could not

> consent to commit the State to a policy which is in my judgment subversive of her sovereignty and at war with all the support of which Georgia entered into this revolution. It may be said that it is not time to discuss constitutional questions in the midst of revolution, and that State rights and State sovereignty must yield for a time to the higher law of necessity.[31]

Brown, in a challenge to Davis and the governors such as Letcher, urged the president to prove "the higher law of necessity." He then buttressed his position by including the argument that the Confederacy was not entitled to conscript the entire militia, which according to Brown's definition, included all arms-bearing adult citizens of the state not in the armed forces of the Confederacy. Although one

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[30] *Ibid*, 1100. Also see, Confederate Constitution, art. I, sec. 8(12), which reads: "Congress shall have power…To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

[31] *Ibid.*, 1116.

historian has described Brown's argument as "turgid,"[32] the governor employed in his strict constructionist argument the formal rules of constitutional construction and original intent. It is fair to say that Brown failed, however, to understand either the dual federalism nature of the Confederate constitution or was selectively reading the provisions in the constitution for his own political gains.[33] The governor represented the state rights' position and argued against the potentially expansive power of the central government.

Davis' reply not only refuted Brown's argument, contention by contention, but asserted a position closely akin to Alexander Hamilton's argument of two generations earlier. Congress, under the "necessary and proper" clause, had the authority to determine the appropriate means to implement its power to raise an army and navy. To Davis,

> The true and only test is to inquire whether the law is intended and calculated to carry out the object; whether it devises and creates an instrumentality for executing the specific power granted, and if the answer be in the affirmative the law is constitutional. None can doubt that the conscription law is calculated and intended to "raise armies" It is, therefore, "necessary and proper" for the execution of that power, and is constitutional, unless it

[32] Paul D. Escott, *After Secession*, 81-82.

[33] As Kenneth Michael Murray has demonstrated in his dissertation "Gubernatorial Politics and the Confederacy," the governors who were elected, or re-elected as the case may be, after 1862 were those sensitive to the concerns of the citizens and generally opposed to the policies of the government in Richmond. Although some governors faced term limits, Brown was the only governor who governed from the beginning of the war to its conclusion.

> comes into conflict with some other provision of our Confederate compact.[34]

As one historian has clearly noted, "Davis had deliberately taken the stage playing a Confederate [Alexander] Hamilton to Brown's [Thomas] Jefferson."[35] Davis' constitutional analysis of broad construction was nearly identical to Hamilton's when the former Secretary of the Treasury stated in 1791 that, 'necessary often means no more than needful, requisite, incidental, useful, or conducive to."[36]

Weighing in on the controversy, Governor Shorter of Alabama argued that the Constitution differentiated between an army raised by the Confederacy and the state militia. The state militia, or portions of it, may be called up by the central government. According to Shorter, a self-proclaimed strict constructionist, Article 1, section 8, granted the authority for the central government "[t]o provide for calling forth the militia to execute the laws of the Confederate States, suppress insurrections, and repel invasions." The invasion of the Confederacy by the Union provided justification for calling out the militia. But limitations precluded absolute control over the militia once called up, since "the States in the exercise of their own sovereignty, give form or body to this army, and after it is so formed or embodied, Congress may provide the mode of its organization and discipline, the States

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[34] President Davis to Governor Brown, May 29, 1862, *Official Records*, series IV, volume 1, 1134-1135.

[35] Paul D. Escott, *After Secession*, 83.

[36] Alexander Hamilton, "Opinion Sustaining the Constitutionality of a National Bank (1791), quoted in Michael Les Benedict, ed., *Sources in American Constitutional History* (Lexington, MA: D.C. Heath & Co., 1996), 42.

retaining the right to supply the officers. This is the compact between the Sates."[37] Therefore, the Confederacy may call for the state militia, but who shall, or shall not, be a member of the militia is for each state to determine, as is the appointment of the officer corps.

The Confederacy could exercise other options for raising troops, according to Shorter; the state militia was just one possible method for raising troops for the Confederacy under the constitution. The constitution grants the central government the right "to raise and support armies." This provision applies to "all residents in the Confederate States who [fall] within its provisions..." and provides justification for conscription.[38] Those who do not fall within the pale of the national law are subject to state law with regard to serving in the militia. The central government, therefore, does not have to follow the traditional method of raising troops by going first through the governor. The Confederate constitution creates a direct relationship between the citizen and the central government in the Confederacy's raising of an army. This is a dual federalism interpretation consistent with the intentions of the founders of the Confederacy. No negotiation was necessary between the Davis administration and the states with respect to conscription because the raising of a national army falls within the constitutionally delegated sphere of the central government.

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[37] John Gill Shorter to the Alabama legislature, called session, April 17, 1863, *Journal of the House of Representative of the State of Alabama*, Roll No. M 367.5, 5. Alabama Department of Archives and History.

[38] *Ibid*.

The governor of Alabama was making a significant assumption in his analysis that belies his self-professed strict constructionism, although it does not damage his argument. In justifying conscription under the nation's power "to raise and support armies," a strict constructionist would have difficulty in reading the word "conscription" into "rais[ing] … an army." No national conscription had existed previously in the United States; only volunteers had been inducted into military service. It was only through the "necessary and proper" clause that one can read conscription into "rais[ing] …. an army;" this particular clause would provide sufficient breadth of interpretation to include conscription. So, like Davis, Shorter could conclude that conscription was constitutional.

The passage of the first Conscription Act represented a major shift in the intergovernmental relationship. While an open and willing cooperation existed between the governors and the Davis administration prior to April 1862, thereafter President Davis and his government would face increased gubernatorial opposition. The governors were not united in their analysis of the Conscription Act of April 1862, but it is clear winning the war was of utmost importance to all. As Governor Letcher of Virginia advised, "Principle is always to be respected and observed; and it is proper to remember that it is not less important as a rule for governments than individuals. If we cannot agree upon the principle, let our protest be made, and postpone the question and the controversy to which it may give rise, to a day of peace."[39] The time to question the principle or constitutionality of conscription was

[39] John Letcher to the Virginia legislature, May 5, 1863, *Journal of the Senate of Virginia*, A.la.Va, reel 7, Virginia State Library, Richmond, Virginia.

when the peace had been won.[40] This was a common theme in the correspondence of all governors but one, Brown of Georgia. Adherence to principle, however, did not mean that positions were solidified with no room for negotiation.

The governors were willing to allow the state courts to determine the constitutionality of conscription and the limits to the central government's constitutional authority in raising troops extended with respect to the states' authority. Given the lack of a national Supreme Court, the state courts were logical choices to determine the constitutionality of national law.[41] This, however, might appear a significant risk for the Davis administration since the state's political climate might induce reluctance on the court's part to support the central government. But it was not. Trusting that the state supreme courts' decisions would support his position, Davis consistently referred contested opinions on conscription to the courts for resolution. He would not be disappointed; throughout the

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[40] Secretary of War George Randolph to Governor Letcher, October 16, 1862, *Official Records*, series IV, volume 2, 123-124; F.N. Boney, *John Letcher of Virginia*, 162-163.

[41] Article III of the Confederate Constitution states that "the judicial power of the Confederate States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." Despite passage of the Judiciary Act of March 16, 1861, establishing the Supreme Court and District Courts pursuant to the Constitution, only District Courts were established. Congress enacted a bill to suspend the sitting of the Supreme Court until structural problems with the court could be resolved. However, additional legislation to create the Court was never passed because of ideological, political, and personal controversies of the legislators. Critical to the discussion were the Court's jurisdiction and fears of the Court's possible centralizing tendencies. See William M. Robinson, Jr., *Justice In Grey: A History of the Judicial System of the Confederate States of America* (Cambridge, MA: Harvard University Press, 1941), 420-457.

Confederacy, the state courts consistently upheld the constitutionality of conscription.

A comparison between Georgia and Virginia illustrates two different approaches to use of the state courts. Joseph Brown actively opposed conscription and undertook aggressive measures to obstruct its implementation in Georgia. In harkening back to the concept of nullification, the governor of Georgia refused to allow execution of the second Conscription Act, passed in September 1862, until after it was approved by the state legislature.[42] This position contrasted starkly with the cooperation extended by the Davis administration in confronting the constitutional concerns raised by the governors. Two weeks prior to Brown's actions, when informed that the superintendent of the Virginia Military Institute had been ordered by Governor Letcher, *inter alia,* not to allow any cadet to be conscripted until the constitutionality of the conscription law had been determined, the Secretary of War agreed that a V.M.I. cadet should file a test case, while allowing the plaintiff to remain enrolled at the Institute during the course of the proceedings. The Secretary closed his correspondence to Letcher by noting, "As my only wish is to obtain a speedy decision of a question threatening us with so much peril, I desire to avoid all controversy about forms of proceeding, and will acquiesce in any arrangements by which the constitutionality of the act can be tested."[43]

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[42] Henry C. Wayne to John B. Weems, November 1, 1862, *Official Records*, series IV, volume 2, 170.

[43] George Randolph to John Letcher, October 16, 1862, *Official Records*, series IV, volume 2, 123.

At this point, the Confederate central government was negotiating a resolution to the impasse over conscription. Letcher entered into the discussions with the Davis administration, but Brown remained adamant that the state legislature should rule on the constitutionality of conscription. Brown shaped the discussion in terms of state rights, individual liberty, and separation of powers, "The conscription act, at one fell swoop, strikes down the sovereignty of the States, tramples upon the constitutional rights and personal liberty of the citizen, and arms the President with imperial powers." The question for the legislature, according to Brown was, "shall we continue to *have States*, or shall we in lieu thereof have a consolidated military despotism?"[44] Brown presented this as an either/or proposition, whereas Letcher, having identical concerns, accepted a settlement of the issue by allowing the state court to decide the constitutionality of conscription. In addition, Brown prohibited the execution of the conscription law within the state of Georgia while Letcher targeted a specific population (the V.M.I. cadets) to whose conscription he objected.[45]

At times, the negotiations between the state and the central government could be difficult and sustained. In South Carolina, conflict between the state and national governments erupted immediately after passage of the first conscription

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[44] Executive Special Message, extra session, November 6, 1862, *Journal of the Senate of the State of Georgia* (Milledgeville, GA: Boughton, Nisbet, and Barnes, 1862), 43, 45.

[45] A case to challenge the constitutionality of conscription was brought before the Georgia Supreme Court in *James L. Mims and James D. Burdette v. John K. Wimberly*, 33 Ga. 587 (1863). Conscription's constitutionality was confirmed by the Court.

law. The state exemption law included overseers, who were specifically identified by the ordinance, and all students over the age of eighteen at the state military academy who were identified by the Executive Council as of March 7, 1862.[46] Throughout the spring and summer, communication between authorities in Columbia and Richmond failed to resolve the critical disagreement, which focused on the overseer exemption. Secretary of War Randolph, who met in July with James Chesnut, Jr., a member of the Executive Council, advised that he lacked authority to change the law, but suggested that South Carolina authorities refer any complaints directly to Richmond. Following this policy, the Commandant of Conscripts John S. Preston directed that those overseers subject to exemption under state law would not be drafted until after the matter was decided in a court of law.

[46] As in Arkansas, Mississippi, Texas, and Florida, an Executive Council was created in South Carolina by the convention. Unlike most of the other states' conventions, which feared an executive possessed with too much authority and power in a time of war, the convention in South Carolina was concerned that the governor lacked the aggressiveness to wage war successfully. The Council consisted of the governor, lieutenant governor, and three others chosen by the convention. According to one historian, "the ordinance creating this council did much more than merely give the governor a cabinet of advisors, …. It set up a council of safety of which the governor was simply a member." To the Council, not only were the governor's executive powers given, but also the power to conduct the military, and related, affairs of the state, including command of the military organization of the state troops, the power to declare martial law, and the power of eminent domain. Its first meeting was in January 1861 and lasted almost two years, until December 1862. See Charles E. Cauthen, *South Carolina Goes to War* (Chapel Hill, NC: University of North Carolina Press, 1950), 142. In Arkansas, the governor's war powers were transferred to a Military Board in 1861; whereas the Military Board authorized by Mississippi's legislature was required to give consent on any matter related to the armed forces. The Texas State Military Board engaged primarily in economic measures to stabilize Texas' economy, seeking foreign investment, selling cotton for war materiel, and establish an ordinance foundry and factories.

While the settlement proposed by Randolph was in accordance with his previous offer of compromise with Virginia, South Carolina insisted on enforcement of its exemption statute. In a letter to the governor and the Executive Council, Jefferson Davis argued that the rights to declare war and raise armies were delegated to the central government by the constitution; therefore, South Carolina was interfering with the just exercise of the Confederacy's constitutional authority. The president went on to cite a second reason why South Carolina was in error. He assured the state authorities that the court system "possess[es] ample powers for the redress of grievances, whether inflicted by legislation or executive usurpation…." In language echoing Governor Milton of Florida, Davis continued,

> But if it be granted even that I am wrong in these opinions it seems to me that the proposed action of your honorable body would still be without just ground. The conscript law acts upon individuals in the different States. If any citizen of the State of South Carolina entitled to exemption from its operation is wrongfully subjected to its action by the Confederate officers, his remedy is open to him. It is plain and easy. Let him apply to the judges of the land for relief from the action of the Confederate officer, and if the State law be indeed valid and operative in his favor he will be released.[47]

Although the October 1862 law included overseers as exempt, thus vitiating South Carolina's objection, Davis raised the issue of who would address the constitutionality of conscription. The states could not raise the issue because they would have no standing to do so. By submitting to the state court, the central government could easily fail. As Justice Moore, echoing the conclusions of the

[47] Jefferson Davis to the Governor and Executive Council of South Carolina, September 3, 1862, *Official Records*, series IV, volume 2, 74-75.

governors, pointed out in *Ex Parte Coupland*, "a necessity exists today, and the law is therefore constitutional, if tomorrow that necessity should cease, its continuance would be as clearly unconstitutional."[48] Without exploring the interpretative problems inherent in Justice Moore's comments, he too confirms the role of the state supreme courts in judicial review of national law.

Davis also recognized the nature of the Confederate constitution as one of dual federalism. When the president asserted that the conscription law "acts upon individuals in the different States," he was not implying that the citizen has only a direct relationship with the central government. Nor was he supporting a Lincolnian, Union-centered approach to federalism. Neither, to support manning and maintaining an army in the field, was Davis jettisoning the political principle of state rights and embracing, out of political expediency, a doctrine inconsistent with that of the Confederate founding fathers. The president was merely defining the citizen's relationship with the central government within that government's independent and fixed sphere of power. Because the national government was possessed of sovereignty within this sphere of power, the citizen possessed a relationship with the national government exclusive of his state.

Although the governors, except for Shorter, Milton, and Brown, failed to raise a constitutional challenge to conscription and were reluctant to raise the issue while the war was in progress, citizens were willing to bring the issue to the state courts for adjudication, and those subject to conscription had standing to file suit on the law's constitutionality. In every instance that the state courts had the

[48] *Ex Parte Coupland*, 26 Texas 387, 405 (1862).

opportunity to rule on this issue, they found for the national government and upheld the constitutionality of conscription. In *Burroughs v. Peyton*, two plaintiffs were drafted and both filed for writs of *habeas corpus*.[49] The critical issue was whether Congress possessed the authority to pass the Conscription Acts of April 16, 1862 and September 27, 1862 or whether this authority resided with the states. Virginia's highest court held that Congress' right to "raise and support armies" did not restrict congressional action to voluntary enlistments alone. In fact, compulsory service existed during the Revolution, through "compulsory draughting" of the militia, with which the Confederate Founding Fathers would have been familiar. To the majority, "in granting the power 'to raise armies,' without any words of limitation or restriction as to the mode to be employed, the [Founding Fathers] must be understood as intending that the power should be exercised in any and all of the modes which had been previously employed by the States. Full power to make war was vested in the Federal government."[50]

To the Virginia court, the central government was clothed with the authority to wage war, which was within its sphere of authority in a dual federalist constitutional structure. The states, therefore, were compelled to submit to the central government on this issue. However, the court recognized that the central government's authority was not unlimited, observing "in executing them (the powers delegated to the central government in the Constitution), nothing shall be

[49] 57 Va (16 Gratt.) 470 (1864). The two individuals, R.F. Burroughs and L.P. Abrahams filed separate suits, but the cases were consolidated because of the similar challenge to the constitutionality of conscription.

[50] *Ibid.*, 57 Va. at 477.

done to interfere with the independent exercise of its sovereign powers by each state."[51] And the central government, within its delegated authority of "raising armies," possessed a direct relationship with its citizens. As the Court made clear, "If it should appear at any time to be proper to increase the army, it might be done by taking men from the militia either as volunteers or as conscripts—the action in either case being upon the individual citizen, and not upon the militia as an organized body."[52]

The Texas high court, in adhering to the formal structure dictated by the Confederate constitution, also agreed that dual federalism defined the relationship between the states and the central government. As Justice George F. Wheeler wrote for the majority,

> In fact, however, nothing is better established than that neither of these governments is inferior or superior to the other. While both possess some of the powers which are called by law writers, in distinguishing different forms of government, "sovereign powers," neither of them are themselves sovereign, but each of them represents the sovereign and both have within their mutual spheres of action just such powers and functions as have been conferred upon them by the constitution creating them.[53]

The Mississippi Supreme Court, following a different approach, defined the relationship between the states and the central government in terms of concurrent powers, which the Court observed, "are not independent and absolute, but subordinate powers, subject to be defeated or postponed whenever the Federal

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[51] *Ibid.,* at 484.

[52] *Ibid.,* at 483.

[53] *Ex Parte Coupland,* 26 Texas at 403-404.

government shall exercise the power granted to it in a manner incompatible with the legislation of the state upon the subject."[54] The Mississippi court relied upon the supremacy clause in the Confederate constitution in deciding that the central government's need to raise troops superceded the states' authority also to raise troops. The court held that both the Confederacy and the states had the authority to raise troops simultaneously as an authority within their distinct spheres, but treated raising troops as a concurrent power, by which the central government trumped the states' authority by the supremacy clause.

These cases recognize the authority constitutionally conferred upon the national government to wage war and raise an army. Within this context, the central government possesses authority that is distinct from state authority. The courts also held that when an individual was conscripted by both the state and the central governments, the Confederacy's claim prevailed since, "the Constitution of the Confederate States, and the laws made in pursuance thereof, are the supreme law of the land."[55]

The central government's offer, then, to permit adjudication of an aggrieved citizen's claim in state court was an important concession in the negotiated compromise. The state possessed a separate sphere of sovereignty. As a separate entity, the national government need not have acquiesced to a state court's decision, much less suggested that an aggrieved individual seek resolution in the state court. By submitting to the state court, the national government was submitting to the will

[54] *Simmons v. Miller*, 40 Miss. 19, 25 (1864).

[55] *Ex Parte Bolling in Re: Watts*, 39 Ala. 609, 610 (1865).

of the state, not knowing beforehand the outcome of the state courts' decisions. And when Justice Moore, in *Ex Parte Coupland*, asserted that the state courts can decide when conscription is a constitutional national government function, based upon the principle of necessity, he was actually asserting state dominance over a constitutional power delegated to the national government. In terms of centralization of authority, Davis could not have foreseen that the state courts would uphold his interpretation of the constitutionality of conscription, despite his statement to the governor and Executive Council of South Carolina that he had "full confidence" that conscription was constitutional.[56] The president was assuming an enormous risk by submitting to the jurisdiction of the state courts. But within the framework of a negotiated federalism, the president and the governors were seeking to resolve the conflict through negotiation, which always entails risk of loss for either side. These negotiations, which forced each side to compromise and sacrifice in areas where feasible, were a necessary element in the attempt to locate common ground by which the central government could fully prosecute the war while allowing sufficient forces to remain in the state for local defense.

It was thus the implementation of the law that defined the contours of Confederate federalism. This invalidates the approach that labels conscription as "centralizing" without acknowledging the negotiation that occurred with the enforcement of the conscription act as the key determinant of the limits of Confederate authority.

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[56] As cited in Paul Escott, *After Secession*, 87.

In addition to both the states and the central government submitting to the state courts for interpretation of the constitutionality of conscription, the two sides negotiated changes in conscription on primarily three fronts: changes to the law itself, exemptions, and local defense. The governors would achieve a measure of success with the first two, and less with the third. But the governors' success in the first two areas demonstrates that the central government could not enforce the conscription statute without continual negotiation between itself and the governors. The pressure exerted by the governors, and other constituencies, necessitated concessions by the central government. While conscription acts themselves would remain in force, in practice their impact would be diminished by the subsequent negotiations, frequently initiated by the governors.

By the summer of 1862, increased pressure for manpower on the battlefield once again forced Congress to consider expanding the original conscription act. The House and Senate produced two different bills, the former based upon a theory of state rights and the latter consistent with dual federalism. The House bill followed the traditional method of raising troops by instructing the president to replace troops of the army by making requisitions upon the governors. The Senate version, however, directed that the Confederate government itself was responsible itself for the raising and organizing of troops. The second Conscription Act, dated September 27, 1862, was based upon the Senate bill, decidedly nationalizing the Confederate army. However, in recognition of the traditional role of the states in forwarding men to the Confederate army, the act continued the practice of using state enrollment officers. In addition, conscripts would first be assigned to existing

regiments from their states.[57] As one historian observed, "Thus the system made it possible for State troops to live, fight, suffer, and die together."[58] These troops, however, were part of a national army. This compromise, consistent with the concept of dual federalism, helped offset some of the criticism while simultaneously supplying men to the Confederacy who would be part of a national army.

Exemptions to conscription were contemplated as early as the passage of the first Conscription Act in April 1862 and posed an ongoing problem. As Albert Burton Moore observed, within a week of the passage of the act, the legislature "separated the population into two groups, the fighters and the producers."[59] While his distinction is too simplistic, the first exemption act spared politicians, judges, teachers, professors, ministers, mailmen, and factory workers from the draft.[60] Immediately, problems of interpretation arose. Two major concerns for Governor Pettus of Mississippi were the apparent lack of exemptions for those employed in tanneries and gun shops as well as the omission from the statute protecting overseers from the draft.[61] Other governors voiced like concerns, especially

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[57] "An Act to Amend an Act…, Chapter XV, September 27, 1862. In James M. Matthews, ed., *The Statutes at Large of the Confederate States of America passed at the second session of the First Congress* (Richmond, VA: R.M. Smith, printer, 1862), 61-62.

[58] Albert Burton Moore, *Conscription and Conflict in the Confederacy*, 141.

[59] *Ibid.*, 52-53.

[60] "An Act to exempt certain persons…," April 21, 1862, *Official Records*, series IV, volume I, 1081.

[61] Jefferson Davis to J.J. Pettus, May 1, 1862, *Official Records*, series IV, volume I, 1110; Davis to Pettus, May 30, 1862, 1138-1139.

concerning the vulnerability of overseers to the draft. One of the more vocal advocates among the governors of the overseer exemption, John Milton, argued that the Confederacy, as an agricultural nation, required slave labor. Since slaves would be productive only with appropriate oversight, overseers were essential to maximize agricultural productivity.[62] Despite pleas for Davis to exempt overseers, the president repeatedly responded that he lacked the authority or jurisdiction since "there is no [statutory] power to exempt them."[63]

In addition to the lack of an overseer exemption, the governors expressed dissatisfaction with the limited classes of artisans exempted. As noted previously, Pettus urged that tanners and gun makers be exempted. Salt makers, millers, and physicians also sought exemptions. Davis was inclined to expand the number of exemptions in those fields. As he advised Pettus, the law does not "embrace tanneries and gun-shops, but they are so clearly in the spirit of the law that I authorize you to exempt them from conscription until the pleasure of Congress can be known."[64] What accounts for Davis' apparent inconsistent exercise of authority by favoring exemptions for artisans over planters? Most likely his comments represented his belief that a compromise should and could be effected. By placing the tanners and gun makers within the artisan exemption, the president was logically consistent with the general intent of Congress, as opposed to creating an entirely

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[62] John Brawner Robbins, "Confederate Nationalism," 112.

[63] President Davis to Governor Pettus, May 1, 1862, *Official Records*, series IV, volume 1, 1110.

[64] *Ibid.*, 1110.

new overseer exemption, which Congress had not yet addressed. Still, Davis and Congress never went as far as some governors hoped. With respect to artisans, John Milton of Florida argued that the state should decide which artisans should be entitled to exemption; for if the authority is exercised "prudently, impartially, and wisely," state authorities will be most familiar with the slackers and "lazy loungers." And, according to Milton, exemptions should continue for the artisans only so long as they sell their goods for a reasonable price in an effort to curb the speculation which was becoming so common throughout the South.[65]

In October, Congress enacted amendments to the April exemption act. And, in recognition of state rights, the act mirrored the state exemptions of state officials for militia duty.[66] Expanded were classifications in manufacturing (including tanners and gunsmiths), salt makers who produced twenty or more bushels daily, and physicians who had practiced for at least five years. Also included was what became popularly known as the "twenty-nigger" law. If state law required it, one white man on each plantation of at least twenty slaves was exempt. Where state law was silent, each plantation of twenty or more slaves could maintain one exempt white man. And to prevent the types of abuses that Milton had experienced with the previous law, affidavits were required concerning the exempt's skill, employment history, and the necessity of his occupation. Lastly, the artisans and manufacturers

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[65] John Milton to Jefferson Davis, September 11, 1862, *Official Records*, Series IV, Volume 2, 94.

[66] "An Act to Exempt Certain Persons…," Chapter XLV, October 11, 1862. In James M. Matthews, ed., *The Statutes at Large of the Confederate States of America passed at the second session of the First* Congress, 77-79.

granted exemptions could sell their goods for no more than seventy-five per cent of the cost of production.[67]

These measures failed, however, to address the fundamental issues of fairness regarding who would fight and who would stay at home. The overseer exemption, along with substitutions, offered the opposition to the war and/or administration the rallying cry of a "rich man's war but a poor man's fight." The issue of slavery exacerbated the complexity of who remained at home. Certainly, leaving women at home to run the plantations and directly oversee the slaves ran counter to the antebellum notion of appropriate behavior for white women. And there existed, as always, the undercurrent of fear of a slave revolt; Milton wrote to Davis, the failure of the government to pass an exemption for overseers "will probably [result in] insubordination and insurrection."[68] But even with an overseer exemption, the fear of a slave revolt continued. Davis, and the entire Confederacy, was faced with a Hobson's choice: keep the overseer law and expect opponents to decry his decision as class favoritism, or eliminate the exemption and risk decreased agricultural productivity and possible slave insurrections.

Congress, meanwhile, struggled with reconciling the need for troops in the field while maintaining fairness at home. After grappling with this issue for the first four months of 1863, the legislature passed an act on May 1, 1863, which addressed

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[67] General Orders No. 82, November 3, 1862, *Official Records*, series IV, volume 2, 160-162.

[68] Quoted in William J. Cooper, Jr., *Jefferson Davis, American*, 445.

only the issues of exemptions for overseers and state officials.[69] Limitations were placed upon the overseer exemption. Originally applicable to all plantations, the new law was revised to apply only to plantations of minors, the mentally handicapped, single women, and those men in the Confederate armed forces. The overseer had to have been employed as such before April 16, 1862 and the owner of the slaves had to pay the Confederacy five hundred dollars to claim the exemption. The new law also increased exemptions for state officials. In addition to the state executive and legislative officers previously exempted, new exemptions under the 1863 act were "all officials whom the governor of a state claimed to be essential for the administration of the government or laws of his state."[70]

This section of the law provided a sufficient opening for governors, if they so chose, to oppose conscription. Many governors, especially Vance and Brown, exploited this provision of the law to dramatically increase the size of the state bureaucracy. While the figures are difficult to ascertain for certain, Brown of Georgia claimed as many as 15,000 men exempt from service under this section while Vance of North Carolina exempted as many as 25,000 men. These two men overwhelmingly claimed more exemptions than the other governors. However, by

[69] "An Act to Repeal certain clauses…," Chapter LXXX, October 11, 1862. In James M. Matthews, ed., *The Statutes at Large of the Confederate States of America passed at the third session of the First Congress* (Richmond, VA: R.M. Smith, printer), 158-159.

[70] John Brawner Robbins, "Confederate Nationalism," 112.

the end of the war, even South Carolina, which claimed no exemptions over states officers until the fall of 1864, asserted thousands of such claims.[71]

Local defense was the third issue that had to be negotiated. In the period between 1862 and the summer of 1864, the Confederacy witnessed the loss of the Trans-Mississippi, Tennessee, and large portions of Mississippi and Alabama. As the states were confronted by invading armies, it became readily apparent that the central government could not defend all fronts at all times. While the governors of Virginia recognized that the fate of Virginia rested in armies of Northern Virginia, other governors hastened to locate and arm men to defend their own states. The consequent competition for men was acute. The Confederacy, with each new conscription act, expanded the number of eligible conscripts, and forced the states to fashion ingenious methods for retaining troops. A governor could try to confront the central government head-on and refuse to allow conscription within the state, even temporarily as did Georgia's Governor Brown. But this was doomed to failure. The need to win the war, the state courts' decisions in upholding the constitutionality of the conscription law, and a sense of nationalism all compelled the governors' acquiescence to the conscription laws. However, the governors could force a negotiation with the central government over interpretation of the law.

With the competition for men between the states and the central government so intense, the states were constantly struggling to keep a viable militia or state reserve; this was particularly true after each of the conscription acts in 1862. In most states, the Confederacy had taken so many men that the states were depleted of

[71] Frank Lawrence Owsley, *State Rights in the Confederacy*, 205-215.

manpower to offer any meaningful local defense. For example, in March 1862, an attack on Mobile Bay by the federals appeared eminent. Governor Shorter called out the militia in eighteen surrounding counties, but few men responded. As one author notes, it was only after the governor's second call for the militia that Shorter realized most of Alabama's eligible men were already in the Confederate service.[72] Likewise, in June 1862, with the federals only miles from Richmond, Virginia's John Letcher authorized the formation of the Virginia State Line and issued a proclamation for recruits, who had to be ineligible for conscription in the Confederate army. Few responded. And those few that did volunteer for the state's defense encountered such difficulty procuring uniforms and equipment because of their prohibitively high cost that Letcher was advised to offer the Line for Confederate service.[73]

Conflicts between the states and the central government certainly had the capability of jeopardizing the ability of the Confederate army in the field. And, as would be expected, the governor of Georgia was at center stage. By early 1863, Brown had been able to raise two regiments of state troops for local defense composed of exempt men who otherwise would have served in the Confederate army.[74]

The Davis Administration negotiated with other governors and negotiated agreements to allow informal exceptions to the conscription law. In August 1863,

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[72] Malcolm C. MacMillan, *The Disintegration of a Confederate State*, 64-65.

[73] F.N. Boney, *John Letcher of Virginia*, 163-164.

[74] T. Conn Bryan, *Confederate Georgia*, 87-88.

Mississippi's Pettus, with his state troops undermanned and with the bulk of Mississippi, including Vicksburg and the Gulf Coast, occupied by federal troops, opposed the central government's increasingly stringent enforcement of conscription. The state and central governments agreed that the Davis administration would relax its enforcement of the act and the state would get those men in those areas of Mississippi "where the enrolling officers cannot get out the conscripts."[75] This compromise proved successful. Fearful of being conscripted into the Confederate army, enough men volunteered for state service to fill two regiments, three battalions, and several unattached companies. When a number of Confederate officers, uninformed of the agreement, attempted to forcibly enroll state troops into the Confederate army, Pettus complained to Davis, who assured the governor that such interference would end. The result was confusing at times, with various units claiming to be state forces when, in fact, they were never mustered into state service, but the negotiated compromise between Pettus and Davis was sustained.[76]

Alabama's Thomas Watts, former Attorney General of the Confederacy and elected governor of Alabama in 1863, faced a similar impasse with the central government, and again the issue was resolved through another successful negotiation. At issue was whether units of men who volunteered as part of the state militia could be disbanded and then enrolled though conscription, with the

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[75] John J. Pettus to Jefferson Davis, August 11, 1863, *Official Records*, series IV, volume 2, 707.

[76] Dubay, *John Jones Pettus: Mississippi Fire-eater*, 189-191.

Confederacy choosing their officers as opposed to the men in the units electing them.[77] In a letter to the Secretary of War, Watts observed that "the States have some rights left, and that the right to troops in time of war is guaranteed by the Constitution. These rights, on the part of Alabama, I am determined shall be respected. I cannot permit the troops organized for State defense and ready to obey my calls to be all taken out of the control of the State."[78] Receiving no reply, the governor was in no mood to compromise, "Unless you order the commandant of conscripts to stop interfering with such companies there will be a conflict between the Confederate general and state authorities."[79] Without acknowledging any other correspondence from Watts on this matter, Seddon replied that Davis thought Watts' position "proper" and instructed the Confederate authorities to consider the troops in question as reserves, thus allowing Watts to command them and resolving the conflict through compromising.[80]

With respect to local defense during the Civil War, Texas faced three distinct enemies: the Indians, Mexicans, and the United States, while most of the

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[77]According to the Act of February 17, 1864, the conscription age was lowered to age seventeen and raised to fifty. Seventeen and eighteen year olds, as well as those men between the ages of forty-five and fifty were to be organized as reserves, while eighteen year olds to forty-five year old males were liable for conscription. Thus the reserves, who were not required to leave their states, could work at their jobs in the state until called upon for an emergency. See *Official Records*, series IV, volume 3, 178-183.

[78] Thomas Watts to James Seddon, May 31, 1864, *Official Records*, series IV, volume 3, 463-464.

[79] Governor Watts to Secretary of War Seddon, June 3, 1864, *Ibid.*, 466.

[80] Secretary of War Seddon to Governor Watts, June 4, 1864, *Ibid.*, 472.

state's men in the military were fighting for the Confederacy outside of Texas. For years prior to the Civil War, Texas complained to the United States that it required additional troops to protect its borders from attacks by the Mexicans and Indians. The dissatisfaction experienced by Texans with the United States' response to the continued threats was not alleviated when the Lone Star state joined the Confederacy. And once the fighting began with the North, the coastline also required protection from the Union blockade. With the Confederacy's decision to focus its military forces against the Union, Texans felt themselves undefended except by local units. For Governor Lubbock, by November 1862, the situation had become a crisis. In a letter to Jefferson Davis, Lubbock noted, "Let me assure Your Excellency that Texas is almost denuded of her best fighting men. We have over sixty regiments in the Confederate service, very few of which are in the State. We are also badly off for arms. Our men took with them the best arms they could control." The governor proposed that the Confederacy send additional arms and that conscription should be suspended in the state until the following spring.[81]

Lubbock's plea reflected the competing demands by the states and the Confederacy for manpower in the military and the intense pressure on the governors to keep men at home for the defense of the state. But with the president's priority to fight on a national front, and his decision not to defend every locality, the imperative to transfer troops strategically from one state to another meant that many states would be left either bereft of Confederate protection or defended with

[81] F.R. Lubbock to Jefferson Davis, November 13, 1862, *Official Records*, series IV, volume 53, 833-834.

insufficient Confederate forces. However, the governors, as commanders-in-chief, were constitutionally empowered to defend their states. This demand for troops at both the national and state levels, combined with passage of the conscription acts which favored the Confederacy's need for men, led the governors to devise ingenious schemes for keeping men at home for local defense.

Texas attempted to compromise on the issue of local defense by replacing the state's Frontier Regiment with a new Frontier Organization, which would both defend the state and assist Confederate authorities in the capture of those men fleeing military service. The Frontier Regiment, formed early in the war for local defense, encountered substantial problems, including inadequate leadership of the Confederate forces, lack of manpower, location of the troops, and the role of the army in defending an area the size of Texas. Critical to all of these deliberations was that local men should remain in Texas to defend Texas territory. Finally, on December 15, 1863, the Texas legislature enacted a law to restructure local defense. This act defined the frontier counties and organized all men in these counties eligible for military service into companies for defense of the frontier. This new unit, know as the Frontier Organization, was not only to defend against Indian attacks but also to arrest Confederate deserters or conscription evaders and turn them over to the Confederate authorities.[82] When the Frontier Organization was in place, the Frontier Regiment, was to be offered to the Confederacy. Although during the Civil War, Texas received little assistance from the national government,

[82] As the war progressed, deserters, draft evaders, and bushwackers were as much of a threat on the Texas frontier as Indian attacks.

it was able to defend itself no worse than with the federal government's assistance prior to the war.

While conscription clearly fostered significant opposition in the Confederacy, the governors also perceived the suspension of the writ of *habeas* corpus as a potential danger as well. Negotiations between the states and the Davis administration successfully mitigated abuses in the law's implementation. With respect to the suspension of the writ of *habeas corpus*, the Confederacy, by the winter of 1862, encountered a conundrum of significant proportions. Sensitive to state rights and, having recently left a government perceived to be abusive of its power, Southerners were vigilant to protect their own liberties, and those of the states. Yet, with strong Unionist sentiment in eastern Tennessee and western North Carolina, as well as Union occupation of Norfolk and its surrounding counties, and the threatened attack on New Orleans in the upcoming spring offensive, the Davis administration was concerned about maintaining order in the face of invasion or insurrection. Traditionally, the declaration of martial law and suspension of the writ of *habeas corpus* had been available to the government for this purpose.

The writ, an ancient protection in English common law, requires the government to produce the detained *corpus*, or person, in court and state the legal justification for holding the detainee. The state, in other words, may not hold an individual indefinitely without a public statement of charges. According to the Confederate Constitution, "the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may

require it."[83] The Confederate founding fathers intended for this right to be suspended only by the legislature, since the clause is located in Article I which addresses legislative powers.

Rather than broadly applying this power, the central government utilized this remedy only with limited authority out of concern for state and individual rights. The limitations consisted of both duration and place. The Confederacy enacted three separate laws regarding the suspension of the writ of *habeas corpus*: the first on February 27, 1862 (with a subsequent amendment on April 19, both of which expired on October 13, 1862), the second on October 13, 1862 (which expired on February 27, 1863), and the last on February 15, 1864 (which expired on August 1, 1864).

Jefferson Davis, too, was sensitive to the power accruing to the central government in suspending this writ and the potential political repercussions from the suspension. But the harm in not suspending the writ far outweighed the political costs. By late winter of 1862, Congress empowered the President, "during the present invasion of the Confederate States…[with] the power to suspend the privilege of the writ of *habeas corpus* in such cities, towns, and military districts as shall, in his judgment, be in such danger of attack by the enemy as to require the declaration of martial law for their effective defense."[84]

The Confederate Congress deliberately combined the suspension of the writ of *habeas corpus* with a declaration of martial law. Historically, martial law has

[83] Confederate Constitution, art. I, sec. 9(3).

[84] *Official Records*, February 27, 1862, series IV, volume 1, 954.

meant the imposition of military authority in lieu of civil authority, including the administration of justice, in territory occupied by the enemy or lacking control by the civil government.[85] The limitations in the February act were significant; unlike Lincoln, Davis' authority only extended for specific periods of time and into those areas of the nation subject to a declaration of martial law.

Each law successively placed more stringent requirements upon the president to ensure protection of those who may be unjustly held by the authorities.[86] For example, the October 1862 act stipulated that the president, would appoint commissioners to "investigate" the cases of those detained, unless a speedy trial on the merits could be held. The commissioners would determine whether sufficient evidence existed to continue holding the detainee until trial. Likewise, the February 1864 act included all of the requirements of the previous act in addition to itemizing the specific illegal behaviors covered by the act, including, treason, conspiracy to incite slave insurrections, and unlawful trading with the enemy.

After passage of the first act, Davis did not issue a comprehensive order, but limited the suspension of *habeas corpus* and imposition of martial law to the cities of Norfolk, Portsmouth, and Petersburg, as well as several Virginia counties at the mouth of the James River. Later, four parishes in Louisiana in the defense of New

[85] Black's Law Dictionary, 5th Edition (St. Paul, MN: West Publishing Co., 1979).

[86] *Official Records*, October 13, 1862, series IV, volume 2, 121 and General Orders No. 31, March 10, 1864, series IV, volume 3, 203-204.

Orleans were included as well.[87] As Frank Lawrence Owsley has noted, Davis attempted to minimize the impact of the law by allowing some of the civil institutions, with restricted authority. In Richmond, the mayor was kept in office and retained his civil powers, while in Petersburg, the courts maintained jurisdiction in a number of cases, including probating wills and child custody cases.[88]

Opposition by the governors to Congressional authority in enacting the suspension of the writ of *habeas corpus* was rather muted; the focus of concern was not on the constitutionality of the act, but rather on irregularities in the imposition of the law. The negotiation between the governors and the Confederate authorities, therefore, focused on the abuse of the central government's power. Governor Thomas O. Moore of Louisiana confronted the Confederacy on this very issue. General Mansfield Lovell had been assigned the defense of New Orleans. In an effort to maintain order, Lovell ordered that all adult while males take an oath of allegiance to the Confederacy or leave the parishes under his authority. In addition, every person was to carry a passport and prove their loyalty in order to travel in the affected parishes.[89] Governor Moore was outraged. In a May 21, 1862 letter to Jefferson Davis, Moore complained that martial law should have been imposed in the parishes bordering those areas controlled by the Union, not in New Orleans and

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[87] James D. Richardson, ed., *The Messages and Papers of Jefferson Davis and the Confederacy*, Vol. 1, 219-227. Also see John B. Robbins, "The Confederacy and the Writ of *Habeas Corpus*," *Georgia Historical Quarterly* 55 (Spring 1971). Also see Jefferson Davis Bragg, *Louisiana in the Confederacy*, 101.

[88] Frank Lawrence Owsley, *State Rights in the Confederacy*, 151-153.

[89] General Orders No. 10, March 15, 1862, *Official Records*, series I, volume 6, 857-858.

the parishes under Confederate authority. After marital law had been finally declared, Moore complained to Davis

> It was not to be expected that I would ever again consent to the proclamation of martial law by General Lovell after the urgent and persistent complaints I made to you of the action of his provost-marshals, which received his silent acquiescence, if not his open approval.[90]

Lovell was removed and replaced by Major General Earl Van Dorn.[91] But Moore was incensed when Van Dorn, on July 4, 1862, declared martial law in the Department of Southern Mississippi and Eastern Louisiana. To avoid a misunderstanding as to the "meaning and effect of martial law," Van Dorn asserted that "it has been well defined to be 'the will of the military commander;' but the extent of the action that may be under it cannot be definitely announced, depending as it does upon the emergency calling for such action."[92]

To Moore, the general far exceeded his authority. Moore was willing to accord Van Dorn the best of intentions, but noted that Louisiana's citizens have been loyal and patriotic thus far in the war and certainly not deserving of such "arbitrary and illegal usurpation of authority." In a direct confrontation with the central government, the governor stated that "…I will not permit 'the will of the Commanding General' to be enforced as the fundamental law in any portion of her

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[90] Governor Thomas O. Moore to President Jefferson Davis, May 21, 1862, *Official* Records, series I, volume 15, 740-741.

[91] Lovell also encountered significant criticism for his perceived inadequate defensive preparations as the commander of New Orleans. The city easily fell to Union forces in April 1862 after Lovell ordered his men to vacate the city and regroup on better defensive ground.

[92] General Orders No. 9, July 4, 1862, *Official* Records, ser.1, vol. 15, 771-772.

territory."[93] Yet he acquiesced, at least momentarily, for on July 7, 1862 Moore ordered the arrest of two individuals for failure to accept state or Confederate notes, in violation of Van Dorn's general order; the same order which was the cause of his scathing letter to Davis.[94]

Clark of Mississippi eloquently stated the governors' position when he addressed the state legislature in March, 1864. After asserting that recent acts, including suspension of the writ of *habeas corpus*, passed by the Confederate government necessitated a special session of the state legislature, he observed that the legislature need not immediately address the constitutionality of these acts. Engaged in war, the state and nation need to focus its efforts on defeating the enemy. And, according to Clark, "your rights will not be lost by delay in asserting them. No statute of limitations applies to States. They cannot lose their rights by failing to make continued claim or protest." While the Confederate Congress, Clark admitted, had the authority to suspend the writ of *habeas corpus*, the problems lie with potential abuse by the President and his subordinates. The critical issue, therefore, was not the constitutionality of the act itself, but its implementation by Confederate authorities. It would be better, argued Clark, "for the Confederate

[93] Governor Thomas O. Moore to President Jefferson Davis, July 23, 1862, MS U-231(10), Special Collections, Hill Memorial Library, Louisiana State University, Baton Rouge, LA.

[94] Orders, No. 727, July 7, 1862, *Official* Records, series I, volume 15, 772-773.

Congress to look for the *cause* of the necessity of this act, and apply the remedy in the shape of better provision for the enforcement of the law by the civil courts…."[95]

Clark articulated the reason that most governors did not oppose the suspension in 1862 of the writ of *habeas corpus* in 1862: Congress possessed the authority to suspend the writ through the constitution and common law. The objectionable issue was the enforcement of the law. Complaints by the governors focused on the arbitrary and unfair arrests. This was the issue that the governors brought to the attention of the Davis administration. In December, 1862 a North Carolina minister, R.J. Graves, had sent anti-war letters to the Richmond *Enquirer*; General John Winder, the provost marshal for Richmond, had Graves arrested for spying. Through the efforts of Vance and the North Carolina legislature, the Secretary of War ordered the release of Graves and accused Winder of acting with "over zeal."[96]

Vance again attacked the suspension of the writ of *habeas corpus* when he had heard that it was being applied in all arrests, whether for those crimes enumerated in the statute or not. In November 1862, North Carolina's governor had heard that forty people "were arrested on suspicion of disloyalty and sent up to Salisbury for safe-keeping." Most important for the governor was to assure that

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[95] Governor Charles Clark to the Mississippi legislature, March and April 1864 sessions, *Journal of the Senate of the State of Mississippi* (Meridian, MS: J.T. Shannon & Co., State Printer, 1864), 7, 14.

[96] Janet E. Kaufman, "Sentinels On the Watchtower," 147-148.

these persons' right to a trial was acknowledged by the central government.[97] When General Samuel G. French, responsible for the arrests, responded that he instructed his officers only to arrest persons if they have "positive proof of [their] having committed offense against our Government or violated its ordinances,"[98] the governor was not satisfied. In a speech to the state's General Assembly, Vance mentioned the seizure and arrest of the forty. Noting that they, "as citizens of North Carolina," are entitled to a speedy trial by a jury, he then launched into a critique of the suspension of the writ of *habeas corpus*:

> I …learn from the newspapers that Congress has conferred upon the president the power to suspend the writ of habeas corpus in *all cases* (emphasis mine) of arrests made by the Confederate authority. If this be once admitted, no man is safe from the power of one individual. He could at pleasure seize any citizen of the State, with or without excuse, throw him into prison, and permit him to languish there without relief—a power I am not willing to see intrusted to any living man….[This would create] a vast tide of inflowing evil, from these inordinate stretches of military power which are fast disgracing us equally with our Northern enemies.[99]

In a reprimand aimed at his colleagues, Vance observed that waiting to decide the constitutionality of issues such as the suspension of the writ of *habeas corpus* was detrimental to liberty itself: "A free republic that must needs cast off its freedom in

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[97] Governor Vance to President Davis, November 11, 1862, *Official Records*, series I, volume 51, part II, 644-645.

[98] General S. G. French to Governor Vance, November 16, 1862, *Official Records*, series I, volume 18, 118.

[99] Governor Vance to the North Carolina General Assembly, November 17, 1862, *Official Records*, series IV, volume 2, 188.

every time of trouble will soon cast it off forever."[100] While this criticism cut to the heart of the issue of governmental centralization, Vance's comments were based solely upon misinformation; in fact, the suspension of the writ of *habeas corpus* was not universally applied to all arrested.

Despite most governors' belief that the abuse of power exercised by Confederate authorities in the implementation of the suspension of the writ of *habeas* corpus would result in the centralization of power in Richmond, Georgia's Joseph Brown alleged that the very law itself was evidence of tyranny. By the time of the passage of the 1864 act, the Confederacy was in dire circumstances: scarcity of food and salt, rampant inflation, speculation, and a sense of hopelessness in a Confederate victory led to low civilian morale and increased criticism of the government in Richmond. In these gloomy times, protest against the Davis administration in 1864 was lead by Joseph Brown. The chief executive of Georgia launched a blistering attack on the Confederate government, and the suspension of the writ of *habeas corpus* in particular, in a speech before the General Assembly. The logic Brown employed in his constitutional exegesis on the suspension of the writ of *habeas corpus* was strained, however. Despite the express language of the constitution regarding the suspension of the writ of *habeas corpus*, Brown argued that the power existed only by implication. According to Brown, the basis for his argument lay in traditional English common law, which forbade warrantless and arbitrary arrests. Davis, in effect, was attempting to revive the Star Chamber, that hated British court abolished by Parliament in 1641. And the Confederate Congress

[100] *Ibid.*, 188.

gave him that power. The only legitimate authority descended from the English common law, Brown argued, would be to arrest, without a warrant, those individuals accused within the area of the rebellion or the invasion so that they may be bound over to the appropriate civil authorities. Any other use of the power "makes the President and not the courts the judge of the sufficiency of the cause for his own acts" and would lead to "military despotism." The governor urged the state legislature as well as the state's congressmen to act within their powers to either urge the repeal or vote for the repeal of this statute.[101]

After additional speeches by Vice President Alexander Stephens and his brother Linton, a state representative, the Georgia General Assembly passed a resolution citing,

> That, in the judgment of the General Assembly, the said act is a dangerous assault upon the constitutional powers of the courts, and upon the liberty of the people, and beyond the power of any possible necessity to justify it; and while our Senators and Representatives in Congress are earnestly urged to take the first possible opportunity to have it repealed, we refer the question of its validity to the courts, with the hope that the people and the military authorities will abide by the decision.

Not wanting to appear to undermine the war effort, the legislature at the same time passed a resolution commending Jefferson Davis' integrity and patriotism.[102] Brown's opposition to the Davis administration with respect to this issue, consistent

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[101] Message of Governor Brown to the General Assembly, extra session, March 10, 1864, *Journal of the Senate of the State of Georgia* (Milledgeville, GA: Boughton, Nisbet, Barnes, and Moore, 1864),17-24.

[102] *Ibid.*, 51, 52, 58, 97, 98.

with his continuing criticisms, was cut short by William T. Sherman's invasion of Georgia in the late summer of 1864.

Texas' governor joined forces with the commander of the military department, only to have their momentum stalled by the Davis administration itself. General Paul O. Hebert, Confederate commander of the Department of Texas, suspended the writ because of the extensive opposition to conscription and declared the entire state under martial law in May 1862. Pursuant to the proclamation, each white male citizen over the age of sixteen was required, if summoned by the provost-marshal, to "furnish such information as may be required of him," and aliens were required to take loyalty oath to the Confederacy. In addition, "any attempt to depreciate the currency of the currency of the Confederate States [would be] an act of hostility…" President Davis rescinded Hebert's proclamation, noting that only the president, and not a military commander, was authorized to suspend the writ of *habeas corpus* and declare martial law. Lubbock urged that at least localities containing disproportionate numbers of disloyal persons remain under marital law, as well as those areas in which the most business was transacted since there the likelihood of currency depreciation was greatest.[103]

Elected officials echoed the governors' concerns. In the Confederate Congress, Jehu A. Orr of Mississippi introduced resolutions of the Mississippi

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[103] *Official Records*, General Orders, No. 45, May 30, 1862, series I, volume 9, 715-716; *Official Records*, General Orders, No. 66, September 12, 1862, series I, volume 9, 735-736; *Official Records*, F.R. Lubbock to General P.O. Hebert, September 26, 1862, series I, volume 53, 829-830; Nancy H. Bowen, "A Political Labyrinth: Texas in the Civil War—Questions in Continuity" (Ph.D. diss. Rice University, 1974), 78-79.

legislature denouncing the suspension of the writ of *habeas corpus* as an infringement on personal liberty and subordinating the popularly elected civil government to the military. Yet most Congressmen favored the suspension of the writ of *habeas corpus* As Louis T. Wigfall of Texas observed, "Congress…has the undoubted right, during invasion or rebellion, and when public safety requires it, to suspend the privilege of the writ of *habeas corpus*." [104]

Wigfall's "undoubted right" was plain to all but a few in the Confederacy. While Congress was debating in 1864 whether to continue the suspension of the writ of *habeas corpus*, the House Judiciary Committee presented a report on *habeas corpus*. The report clearly sanctioned the constitutionality of the suspension, noting that the rights of citizens were not identical in times of war as in peace. Throughout the remainder of the war, Congress debated extending the president's authority to suspend the writ of *habeas corpus*. The inability of Congress to reach a consensus was not due to its authority to do so, but due to the limitations to be imposed on the president in exercising his power.

The governors assumed leadership in opposing what they viewed as despotic acts by the central government. While the necessity of war led to a degree of cooperation in not challenging the constitutionality of conscription, the states exerted significant measures to limit the implementation of the statute through negotiation with the central government. These measures included use of the state courts in deciding the constitutionality of conscription, changes to the law itself,

[104] Quoted in John Brawner Robbins, "Confederate Nationalism," 83.

exploiting the use of exemptions under the conscription law, and use of troops for local defense.

The suspension of the writ of *habeas corpus*, though producing significant opposition, was not opposed in principle by most governors. This right was imbedded in the English common law and accepted in American constitutionalism. But this right was not unlimited and questions quickly arose as to implementation of the law. Congress restricted the president's authority with each successive law authorizing him to suspend the writ. And Davis, sensitive to the abuses of the law by the military, reacted quickly to correct any usurpation of power. As with conscription, the compromises to the implementation of the suspension of the writ of *habeas corpus* resulted within the context of a negotiated federalism, in which the states' chief executives and the Confederate authorities negotiated their competing interests.

CHAPTER FOUR

ECONOMIC NEGOTIATION: FISCAL POLICY, RAILROAD REGULATION, INDUSTRIAL REGULATION, AND IMPRESSMENT

This chapter will examine the relationship of the Confederate states to the central government with respect to the critical economic issues confronting the Confederacy: fiscal policy, railroads, regulation of industry, and impressment. In none of these areas did the governors challenge the constitutionality of the central government's authority to pass legislation. Both taxation and impressment were perceived as legitimate, constitutional functions of the Confederate government. Although Congress granted the president the power to regulate the railroads, Davis refused to exercise that power as it was a sphere traditionally dominated by the states. Lastly, regulation of industry generated very little reaction from the governors because industry played such a minor role in nation overwhelmingly dominated by agricultural interests.

The constitutional concerns for the governors regarding economic legislation focused on the constitutionality of the laws' implementation rather than the constitutionality of the laws themselves. The practical effects of the government's policies could deprive individuals of their liberty and property and well as invade the states' spheres of constitutional authority. Ongoing political pressure from the governors, state legislatures, and state courts, resulted in negotiated compromises that led to both changes in the law and its implementation. The governors accorded wide latitude to the central government in its efforts to keep the Confederacy

economically afloat, but they resisted attempts to imposing nation-wide control over the railway system. Negotiation in this area was limited, resulting in local control over the rail system. Impressment generated the most criticism from the governors and the public, and consequently the negotiations between the Davis administration and the state authorities that ensued after the passage of the first impressment act led to changes in both the implementation of impressment and the law itself. The Davis administration exercised considerable control over industrial production, with the governors more concerned that local needs were met than with constitutional issues.

From its inception, the Confederacy faced significant obstacles in prosecuting a war the magnitude of the Civil War. The wealth of the Confederate states was located primarily in land and slaves; they were ill-equipped economically to wage a prolonged war. With only ten per cent of the slave states' population living in towns of 2,500 or more in 1860, the percentage of the labor force employed in agriculture was over 80%. While the slave states possessed major manufacturing plants in Richmond and Augusta (Georgia), New York and Pennsylvania each produced more manufactured goods in 1860 than all of the future Confederate states combined. And while the South grew all of the nation's cotton, it commanded only six per cent of cotton manufacturing. With respect to banking capital, the divergence between the non-slaveholding and slaveholding states was equally dramatic; New York alone possessed as much banking capital as all of the slaveholding states combined.[1] The North also had over twice the railroad mileage

[1] James M. McPherson, *Ordeal by Fire*, 3d ed. (New York, NY: McGraw-Hill, 2001), 28.

of the Confederate states and five times the white population of the South.[2] The Confederacy's quest for independence hinged on its ability to overcome these deficiencies.

Prior to the war, donations poured into the Confederate treasury. Alabama offered a half a million dollars as a loan, while Louisiana loaned the approximately half a million dollars which it had seized from the New Orleans mint. Contributions of money, food, and clothing by individuals, churches, and businesses were donated to the Confederacy during in the first months of the war, but it was clear to all but a few that a large revenue source was essential as the nation moved closer to conflict with the Union. Means of raising revenue, however, were limited to loans, taxation, and/or treasury notes. For the first two years of the war, the government relied almost exclusively on loans. This would prove financially unsustainable.

As early as February 1861, the Provisional Congress authorized the Secretary of the Treasury to issue fifteen million dollars in bonds, bearing eight per cent interest, and payable in ten years. Two problems quickly became apparent. When Secretary Christopher Memminger required payment of the bonds in specie only, many potential investors were precluded from purchasing the bonds because of the suspension of specie payments imposed by most of the states. Secondly, without sending its own agents to sell the bonds, the central government had to rely heavily on support from the private sector, particularly banks. And the banks

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[2] J.G. Randall and David Herbert Donald, *The Civil War and Reconstruction* (Lexington, MA: D.C. Heath & Co., 1969), 5, 8. For a more complete description of the limits of the southern economy in 1861, see Douglas B. Ball, *Financial Failure and Confederate Defeat* (Urbana, IL: University of Illinois Press, 1991), 20-23.

rescued Memminger's plan. They were willing to redeem their outstanding notes in exchange for specie, provided the specie was for the purchase of the bonds. In addition, the banks purchased the bonds as an investment. Despite state laws prohibiting the payment of specie, the states permitted these bank transactions and cooperated in the success of the measure.[3]

The Confederate Congress continued utilizing bonds to raise revenue through the end of 1862, but this led the Confederacy into deepening debt. An additional fifty million dollars were raised with the passage of the so-called Produce Law on May 16, 1861, which was aimed at planters by subscribing a portion of their crop for purchasing the bonds. In August, Congress authorized an increase to one hundred million dollars in bonds and in April 1862, the amount of the loan was further increased to 250 million dollars. Now the Secretary was authorized to accept actual produce in exchange for the bonds, unlike the earlier loans which authorized the government only to receive payments in specie from the sale of the crops.[4] It was becoming apparent to many, including the fiscally conservative Secretary of the Treasury, that floating bonds alone would not provide sufficient

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[3] John Schwab, *The Confederate States of America, 1861-1865: A Financial and Industrial History of the South During the Civil War* (New York, NY: Charles Scribner's Sons, 1901), 6-8; also see Douglas B. Ball, *Financial Failure and Confederate Defeat* (Urbana, IL: University of Illinois Press, 1991), 123-125.

[4] "An Act to Authorize a Loan…," Chapter XXIV, May 16, 1861. In James M. Matthews, ed., *Statutes at Large of the Provisional Government of the Confederate States of America* (Richmond, VA: R.M. Smith, printer to Congress, 1864), 117-118; "An Act to Authorize the Issue of Treasury Notes…," Chapter XXXV, April 17, 1862. In Richard M. Matthews, ed., *Public Laws of the Confederate States of America at the first session of the First Congress* (Richmond, VA: R.M. Smith, printer to Congress, 1862), 34.

income necessary for the Confederacy to survive. Yet on August 19, 1861, Congress also authorized the issue of one hundred million dollars of non-interest bearing notes. Redemption of the notes would occur six months after the Confederacy and the United States concluded a peace agreement.

The increasing deficits accumulated as a result of the Confederacy's fiscal policy was staggering. From February 1862 to end of that year, approximately 94% of the government's income was derived from the issue of treasury notes or bonds.[5] According to one historian, the Confederacy ran a deficit during 1861 of twenty-six million dollars. Of its receipts, 76% came from the issuance of treasury notes while 22% from the issuance of bonds. The news was just as depressing for 1862. The outstanding debt of the Confederacy at the end of that year was $567,500,000, of which 82% was the result of treasury notes issued.[6]

Despite the indebtedness, the Confederacy passed only one tax law during its first two years. The measure, referred to as the war tax and enacted by Congress on August 19, 1861, levied a tax of fifty cents per one hundred dollars value on all property, except Confederate bonds and money, with exemptions including the first five hundred dollars of property and religious, charitable, and educational organizations.[7] Although the statute did authorize a minimal administrative structure to collect the tax, the primary burden lay upon the states for collection.

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[5] John Schwab, *The Confederate States of America, 1861-1865,* 24.

[6] *Ibid.,* 18, 44.

[7] "An Act to Authorize...," Chapter XXIII. In James M. Matthews, ed., *Statutes at Large of the Provisional Government of the Confederate States of America*, 177-183.

Implementation of this act was postponed four times because of the disruption caused by the war.[8]

The war tax yielded approximately four million dollars; still the Secretary of Treasury had reason for concern. By mid-1862, only two states had filed completed returns and paid their respective share of the tax.[9] Seven of the eleven states had paid by mid-August 1862, but five still had not filed completed returns. The states, responsible for assessing property within their jurisdiction, significantly undervalued property, particularly slaves, which contributed to the Treasury receiving less in revenue than anticipated.[10] Lastly, most of the states did not actually collect taxes from its citizens, but rather floated bonds or borrowed the money in the form of a loan. This, of course, contributed to the spiraling inflation rate. [11]

Governor Moore advised the Alabama legislature that he could not recommend such an "onerous and oppressive" tax on its citizens; rather the state,

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[8] John Schwab, *The Confederate States of America, 1861-1865,* 285-286.

[9] As in the United States, capitation or other direct taxes in the Confederacy were to be apportioned according to the population of the states. Confederate Constitution, art. I, sec. 9(5).

[10] Secretary of the Treasury Memminger to Speaker of the House Bocock, August 18, 1862, *Official Records*, series IV, volume 2, 59-63; Chief Clerk of War Tax Allan to Secretary of Treasury Memminger, August 1, 1862, *Official Records*, series IV, volume 2, 63-65; Schwab, *The Confederate States of America, 1861-1865,* 286.

[11] Jefferson Davis observed that the states collecting the tax through floating bonds and issuing treasury notes led to "the public debt of the country was thus actually increased instead of being diminished by the taxation imposed by Congress." President Davis to the Confederate Congress, December 7, 1863, *Official Records*, series IV, volume 2, 1036.

according to Moore, could pay the amount due through loans, bonds, or issuing treasury notes. The legislature opted to borrow the money; the banks of the state loaned the government in Montgomery two million dollars, to be repaid from future state tax revenues.

Moore observed that the war tax was constitutional and not "an invasion of the rights of the States, as some have supposed, but is rather a concession to the States because it permits them to do that which they have no right to do without the consent of the Confederate Government." In asserting that the states had no right to collect Confederate taxes but had been granted permission to do so by the central government, Moore acknowledged and endorsed the central tenent of the Confederate constitutional system: dual federalism and the separate constitutionally authorized domains of power. He continued by asserting that "the rights and powers of the States and of the Confederate Government are plainly and distinctly marked out…," and that each government could only legitimately exercise those powers delegated to it. Because of these separate spheres, "the State should never concede to the General Government the exercise of powers not delegated in the Constitution, and they should never, except in cases of absolute necessity, consent to exercise powers or to perform duties which do not properly belong to them." Moore asserted the right and responsibility of the central government to collect taxes and enforce the law "against her own citizens."[12]

[12] Governor A.B. Moore to the Alabama legislature, October 28, 1861, *Official Records*, series IV, volume 1, 697-700.

While Moore recognized the separate constitutional rights of the states and the central government, he never articulated why the collection of the Confederate tax by the states was an "absolute necessity." That the tax was passed in August 1861, a period of cooperation between the states and the central government, reflects the governor's willingness to collect the tax on behalf of the Confederacy. Moore was willing to ignore constitutional structures in a spirit of cooperation.

Other states followed Alabama's lead in borrowing money to pay the Confederate tax. Arkansas, Florida, and Louisiana issued treasury notes to raise the funds for the war tax, while Mississippi paid part of its share by issuing bonds. Of course, the states' issuing state bonds and treasury notes to pay the tax only compounded the indebtedness crisis that was to create such a threat to the Confederacy's economy by 1863. The Confederate war tax was intended to reduce indebtedness, but most states could not bring themselves to pay the tax by taxing their citizens. Only South Carolina, Mississippi, and Texas paid all, or a portion, of the obligation due to the government through taxes imposed on state citizens. According to one historian, less than one-tenth of the war tax actually forwarded to the central government was collected as a tax from citizens.[13] The governors, clearly recognizing the separate spheres of constitutional authority between the states and central government, allowed the states to interpose themselves between the central government and its citizens. In other words, the state was allowing itself, out of cooperation with the central government early in the war, to take on the central government's responsibility of collecting a Confederate tax.

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[13] John Schwab, *The Confederate States of America, 1861-1865*, 290.

Many governors agreed, however, that the Confederacy was facing a crisis significant enough to warrant a war tax and that the tax act was constitutional as it stood. John Milton argued that "millions upon millions, and life upon life" may need to be sacrificed to "defend life, liberty, and property from vandalism." Necessity dictated that the people should not suffer to pay the tax when treasury notes could be issued that "have the similitude and form of Bank Notes."[14] Isham Harris of Tennessee supported the act, but advised that "care should be taken that no part of the burthen is imposed upon that class of the people who are wisely exempt…."[15] Joseph Brown, who might be expected to raise constitutional objections to the tax act, did not. His primary concern was that the state collect the revenue thereby keeping the Confederate agents at bay, since "the adoption of this policy would act upon a principle alike compatible with her dignity and sovereignty…."[16]

For the first two years of the war, then, the predominant methods of raising revenue were borrowing, floating bonds, or issuing treasury notes.[17] A national tax

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[14] John Milton to the Florida Legislature, eleventh session, December 9, 1861, *Journal of the House of Representatives*, (Tallahassee, FL: Office of the Florida Sentinel by Edwin A. Hart, 1861), 221.

[15] Governor Harris to the Tennessee legislature, October 7, 1861; quoted in Robert H. White, ed., *Messages of the Governors of Tennessee, 1857-1869* (Nashville, TN: The Tennessee Historical Commission, 1957), 347.

[16] Governor Brown to the Georgia legislature, annual session, November 6, 1861, *Journal of the Senate of State of Georgia*, (Milledgeville, GA: Boughton, Nisbet, and Barnes, 1862), 33.

[17] The Confederacy flirted with making treasury notes and other types of paper currency legal tender for all debts. Although the Union passed its first Legal Tender

act was passed, but very few of the states actually collected the revenue through taxation. Most of the states borrowed the money or issued treasury notes to meet their apportioned share of the tax, confirming President Davis' observation that the Confederate tax act did not reduce the country's debt, but increased it. By 1862, however, fiscal options available to the Confederacy were diminishing. Debt had mounted and inflation was rampant with the issuance of treasury notes at both the national and state levels.

Through the spring of 1863, the governors cooperated extensively with the central government with respect to the minimal taxation imposed by acting as agents on behalf of the central government. Gubernatorial objections to the borrowing and issuing of treasury notes were minimal, as long as the central government's actions did not infringe upon the state's sphere of authority. The governors, employing a debt-incurring policy of their own to pay the war tax, seemed oblivious to the consequences of the borrowing and the issuing treasury notes. With so little income from the war tax coming directly from the citizens, it is not surprising that the Confederacy faced a fiscal crisis by the spring of 1863. What is surprising is that the Confederate authorities were able to delay a substantial tax bill until then.

Act on February 25, 1862, the Confederacy never followed suit, despite the introduction in Congress of legal tender bills in each year from 1861 to 1864. Despite early arguments against the measures focused on the public acceptance of the treasury bills as currency, which would negate any justification for the act, by 1862, with inflation soaring, emphasis on the constitutionality of a legal tender act was questioned. At issue was whether the constitutional right for Congress "to coin money" under article I, sec. 8(5) included printing paper. For a complete discussion of the topic, see Douglas B. Ball, *Financial Failure and Confederate* Defeat, 172-176 and John Swab, *The Confederate States of American, 1861-1865*, 86-98.

While the governors failed to raise concerns regarding the fiscal crisis, other citizens directed attention to the consequences of the Confederacy existing only on borrowed money. Duncan Kenner, a representative from Louisiana, proposed in September 1862 a personal income tax of twenty percent, payable on January 1, 1863 for income earned in 1862. Despite Kenner's pleas that the responsibility of Congress was to meet the growing costs of the war and not to lessen the tax burden of the people, Congress tabled the bill.[18]

Newspapers, particularly the Richmond *Enquirer* and the Charleston (S.C.) *Courier*, called for taxation to fund the maintenance of the war and the government. The *Enquirer* decried the debt accrued through borrowing which the government was leaving to the nation's posterity and expressed dismay at the rapidity which the Confederacy appeared to be approaching bankruptcy. The *Courier* urged a national progressive income tax scheme as the fairest measure to ensure effective fiscal responsibility.[19]

But the Davis administration was slow to respond to the growing crisis. In an effort to strengthen financial confidence in the Confederacy, and to stave off implementing an unpopular tax, the Secretary of the Treasury followed the lead of a number of states which proposed that the state governments endorse, or guarantee, the new issue of Confederate bonds. By January 1863, state legislatures in

[18] Douglas B. Ball, *Financial Failure and Confederate Defeat*, 229-230.

[19] John Brawner Robbins, "Confederate Nationalism," 134.

Alabama, Florida, South Carolina, and Mississippi endorsed the concept.[20] The governors of these states also issued their approval. The attractive feature of this arrangement was that the bonds could sell for six percent, rather than eight percent, because they were guaranteed; therefore, the central government could raise additional funds by issuing more bonds. This additional revenue would be applied to reduce the national debt. Accordingly, Memminger proposed, and Congress enacted on March 23, 1863, a scheme for the Treasury Department to sell up to two hundred million dollars worth of bonds, at six percent interest, redeemable in thirty years.[21]

This plan would be successful only if all of the states would agree to the endorsement. But quick to object to the scheme was Joseph Brown. In a speech to the Georgia legislature only two days after Congressional passage of the act, Brown emphatically urged the legislature to reject the state's endorsement of the new issue of Confederate bonds. Among other arguments, Brown's constitutional justification for not supporting the law was based upon the dual federalism of the Confederate constitution. The constitution, argued Brown, authorized Congress to assess, and impose, taxes. For Brown, "The power in the Government that creates the debt, should have resting upon it, the sole responsibility of providing the means for its payment, and of imposing the taxes for that purpose which may be necessary." The

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[20] Joint Resolution of the Alabama General Assembly, December 1, 1862, *Official Records*, series IV, volume 2, 219; Joint Resolution of the General Assembly of Florida, December 15, 1862, *Official Records*, series IV, volume 2, 237; Secretary of the Treasury Memminger, January 10, 1863, *Official Records*, series IV, volume 2, 320.

[21] John Schwab, *The Confederate States of America, 1861-1865*, 49-52.

Constitution provided that the national government, if it imposed the tax, must collect the tax as well. Otherwise, the economic and financial vitality of the states could be sapped. Brown, already in contention with the central government over conscription, impressment, local defense, and the suspension of the writ of *habeas corpus* continued,

> …the tendency of our Government, is to consolidation, and …the central Government is ever ready to usurp as much undelegated power, as the States will consent to lose. As the central Government grows stronger, the States grow weaker, and their just rights are disregarded. Now, I can imagine no one act of the States, that will tend so much to strengthen the central Government, at the expense, to them of the loss of their just powers, as the adoption of the policy now proposed, which binds them individually, to provide for the payment of all debts which Congress may choose to contract, but may not be willing to impose the tax to pay.[22]

While the other governors were blurring the boundaries between state and central government authority in cooperatively seeking a solution to the financial morass in which the Confederate government found itself, Brown perceived the endorsement scheme as yet one more event leading to consolidation by the Confederate government. Brown's insistence on the separate authority of the states and central government, consistent with dual federalism, placed the Confederate government in an untenable fiscal predicament and forced the Davis administration to negotiate with the governors and Congress on implementing a taxation scheme. As Brown advised the legislature, "There is one remedy, and only one, which can mitigate the evil, inspire confidence in the stability of the Government, and the

[22] Governor Brown to the Georgia legislature, extra session, March 25, 1863, *Journal of the Senate of the State of Georgia* (Milledgeville, GA: Boughton, Nisbet, and Barnes, 1863), 19.

ultimate payment of the debt, and induce the investment of surplus capital of the people of other Governments, as well as own in Confederate bonds. That remedy is taxation by Congress…."[23]

The lower house of the Georgia legislature, contrary to Brown's appeal, approved Georgia's endorsement of the new issue of Confederate bonds, while the Senate voted to submit the issue to the people in the coming November election. The following day, the matter was postponed indefinitely.[24] In revisiting the topic in November, Brown reiterated his argument to separate the constitutional authority delegated to each by the Constitution, "Let the State and Confederate Government each move within the sphere assigned it by the Constitution; and let each be responsible to the people for the faithful discharge of the trust reposed in it." For the states to endorse the bonds, "…when the States have delegated the full, ample and exclusive management of this matter to the Confederate Government, is a virtual declaration that the government is a failure…"[25]

Governor Brown's public suggestion that the Davis administration was a failure could have signaled a figurative, public vote of "no confidence" upon which other politicians and citizens could seize. As one historian has noted, by the fall of 1863, the governors had been acting as 'a buffer between the Confederate government and discontented citizens; while arguing with the one for a change in

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[23] *Ibid.*, 19.

[24] Louise B. Hill, *Joseph E. Brown and the Confederacy*, 143.

[25] Governor Joseph E. Brown to the Georgia legislature, annual session, November 5, 1863, *Journal of the Senate of the State of Georgia* (Milledgeville, GA: Nisbet, Barnes, and Moore, 1863), 25.

policies they urged the people to support the war effort…." Brown most clearly articulated much of the discontent of the people who were suffering from shortages of food and manpower, as well as the unsound fiscal and monetary policy of the Davis administration. As a result, of the three gubernatorial elections in the fall of 1863, only Brown, the most vocal critic of the Davis administration, survived re-election; in Alabama and Mississippi the secessionist Democratic governors were rejected by the voters.[26]

On the military front, losses at Gettysburg and Vicksburg were perceived as catastrophic defeats. According to Paul Escott, Confederate defeats in these two battles caused many soldiers and civilians to "conclude that the war was hopeless."[27] And the Confederate losses would mount as 1863 drew to a close with the loss of Chattanooga, opening the way for Sherman's invasion of Georgia.

Fortunately for the central government, Brown's declaration that the Confederacy was a virtual failure was not seized upon by others to attack the effectiveness of the central government. While the government in Richmond was subject to criticism for his military policy, fiscal policy, and centralization of power in the central government, President Davis enjoyed a level of personal support

[26] Kenneth Michael Murray, "Gubernatorial Politics and the Confederacy," 1-3, 718-720.

[27] Paul Escott, *After Secession,"* 126.

because of his ability to become identified with the cause of liberty and an independent Confederacy.[28]

Because of Brown's objections and the vote by the Georgia senate to submit the state endorsement of Confederate bonds to the people in the November 1863 election, the Davis administration needed an alternative plan to raise revenue. The central government required a significant infusion of money and could not wait for the state of Georgia to decide whether to endorse the bonds or not. On April 24 1863, Congress enacted a comprehensive tax scheme, which included taxing property, select occupations, a graduated income tax, and a tax-in-kind of one-tenth of agricultural products.[29] The tax was to be assessed on July 1 and collected, with some exceptions, by October 1.[30] By April 1864, almost sixty million dollars had been collected through taxation, with another forty-two million dollars by October of the same year.[31]

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[28] William J. Cooper, *Jefferson Davis: American*, 462-465. Cooper articulates Davis' ability to represent republican values in the defense of the Confederacy, thus deflecting much of the criticism directed toward the central government and himself.

[29] "An act to lay taxes…," Chapter XXXVIII, April 24, 1863. In James M. Matthews, ed., *Statutes at Large of the third session of the First Congress* (Richmond, VA: R.M. Smith, printer to Congress, 1863) 115-126; amended Chapter XXXII, February 13, 1864. In James M. Matthews, ed. *Statutes at Large of the fourth session of the First Congress* (Richmond, VA: R.M. Smith, printer to Congress, 1864), 186 and Chapter LXIV, February 17, 1864. In James M. Matthews, ed., *Statutes at Large of the fourth session of the First Congress*, 186.

[30] The collection of the tax, however, was delayed until the end of 1863.

[31] John Swab, *The Confederate States of America, 1861-1865*, 293.

To enforce the April tax act, Congress created an administrative structure for collection of the tax in the Act for the Assessment and Collection of Taxes.[32] Unlike the earlier war tax, which relied on states to collect the tax, under the new law a Confederate tax collector for each state was appointed by the president, upon the advice and consent of the Senate. These officials, authorized to create layers of bureaucracy within the states for the assessment and collection of the tax, were responsible to the Confederate Bureau of Taxation for ensuring that the assessments and collections were carried out.

One historian has noted that this administrative structure "created a centralized machine of agents who brought the arm of the national government to the doorstep of every Southerner."[33] That much is true. But, under the constitutional framework of dual federalism, it did not lead to centralization of the Confederate government at the expense of the states. The central government was collecting taxes within its sphere of constitutionally delegated authority and the states, which were not included as part of this tax scheme by the Confederacy, lacked authority to regulate how the Davis administration would enforce collection of the government's taxes. This was not an issue for the states. Therefore, whatever other constitutional concerns may have existed regarding the taxation, having the central government impinge upon the sovereignty of the state was not one of them.

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[32] "Act for the assessment and collection of taxes," Chapter LXVII, May 1, 1863. In James M. Matthews, ed., *Statutes at Large of the third session of the First Congress*, 140-153; amended Chapter LXVII, February 17, 1864. In James M. Matthews, ed., *Statutes at Large of the fourth session of the First Congress*, 227-229.

[33] John Brawner Robbins, "Confederate Nationalism," 151.

Lacking the power to tax the two pillars of wealth in the Confederacy, land and slaves, the Davis administration moved to include them as taxable property. On February 17, 1864, Davis signed the Funding Act, a comprehensive tax measure that continued the laws of the April 1863 tax act and added a five percent ad valorem tax on property (including slaves), an excess profits tax of twenty-five percent, and a ten percent tax on gold and silver as well as on bank bills and other paper issued currency.[34]

Since the law's administrative apparatus was outside the purview of the states, the more important issue for the governors was the continuing discussion on the law's constitutionality. The governors objected to the onerousness and burden of portions of the act, but, with one exception, did not view the constitutionality of the law as subject to question. John Milton complained about the depreciated currency and supported taxation, but wondered why state officers could not also collect the Confederate tax as well, thereby decreasing the cost to the central government and increasing the number of available men for the army by eliminating the tax collectors.[35] Henry W. Allen, of Louisiana, like most of the governors, never really addressed the constitutionality of the tax law. He noted that the law did

[34] "An Act to Levy Additional Taxes…," Chapter LXIV, February 17, 1864. In James M. Matthews, ed., *Statutes at Large of the fourth session of the First Congress*, 208-211.

[35] Governor Milton to the Florida legislature, twelve session, November 16, 1863, *Journal of the House of Representatives of the General Assembly of Florida* (Tallahassee, FL: Office of the Florida Sentinel by Edwin A. Hart, 1863), 29-30.

"absorb a large amount [of currency in circulation], and it is hoped that Congress will, at its present session, make provision for a further curtailment."[36]

Georgia's Joseph Brown regarded the produce tithe as an "unfortunate error;"[37] but, more importantly, Brown, weighed in on the constitutional issues. Brown's primary criticism of the April 1863 tax law focused on the lack of a census to determine the constitutionally required apportionment as well as the exclusion of Missouri and Kentucky from the tax burden despite their having representation in the Confederate Congress.[38]

Jefferson Davis addressed the apportionment issues raised by Brown in a December 1863 address to the Confederate Congress. While confirming Brown's objections, and acknowledging the validity of his claims, the president was confronted with the need to obtain revenue from a source other than borrowing. For a direct tax to conform to constitutional requirements, Davis acknowledged, it would need to be subject to a census to determine the apportionment. In justification of the direct tax's lack of proportionality based upon a census, the Chief Executive observed that, "So long as this appeared to be practicable, none can deny

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[36] Governor Henry W. Allen to the Louisiana legislature, January 26, 1864, Roll P 1978-200, Louisiana State Archives, Baton Rouge, LA.

[37] Quoted in Louise B. Hill, *Joseph E. Brown and the Confederacy*, 146.

[38] Since taking a census was difficult, if not impossible, in many areas of the Confederacy by the middle of 1863, the counterargument to Brown would be to rely on the 1860 census for apportionment of taxes. But, then again, the reliability of any census after the spring of 1862 would not accurately reflect the population of the states. Governor Joseph E. Brown to the Georgia legislature, extra session, February 15, 1865, *Journal of the Senate of the State of Georgia* (Milledgeville, GA: Boughton, Nisbet, Barnes, and Moore, state printers, 1865)), 18.

the propriety of your [Congress'] course in abstaining from the imposition of direct taxes till you could exercise the power in the precise mode pointed out by the terms of the fundamental law." But, in the midst of the war, much of what was constitutionally proper was no longer practicable and feasible. For example, no longer could the Confederate government "guarantee to very State … a republican form of government."[39] The war, Davis said, precluded the Confederacy from that constitutional obligation in those states either overrun by the federals or where military engagements are being fought. And, according to Davis, the war precluded an accurate census, since

> …any attempt to apportion taxes amongst States, some of which are wholly or partially in the occupation of hostile forces, would subvert the whole intention of the framers of the Constitution, and be productive of the most revolting injustice instead of that just correlation between taxation and representation …. With large portions of some of the States occupied by the enemy, what justice would there be in imposing on the remainder the whole amount of the taxation of the entire State in proportion to its representation?[40]

For Davis, the necessity of taxation overrode strict adherence to the language of the constitution with respect to conducting a census. The constitutional issues over taxation raised by the governors and others would vex the Davis administration, but the government in Richmond could find no alternative in its attempt to stabilize Confederate fiscal policy.

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[39] Confederate Constitution, art. IV, sec.4.

[40] President Davis to the Confederate Congress, December 7, 1863, quoted in James D. Richardson, ed., *The Messages and Papers of Jefferson Davis and the Confederacy*, 365, 366.

In addition to taxation, the central government attempted to reduce the number of notes in circulation. Davis, along with the other politicians, knew that an overabundance of notes was producing a catastrophic impact on the Confederate economy.[41] Eventually, over 1.5 billion Confederate dollars were printed; in addition, many states issued their own currency. Combined with the scarcity of goods, this flood of currency resulted in hyperinflation. By January 1864, the inflation rate was 600 percent.[42] In addition, the price index by April 1864 had risen over nine thousand percent since the beginning of the war. The gold value of the Confederate notes, conversely, decreased dramatically. Standing at 90.0 (par=100) in the third quarter of 1861, by the end of the war, the gold value was 1.7. Likewise, the average monthly value in currency of one gold dollar rose from a one-to one value in February 1861 to a one-to sixty-one value in March 1865.[43] These figures all point to the fact that by 1864 the central government faced a currency crisis of the first magnitude. As one historian has noted, when "the year 1861 closed, experience with these issues [e.g., bonds], and treasury policy in general, made the public uneasy. By the end of 1864, this uneasiness had degenerated into outright distrust of the Treasury."[44]

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[41] President Davis to the Confederate Congress, May 2, 1864, *Ibid.*, 446.

[42] William J. Cooper, Jr., *Jefferson Davis, American*, 352.

[43] John Schwab, *The Confederate States of America, 1861-1865*, 167, 172.

[44] Ralph Louis Andreano, "A Theory of Confederate Finance," *Civil War History* 2 (December 1956), 27.

Congress passed an act in February 1864 intended to create a new confidence in the Confederate currency by reducing the amount in circulation. A negotiated compromise between those who sought currency reduction and those who opposed currency repudiation of any kind was ultimately reached, but with significant compromises. After reviewing a variety of proposals, the House forwarded to the Senate a bill which combined exchanging notes for bonds, with increased interest rates on the bonds for earlier exchanges combined with a gradual tax on the face value of any remaining notes until the notes became worthless. The government would then be authorized to print no more than two hundred million dollars worth of new currency. The Senate rejected the blend of notes and taxation supported by the House, and passed a bill relying more on taxation while severely limiting the repudiation aspect of the House bill. Ultimately a compromise was reached in committee which required that treasury notes were to be exchanged for bonds which would earn 4% interest by April 1, 1864 (in the Trans-Mississippi, by July 1). After those dates, the larger notes would be gradually reduced in value, ultimately becoming worthless, while the smaller denominations could be exchanged for two-thirds of their value. Meanwhile, the Confederate government would issue new currency.[45] But despite the concomitant act to impose the *ad valorem* tax, the impact of the new currency reduction laws, through the issuance of

[45] "An act to reduce the currency and to authorize a new issue of notes and bonds," Chapter LXIII, February 17. 1864. In James M. Matthews, ed., *Statutes at Large of the fourth session of the First Congress*, 205-208. Also see, John Brawner Robbins, "Confederate Nationalism," 143-146 and Douglas B. Ball, *Financial Failure and Confederate Defeat*, 185-189.

new currency and partial repudiation, could not stave off the inevitable results of a fiscal policy founded largely on borrowing and printing notes.[46]

The Confederate governors were unusually quiescent after the passage of the currency reduction act.[47] Brown of Georgia, however, railed against the repudiation of the Confederate debt, which he claimed had either "shaken the confidence of our people in either the justice of the late Congress or its competency to manage our financial affairs."[48] Although Confederate fiscal policy would have a direct, and possibly severe, impact on the states, the lack of attention can be attributed to the lack of controversy regarding the Confederacy's constitutional right to tax. John Robbins' assertion that the Confederate government had "disregarded constitutional scruples" with respect to fiscal policy is inaccurate and unfair.[49] The Confederate government was acting within its own constitutionally authorized sphere of responsibility. This was so obvious, at least to the governors, that few complaints

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[46] John Schwab, *The Confederate States of America, 1861-1865,* 66-69.

[47] On possible challenge to the act, which the governors never pursued, could have been that the act was in violation of Article I, Section 8(4) which reads, "… The Congress shall have the power to establish …uniform laws on the subject of bankruptcies, throughout the Confederate States; but no law of Congress shall discharge any debt contracted before the passage of the same." By equating the currency repudiation to a declaration of bankruptcy, however limited, the states would have a plausible complaint. This argument would become particularly compelling with the removal of the general welfare clause from the Confederate constitution. The central government would probably have trumped any court action by the states, however, by claiming sovereign immunity, despite the political risk which such a defense might have entailed.

[48] Governor Joseph Brown to the Georgia Senate and House of Representatives, March 10, 1864, *Journal of the House of Representatives of the State of Georgia*, 9.

[49] John B. Robbins, "Confederate Nationalism….," 150.

surfaced regarding the constitutionality of the central government's tax laws. Complaints were made regarding the effects of the law, particularly the harshness of the produce tithe.[50] The only significant measure of opposition that merits attention was the failure of the central government to conduct a census to determine apportionment in the payment of taxes; but the need for a tax policy, and the impossibility to accurately determine a census, overrode strict compliance with the constitution for most governors.

The most startling constitutional concessions on the part of the governors and the central government occurred with respect to the central government's economic regulation, in particular regulation of the railroads and the manufacturing sector. The railroads, according to Robert C. Black, III, were a key to Confederate success by providing a network of connections within its interior lines. Despite the formation of a Railroad Bureau early in the war, the central government exhibited a surprising lack of interest in centralizing the railroad organizational structure almost throughout the war. Relying upon cooperation with the leading railroad lines in rate setting and prioritization of use, it was not until May 1, 1863 that Congress enacted a measure authorizing the President broad powers in regulating

[50] In North Carolina, public meetings criticizing both conscription and the collection of taxes forced Governor Vance to issue a proclamation urging the state's citizens not to fail the revolution in its time of need and to obey all of the Confederacy's laws, since the "Constitution of the Confederate States and all laws passed in pursuance thereof are the supreme law of the land." Failure to comply, according to Vance, was tantamount to treason. Proclamation by Governor Vance, September 7, 1863, *Official Records*, series IV, volume 2, 794.

the railroads for the benefit of the government and, particularly, the military.[51] Confederate officials, however, particularly President Davis, were loath to enforce the law.[52] The reason is not particularly clear. In a letter to his Secretary of War, Davis asserted, "Due effort should be made to secure the co-operation of railroad companies in the most effective plan before proceeding to take possession of the railroads. I am not encouraged by the past to expect that all difficulties would be removed by transferring the management of these extensive organizations to the agents of the War Department."[53] Even when armed with appropriate legislation, Davis did not articulate any constitutional concerns, but rather appeared more worried about the practicalities of managing the railroad system and seemed willing to concede management of the railway system to the railroad companies.

The authority for the central government to regulate the rail system was further strengthened in February 1865, but still the governors continued their silence on the subject. Again, the president exhibited little concern about the crises in the

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[51] The law gave the president power to require that all rail facilities grant priority status to the military, reserving the right to run one passenger train every twenty-four hours. In addition, the Confederate government would set the schedules and control distribution of the locomotives and cars. Failure to comply by the railroad companies could result in impressment of all moveable property, including rolling stock, rails, shop machinery, etc. Robert C. Black, III, *The Railroads of the Confederacy* (Chapel Hill, NC: University of North Carolina Press, 1998), 120-122.

[52] In fact, not until the waning days of the war, on February 28, 1865, would the Confederate Congress enact a $21,000,000 appropriations bill to repair lines. "An Act Making an Appropriation…," Public Law 132, March 9, 1865. In Charles Ramsdell, ed., *Laws and Joint Resolutions of the last session of the Confederate Congress* (Durham, NC: Duke University Press, 1941), 101.

[53] President Davis to Secretary of War Seddon, April 23,1864, *Official Records*, series I, volume 51, part 2, 852.

war's closing months which necessitated increased governmental control of the railroads; he did not sign the measure until ten days after its passage by Congress. By the end of the war, on paper, the Confederacy had virtually nationalized the railroad industry. But the reality was very different. That reality was reflected in the paucity of gubernatorial complaints over Confederate interference with the railroad lines. The governors had little to complain about because, despite Richmond's authority for doing so, there was actually little interference by the central government. Governor Joseph Brown provided the exception. On a number of occasions, Brown refused to allow the Confederate authorities to seize Georgia rolling stock. In the fall of 1861, the Secretary of War Judah Benjamin incurred Joseph Brown's wrath when he needed to borrow six engines and seventy boxcars from the Western & Atlantic, a Georgia owned company. Even the Secretary's attempts at impressment failed. After Georgia's governor pronounced, "If you seize our cars or engines I shall by military force, if necessary, make counter measures," Benjamin capitulated and took no further action.[54] Instances of gubernatorial obstruction of Richmond's policies were rare, however, since the railroads, along with their maintenance, rates, and schedules were essentially determined by the cartel of railroad owners.

If the governors found few reasons to object to governmental policy on the railroads, some private citizens did find their interests threatened and worked to limit the central government's power. David Levy Yulee, as a shareholder of the Atlantic and Gulf Central Railroad, negotiated a compromise with the Confederate

[54] Robert C. Black, III, *The Railroads of the Confederacy*, 68-69.

government when the Davis administration impressed over six hundred tons of iron rails belonging to the Atlantic and Gulf Central in August 1862. In exchange for the rails, the Confederate government agreed to provide an amount of rails equal to the amount impressed within six months of the conclusion of the war, or pay $80.00 per ton for the impressed iron rails. Yulee enjoyed less success when the central government wanted to seize iron rails from the Florida Railroad, of which Yulee was president. When a state circuit court judge ruled in favor of the railroad enjoining the government from seizing the iron rails, the Confederate authorities and Governor Milton presented a moment of unity on this issue. The both blatantly ignored the court order and seized twenty-five miles of Florida Railroad's track, which were used for extending a line from Lake City, Florida to the Georgia border.[55]

With the acquiescence of the governors, the railroad officials limited the intrusion of the Davis administration on the rail systems. Beginning in April 1861, Postmaster-General John H. Reagan convened the first in a series of meetings between railway owners and the central government to discuss rate schedules, coordinating the rail system for moving mail, passengers, troops, and goods. These meetings failed to strengthen the Confederacy's control of the vital mechanisms necessary to successfully wage a modern war. Again, attempts at securing the cooperation necessary from the railroad industry to centralize operations in the central government failed because the Davis administration was unwilling to enforce the powers granted to the Executive by congressional legislation and the

[55] John E. Johns, *Florida During the Civil War*, 138-139.

state governors acquiesced in this. The result was a disjointed, uncoordinated railway system that was to plague the Confederacy's war effort for the war's duration.[56]

Davis' reluctance to assert Confederate government authority in this instance may have been due to the fact that the railroads had received substantial state government support prior to the war and, therefore, were closely aligned with state interests. Ownership of southern railroads was, to a large degree, in private southern hands; but because the private sector of the southern economy lacked the capital necessary for such large investments as were required by the railways, the bulk of investment capital derived from the states. As one historian has noted, three-fifths of the equity capital invested in Virginia's railroads was subscribed by the state, which had also loaned the state's railroads over three million dollars by 1861 and guaranteed approximately $300,000 more. Other states, including Alabama, Florida, Georgia, and North Carolina, also invested heavily in their respective rail systems.[57] The result was a traditional ante-bellum pattern of significant state involvement with the railroad system in the South which could have stymied Davis' motivations to exercise his authority. In addition, the constitution did not grant him explicit authority to regulate the railroads, as one could argue for conscription in the clause "to raise and support armies." With Davis' sensitivity to

[56] Robert C. Black, III, *The Railroads of the Confederacy*, 294.

[57] *Ibid.*, 40-46.

state issues, the need for the president to impinge upon what he would perceive as a right of the state would be absent.[58]

In the area of industrial regulation, the governors ceded control to the Confederate government. This was largely due to the fact that, with the exception of railroads, no other corporations existed on an extensive scale in the South. In a region economically dominated by agriculture and agricultural interests before the war, the significance of the factories was minimized early in the war. When the Confederate government was affected by shortages, it took immediate steps to assure its military received adequate powder, arms, and ammunition. However, in the few instances where the states complained about the central government's control over a state factory, a negotiated compromise between the state and the central government was reached.

The slowly evolving process of Richmond's regulation was prompted by shortages necessary for the production of military equipment and supplies, especially at the Tredegar Iron Works in Richmond. By the fall of 1861, diminishing supplies of pig iron resulted in Tredegar's inability to meet the increasing demands for ordinance. To ensure continued production and economic viability, Tredegar's officials requested that the Confederate government establish higher prices for ordinance and ammunition ordered as well as guaranteeing

[58] As noted by Paul Escott, Davis "tried to soften [his proposals'] impact. The Confederate president did what he thought was necessary but never was heedless of southern traditions or habits of mind." *After Secession*, 70.

$2,000,000 annually of government purchases. With minor revisions, a two-year contract was entered into, to take effect on January 1, 1862.[59]

Establishment of a contract to produce war materiel with Tredegar was the first Confederate measure which would ultimately lead to significant government involvement in industries. Other factories followed suit by entering into exclusive contracts with the Confederate authorities. In addition, the Confederacy offered businessmen up to fifty percent of the start-up expenses of new industries and advanced up to one-third of the anticipated value of the firm's output. The government subsequently enacted measures to limit prices an industry could charge and later imposed fixed prices after some industrial owners inflated prices to increase profits. The rigidity of fixed profits, particularly given the government's monetary policy, became unreasonable; arbitration commissions were created to periodically review prices.[60] The governors voiced no concerns or objections to the Confederate government's increasingly intrusive control in the private sector.

The Confederacy adopted even further measures to ensure that its armies were well supplied. In May, 1862, the War Department permitted the Nitre and Mining Bureau to impress nitre mines in eastern Tennessee, north Georgia, and northern Alabama. Although the Bureau was incapable of operating all of the mines because of a lack of manpower, it did seize the more significant producers and

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[59] Charles B. Dew, *Ironmaker to the Confederacy: Joseph R. Anderson and the Tredegar Iron Works* (New Haven, CN: Yale University Press, 1966), 105-106.

[60] Luraghi, *The Rise and Fall of the Plantation South*, 123-124.

allowed the smaller caves to be mined by private companies.[61] The Confederacy also constructed its own company: the Augusta Powder Works at Augusta, Georgia. Producing almost three million pounds of powder in the war, the factory at Augusta cost the Confederate government $385,000 to build. The Confederacy owned powder mills in Antonio, Texas and Petersburg, Virginia, as well as ordinance factories at Macon, Georgia, Salisbury, North Carolina, and firearms factories at Fayetteville, North Carolina, Macon, Georgia, and Columbus, Georgia.[62] And though begun as a private concern, the Selma Cannon Works was purchased by the Confederate government in June 1863, which produced more than one hundred cannon for the Confederate navy.

To man these factories, the central government resorted to granting exemptions from conscription for skilled workers, impressing slaves, and detailing soldiers already in the Confederate army. Through these devices the central government was able to maximize production and punish those factories that did not comply with government expectations. Yet again, the central government exhibited little hesitation in centralizing manufacturing, and yet again, the governors did not object.

The governors who objected to the central government's control over the industrial and manufacturing sectors did so primarily on legalistic grounds that the Confederacy was preventing the state concern from fulfilling its contractual

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[61] Maurice Melton, "Major Military Industries of the Confederate Government," (Ph.D. dissertation, Emory University, 1978), 90-92.

[62] Luraghhi, *The Rise and Fall of the Plantation South*, 127-128.

obligations to provide the product to the Confederate government. In other words, the governors' chief complaint was that the factories were already fulfilling their contractual obligations, therefore the interference by the central government was not necessary. In June 1864, Governor John Milton requested that the Confederate authorities stop interfering with the Monticello textile factory and allow it to fulfill its exclusive contract with the government. Likewise, Governor Watts objected to the Confederacy's attempt to seize control of the mills in Alabama, particularly the mill at Prattville. In both instances, the Davis administration retreated; Monticello was permitted to fulfill its contract without Confederate obstruction, while Watts and the Confederate authorities negotiated a settlement whereby the War Department would seize only half of Prattville's production, leaving the remainder to Alabama. Likewise North Carolina and Virginia negotiated agreements with the Confederate government over factory ownership and/or production.[63]

Although the governors were restrained in their objections to Confederate fiscal policy and industrial regulation, their criticism of impressment was ongoing and vehement. Negotiations between the governors and the Davis administration were constant, with the focus of the governors' attacks on the implementation rather than the constitutionality of impressment.

Early in the war, even before the end of 1861, the Confederacy faced a quandary in supplying and equipping its army. Within the first year of the war, civilians had freely provided to the Confederacy food, clothing, blankets, and even

[63] Harold S. Wilson, *Confederate Industry: Manufacturers and Quartermasters in the Civil War* (Jackson, MS: University Press of Mississippi, 2002), 109-124.

bells and brass household utensils to be melted down and made into munitions or armaments. But the extent of the individual citizen's cooperation was based, among other limitations, upon how much he/she owned and could spare. Relying on voluntary contributions from citizens and the states proved inadequate to meet the pressing needs of a modern army.

The Confederate government required more than supplies however; building fortifications, railroads, and other construction demanded labor, which could be provided by slaves. The need for slave labor by the government became so acute that in October, 1862, President Davis requested that the governors assist the military by furnishing slaves to build fortifications.[64] Initially, the Confederacy employed impressment through its military powers.[65] But this power was not unlimited. While impressments early in the war were informal and unregulated, the government in Richmond, aware of the heightened sensitivity of the subject, sent a continuous stream of instructions advising field officers that only those authorized by the commanding general could order impressment.[66]

Aware of the potential for citizen criticism and abuse by the military, the central government ordered its impressment agents to present evidence of authority to the property owner, as well as to provide a certificate stating the value and character of the property seized. The central government clearly recognized the

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[64] Kenneth M. Murray, "Gubernatorial Politics and the Confederacy," 361-362.

[65] Joseph E. Brown to Judah Benjamin, October 2, 1861, *Official Records*, series IV, volume 1, 646; Brown to Benjamin, October 4, *Official* Records, series IV, volume 1, 666.

[66] For complete discussion, see Robbins, "Confederate Nationalism," 160-161.

sensitivity of this issue when it reminded its agents that, "Impressments must not be resorted to, except when absolutely demanded by the public necessities, and their burden must be apportioned among the community, so far as may be possible, equally and impartially, having due regard to the means and ability of owners of property."[67]

By 1863, this informal, cooperative arrangement proved inadequate as shortages of food and other essentials throughout the Confederacy threatened the survival of the armed forces in the field. Just as with military manpower, competition between the states and central government for available resources strained the ability of the two governments to work cooperatively. But other issues, such as the strangling Union blockade, contributed to the scarcity of foodstuffs and other supplies. A drought in the summer of 1862 led to food shortages throughout the South. Hyperinflation, largely due to the shortages, military reverses, and currency depreciation, caused citizens to refuse Confederate money in exchange for their goods. In addition, speculators were purchasing goods at a price significantly higher than the central government's agents were offering, thereby taking the goods out of circulation for use by the armies.

Hoping to halt speculators' profits and feed the army, the Confederate Congress on March 26, 1863 enacted its first impressment law, with amendments to the original law in 1864 and 1865. The act provided for the impressment agent to determine the price of goods to be seized. In the event of disagreement between the

[67] Circular, Quartermaster-General's Department, November --, 1861, *Official Records*, series IV, volume 1, 767.

impressment agent and the owner of the property as to the property's value, two "loyal and disinterested citizens" would determine the value of the property "fairly and impartially." In the event the two arbiters were unable to reach agreement, the owner and impressing officer shall choose one arbiter together. Section five of the act generated the most controversy, for it determined that the president shall appoint commissioners who shall "agree upon and publish a schedule of prices every two months," thus replacing the judgment of the impressment agents in determining the price of impressed goods.[68] This artificial schedule of prices created much of the hardship. Even those governors critical of impressment recognized the need for the Confederacy to supply itself to successfully wage the war and rarely voiced substantive objections regarding the policy of impressment itself.

One of the few governors who openly questioned the constitutionality of impressment was Virginia's John Letcher. President Davis approached Letcher about the possibility of employing balloons over enemy lines in the late summer of 1862. Letcher, however, derailed these plans by failing to impress the sulfuric acid necessary to generate hydrogen for the balloon. Despite requesting an opinion from the Confederate Attorney General as to the constitutionality of impressment, Letcher's long-standing ideological respect for the traditional rights in private property compelled the governor to announce that he lacked the authority to impress goods. Therefore, the entire matter died. Letcher's reluctance to resort to impressment of salt, likewise, led to a shortage in the state of this necessary

[68] "An act to regulate impressments," Chapter X, March 26, 1863. In James M. Matthews, ed., *Statutes at Large of the third session of the First Congress*, 102-104.

condiment, but he held to his principles. And in October 1862, when the state legislature specifically authorized the governor to impress slaves to work on Confederate fortifications if requested by Jefferson Davis, Letcher would only issue requisitions for slaves. He never did resort to impressment, even when planters' resistance proved severe and limited the number of slaves he could turn over to the Confederacy.[69]

The other Confederate governors did not exhibit Letcher's reluctance. Joseph Brown regularly supported impressment by state authorities. This is ironic because no greater critic of the Confederacy's impressment policy existed among the governors. As governor, he impressed salt and agricultural products, and sought legislative authorization to seize manufactured goods, impress slaves, and impress provisions for soldiers' families and the destitute.[70] Yet Brown complained continually against the hardships imposed upon civilians by Confederate impressment. So numerous were Brown's tirades on this issue that Secretary of War, James A. Seddon, felt compelled to ask for Brown's cooperation during the Chattanooga campaign in October and November, 1863. According to Seddon, the problems in acquiring supplies, "surpass any conception you can have," to the point where there is "gravest doubt whether the army of General Bragg can be maintained…." Yet Brown, in agreeing to cooperate "with the legal execution of the laws regulating impressment…[and] to aid and encourage it," advocated that the government purchase goods at fair market value rather than paying the scheduled or

[69] F.N. Boney, *John Letcher of Virginia,* 145-146, 170-174.

[70] Louise B. Hill, *Joseph E. Brown and the Confederacy*, 147ff.

arbiter's price. This, according to Brown, combined with the uneven distribution of impressment agents in the state, had resulted in a shortage of goods and undue hardship to the people.[71] But the government believed that paying fair market value would only lead to a devaluation of the currency and therefore supported the law's fixed rate schedule.

Governor Thomas Watts, after his election in Alabama in August 1863, was almost immediately confronted by inequities in the Confederate impressment policy.[72] Angered at Confederate Major J.J. Walker, Acting Commissary of Subsistence, for his household inventory of foodstuffs which offended Alabamians, Watts complained to President Davis that "impressment of private property is always odious and ought to be avoided whenever possible." Better for the government, according to the governor, to pay twice the price for goods than to alienate the people. In calling the impressment system "disastrous," it was obvious to Watts that impressment "only aggravates the price and creates opposition to the Government and our cause."[73] Yet his approach differed from Brown's. Brown demanded immediate change to Section Five's fixed rate schedule, and urged the government to pay fair market value for impressed goods. Watts, however, believed

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[71] *Official Records*, series IV, volume 2, 915 and 943-944.

[72] As Confederate Attorney General from April 1862 to November 1863, Watts had once warned President Davis that "the common mind rarely distinguishes between the *cause* and the *men* who administer the functions of Power and hence Liberty may suffer for the sins of its ministers." Thomas Watts to President Jefferson Davis, April 26, 1862, in Rembert W. Patrick, ed., *Opinions of the Confederate Attorneys-General*, 75.

[73] T.H. Watts to Jefferson Davis, January 19, 1864, *Official Records*, series IV, volume 3, 37.

that patience would result in more return for the Confederacy rather than an immediate impressment policy that left families hungry and the citizens angry. As late as May, 1864, Watts supported impressment by appealing to the citizens' patriotism in feeding its soldiers to keep them in the field. Yet at about the same time, he echoed his earlier admonitions rendered as Attorney General to Jefferson Davis, by noting that citizens rarely considered "the differences between the cause and the agents who administer that cause."[74]

John Milton, usually so supportive of the Confederacy, lashed out at the national government for employing armed citizens to assist appointed commissioners, "Has Congress the right to justify such proceedings? …Congress cannot rightfully exercise any power not granted by the Constitution; nor should any Department of the Government be permitted to do so, without respectful complaint, and, if need be, determined resistance."[75] It was the lack of constitutional authority and the inequity of armed civilians assisting the impressment commissioners that roused the governor's ire. The impressment act, according to Milton, could be constitutional, but the implementation of the act through the use of armed civilian assistants was constitutionally suspect.

Other branches of the state governments inveighed against impressment. Ignoring Brown's recommendation of imprisonment and/or public flogging for

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[74] Watts to Andrew G. Magrath, January 18, 1864, Watts Letterbook, quoted in John Brawner Robbins, "Confederate Nationalism," 169.

[75] Address by Governor John Milton to the Florida legislature, twelfth session, November 20, 1863, *Journal of the House of Representatives of the State of Florida* (Tallahassee, FL: Office of the Florida Sentinel, 1863), 77-78.

those in violation of the national impressment law or for impressing property without authority, the Georgia legislature passed a measure stipulating that only persons not subject to conscription could be impressment officers. Georgia even passed legislation which authorized the governor to impress property.[76] Such state law, of course, hindered Confederate authorities in procuring necessary supplies for the army. The legislature in Texas, acting on a recommendation by its governor, passed joint resolutions on May 27, 1864 criticizing the schedule of prices as "notoriously below the market values of the articles" and called for the Confederate authorities to pay fair market value for goods seized as well as to enforce the current statute fairly and equitably.[77]

Likewise, state courts intervened in an effort to curb the excessive abuses of the Confederacy's impressment agents. The Georgia Supreme Court ruled that Section Five of the impressment act of 1863 was unconstitutional. While artfully avoiding a determination on the constitutionality of impressment, the Court held that a pre-set, artificially determined price for goods was unconstitutional, thus essentially affirming that impressment officers must pay the fair market value of seized goods.[78] In Florida, the Supreme Court, in *Yulee v. Canova*, reversed a lower court decision by holding that the impressment agents seizing sugar grown and

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[76] Louise B. Hill, *Joseph E. Brown and the Confederacy*, 149; May Spencer Ringold, *The Role of the State Legislatures in the Confederacy*, 33.

[77] *Official Records*, Joint Resolutions of the Legislature of Texas, May 27, 1864, series I, volume 53, 994-995.

[78] *Cox and Hill v. Cummings*, 33 Ga. 549 (1863) and *Cunningham v. Campbell, et al.*, 33 Ga. 625 (1863).

owned by former Senator David L. Yulee must pay for the goods at an amount closer to the fair market value at the time of the taking.[79] And in Louisiana, Governor Henry Allen urged all citizens to seek judicial redress if one's "rights…[have been] violated under the pretence of military authority." Allen continued, "I know it to be his [General Edmund Kirby Smith, Confederate commander of the Trans-Mississippi Department] earnest wish that every abuse of authority by any subordinate officer shall be resisted by citizens under all circumstances, and promptly reported. If there are acts of petty tyranny, annoyance, and proscription commented in this Department, they will be reprobated by him…"[80]

Once again, state courts played a significant role in negotiating the conflict between the governors and the central government. As with suspension of the writ of *habeas corpus*, the fundamental constitutionality of the impressment act itself was never challenged. Criticism of impressment, too, focused not on the law itself, but on the irregularities and inequities of the enforcement of the act, which in essence were unconstitutional takings of property without just compensation. The constitutional challenges, therefore, were directed to the unlawful takings of property rather than to the question of whether the Confederacy possessed the authority to impress. While other politicians were maintaining the sanctity of

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[79] *Yulee v. Canova*, 11 Fla. 9 (1864). Also see Robert A. Taylor, *Rebel Storehouse: Florida's Contribution to the Confederacy* (Tuscaloosa, AL: The University of Alabama Press, 2003), 78.

[80] Sarah Anne Dorsey, *Recollections of Henry Watkins Allen* (New York, NY: M. Doolady, Publisher, 1866), 248.

private property and the lack of authority for Congress to seize private property even for the public good,[81] the governors were uniform in their support of the concept. However, the governors, state legislatures, and state courts criticized, on constitutional grounds, the tyranny and overreaching in the practical effects of the act.[82]

In response to the ongoing criticism, officials in the Confederate government were hesitant to negotiate a compromise, but would only offer compensatory assistance. The Confederate authorities were reluctant even to provide more stringent oversight. Davis responded to Brown's numerous complaints, advising that instances of officials exceeding their authority should be reported to the local commanders. And if a commander inadvertently erred in execution of the law, the governor should exercise understanding.[83]

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[81] Robbins, "Confederate Nationalism," 162.

[82] In a letter to Jefferson Davis shortly after riots in Raleigh, Governor Vance identified three causes for the disaffection in the Tar Heel state,

> Conscription, ruthless and unrelenting, has only been exceeded in the severity of its execution by the impressment of property, frequently intrusted to men unprincipled, dishonest, and filled to overflowing with all the petty meanness of small minds dressed in a little brief authority. The files of my office are filled up with the unavailing complaints of outraged citizens to whom redress is impossible. Yet they have submitted and so far performed with honor their duty to their country….
> Governor Vance to President Davis, February 9, 1864, *Official Records*, Series I, Volume 51, part 2, 819.

[83] Rowland, ed. *Jefferson Davis, Constitutionalist: His Letters, Papers, and Speeches*, volume VI, 260-261.

Pressure for negotiation, however, was exerted within the administration itself. Secretary of War James Seddon, in a report to Jefferson Davis dated November 26, 1863, observed that the enforcement of the law "becomes beyond measure offensive and repugnant to the sense of justice and prevalent sense of our people. It has been, perhaps the sorest test of their patriotism and self-sacrificing spirit…." He cautioned the president that, more than unfair enforcement or speculation, continual rising inflation caused more problems than any other with impressment; this was the evil that needed to be controlled. Legislation to correct these problems was essential.[84]

Political pressure from governors, state legislatures, and state courts brought negotiated changes to the original impressment act. After four months of debate, and despite Jefferson Davis' plea to Congress that the crisis on the battlefield necessitated removal of all restrictions, a new impressment act was passed and went into effect on March 18, 1865.[85] Congress eliminated the controversial fifth section of the original act and defined just compensation as "the usual market price of such property at the time and place of impressment." Davis reluctantly signed the bill into law. Even though the war was in its waning days and the Confederacy in its death throes, the governors and other critics of the first impressment act forced the central government to make concessions.

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[84] *Official Records*, James Seddon to Jefferson Davis, November 26, 1863, series IV, volume 2, 1108-1011.

[85] Louise B. Hill, *Joseph E. Brown and the Confederacy*, 150-151. Also see "An Act to Amend the Law Related to Impressment," Public Law 195, March 18, 1865. In Charles Ramsdell, ed., *Laws and Joint Resolutions of the last session of the Confederate Congress*, 151-153.

Confederate fiscal policy, railroad regulation, industrial regulation, and impressment were not constitutionally challenged by the governors. After bombarding the country with bonds and notes, the central government enacted a tax policy which went largely unchallenged by the governors because it was acknowledged to be within the constitutional purview of the central government and would ameliorate the inflationary crisis created by the proliferation of paper in circulation. Meanwhile the Davis administration conceded control of the railway system to the states and the local railroad ownership. The Davis administration never attempted to utilize the statutory power made available by Congress; confrontation, therefore, was avoided. Confederate regulation of the factories and industries through exclusive contracts, exemptions, and detailing essentially went unchallenged by the governors, largely because of the agricultural power and influence in the South and the minimal influence of the industrial sector prior to the war. While negotiations occurred in each of the aforementioned activities, they were over implementation of the law and did not challenge the authority of the states or central government within a dual federalism system. Lastly, while the constitutionality of impressment was not directly challenged, unfair takings, inequitable compensation, and the abuse of power by armed civilian assistants were perceived as unconstitutional takings of property. Gubernatorial concerns ultimately led to negotiated changes in the law by late in the war. The governors, with respect to economic issues from the spring of 1862 to the fall of 1864, showed they could be both pragmatic and principled in safeguarding their dual federalist position in the Confederacy.

CHAPTER FIVE

SURVIVAL

This chapter will examine the relationship of the Confederate governors with the Davis Administration during the last months of the war, from the fall of 1864 to the end of the war in May 1865. Hope for victory faded as tens of thousands of refugees sought security on the road rather than in their homes and as federal armies were overwhelming the Confederacy on all fronts. The governors struggled and improvised for survival: to maintain local defense, enlarging the number of conscription exemptions and even supporting the drafting of blacks into the military. In the face of the massive shortages of food and supplies, the governors sought to keep goods at home for local civilian and troop consumption. Lastly, the governors had to suppress the peace movements within the states; these movements threatened the very existence of the Confederacy by disrupting the delicate balance that was Confederate federalism. The demise of the Confederacy transformed Confederate federalism from a negotiated federalism towards individual state survival.

By the fall of 1864, news from the battlefield was discouraging for the Confederacy. Divided a year earlier when the Mississippi River was seized by the federals, the Confederacy's existence itself was threatened. Much of Louisiana was under federal control, as was most of Alabama and Mississippi. Not only had Mobile Bay in Alabama fallen, but so had the important city of Atlanta. Although John Bell Hood's Confederate army survived the defense of Atlanta to fight again,

his failure to hold Atlanta virtually assured Lincoln's re-election in November.[1] Philip Sheridan had laid the Shenandoah Valley to waste, while Lee's Army of Northern Virginia was bottled up at Petersburg after having won Pyrrhic victories earlier in the year at the Wilderness, Spotsylvania Courthouse, and Cold Harbor.

In addition to the military setbacks, the Confederate army suffered from a desertion rate that accelerated as the war progressed. The causes for desertion included unwilling conscription into the army, lack of sufficient food, clothing, and equipment, and worry about families subject to terror and deprivation from an invading army. The fact that the desertion rate rose significantly towards the end of the war is critical. According to Ella Lonn, "the full flood of [Confederate] desertion seems not have set in until the fall of 1864, when, sweeping down all barriers, it rushed on to a highwater mark during the concluding months of the war … (when) [the Confederate] army was visibly melting away." As Lonn further notes, the government in Richmond reported that, from October 1, 1864 to February 4, 1865, almost 72,000 men had deserted the armies in the eastern and western theaters.[2] General Lee himself was so concerned by the end of March 1865 that wrote to the Secretary of War "…the number (of desertions) is very large, and gives

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[1] In fact, Hood had barely defended Atlanta, opting to move northward towards middle Tennessee in the hope that Sherman would be diverted from Atlanta and move between Hood's army and Nashville to maintain its supply and communication route. However, by the fall of 1864, Sherman's army was so powerful, and Hood's so weakened, that Sherman only ordered two corps to block the Confederates in Tennessee, while moving the remainder of his army to Savannah.

[2] Ella Lonn, *Desertion During the Civil War* (Gloucester, MA: American Historical Association, 1928; reprint, Lincoln, NE: University of Nebraska Press, 1998), 27, 226 (page citations are to the reprint edition).

rise to painful apprehensions as to the future. I do not know what can be done to put a stop to it."[3] Within one month, Lee would surrender his army. The number of desertions was so high that when, at Appomattox, General Grant asked Lee how many men he had under his command for the purpose of providing rations, the Confederate general responded that he did not know.

The breakdown was further exacerbated by a home front deprived of basic necessities and a currency policy that contributed significantly to hyperinflation. While the Union blockade significantly limited the Confederacy's imports and exports,[4] the governors took steps to alleviate the hardships, showing themselves to be "most sympathetic to the needs of the people."[5] Laws prohibiting the use of grain for distilling into alcohol, providing aid to needy families of soldiers and sailors, restricting the planting of cotton and encouraging the production of food crops, and encouraging the construction of factories were supported by the governors to relieve the distress and deprivation affecting civilians.[6]

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[3] General Lee to the Secretary of War, March 27, 1865, *Official Records*, series I, volume 46, part III, 1353.

[4] For example, cotton exports, a major source of income to the nation prior to the Civil War, dropped from the period 1862-1865 to five percent of the bales exported from 1858-1860. William W. Freehling, *The South v. The South: How Anti-Confederates Southerners Shaped the Course of the Civil War* (New York, NY: Oxford University Press, 2001), 142.

[5] Mary Elizabeth Massey, *Ersatz in the Confederacy: Shortages and Substitutes on the Southern Homefront* (Columbia, SC: University of South Carolina Press, 1952, 1993), 43.

[6] *Ibid.*, 43-52.

Impressment made things even worse. Confederate authorities seized food, crops, and livestock without properly compensating the owners. By the end of 1864 and into 1865, people had lost faith in the viability of the Confederacy to honor any promissory notes for private property seized by the government commissary agents. In Alabama, planters refused a promise by the commissary agent to repay them for their surplus as promptly as he received funds from the government. Instead, "the appeal failed to produce any effect, because the people did not believe it. They no longer credit any promises made by Government officials, and I regret to say that this effort only confirmed their incredulity, as the funds were not forwarded."[7] Likewise, in North Carolina, the producers were skeptical about the government's ability to pay for their goods; government agents were forced to wait for funds from Richmond, which frequently arrived too late to purchase the goods intended.[8]

The Trans-Mississippi in particular suffered because faith in the government's ability to provide equitable compensation for goods seized had evaporated. By the end of December 1864, the army owed more than forty million dollars to citizens and merchants from whom goods had been impressed. On February 8, 1865, the Department of Trans-Mississippi's Chief Quartermaster reported, "We cannot use certified accounts; [we] cannot use the large certificates of indebtedness; cannot impress; have no currency; the army is in want; it cannot be

[7] John J. Walker to Col. L.B. Northrop, Confederate Commissary-General, January 25, 1865, *Official Records*, series I, volume 46, part 2, 1220.

[8] *Ibid.*, 1221

supplied."[9] But the army had to eat. After appeals to the Texas legislature and Governor Murrah for money to purchase supplies were unsuccessful, the commander of the department, General Kirby Smith, ordered the army to take what goods it needed, even if by force.[10]

State legislatures enacted measures to correct the worst abuses by impressment agents. Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and Texas established penalties for fraudulent seizures of property by agents. The Georgia legislature even went so far as to recommend that the central government revoke the appointments of impressment agents otherwise eligible for conscription and replace them with state officials exempt from conscription.[11]

By the beginning of 1865, impressment, as a policy, had become so dysfunctional that citizens were leery of trusting the government, due to empty promises of payment and fraudulent takings, unless presented with cash directly in exchange for supplies. The government agents were not able to always produce cash, owing over $200,000,000 in unpaid requisitions by February 1865.[12] In March 1865, Congress attempted to correct these problems. No longer were impressment agents required to pay cash or issue promissory notes, but could issue

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[9] Quoted in Robert L. Kerby, *Kirby Smith's Confederacy*, 389.

[10] *Ibid*., 388-390; Fredericka Ann Meiners, "The Texas Governorship, 1861-1865: Biography of an Office," (Ph.D., Rice University, 19740, 371-372.

[11] May Spencer Ringold, *The Role of the State Legislatures in the Confederacy*, 33.

[12] Secretary of War Breckinridge to President Davis, February 18, 1865, *Official Records*, series IV, volume III, 1094.

"certificates of indebtedness," to be paid "as soon as practicable."[13] With only a month of the war remaining, this was an act of futility. Impressment, though a law of record, was reduced to virtual non-compliance by the end of the war.

The Confederacy was collapsing and the states, in an effort to survive, were directing their attention to local defense as the Confederate army gave way throughout the South to the federal forces. Many of the governors stopped complaining to the Davis administration about impressment and cooperated with the Confederate military because it would serve their own interests in defending their states. Governor William Smith of Virginia made every effort to enforce the Confederacy's December 1864 requisitions for slave labor to reinforce defensive fortifications within the state. The planters' primary concern, however, was to protect their property; as a result of their resistance, only 502 of the 5,000 slaves requisitioned by the Army of Northern Virginia were received.[14]

In addition to the conflict between the states and the central government over impressment, the governors were forced to address a critical constitutional issue regarding cargo space for goods on ships running the Union blockade. In the beginning of the war, the Confederacy owned only three or four small vessels for blockade running, while states such as Georgia, North Carolina, Virginia, and Alabama had their own ships, were chartering ships, or were purchasing shares of cargo space on privately owned blockade runners. Competition among the states,

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[13] "An Act to amend an Act entitled 'An act to regulate impressment…," March 18, 1865, *Official Records*, series IV, volume 3, 1170.

[14] Alvin Arthur Fahrner, "The Public Career of William 'Extra Billy' Smith," 282-283.

ship owners, and the central government to secure space on the private blockade runners was intense and the states dominated the cargo space. Profits could be enormous and the Confederate government found that essential goods, including cotton, were being shipped overseas, with the central government reaping few of the financial rewards.[15] The privateers found running the blockade lucrative, and the state was able to procure food, clothing, arms, and ammunition benefiting both the people and the soldiers of the state.

By mid-1863, the Confederate government began renting one-third of the space on blockade runners to ship their own cotton and supplies. This action led to immediate conflict with the governors.[16] A number of the seaboard states, including Virginia, North Carolina, and South Carolina, had already contracted for large shares of the space, thus precluding the central government from its one-third share and continuing its exclusion from the profits. At one point, the state governments were so effective at blocking access to vessel space by the Davis administration that the Secretary of War wrote to Zebulon Vance of North Carolina, "The necessities of the Government really require adherence to this regulation (the one-third share), and I earnestly hope that you will not encourage or allow in your name the infringement

[15] Frank Lawrence Owsley, *State Rights in the Confederacy*, 128-130; Jefferson Davis to the House of Representatives, June 10, 1864, *Official Records*, series IV, volume 3, 553-554.

[16] Secretary of War Seddon to Governor Vance, January 14, 1864, *Official Records*, series IV, volume 3, 28-29.

of it."[17] Vance, intimately involved in inhibiting Confederate access to the vessels, informed the Secretary of War at one point that he had 40,000 blankets, 40,000 pair of shoes, 112,000 pair of cotton cards, and other goods waiting at Bermuda and he was sending four steamers to bring the supplies back to Wilmington. The governor complained that the Confederacy's insistence on reserving cargo space was tantamount to a "prohibition of the business." According to Vance, the Confederacy's share would be at the expense of steamers' owners, which would cut into their profits significantly. The state, however, would continue to maintain its share as the original contract called for. Vance closed by inquiring why the Confederate government would want to oppose an importing system that has been so successful to the cause; in fact, argued the governor, the Confederacy should encourage the current system, not interfere with it.[18]

Vance presented no hint of accommodation or cooperation with the Davis administration as he argued for the state's full share of the profits. Not addressed were such issues such as how much profit the state should earn, how much profit the ship owner should receive, whether the war effort would best be served by allowing the Confederacy access to overseas goods, and whether there was room for a negotiated compromise. Vance's comment that the state experienced "downright opposition rather than encouragement" revealed his lack of empathy for the Confederate position; the central government was losing money, was not able to

[17] Secretary of War Seddon to Governor Vance, January 6, 1864, *Official Records*, series IV, volume 3, 4.

[18] Governor Vance to Secretary of War Seddon, January 7, 1864, *Official Records*, series IV, volume 3, 10-11.

secure sufficient overseas supplies, and was foreclosed from the overseas market. Although it had undertaken to build a merchant fleet, the Confederacy lagged behind the privateers and could not compete with the state/privateer partnership.

In response, the Confederate Congress on February 6, 1864 passed two laws to regulate shipping commerce.[19] The first of the laws prohibited the importation of luxury goods, while the second outlawed importing cotton, tobacco, military and naval supplies, sugar, molasses, and rice, except pursuant to regulations promulgated by the president. The second law, under the justification of public defense, intended to protect Confederate foreign commercial interests by permitting the Chief Executive to regulate foreign commerce. Section Three of the statute stipulated that before loading any goods pursuant to this law, a permit must be obtained from an officer of the Confederacy. And Section Five provided that "nothing in this act shall be construed to prohibit the Confederate States, or any of them, from exporting any of the articles herein enumerated, on their own account."[20] The regulations, issued on March 5, eliminated many of the problems in vessel access encountered by the Confederacy over the past several years. Both outbound and incoming vessels were required to reserve at least one-half of its cargo space for the Confederacy, with the goods to be paid for at a fixed rate. In addition, for those goods shipped into the Confederacy which were not prohibited by law, the central

[19] "An Act to prohibit the importation of luxuries…," February 6, 1864, *Official Records*, series IV, volume 3, 78-80 and "A Bill to impose regulations upon the foreign commerce of the Confederacy…," February 6, 1864, *Official Records*, series IV, volume 3, 80-82.

[20] "An Act to prohibit the importation of luxuries,…" and "A bill to impose regulations…," February 6, 1864, *Official Records*, series IV, volume 3, 78-82.

government received one-half of the proceeds. Lastly, vessels owned by the states and used exclusively for shipping were exempt from complying with the regulations.

The new laws and regulations brought immediate results. The Confederacy's credit was strengthened and increased, enabling it to purchase much needed supplies, munitions, and naval vessels. Its bonds increased in value and from March 1 to December 10, 1864, the central government sold over five million dollars worth of cotton.[21] Overseas investors experienced increased confidence in the Confederacy, despite military reverses in the field, an economy suffering from hyperinflation, severe shortages of essential goods and war materiel, and massive number of refugees.

The private ship owners and governors of the affected states, however, refused to yield. Many ship owners threatened to convey their vessels to the states and, for a time, refused to ship goods in or out of the Confederacy.[22] Gazeway B. Lamar, president of the Importing and Exporting Company in Georgia, anticipated the new regulations would ruin his business and, as a consequence, he leased four of his steamers to the state of Georgia. After Confederate authorities denied a permit

[21] Louise Hill, *Joseph E. Brown and the Confederacy*, 156-157.

[22] Jefferson Davis to the House of Representatives, June 10, 1864, *Official Records*, series IV, volume 3, 554.

to one of the steamers, citing its failure to reserve half of its space for Confederate cargo, Brown lashed out at the central government's usurpation of state rights.[23]

Zebulon Vance, likewise, was outraged at the regulations. In a letter to the Secretary of War, North Carolina's chief executive queried, "Is it possible that such an unblushing outrage is intended by the Government? I have no comment to make on such a proceeding further than that I will fire the ship before I agree to it."[24] Despite Vance's initial, vehement reaction, he subsequently presented a reasoned argument defending his position. Experience, according to Vance, had shown that "convenience, economy, and success have been best attained by inducing individuals with their ships and capital to conduct the enterprise of exporting and importing on joint account." In addition to this capitalist argument, there was the fact that the state had entered into contracts with these shippers, and those contracts, with the passage of the regulations, had been compromised. Given these considerations, it made little sense to alter the importing/exporting arrangement which had been successful. And to Vance, with the Confederacy so depleted in the shipping sector, the states had assumed responsibility in providing for their citizens. As Vance noted in a self-serving way,

> While it would be a grateful relief to the Government of this State from responsibility and risk to discontinue the trade and leave a monopoly of Government commerce in the hands of the Confederate Government, the evident operation and tendency of the regulations to diminish

[23] John B. Robbins, "Confederate Nationalism: Politics and Government in the Confederate South, 1861-1865," 175-176.

[24] Governor Vance to Secretary of War Seddon, March 8, 1864, *Official Records*, series I, volume 51, part II, 828.

> commerce would make a cessation of the State's enterprise more severely felt and complained of by her troops and people now than ever before.[25]

With the criticism of the regulations unheeded by the Davis administration, Brown corresponded with the other governors and requested that they join him in a joint protest opposing the regulations promulgated by the president. Virginia's William Smith and Florida's John Milton refused to participate, with Milton admonishing Brown that he would not participate in any activity that would undermine the stability of the Confederate government and echoing Virginia' former governor John Letcher, "When the independence of the Confederate States shall have been achieved, …the rights of the States and the constitutional powers of the Confederate Government will be adjusted by an intelligent, brave, and free people…."[26] However, Clark of Mississippi, Vance of North Carolina, Watts of Alabama, joined Brown in complaining that Davis had exceeded his authority in issuing the regulations. The states under the law, according to the governors, had an absolute right to export, subject to no governmental regulations. The president's interpretation of the law infringed upon state rights, according to the governors, which was intolerable. The chief executives closed by advocating that each state

[25] *Ibid.,* 837-839.

[26] Allen D. Candler, ed., *The Confederate Records of the State of Georgia*, Vol. III (Atlanta, GA: C.P. Byrd State Printer, 1909-1911), 497-500, as cited in Louise B. Hill, *Joseph E. Brown and the Confederacy*, 158.

should be responsible for the exportation and importation of goods.[27] The joint protest was forwarded to Congress.

The governors' objections were consistent with a dual federalist interpretation of the Confederate constitution. Article I, Section 8(1) of the constitution authorizes the Congress to "lay and collect taxes, duties, imposts, and excises…," while Article I, Section 10(3) specifically limits the right of a state, without the consent of Congress, to "lay any duty on tonnage, except on sea-going vessels for the improvement of its rivers and harbors navigated by the said vessels." But the demand for cargo space, and the Confederate government's reservation of cargo space, was not a taxation issue. The only other possibly pertinent reference in the constitution was Section 8(3) of the same article, which empowered Congress to "regulate commerce with foreign nations, and among the several States, and with the Indian tribes…." The regulations promulgated by the president in addressing reservation of cargo space for the central government, the governors could argue, was less concerned with regulating trade than it was with permitting the Confederacy access to ship goods because their own capability to do so was reduced. In other words, the Confederate government possessed no authority to issue regulations reserving cargo space with respect to a state activity; the central government had transgressed its constitutionally demarcated line of authority. But the governors failed to assert these constitutional arguments, instead relying on the general proposition that importation was a state interest in which the Confederate government possessed no constitutional authority to interfere.

[27] As cited in Frank Lawrence Owsley, *State Rights in the Confederacy*, 142.

The issue would not die. Brown again assumed a leadership role at an October 1864 governors' conference at Augusta, Georgia to discuss a range of issues, including the problems arising from Davis' regulations pursuant to the February 6 law. The governors of North Carolina, South Carolina, Alabama, Georgia, and Mississippi, with Governor William Smith of Virginia presiding, supported the recommendations of the governors earlier agreement.[28] The chief executives argued that the states could export and import goods "upon any vessel owned or charted by them," and petitioned Congress to remove "all restrictions which have been imposed by Confederate authority upon such exports or imports by the states."[29]

Congress responded to the growing criticism regarding the Confederate act to regulate cargo space. Both the Senate and the House of Representatives requested information from the president on the very issues that concerned the governors: the restrictions placed upon the states, the extent to which the regulations limited the number of vessels engaging in foreign commerce, the net effect of the

[28] It is important to note who was not present at the governors' conference: John Milton of Florida and the governors of the Trans-Mississippi. The chief executive of Florida was insistent that he would not undermine the Confederacy's efforts in winning the war and therefore remained in Tallahassee. In addition, the Trans-Mississippi was not represented since the issue under discussion was not as compelling. Louisiana was largely under control of the federals, thus the Confederacy had lost New Orleans, its most important seaport. Texas, with Galveston as the only harbor in the Trans-Mississippi with over six feet of draw, lacked the internal transportation network capable of sustaining large volumes of trade. Lastly, Texas' location, as compared to the seaboard and Gulf states east of the Mississippi, was inconvenient to Havana and Nassau, the two significant neutral trading ports. See Robert L. Kerby, *Kirby Smith's Confederacy*, 162-163.

[29] Allen D. Candler, ed., *The Confederate Records of the State of Georgia*, Vol. II, 780.

regulations, and whether or not it was time to repeal or modify the act.[30] Davis' response emphasized the evils that the law remedied and the benefits accruing to the Confederacy as whole, and not just to a state or a businessman. According to Davis, both the act restricting importation of luxury items as well as the law granting the Confederacy access to private vessels were in response to complaints that aliens controlled the foreign commerce; that cotton, tobacco, and naval stores were being sold overseas, leaving the state impoverished; and that speculators and owners of the steamers in foreign commerce were making exorbitant profits at the expense of the people. To Davis, the benefits of the laws were immeasurable:

> …the Army in the field is the Army of the Confederacy, which is charged with the duty of supplying it with clothing, subsistence, and munitions of war. The performance of this duty demands the most strenuous exertions and the command of all the resources that can be reached. Any diminution of our command of those resources by a modification of the existing legislation might lead to disastrous consequences. Under our present arrangements we are barely able to supply to our brave defenders a moderate share of those comforts which are indispensable to their efficiency.[31]

Davis continued that privation should be shared by all; soldiers from the interior states should not be at a disadvantage to those from states on the seacoast with respect to supplies. Despite his prediction that "...any legislation checking or diminishing the control now exercised by the Government over foreign commerce…would insure the renewal in aggravated form of the evils which it was

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[30] Senate Resolution, December 5, 1864, *Official Records*, series IV, volume 3, 897.

[31] James D. Richardson, ed., *The Messages and Papers of Jefferson Davis and the Confederacy*, 509.

the purpose of your predecessors to remedy by the laws now in force," Congress chose to ignore Davis.[32] On March 4 and 8, 1865, with the Confederacy in a state of collapse, Congress repealed the February 6, 1864 laws, leaving the Confederacy bereft of any control over importation and exportation.[33]

The governors were aware of the importance of foreign commerce to the success of the Confederacy's quest for independence. The struggle between the Davis administration and the states over this issue involved millions of dollars in income as well as securing the requisite supplies to maintain the nation and the states. Despite the willingness to negotiate major issues of contention for the past two years of the war, both the governors and the Davis administration were locked in a struggle over this with neither side wiling to concede. Zebulon Vance "regarded the success of the venture of state blockade-running as one of the most important achievements of his administration…."[34]

While the governors were engaged in negotiations with the Confederate government over the regulations on import/export shipping, negotiations were also in progress during 1863 and 1864 over the exemption of state officials as a means of expanding the state forces for local defense. The states' chief executives were responsible for the defense of their respective states. Since passage of the first Conscription Act in April 1862, competition between the states and the Confederacy for men of military-service age was severe. By 1863 and 1864, this competition

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[32] *Ibid.,* 513.

[33] Frank Lawrence Owsley, *State Rights in the Confederacy*, 149.

[34] John G. Barrett, *The Civil War in North Carolina*, 255.

was further complicated by the increasing demand for skilled labor to produce the products of war and maintain governmental services. In response to these specific needs, Congress passed the Conscription Act of February 17, 1864 which lowered the age for conscription from eighteen to seventeen and raised the upper age from forty-five to fifty. In addition the new conscripts comprised "a reserve for State defense and detail duty, and shall not be required to perform service out of the State in which they reside." As in the conscription laws of the past year and a half, the governors were granted the authority to exempt those persons "necessary for the proper administration" of the state governments.[35] The interpretation of the word "necessary," a key word in constitutional interpretation since 1788, once again would prove controversial.

Like many of the chief executives across the Confederacy, the governors of South Carolina prior to December 1864 exempted very few for state service or the state militia, but this policy could not survive an impending attack by the federals. As Governor Milledge Bonham wrote in a letter to Governor Vance, "no persons are reserved to the State, but all have gone to into Confederate service….Whilst I think each State should have a permanent force of its own, as matters now stand it is better that every one who can be spared should go into the Confederate service…."[36] Yet the state legislature, by the end of 1864, was concerned with the exodus of its white, male citizens into the Confederate army and the state's potential inability to

[35] General Order No. 26, March 1, 1864, *Official Records*, series IV, volume 3, 178-183.

[36] Governor Bonham to Governor Vance, September 28, 1864, *Official Records*, series IV, volume 3, 692-693.

defend itself against William Tecsumseh Sherman, who would move toward South Carolina once he had reached the Georgia coast. To that end, it enacted a bill granting the governor broad exemption powers, including not just members of the legislature, professors, and judges of all courts, but also "such artisans, mechanics, and persons of scientific skill, and other employees as may be indispensable to the carrying on of the manufactories and public works belonging to the state." Specifically in defense of the state, the governor was authorized to exempt "such persons as he may adjudge indispensable for….the protection of the citizens and property of the States."[37] This was the second occasion that South Carolina authorities directly confronted the Confederacy over conscription. Unlike the earlier episode in 1862/63 over the lack of an overseer exemption, this direct affront to the Confederacy's conscription law remained until the end of the war.[38]

Coupled with the anxiety of the South Carolina legislature was the election in December 1864 of Andrew Magrath as governor. As a powerful advocate for state rights, the new chief executive's election was a clear repudiation of the Davis administration. His December 19 inaugural address emphasized the abuses of the government in Richmond, such as impressment and the suspension of the writ of *habeas corpus*, and the centralization of power which it had accrued. Magrath, in agreement with Governors Vance and Brown, spoke against the suspension of civil

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[37] An Act to authorize the governor…., (South Carolina), December 29, 1864, *Ibid.*, 980.

[38] Albert Burton Moore, *Conscription and Conflict in the Confederacy*, 301-302. Also see Charles Edward Cauthen, *South Carolina Goes to War, 1860-1865*, 166-168.

liberties, especially in a time of war and, to protect "the honor and independence" of South Carolina, he would defend those rights.[39]

But by the time Magrath assumed office, South Carolina's very existence within the Confederacy was threatened. In January 1865, the Union armies were moving northward, having devastated a sixty mile wide path through Georgia. With only 10,000 men at his disposal, the governor appealed to the Confederacy for men and munitions.[40] In addition, he withdrew the South Carolina militia he had loaned to Governor Vance for the defense of the Tar Heel state.[41] But he could also rely upon those state officials exempt from conscription. According to one historian, Magrath "probably exempted several thousand able-bodied men for military service."[42]

Magrath's experience was similar to that of most of the governors whose states were still under Confederate control by the fall of 1864. Issues of local defense, securing sufficient foodstuffs and supplies for both the state and the state's armed forces, and expanding the exemptions to conscription so that the state could

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[39] Charles Edward Cauthen, *South Carolina Goes to War, 1860-1865*, 222-223.

[40] Governor Magrath to the Honorable Robert W. Barnwell, December 30, 1864, Magrath Letterbook, CW 1428, South Carolina Department of Archives and History, Columbia, South Carolina. Also see, Governor Magrath to Secretary of War Breckinridge, September 28, 1865, Magrath Letterbook, CW 1428, South Carolina Department of Archives and History. Also see, Governor Magrath to General Joseph E. Johnston, March 10, 1865, Magrath Letterbook, CW 1429, South Carolina Department of Archives and History.

[41] Governor Magrath to Governor Vance, March 6, 1865, Governor Andrew G. Magrath Papers, file no. S513004, folder 28, South Carolina Department of Archives and History, Columbia, South Carolina.

[42] Frank Lawrence Owsley, *State Rights in the Confederacy*, 213.

secure able-bodied men in its defense were intertwined. When the Confederacy decided to reallocate military resources, with the soldiers went the defense of the state. In the negotiation phase of the relationship between the governors and the Davis administration between the spring of 1862 and the fall of 1864, the administration did what it could to allay to fears of the governors that local defense was inadequate. It provided arms when possible, reduced conscription to the minimum in some states, and allowed other states to keep their men until six months past the implementation of the conscription act. Lastly, new and more able generals were appointed to defend the reorganized departments.[43] By the fall of 1864, however, the Confederacy was besieged on all fronts. It had been nearly cut into thirds; the states in the West and the Trans-Mississippi (with the exception of Texas) were largely occupied by the federals. The blockade was nearly complete.

This loss of the Confederate army and withdrawal of support, in terms of defense, from the central government, forced the states to rely upon the state reserves, militia, or those exempt from conscription. Unlike during the competition for men in 1861 between the central government and the states, there were fewer able bodied adult males by the fall of 1864. This meant that the states had to rely on the very young and the very old to defend hearth and home. Drastic measures, in addition to expanding the classes and numbers of exemptions, were necessary to enable the states to defend themselves. After the federals occupied Atlanta, beginning on September 3, 1864, Governor Brown withdrew his state militia from the Confederate army in Georgia, commanded by General John B. Hood. These ten

[43] Albert Burton Moore, *Conscription and Conflict in the Confederacy*, 147-148.

thousand men, derisively tagged "Joe Brown's Pets," were immediately granted a thirty day furlough to harvest crops. One historian has observed, however, that Brown employed the furlough as a ruse to prevent the Confederate army from enrolling the state troops.[44] The Union army, under William T. Sherman, devastated the Georgia countryside in his infamous March to the Sea, while the governor requested a bill from the legislature permitting him to call out the entire population to defend the state. The legislature complied, only after exempting themselves and state judges. So desperate was Brown for troops that he even went to the state penitentiary and offered pardons to all who would enlist in the militia. All but four of the 125 prisoners accepted his offer. But Brown realized the futility of his effects; in a letter to General Beauregard, Georgia's chief executive observed, "I fear we have not force to stop…the enemy."[45]

While Georgia and South Carolina endured a massive invasion by the federal forces in late 1864 and early 1865, Virginia, which had been the focal point for the war in the east since 1861, required troops for local defense by the fall of 1864. Governor Letcher, more often than not, cooperated with the central government and was in office as governor during the successes of the Confederacy in his state: the Seven Days Battle, First and Second Manassas, and Chancellorsville. However, his successor, William "Extra-Billy" Smith, who took office on January 1, 1864, witnessed the slow death of the Confederacy, despite victories at The Wilderness, Spotsylvania Courthouse, and Cold Harbor during the

[44] T. Conn Bryan, *Confederate Georgia*, 163.

[45] *Ibid.*, 168-169.

spring and summer of 1864. Clearly the defense of Virginia was inextricably related to the survival of the Confederacy.

Despite the controversy surrounding the governor's use of exemptions, Smith chose not to expand the number of exemptions to raise troops for the defense of Virginia. He neither pursued a policy of broad inclusiveness in granting exemptions,[46] nor did he grant more exemptions than Brown of Georgia, as Brown himself alleges.[47] Alvin Fahrner has shown that Smith actually sought to limit both the number of exemptions and people eligible for those exemptions.[48] In an ongoing battle with the legislature on this issue, Smith contended that he, as governor, should determine who was a "necessary" state official and eligible for exemption. The legislature argued that it should make that determination and directed Smith to do its bidding. In fact, following Jefferson Davis' proposal to the Confederate Congress that would eliminate all exemptions and require all able-bodied males to enter the armed forces, Smith on December 7, 1864 suggested to the state legislature that all able-bodied Virginians not "necessary" to the maintenance of state government be conscripted.[49] The state legislature rejected

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[46] Clifford Dowdy, *Experiment in Rebellion* (Garden City, NY: Doubleday & Company, 1946), 376.

[47] Governor Brown to Major General Howell Cobb, May 20, 1864, *Official Records*, series IV, volume 3, 432.

[48] Alvin Arthur Fahrner, "The Public Career of William 'Extra Billy' Smith," 272-278.

[49] Governor William Smith to the Virginia Senate and House of Delegates, extra session, December 7, 1864, A.1a. Va, reel 8, Library of Virginia, Richmond, Virginia.

Smith's proposal. The issue of exemptions would remain unresolved. Meanwhile Smith sought to increase his fighting forces in another, even more dramatic, fashion.

Although some discussion transpired early in the war regarding the use of blacks as soldiers, little official action was taken at either the state or national level.[50] In January 1864, General Patrick Cleburne, a divisional commander in the Army of Tennessee, proposed emancipating the slaves and conscripting those able-bodied males. President Davis rejected Cleburne's idea, fearing that the issue would be divisive within the ranks of the army. That blacks would fight for the Confederacy also threatened the dominant perception of most whites that blacks were inferior to whites. However, by the fall of 1864, Governor Henry Watkins Allen of Louisiana urged both the state legislature and the Confederate authorities to pass measures utilizing slaves as soldiers in exchange for their emancipation. In a September 26, 1864 letter to the Secretary of War, Allen wrote, "The time has come for us to put into the army every able-bodied negro man as a soldier. This should be done immediately. Congress should at the coming session take action on this most

[50] Albert Burton Moore, *Conscription and Conflict in the Confederacy*, 343-344. According to Robert Durden, approximately fourteen hundred free blacks entered Louisiana's state militia early in the war, while free blacks also served in the military forces of Tennessee and Alabama. Durden asserts that "(the indirect evidence) suggests that if freedom were anywhere in prospect, some blacks (e.g., slaves) were indeed willing to become Confederates." *The Gray and the Black: The Confederate Debate on Emancipation* (Baton Rouge, LA: Louisiana State University Press, 1972), 47.

important question…. I would free all able to bear arms and put them into the field at once."[51] However, the Louisiana legislature failed to act upon Allen's proposal.

The following month, at the gubernatorial conference in Augusta, Georgia, the governors of North and South Carolina, Mississippi, Alabama, Virginia, and Georgia, resolved, *inter alia*, that "to give encouragement to our brave soldiers in the field and to strengthen the Confederate authorities, in pursuit of this end we will use our best exertions to increase the effective force of our armies." When combined with the resolution which reads, "…we recommend to our authorities, under proper regulations, to appropriate such part of them (e.g., slaves) to the public service as may be required," it becomes clear that the governors were urging the enlistment of slaves into the army.[52]

With the Army of Northern Virginia besieged at Petersburg and undermanned compared to the growing strength of the federals, and in anticipation of the upcoming spring offensive, Smith implored the legislature to enact measures allowing the state to draft blacks, including slaves. To Smith,

> All agree in the propriety of using our slaves in the various menial employments of the army, and as sappers and miners and pioneers; but much diversity exist [sic] as to the propriety of using them as soldiers *now*. All agree that when the question becomes one of liberty and independence on the one hand, or subjugation on the other, that every means within our reach should be used to aid in

[51] Governor Allen to Secretary of War Seddon, September 26, 1864 *Official Records*, series I, volume 41, part III, 774. Also see, Jefferson Davis Bragg, *Louisiana in the Confederacy*, 218-219.

[52] Resolutions by the governors of Virginia, North Carolina, South Carolina, Georgia, Alabama, and Mississippi, October 17, 1864, *Official Records*, series IV, volume 3, 735-736.

> our struggle….Even if the result were to emancipate our slaves, there is not a man that would not cheerfully put the negro into the army rather than become a slave himself to our hated and vindictive foe. It is, then, simply a question of time.[53]

Smith argued that the time was now. But he faced significant opposition, especially from the planters, who were more interested, according to one historian, in protecting their own interests than achieving independence. The planters' objections were threefold: many believed that to enlist the blacks would only prolong a losing effort by the Confederacy, many hoped to keep their slaves after the Confederacy's defeat, and many believed arming the black man to fight for the Confederacy was "repugnant because the protection of slavery had been and still remained the central core of the Confederate purpose." [54]

When General Lee finally weighed in on the issue in mid-January 1865, supporting the use of blacks as soldiers, momentum swung to Smith.[55] After renewing his request and his urging the legislature to act without delay, Smith's goal was satisfied when the legislature passed two joint resolutions. The first, passed on

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[53] Governor Smith to the Virginia Senate and House of Delegates, extra session, December 7, 1864, A.1a. Va, reel 8, Library of Virginia, Richmond, Virginia.

[54] Paul Escott, *After Secession*, 252-255 and 272-273. Also see Alvin Arthur Fahrner, "The Public Career of William 'Extra Billy' Smith," 289.

[55] General Lee concluded, should the war continue "under existing circumstances," the Confederacy would lose more land to the federals, as well as slaves and free blacks to the Union army as a result of President Lincoln's policy of emancipation. Therefore, according to Lee, "…we must decide whether slavery shall be extinguished by our enemies and the slaves be used against us, or use them ourselves at the risk of the effects which may be produced upon our social institutions. My own opinion is that we should employ them without delay." General Robert E. Lee to the Hon. Andrew Hunter, January 11, 1865, *Official Records*, series IV, volume 3, 1012-1013.

March 4, authorized Confederate authorities to requisition black troops through the governor. All free able-bodied black males between the ages of eighteen and forty-five were subject to conscription, and as many slaves within that category as were necessary, to be apportioned among the counties. On March 6, the second joint resolution authorized the state or the Confederate authorities to allow the conscripted blacks to bear arms, like any other soldier. Virginia enacted legislation allowing for the enlistment of blacks, with no emancipation for slaves who served. The Old Dominion was the only state to pursue this option of raising troops. And Governor Henry W. Allen of Louisiana was the only other governor in support of employing blacks as soldiers, but the Louisiana legislature was opposed to any measure such as this.[56]

The invading federals presented a significant justification for the governors in terms of maintaining a local defense. While the states differed in how they sought to attain sufficient troops for defense, they each struggled to create a local defense that would protect the state. But danger lurked not just from the federal army, but also from within: the peace movements.[57] And, again, the states were

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[56] *Ibid.*, 291; James McPherson, *Battle Cry of Freedom*, 831-838; Robert F. Durden, *The Gray and the Black*, 253-255. On March 13, 1865, the Confederate Congress passed legislation permitting the President to accept slaves into the military, but would not grant them emancipation unless agreed to by the owner and the state in which they resided. However, subsequent regulations issued by the War Department clearly intended that only freedmen would be accepted for military service. *Official Records*, series IV, volume 3, 1161-1162.

[57] For a comprehensive overview, see Georgia Lee Tatum, *Disloyalty in the Confederacy* (Chapel Hill, NC: University of North Carolina Press, 1934). Tatum identified the causes for the disaffection as those who were opposed to going to war in 1861, the passage of Confederate laws such as conscription, impressment, the

forced to address this issue without assistance from the central government. The governors held firm both in resisting individual state peace settlements with the Union and in suppressing potential peace initiatives within the states. Brown of Georgia, offered a peace plan of his own, but he ensured that it included Confederate independence. If any one governor had not been successful in restraining the peace movement in his state, or had conducted peace negotiations independently and exclusive of the central government, federalism in the Confederacy would have collapsed completely and absolutely, with each government probably scurrying to negotiate the best deal possible.

The Confederate constitution made quite clear that the state governors lacked authority to conclude a peace treaty of any sort: "No State shall enter into any treaty, alliance, or confederation…."[58] The only avenue open to those seeking peace was extraconstitutional: to independently enter into peace negotiations with the Union or its armies and, after the conquest of territory, hope to either install themselves or govern by the will of the Union army. But, while most governors in office confronting this issue were attempting to quash the peace movement, Joseph E. Brown was offering peace proposals.

Just as the South was never truly unified in its efforts to achieve independence, so too the peace movements sprang from the variety of opinions that

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conflict between the state and central government officials regarding the implementation of these laws, the hardship and weariness of the war, and the state rights peace movements. She downplays the class conflict, but it is apparent in her work that this, too, is an issue.

[58] Confederate Constitution, art. I, sec. 10(1).

had been opposed to secession. Some ethnic groups, such as the Germans in Texas, opposed the Confederacy and paid dearly for it.[59] Geographically, the border states of Maryland, Kentucky, and Missouri, despite being slave states, were tied economically to both the South and the North. Eastern Tennessee, western North Carolina, western Virginia, and northern Alabama contained large number of Unionists. With so much of the Confederacy so divided, it is not surprising that peace movements appeared throughout the Confederacy during the course of the war. The governors were successful in fending off each attempt.

Unionists early in the war could be either conspicuous or surreptitious in their opposition to the Confederacy, depending on the level of support that the Union was willing to offer. In the far western portion of Virginia, federal troops were in place to assist and protect the locals in their expression of dissatisfaction with secession. With victories at Philippi, Cheat Mountain and the Kanawha campaign, federal forces secured western Virginia for the loyalists. Culmination of the efforts was the admission of West Virginia to the Union on June 20, 1863. Yet even substantial federal support did not lead to similar success in eastern Tennessee.

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[59] The Germans, who constituted the second largest white ethnic group in the Confederacy, were located in ethnic pockets, usually in isolated regions. In Texas, the Germans were largely found in south-central Teas and tended to believe that that slavery and disunion violated the basic constitutional tenants. So threatening were their activities that the Confederate government placed several Texas counties under martial law. On August 10, 1862, at the Battle of Neuces, a pro-Union regiment comprised of Germans from Texas which was heading toward Mexico, was attacked by a Confederate force and soundly defeated. The bodies of the German dead were left on the battlefield, only to be recovered and buried after the war. See, Georgia Lee Tatum, *Disloyalty in the Confederacy* (Chapel Hill, NC: University of North Carolina Press, 1934); reprint, Lincoln, NE: University of Nebraska Press, 2000 and *Encyclopedia of the Confederacy*, s.v., "Germans," by Jason H. Silverman.

Under the leadership of William Brownlow, editor of the Knoxville *Whig*, Senator Andrew Johnson, and Congressman Thomas Nelson, the peace movement flourished. On June 21, 1861, a convention from eastern Tennessee called for the legislature in Nashville to allow it to secede and become an independent state. Federal troops under General Don Carlos Buell attacked middle Tennessee, however, and the Confederacy was forced to place eastern Tennessee under martial law. As the first Confederate state to fall to the Union, Tennessee was placed under the control of Andrew Johnson as military governor in 1863. After a state convention, another Unionist, William Brownlow was chosen as governor on March 4, 1865, some five weeks before the surrender of Lee's army.

Peace movements also flourished in Arkansas, but without federal assistance, they were forced underground. When Governor Rector discovered the existence of these groups in the latter months of 1861, he moved quickly to suppress their organizations by having the arrested members choose between a treason trial or an enlistment in the Confederate army. As one historian has noted, "The discovery of deep-seated alienation in Arkansas, the first such discovery in the Confederacy, set the stage for the long, vicious, and brutal war of personal vendettas that followed."[60]

As the war progressed and the vicissitudes of war produced death, hardship, and destruction, the people became more critical of the government, and expressed their desire for peace more openly. Near the end of the war, much of this was articulated in the gubernatorial elections of Louisiana, Virginia, South Carolina,

[60] Michael B. Dougan, *Confederate Arkansas*, 84.

Georgia, and North Carolina. While the candidates in the first two gubernatorial campaigns did not vary much from asserting cooperation with the Confederacy,[61] South Carolina's Andrew Magrath ran a campaign that, as characterized by one historian, "was in complete harmony with the anti-Confederate attitude that was becoming more popular in South Carolina."[62] Attention was focused less in the election on suing for peace than on limiting the centralization of the government at Richmond. But it was in North Carolina and Georgia that the peace movements took their firmest hold.

In North Carolina, William W. Holden, the editor of the *North Carolina Standard* and a former ally of the governor, began to sponsor mass meetings advocating for peace after the defeats at Gettysburg and Vicksburg. Evident throughout these meetings was the threat that North Carolina would secede from the Confederacy if the Confederacy did not sue for peace. At one point, the *Standard* called for the citizens to hold public meetings and inform the politicians of their opinions regarding peace. Surprisingly, one hundred meetings were held in forty

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[61] It is understandable why either of these elections produced dramatic choices for the voters. Louisiana's interior, under assault by the federal army under General Nathanial Banks, limited the vote to only those parishes under Confederate, and therefore state, authority. In addition, a loyalty oath was required before one could vote. See Jefferson Davis Bragg, *Louisiana in the Confederacy*, 182-185. William Smith was elected governor of Virginia in December 1864 after pledging full support for the Confederacy. Given the state's reliance upon the Confederate army for defense, the new governor would have been foolhardy to do otherwise. See Kenneth Michael Murray, "Gubernatorial Politics and the Confederacy," 339-341.

[62] John B. Edmunds, Jr., "South Carolina," in *The Confederate Governors*, ed. W. Buck Yearns, 180.

counties. Holden had become so emboldened by the end of 1863 that he called for a state convention to seek peace with the Union.

Vance followed two courses of action in addressing Holden's rising popularity. First, he presented to the people the futility and destructiveness of a convention. And, secondly, he appealed to President Davis to address the grievances of the North Carolinians. Davis rejected the latter; most of the grievances had to do with the perceived centralization of power at the expense of the states, which Davis denied. Therefore, Vance focused his campaign on convincing the people that calling a convention was inimical to their interests.

The confrontation between the two peaked in the summer of 1864 when Holden challenged the incumbent Vance for the governorship. The lengthy campaign focused on Holden's calls for peace, the constitutionality of the new suspension of the writ of *habeas corpus* enacted in February 1864, and Vance's alleged turn from conservatism as governor. However, Holden's claims were vacuous. The governor consistently railed against the suspension of the writ of *habeas corpus*, but maintained that he would follow the law, interpret it strictly, and seek to overturn it. As one historian has observed, "[Vance's] record in defense of civil liberties was more than good enough to overcome Holden's criticisms."[63]

The opposition also claimed that Vance had sided with the Davis administration with respect to the issue of conscription, failing to support substitutes, and profiting from the blockade running. Again, Vance outwitted Holden by publishing a significant portion of his correspondence with the President.

[63] Kenneth Michael Murray, "Gubernatorial Politics and the Confederacy," 654-655.

As noted by the Raleigh *Conservative*, the released documents demonstrated that Vance had "done all that can be desired to obtain peace on honorable terms and to preserve the blessings of civil and constitutional liberty."[64] The charge of Vance's profiteering through overseas shipping, too, lacked merit, and was not pursued heavily by Holden since it placed him in support of the president. This left Holden only his campaign promise to sue for peace if elected governor.

In the end, Vance trounced Holden by almost a five to one margin: 58,065 votes for Vance and a mere 14, 471, for Holden. Support for the separate peace plan advocated by Holden was greater in appearance than in actuality. Holden, however, would make one more attempt in the last weeks of the war to criticize Vance and re-introduce his peace proposals, but it was far too late to resurrect the issues of the 1864 election.[65] Vance, and the voters, quelled this potential constitutional crisis for the Confederacy.

Meanwhile in Georgia, different peace plans were undertaken, but the end result was much like that in North Carolina. Like their northern neighbors, Georgians by the end of 1863 had grown weary of the war and its concomitant economic hardships. But in the southern Empire State, there was always another factor to be considered when examining discontent in the Confederacy: Governor Joseph E. Brown. Long a defender of civil liberties while governor, Brown opposed

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[64] *Ibid*., 660.

[65] For excellent coverage of North Carolina's gubernatorial election of 1864, see Kenneth Michael Murray's "Gubernatorial Politics and the Confederacy," 632-681. Also see, H.W. Raper, "William W. Holden and the Peace Movement in North Carolina," *North Carolina Historical Review* XXXI (October 1954).

virtually every expansion of power that the central government accrued, including conscription, suspension of the writ of *habeas corpus*, reserving cargo space on blockade runners, and impressment. The governor did believe in the Confederacy, however, and fought every attempt involving the state seeking a separate peace.[66]

The initial peace movement in Georgia galvanized around Alexander Stephens, a Georgian who was Vice-President of the Confederacy. As early as the summer of 1863, Stephens hoped that an upcoming prisoner exchange would provide an opportunity to communicate for his communicating a peace proposal to the Lincoln government which emphasized "but one idea of the basis of final settlement or adjustment; that is, the recognition of the sovereignty of the States and the right of each in its sovereign capacity to determine its own destiny." Davis approved, but the United States government, flush from their victory at Gettysburg, refused to even consider the request for peace discussions.[67]

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[66] Brown told the General Assembly, not to believe that any conflict between Davis administration and himself was an effort to embarrass the central government, despite what some newspapers may claim. He continued, "Do not be deceived by this false clamor. It is the same cry of *conflict*which the Lincoln government raised against all who defended the rights of the Southern States against its tyranny." In conclusion, Brown articulated his ultimate support of the Confederacy, "While she [the state of Georgia] deprecates all conflict with the Confederate Government, if to require these be *conflict*; the *conflict*will never end till the object [independence] is attained." Joseph Brown to the Georgia General Assembly, extra session, March 10, 1864, *Journal of the House of Representatives of the State of Georgia* (Milledgeville, GA: Boughton, Nisbet, Barnes, and Moore, 1864), 17,18.

[67] James D. Richardson, ed., *The Messages and Papers of Jefferson Davis and the Confederacy*, 339-344. Also see Louise B. Hill, *Joseph E. Brown and the Confederacy*, 198-199. Peace movements existed in the Union as well. Copperheads, or those northern Democrats opposed to Lincoln's policies and in support of restoration of the Union as it existed before the war, were prevalent in the North, particularly in the mid-west, or Butternut country. The legislature of Illinois,

Soon the Governor Brown joined the Vice-President. With the passage of the Conscription Act of February 17, 1864 and the ongoing problems with the suspension of the writ of *habeas corpus*, the governor's reaction was predictable. The conscription act, as the governor had argued before, would leave the state defenseless. And Brown was appalled at the suspension of the writ, which he characterized as "this most monstrous deed." It remained for "the constituted authorities of each State, send up to their representative when they assemble in Congress, an unqualified demand for prompt redress…"[68] For his part, Brown collaborated with Stephens and the Vice-President's brother Linton, a state congressman, as an attempt to force the government to compromise on conscription and the suspension of the writ of *habeas corpus*. The governor wanted to use this partnership to hold out an olive branch. But it was not out of weakness, despair, or weariness. Rather, Brown's peace offering would only be offered after military

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Lincoln's home state, passed resolutions in late 1862 opposing Lincoln's handling of the war and urged an armistice to immediately end hostilities, while a national convention could conclude an end to the war. Likewise, in 1863, the Democrats in the Pennsylvania legislature called for a national convention to negotiate a conclusion to the conflict. The leaders of this movement were immediately arrested. In addition, by 1863, a leader of the Peace Democrats emerged: Clement L. Vallandgham, who called for an end to hostilities, a restoration of the Union, taking into account only the needs of whites. However, the 1864 presidential election amounted to a referendum on the war and Lincoln's re-election effectively put an end to the calls for a negotiated settlement with the Confederacy. A critical plank in the Democratic party's platform included a call for an end to the hostilities and a convention of states to conclude a peace to be "restored on the basis of the Federal Union." As cited in James M. McPherson, *Battle Cry of Freedom* (New York, NY: Oxford University Press, 1988), 772. Also see, William B. Hesseltine, *Lincoln and the War Governors* (New York, NY: Alfred A. Knopf, 1948).

[68] *Ibid.*, 23, 24.

victories on the battlefield and a guarantee of state sovereignty. As the governor announced to the state legislature,

> …in my opinion, it is our duty, to keep it [offers to negotiate a peace] always before the Northern people, and the civilized world, that we are ready to negotiate for peace; whenever the people and government of the Northern States, are prepared to recognize, the great fundamental principles of the declaration of Independence, maintained by our common ancestry—the *right of all self-government and the sovereignty of the States*….Let us stand on no delicate point of etiquette, or diplomacy. If the proposition is rejected a dozen times, let us tender it again after the next victory—that the world may be reassured from month to month, that we are not responsible for the continuance of this devastation and carnage.[69]

Brown's perspective on peace negotiations logically fit with his ongoing disputes regarding the increased power of the Confederate central government and his dedication to state rights. To the governor, the continual disputes with the central government and its accompanying accrual of power must have appeared endless. Likewise, with the despair on the battlefields and the home front, it must have appeared that the war could not end favorably for the Confederacy. Therefore, Brown could press both issues: negotiate with the northern forces for peace while attacking simultaneously the suspension of the writ of *habeas corpus.*

During the same legislative session, Linton Stephens introduced two resolutions: the first condemned the suspension of the writ of *habeas corpus* as usurpation of power by the central government and urged Georgia's congressmen to support its repeal, and the second resolution requested that the Confederate government offer peace after the next victory to the Union based upon independence

[69] *Ibid.*, 42-43.

of the Confederate states. The legislature passed both. It also, however, passed a resolution that expressed confidence in the president, and an amendment to the second resolution which pledged Georgia's resources to the achieve independence. Both of these had the effect of neutralizing any momentum for the Brown/Stephens' peace offerings. [70]

A second attempt at achieving peace was offered by none other than Union General William T. Sherman. Having just taken possession of Atlanta, and aware that Georgia, with only the state militia on furlough for defense, was virtually defenseless, Sherman knew of the prior attempts by the Brown/Stephens' partnership to sue for peace as well as Brown's inimical relationship with Davis. Therefore, through intermediaries, Sherman offered that,

> Georgia can now save herself from the devastation of war preparing for her only by withdrawing her quota out of the Confederate army and aiding me to repel Hood from the borders of the State, in which event, instead of desolating the land as we progress, I will keep our men to the high roads and commons and pay for the corn and meat we need and take.[71]

Brown refused to meet with Sherman and noted that neither of the two were authorized to negotiate a peace settlement. The governor followed this by asserting a power which he could not possess: the state could enter into treaties and sue for peace, but he, as governor, lacked authority from the convention to act on Sherman's proposals.

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[70] Louise B. Hill, *Joseph E. Brown and the Confederacy*, 208-219.

[71] Major General Sherman to President Lincoln, September 17, 1864, *Official Records*, series I, volume 39, part II, 395-396.

Although nothing further came of the two peace proposals, it is worth noting that Brown was actively involved in both. Clearly Brown supported peace, but at not any cost. His alliance with the Stephens' brothers enabled him to control them while forwarding his conditions for peace.[72] General Sherman's offer was not on Brown's terms, and the governor diplomatically declined to negotiate. However, to some extent, Brown achieved what he wanted. J.L.M. Curry, recently appointed commissioner for enforcing the act suspending the writ of *habeas corpus*, wrote to the Secretary of War, "The execution of the act will be attended with some difficulty, owing to the opposition of Governor Brown, the Vice-President, and other prominent men in Georgia. My aim shall be to avoid all collision with State authorities and so to use my office as to prevent discord and promote harmony."[73] Brown succeeded, not in attaining peace on his terms, but in blocking effective implementation of the suspension of the writ of *habeas corpus*.

Following a different path than North Carolina and Georgia, Alabama produced a radical peace movement, intent upon suing for peace at any cost. As a result of the general state elections in 1863, Thomas H. Watts, former Confederate Attorney-General and a supporter of the Confederacy, was elected governor, while the new legislature was comprised of a number of "obscure Peace party men who

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[72] Brown did pay a price for his position. Despite his tremendous popularity with the troops, a number of regiments and batteries passed resolutions condemning him for attempting to undermine the legislature and the Confederacy. Louise B. Hill, *Joseph E. Brown and the Confederacy*, 217.

[73] J.L.M. Curry to Secretary of War Seddon, March 28, 1864, *Official Records*, series I, volume 52, part II, 648.

would refuse to cooperate in carrying out the war."[74] Conditions in Alabama, like the rest of the South, had become unsettled. With the recent losses of Gettysburg and Vicksburg, Alabamians had grown weary of, and were suffering from, Union raids, the hyperinflation, abuses from impressment, shortage of foodstuffs ("bread riots" had occurred prior to Watts' inauguration), and a tax-in-kind. As the war progressed, the suffering did as well. In the 1863 Alabama elections, the peace issue surfaced at the end of the campaign. While the gubernatorial candidates rejected any proposals for a separate peace, the four northernmost counties in Alabama elected six Unionists to Congress. By December 1864, a minority of legislators proposed suing for peace, which Governor Watts publicly opposed. A joint resolution passed the legislature which clearly rejected its members supporting a peaceful reunion with the United States; after a lengthy debate, the legislature "affirms and reiterates her unalterable determination to maintain her stand for the independence of the Confederate States…[and] to sacrifice if necessary all her resources to the common cause." The resolution continued that any citizen who had supported suing for peace was "now deprived of all further excuse to do so, and should make speedy reparation by pledging unreservedly his life, his property, and his sacred honor to the cause of the Confederate independence."[75]

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[74] Malcolm C. McMillan, *The Disintegration of a Confederate State*, 81.

[75] Quoted in Jeanne Hall Lynch, "Thomas Hill Watts, Civil War Governor of Alabama, 1863-1865," (M.A. thesis, Alabama Polytechnic Institute, 1957), 76; Frank L. Owsley, "Defeatism in the Confederacy," *North Carolina Historical Review* 3 (July 1926), 446-456; Kenneth Michael Murray, "Gubernatorial Politics and the Confederacy," 344-410.

It would take more than a legislative resolution to effectively end the peace movement in Alabama. In response to the legislative resolution, the Peace Society went underground. Despite the scarcity of records on the Peace Society, it is clear that its members were attempting to secure the cooperation of the governor in concluding a peace agreement with the United States. The Peace Society also undertook measures to disrupt the home front, by seeking a change in the administration, and the war effort, by encouraging desertions. Ultimately, by 1865, the radical elements sought an overthrow of the state and/or central government. The leadership of these societies, according to one historian, intended to take control of the state at the time of the 1865 elections, either through elections or revolution.[76] With the peace movement gaining momentum, and buoyed by a belief in the Union's Democrat party plank to sue for peace if it won the upcoming 1864 presidential election, many in Alabama began openly supporting a peace initiative. Only the fall of the Confederacy would end the peace movement in Alabama.

This last phase in the relationship between the governors of the states and the central government of the Confederacy, that period from the fall of 1864 through the end of the war, was a fight for state survival and was characterized by dramatic decline militarily and on the home front. As a result, the governors struggled to provide supplies for the state's people and troops. Cooperation and negotiation broke down as the primary interaction between the governors and the Davis

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[76] Walter L. Fleming, *Civil War and Reconstruction in Alabama* (New York, NY: Columbia University Press, 1905), 146; Malcolm C. MacMillan, *The Disintegration of a Confederate State*, 130-132; J.J. Giers to General U.S. Grant, January 26, 1865, *Official Records*, series I, volume 49, part 1, 590-592

Administration as state survival assumed priority. In a time of rapidly dwindling resources, the struggles between the states and the central government over impressment, goods to be carried on blockade runners, and maintaining a local defense revealed the need for the states to keep resources within their boundaries to hold the Union at bay. In addition, the governors had to control the peace societies that were springing up throughout the South. Failure to do so would have resulted in an absolute break-down of federalism within the Confederacy. As it was, with the surrender of the Army of Northern Virginia and the nation being overrun by the federals, the governors and Confederate officials were on their own.

CONCLUSION

"SENTINELS UPON THE WATCHTOWER OF LIBERTY…."

Early in the war, Tennessee governor Isham Harris received correspondence from a constituent, claiming in exuberance, "For the first time, in the history of the State, to be Governor *means something*. Here-to-fore the position has been simply nominal…. But *now*, how bold the contrast: With the liberties of more than a million of people to maintain—our fields to protect, and the sanctity of our household Gods to preserve…. "[1] The author of the letter was correct in that the role and responsibility of the governors had expanded with the creation of the Confederacy. As the United States was moving toward a nation-centered constitutional system, the Confederate States adopted a constitution which embodied dual federalism. The Confederacy intended to maintain the federalism embraced in the antebellum United States, a federalism which was characterized by the state and central government each possessing independent and separate spheres of authority. Under this system, the responsibilities of the Confederate governors' were heightened. Engaged in a war for the nation's survival, the governors' sphere of authority was nothing less than the defense of the state and the well-being of its people. On a host of issues, including conscription, impressment, and the suspension of the writ of *habeas* corpus, the governors were at the forefront in defending their states' interests against encroachment by the central government.

[1] H.S. Bradford to Governor Isham G. Harris, July 12, 1861, Governor's Papers, Tennessee State Library and Archives, Nashville, TN.

Since the Confederacy existed only during war, the relationship between the states and the Confederacy developed in response to war-time exigencies and crises. The war and the dual federalist constitutional system placed the Confederate governors in a position unlike that of any governors in American history.

The Confederate governors were forced to operate in a dynamic, fluid political environment which required them to be sensitive to demands placed upon them by other constituencies, interest groups and individuals, as well as the formal institutional structures of the legislatures and the courts. At times, these groups and individuals acted in concert with the formal structures and, at other times, independently of the state's chief executive. In doing so, they had an impact on the type of federalism that evolved in the Confederacy. For a governor to successfully represent his state at the national level, his awareness of and ability to work with these groups and individuals, as well as the legislature and courts, was essential.

A cartel of railroad owners, for example, was able to dictate rate scheduling and coordination of the rail system for moving mail, passengers, troops, and goods despite laws granting the Davis administration extensive powers to regulate the rail system. Likewise, when the Confederate central government offered commissions directly to individuals who would raise regiments for the Confederate army, this bypassed the traditional role of requesting troops through the governors, and introduced a new element in the federalist relationship.

At various times, some governors faced competition from state conventions which assumed legislative powers even after secession was completed and the

justification for the convention's existence had passed. These disruptions generally lead to a weakened relationship between the state and the central government. Florida's convention, for example, disbanded the militia and worked to limit expenditures during the war-time crisis, leaving the defense of Florida solely to the Confederate army. Governor John Milton bristled at this, and, in February 1862, denounced it as convention dictatorship.[2] The most volatile relationship between a governor and a state convention, however, occurred in Texas, where Sam Houston was ousted as governor by a state convention for his failure to take an oath of allegiance to the Confederate constitution as mandated by the convention.

The governors also were forced to address the dynamics of working with the state legislatures, which further shaped the states' relationship with Richmond and the type of federalism that evolved. Governor William Smith of Virginia, for example, engaged the state legislature over which of the two possessed the authority to define a "necessary state official" for the purposes of determining who in the government was entitled to exemptions. Since this device could be utilized to increase state forces for local defense, and since there was an impasse between the governor and the legislature, Smith called upon the legislature to draft slaves for the state militia to defend Virginia. The legislature ultimately agreed to do so, but not until March 1865. State legislatures could withhold support for a governor, as did the Georgia legislature from Governor Joseph Brown on at least two important issues. In 1862, Brown failed in his attempt to use the state legislature to decide on the constitutionality of conscription. And, in 1864, Brown hoped for legislative

[2] May Spencer Ringold, *The Role of the State Legislatures in the Confederacy*, 10.

support against the suspension of the writ of *habeas corpus* by the Davis administration, but instead encountered a legislature sympathetic to Davis' position. Clearly, the political dynamics within each state complicated the state/central government relationship.

The state courts were another essential governmental structure with which the governors had to contend. In submitting constitutional issues, such as conscription, to the state courts, both the governors and the Davis administration allowed the courts to determine critical boundaries in the state/central government spheres of authority. On some issues, such as the unconstitutionality of Section Five of the Impressment Act, the courts supported the governors. Yet, on other points of contention, such as the central government's power to raise an army through conscription, the state courts consistently upheld the Confederacy's position. The impact of the courts in delineating the contours of Confederate federalism was significant.

In addition to the interest groups, individuals, and formal governmental structures, public opinion helped determine the success or failure of important issues essential to a determination of federalism in the Confederacy. As Kenneth M. Murray has shown, some of the governors' most obstructionist positions were intended to curry the favor of those opposed to the war. Murray continues, "Election results show that being too closely identified with the Richmond administration could be politically fatal, especially in states that remained relatively

free from invasion until late in the war."[3] Public opinions, which frequently shifted with the fortunes of war, dictated the limits of gubernatorial power.

Despite the dynamic political and constitutional influences which the governors encountered, it was ultimately the relationship between the governors and the Davis administration that defined the nature of federalism in the Confederacy. Governor Murrah articulated the ambiguity of dual federalism that confronted the Confederate governors in their relationship to Richmond. There was no reason, according to the last Civil War governor of Texas, why the state and central governments could not co-exist, each operating within its own spheres of sovereignty. Although he demanded that a "rigid observance" of the boundaries between the two governments should be observed, he never defined those boundaries nor did he disagree with the notion that in wartime, one or both of the governments may assume extraordinary powers. He argued, however, that the people should be vigilant against deliberate acts violating the constitution as opposed to "mere irregularities" committed by Confederate authorities.[4] Murrah's observations represent the shared perspective of the Confederate governors on federalism. As governors within a dual federalist constitutional structure, the states and central government asserted limits to each other's power; but the boundaries of the respective powers were not well-delineated. Dual federalism, by its very nature,

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[3] Kenneth Michael Murray, "Gubernatorial Politics and the Confederacy," 6.

[4] Pendleton Murrah, Inaugural Address, November 5, 1863, James M. Day, ed. *House Journal of the Tenth Legislature, regular session of the State of Texas, November 3, 1863-December 16, 1863* (Austin, TX: Texas State Library, 1965), 48-55.

embraces an ambiguity on the boundaries between the state's authority and the central government's. By implication, Murrah was arguing that at least some of conflicts regarding federalism between the state and central government by the end of 1863 were not substantive violations of the Constitution by the Davis administration, or even disagreements over the state and central government boundaries of authority, but only irregularities committed by its agents. Not all of the governors agreed with Murrah. Frequently the line between an unconstitutional act and an irregularity was the subject of gubernatorial debate.

Despite gubernatorial complaints of irregularities or unconstitutional acts committed by the Davis administration, and despite the conflicts inherent in dual federalism over the boundaries that separate state from national authority, every governor believed in the Confederacy and fought for its survival. Even conscription did not provoke all governors to express constitutional concerns. Although worried about conscription, Texas' Governor Francis Lubbock's objective was to win the war, and constitutional wrangling over conscription would only inhibit Confederate success. John Letcher of Virginia also steadfastly supported the Confederacy even though he expressed many times that he believed conscription was unconstitutional. Better to adjudicate these issues after the war was won, argued Letcher, than risk losing the war over adhering to a strict observance of the central government's proper role in the constitutional system. Joseph Brown of Georgia, one of the staunchest defenders of state rights, demanded a strict adherence by the central government to the dual federalist constitutional system. Even for Brown, however, the Confederacy was paramount: his peace overtures in 1864 were predicated upon

the United States recognizing the existence of the Confederate States of America. William Smith, Virginia's last governor during the war, was so dedicated to the existence of the Confederacy that he proposed, despite the surrender of Lee's army, that he be placed in command of all Confederate forces left in Virginia to continue the fight. When Davis rejected Smith's proposal, the governor toured the state seeking support to continue opposition to the Union through guerilla warfare.[5]

This level of passion and support by the governors for the Confederacy's victory, along with their commitment to dual federalism and state rights, ultimately led to conflict in the relationship between the states and central government. Even though the state supreme courts relied upon past United States Supreme Court decisions in determining the contours of that relationship, and the politicians reflected on past experiences while in the United States, the constitutional situation in the Confederacy was unprecedented. Facing new and threatening challenges under war-time conditions, it is not surprising that despite an adherence to the concept of dual federalism, sometimes the roles between state and central government would become blurred. The struggle over conscription provides a clear example of the ambiguity faced by the governors with respect to the central government. The traditional mode of raising troops through the states proved incapable of meeting the manpower demands of the Confederate army. Yet, many governors argued that there were still enough volunteers to fill the need; some states even resorted to a draft themselves to fill their quotas.

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[5] Alvin Arthur Farhner, "The Public Career of William 'Extra Billy' Smith," 299-301.

While clarity in spheres of constitutional authority may have been lacking, the interaction between the states and the central government, in most instances, fell into discernible patterns. The patterns of interaction were a fundamental component of Confederate constitutionalism and reflected the variety of forms found in Confederate federalism. Federalism was a principle firmly rooted in the Confederate constitution, the various types of federalism prevalent in the Confederacy, largely as a result of war-time experiences, do not reflect merely political adjustments to changing circumstances, but rather a flexible constitutional response by the states and central government within the context of normative principle.

There were three phases in the relationship between the governors and the central government during the Confederacy's existence. The first, from the beginning of the war to the spring of 1862, was dominated by cooperation and mutual assistance in an effort to win the war, with little regard for institutional structures or forms. The second phase, from the passage of the first conscription act in April 1862 to the fall of 1864, can be identified by the resolution of conflicts between the governors and the Confederate government through negotiation. The last phase, which spanned from the fall of 1864 to the end of the war, can be characterized as one of survival, as the states and the central government struggled with the impending collapse of the Confederacy. These phases of Confederate federalism were not exclusive; overlap and continuities from one phase to the next existed. A certain degree of cooperation between the governors and the central government existed during the collapse of the Confederacy, and negotiation

occurred in the cooperation phase. But the three phases are discernable and represent the dominant interactions between the governors and the Davis administration during the life of the Confederacy. And the three phases are directly related to the success or failure of the Confederate armies on the battlefield.

From the war's inception until the spring of 1862, spirits were buoyant and optimistic in the South for a quick Confederate victory. The governors were quick to cooperate with the central government, operating under the illusion that the war would be short with relatively little bloodshed. Whether the issue was the transfer of troops from one state to another for the defense of the country or the transfer of arms and other war materiel, cooperation dominated the relationship among the governors themselves, and between the governors and government in Richmond. Although the Confederate constitution was based upon the principles of dual federalism, the lines of authority demarcating state and central government authority were significantly blurred in this phase as both the state and central governments were anxious to cooperate in order to secure victory and independence. Dual federalism gave way to cooperative federalism.

After the Battles of Shiloh and Seven Days, however, it became obvious that the war would last much longer than most had anticipated only a year before. The vicissitudes of the Confederate battlefield experiences, and the concomitant shortage of necessary civilian supplies along with a rapidly deteriorating economy, led the Davis administration in the spring of 1862 to encourage and adopt laws and policies that could result in amassing power in Richmond at the expense of state and local control. Issues such as conscription, the suspension of the writ of *habeas* corpus,

impressment, and reservation of space by the government on blockade runners forced the governors to re-examine their cooperative relationship with the Davis administration.

The governors and central government entered a period of negotiation, which occurred still within the constitutional framework of dual federalism. Hotly contested were conscription and reservation of space by the central government on blockade runners; two issues which confronted the boundary separating authority of central government power as opposed to state powers. The governors did not negotiate over the constitutionality of taxation, the suspension of the writ of *habeas corpus*, or impressment. The right of the central government to impose these policies clearly fell within the sphere of the central government; therefore, the negotiation occurred when the governors raised issues of equity and fundamental fairness with respect to the implementation of the laws. This negotiation reflected a more healthy and lively relationship between the governors and the Confederate authorities because it did allow for the states and central government, as within the context of dual federalism, to interact as equals, with compromise on both sides.

By the fall of 1864, with the collapse of the Confederate armies on all fronts, an economy dominated by inflation and scarcity of goods, and a federal blockade strangling Confederate trade, the states struggled to defend themselves against the overwhelming might of United States' power. During the survival phase, which witnessed the collapse of the Confederacy, the states gathered local forces for defense and struggled to suppress the increasingly powerful peace societies. While the governors' efforts were considerable in forcing the Confederate Congress to

repeal laws, such as reservation of space by the Confederate government on blockade runners, or to modify laws, such as repealing the impressment schedule of prices, it was much too little and too late. The Confederacy had been so reduced by the fall of 1864 that the state forces and Confederate armies were defending the same territory. Constitutional arguments were more often than not set aside as attention was focused on survival.

Throughout all three phases, the lack of gubernatorial protest against the statutes regulating the railroads and the centralization of the South's industry is notable, but not surprising. While the governors voiced concerns about these issues and occasional opposition to Richmond's policies, they paled in comparison to their reaction to issues such as conscription and impressment. With respect to the railroads, Confederate state governments in the pre-war period were already heavily invested in the rail system. Although incomplete and not connecting key southern cities, the railroads were subject to state involvement by varying degrees in each southern state. Depending on the jurisdiction, the state supplied surveyors, engineers, rate schedules, and set rail gauges, in addition to providing funds and guaranteeing bonds. The state's involvement in the railroads prior to the war, along with the president's sensitivity and devotion to dual federalism, deterred Davis from centralizing the railroad system despite being given statutory authority to do so. In addition, Davis chose not to pursue rail regulation because, as a practical matter, he did not think that the national government would provide more effective administration of the rail system than the states.

Some historians have characterized the Confederate control over southern industries as an example of "state socialism." This is inaccurate. The Confederate government significantly regulated the large industries through financial investment, exclusive contracts, conscription, detailing, impressment of workers, and price restrictions. But the South was, as one historian noted, dominated by agriculture with only a very few, small "preindustrial plants…."[6] And this is likely the very reason why the governors offered so little objection to central government control. Unlike the railroad system, in which the state was heavily invested prior to the war, the industrial sector was so small prior to 1861 that their interests were barely evident. The governors, in a society dominated by agriculture, were more attuned to planters' concerns rather than those of infant industries. Therefore, the governors, except in rare instances where government policy would have directly influenced the state's home front or military, would not have been sensitive to the centralizing effect of the governmental policy regarding industries.

The apparent contradictions of the Confederate governors' responses to the Davis administration's attempts at centralization must be perceived within the larger context of constitutional and political principles. The governors may have espoused the term state rights, but examination of the meaning of the governors' statements illustrated they believed in dual federalism. The term state rights, as used by the governors, frequently meant a defense of the state's constitutionally recognized sphere of authority upon which the central government was infringing, and not, as

[6] Raimondo Luraghi, *The Rise and Fall of the Plantation South*, 128.

one historian has asserted, a euphemism for defending slavery.[7] A reductionist conclusion such as this ignores the significant constitutional issues which the governors and other Confederate politicians were attempting to resolve under the most difficult of circumstances.

There was, however, a relationship between the issues that the governors chose to dispute with the central government and those that were in the political best interests of the governors. Governor Milton advised President Davis,

> But in the maintenance of the vast efforts which you are making for the salvation of the people of the several States I regard the Governors of the respective States as the sentinels upon the watchtowers of liberty, who will be faithless if they do not frankly make known opinions which they may reasonably entertain and submit facts and arguments to your consideration in matters appertaining to the high trust confided to you.[8]

The role of the governors, according to Milton, was to defend the fundamental right of liberty. As Justice Benjamin Cardozo opined in the next century, there are certain "principles of justice so rooted in the traditions and conscience of our people as to be ranked fundamental;"[9] Liberty, to the Confederates, was one such right. The central government's accrual of power could be analyzed in two contexts: the law itself could exceed the central government's constitutional authority or the

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[7] John Brawner Robbins, "Confederate Nationalism: Politics and Government in the Confederate South, 1861-1865," 5.

[8] Governor Milton to President Davis, October 10, 1862, *Official Records,* Series I, Volume 53, 259.

[9] *Palko v. Connecticut* 302 U.S. 319, 325 (1937).

implementation of the law could infringe upon the citizens' constitutionally protected rights.

Conscription provides a clear example of the governors defending what many governors viewed as a fundamental right of liberty of the state: the states' traditional authority to raise troops and then transfer them to the Confederacy. After the initial year of war, in which the deluge of volunteers so prominent in the spring of 1861 had dwindled significantly, the central government was faced with a severe shortage of manpower. The essential constitutional issue was whether the central government, through its authority to raise armies, could conscript men directly into a national army. The struggle that ensued over this issue, under the dual federalism constitutional model, demonstrated a healthy adversarial relationship between the states and the central government with respect to the appropriate allocation of constituted authority. Most governors accepted Davis' interpretation that the central government was merely exercising its constitutional authority; those who saw it otherwise remained publicly silent on the issue, preferring a victorious conclusion to the war first and a resolution of this constitutional issue second.

Governor Brown, the most articulate opponent of conscription, ultimately abided by a negotiated settlement of this dispute with the central government. The governor of Georgia interpreted the constitution narrowly, attempting to preserve the traditional power of raising troops to the states. Although Brown adamantly objected to any negotiation in reaching a settlement with the central government, he ultimately complied with the negotiated compromise agreed to by the Davis administration and the other governors. The Confederacy could conscript men, but

the states retained important rights, e.g., the right of governors to grant exemption for those necessary to state service. In addition, the Davis administration and the governors occasionally would enter into informal agreements which would delay or detail men that would otherwise be conscripted. The governors, in this instance, were fulfilling their obligation as sentinels of liberty by negotiating measures with respect to manpower that would enhance local defense and allow for important state functions to be determined by the governors.

The governors' responsibility included not just opposing laws that appeared unconstitutional on their face, but in confronting laws that were constitutional, but whose implementation transgressed on the states' or individuals' liberty and/or property. Only two governors objected to the constitutionality of the suspension of the writ of *habeas corpus* and none to the constitutionality of impressment. With respect to the suspension of the writ of *habeas corpus*, the governors overwhelmingly voiced no issue as to the constitutionality of the measure itself, despite its obvious deprivation of liberty to the accused. For most governors, the Constitution allowed for the suspension of the writ by Congress. The importance of winning the war was paramount to the governors; they set aside certain constitutional issues for adjudication until after the conclusion of the war. The Davis administration and Congress were quite aware of the significance of the suspension; limitations were placed on when, where, and to whom the law was to apply. When irregularities in the application of the law were brought to the attention of Confederate officials, in almost every instance, the central government

retreated. To a nation fighting for its liberty and independence, protection of an individual's liberty took on heightened significance.

Criticism directed at impressment was loud and constant. Complaints were directed to the governors, who, in turn, notified the Confederate authorities. The seizure of property by the government was a particularly sensitive issue in the South because of slavery. But the criticism was about more than merely seizing property; much concern focused on what property was seized and for what price. The Confederate constitution permitted the state to take private property for public use, but only for "just compensation;" to do otherwise would merely constitute state sanctioned theft.[10] Most citizens' complaints to the governors, which were forwarded by the governor to the Confederate authorities, centered on "just compensation." Section Five of the first impressment act allowed the Confederate military to impress property at preset prices, which were usually much less than the fair market value of the goods seized. By the end of the war, the situation had escalated further: the Confederate government was compensating for impressed property with worthless money or notes for money owed. A compromise was negotiated at the very end of the war when legislation was passed which ordered payment for impressed property at fair market prices. But the legislation was far too late to be of much effect.

With respect to both the suspension of the writ of *habeas corpus* and impressment, the governors were protecting the individual liberties of their citizens

[10] Confederate Constitution, art. I, sec. 9(16).

and their property against unconstitutional seizures by the central government. Negotiated settlements were ultimately reached with varying levels of success.

The governors seem to have failed, however, to consider fundamental constitutional issues when confronted with the central government's regulation of the economy. The role of the central government in the economy and the nationalizing effect that such involvement would invariably produce were issues that do not seem to have been debated. Perhaps this is understandable given the undeveloped character of southern industry prior to the war and reflects the historical lack of attention devoted to industry and manufacturing throughout the South. Consequently, when the Confederate government regulated industry with financial assistance, exclusive contracts, the construction of state-owned factories, or even dictating the width of railroad gauge, the governors' complaints were not about the constitutionality of all this, but rather about the ability of the factories to meet their individual contractual obligations. The contested issues were over the effects that the government regulation would have on industries as they affected state interests.

In contrast to the governors' lack of interest in the Confederacy's intrusion into the industrial and manufacturing sector, they assumed, and the Davis administration accepted, the traditional local control over the railroads. The railroad companies, acting in concert as a cartel, defended their interests so effectively that gubernatorial intervention was minimal. The Confederate authorities, despite being granted legislative authority, ceded this issue and never challenged the railroad interests. Since the central government did not impose nation-wide regulations, the

governors encountered few reasons to contest any transgressions upon their sphere of authority because there were so few.

The Confederate governors were forced into a unique role, assuming leadership under the most exigent of circumstances and actively defending the states and their citizens against constitutional encroachments by the central government, all while in the process of building a nation. Any assessment of the Confederate governors and Confederate politics needs to address the importance of their struggle in defining Confederate federalism. As George Rable has observed,

> However tedious and often petty wartime debates over issues ranging from conscription to impressment to habeas corpus to taxation may seem today, many Confederates at the time considered these issues critical to their own sense of purpose and national identity.[11]

This statement especially applies to the Confederate governors, who were at the vortex of the discussion on all of these issues. And these issues were critically important to the governors because they shaped and defined the contours of federalism in the new government. While the specific issues are no longer compelling as political controversies, the governors left a legacy within the American constitutional tradition of balancing the need for a strong, effective central government with the need to limit that government for the preservation of liberty and property. In that respect, Governor Milton was correct; the Confederate governors were the Confederacy's "sentinels upon the watchtower of liberty…"

[11] George Rable, *The Confederate Republic: A Revolution Against Politics*, 301.

APPENDIX ONE

THE GOVERNORS OF THE CONFEDERACY

State	*Governor*	*Date Term Began*
Alabama	Andrew Barry Moore	December 1, 1857
	John G. Shorter	December 2, 1861
	Thomas H. Watts	December 1, 1863
Arkansas	Henry M. Rector	November 15, 1860
	Thomas Fletcher	November 4, 1862[1]
	Harris Flanagin	November 15, 1862
Florida	Madison Starke Perry	October 5, 1857
	John Milton	October 7, 1861
	Abraham K. Allison	April 1, 1865[2]
Georgia	Joseph E. Brown	November 6, 1857
Louisiana	Thomas Overton Moore	January 23, 1860
	Henry Watkins Allen	January 26, 1864
Mississippi	John Jones Pettus	November 21, 1859
	Charles Clark	November 16, 1863

[1] Fletcher served as governor of Arkansas for less than two weeks due to the resignation of Rector following his gubernatorial defeat to Flanagin.

[2] As president of the Senate, Allison became governor after John Milton committed suicide.

North Carolina	John W. Ellis	January 1, 1859
	Henry Clark	July 7, 1861[3]
	Zebulon Vance	September 8, 1862
South Carolina	Francis Wilkinson Pickens	December 16, 1860
	Milledge L. Bonham	December 17, 1862
	Andrew G. Magrath	December 19, 1864
Tennessee	Isham G. Harris	November 3, 1857
	Robert l. Caruthers	August 1863[4]
Texas	Edward Clark	March 18, 1861[5]
	Francis R. Lubbock	November 7, 1861
	Pendleton Murrah	November 5, 1863
Virginia	John Letcher	January 1, 1860
	William Smith	January 1, 1864

[3] As Speaker of the Senate, Clark became governor after Ellis died suddenly.

[4] Although elected governor in August 1863, Caruthers was never inaugurated and never attempted to serve since Tennessee was occupied by federal forces.

[5] When Governor Sam Houston refused to take the oath of allegiance to the Confederacy as mandated by the state convention, that body declared the governor's office vacant and named Lieutenant Governor Clark Houston's successor.

APPENDIX TWO

THE CONSTITUTION OF

THE CONFEDERATE STATES OF AMERICA

MARCH 11, 1861

Preamble

We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity invoking the favor and guidance of Almighty God do ordain and establish this Constitution for the Confederate States of America.

Article I

Section I. All legislative powers herein delegated shall be vested in a Congress of the Confederate States, which shall consist of a Senate and House of Representatives.

Sec. 2. (I) The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall be citizens of the Confederate States, and have the qualifications requisite for electors of the most numerous branch of the State Legislature; but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.

(2) No person shall be a Representative who shall not have attained the age of twenty-five years, and be a citizen of the Confederate States, and who shall not when elected, be an inhabitant of that State in which he shall be chosen.

(3) Representatives and direct taxes shall be apportioned among the several States, which may be included within this Confederacy, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all slaves. The actual enumeration shall be made within three years after the first meeting of the Congress of the Confederate States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every fifty thousand, but each State shall have at least one Representative; and until such enumeration shall be

made, the State of South Carolina shall be entitled to choose six; the State of Georgia ten; the State of Alabama nine; the State of Florida two; the State of Mississippi seven; the State of Louisiana six; and the State of Texas six.

(4) When vacancies happen in the representation from any State the executive authority thereof shall issue writs of election to fill such vacancies.

(5) The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment; except that any judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof.

Sec. 3. (I) The Senate of the Confederate States shall be composed of two Senators from each State, chosen for six years by the Legislature thereof, at the regular session next immediately preceding the commencement of the term of service; and each Senator shall have one vote.

(2) Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen by resignation, or other wise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

(3) No person shall be a Senator who shall not have attained the age of thirty years, and be a citizen of the Confederate States; and who shall not, then elected, be an inhabitant of the State for which he shall be chosen.

(4) The Vice President of the Confederate States shall be president of the Senate, but shall have no vote unless they be equally divided.

(5) The Senate shall choose their other officers; and also a president pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the Confederate states.

(6) The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the Confederate States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

(7) Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under the

Confederate States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

Sec. 4. (I) The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, subject to the provisions of this Constitution; but the Congress may, at any time, by law, make or alter such regulations, except as to the times and places of choosing Senators.

(2) The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

Sec. 5. (I) Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

(2) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of the whole number, expel a member.

(3) Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

(4) Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sec. 6. (I) The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the Confederate States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place. 'o Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the Confederate States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the Confederate States shall be a member of either House during his continuance in office. But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of

either House, with the privilege of discussing any measures appertaining to his department.

Sec. 7. (I) All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

(2) Every bill which shall have passed both Houses, shall, before it becomes a law, be presented to the President of the Confederate States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respective}y. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law. The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.

(3) Every order, resolution, or vote, to which the concurrence of both Houses may be necessary (except on a question of adjournment) shall be presented to the President of the Confederate States; and before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be repassed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

Sec. 8. The Congress shall have power-

(I) To lay and collect taxes, duties, imposts, and excises for revenue, necessary to pay the debts, provide for the common defense, and carry on the Government of the Confederate States; but no bounties shall be granted from the Treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States.

(2) To borrow money on the credit of the Confederate States.

(3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the Constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation; in all which cases such duties shall be laid on the navigation facilitated thereby as may be necessary to pay the costs and expenses thereof.

(4) To establish uniform laws of naturalization, and uniform laws on the subject of bankruptcies, throughout the Confederate States; but no law of Congress shall discharge any debt contracted before the passage of the same.

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

(6) To provide for the punishment of counterfeiting the securities and current coin of the Confederate States.

(7) To establish post offices and post routes; but the expenses of the Post Office Department, after the Ist day of March in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenues.

(8) To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

(9) To constitute tribunals inferior to the Supreme Court.

(10) To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

(11) To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

(12) To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

(13) To provide and maintain a navy.

(14) To make rules for the government and regulation of the land and naval forces.

(15) To provide for calling forth the militia to execute the laws of the Confederate States, suppress insurrections, and repel invasions.

(16) To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the Confederate States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

(17) To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of one or more States and the acceptance of Congress, become the seat of the Government of the Confederate States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the . erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the Confederate States, or in any department or officer thereof.

Sec. 9. (I) The importation of negroes of the African race from any foreign country other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.

(2) Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy.

(3) The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

(4) No bill of attainder, ex post facto law, or law denying or impairing the right of property in negro slaves shall be passed.

(5) No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

(6) No tax or duty shall be laid on articles exported from any State, except by a vote of two-thirds of both Houses.

(7) No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

(8) No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

(9) Congress shall appropriate no money from the Treasury except by a vote of two-thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for

by some one of the heads of departments and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the Government, which it is hereby made the duty of Congress to establish.

(10) All bills appropriating money shall specify in Federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compensation to any public contractor, officer, agent, or servant, after such contract shall have been made or such service rendered.

(11) No title of nobility shall be granted by the Confederate States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

(12) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the Government for a redress of grievances.

(13) A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

(14) No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

(15) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

(16) No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

(17) In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with

the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

(18) In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact so tried by a jury shall be otherwise reexamined in any court of the Confederacy, than according to the rules of common law.

(19) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(20) Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

Sec. 10. (I) No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, or ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

(2) No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports, or exports, shall be for the use of the Treasury of the Confederate States; and all such laws shall be subject to the revision and control of Congress.

(3) No State shall, without the consent of Congress, lay any duty on tonnage, except on seagoing vessels, for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations; and any surplus revenue thus derived shall, after making such improvement, be paid into the common treasury. Nor shall any State keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. But when any river divides or flows through two or more States they may enter into compacts with each other to improve the navigation thereof.

ARTICLE II

Section I. (I) The executive power shall be vested in a President of the Confederate States of America. He and the Vice President shall hold their offices for the term of six years; but the President shall not be reeligible. The President and Vice President shall be elected as follows:

(2) Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to

which the State may be entitled in the Congress; but no Senator or Representative or person holding an office of trust or profit under the Confederate States shall be appointed an elector.

(3) The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the Government of. the Confederate States, directed to the President of the Senate; the President of the Senate shall,in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the 4th day of March next following, then the Vice President shall act as President, as in case of the death, or other constitutional disability of the President.

(4) The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

(5) But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the Confederate States.

(6) The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the Confederate States.

(7) No person except a natural-born citizen of the Confederate; States, or a citizen thereof at the time of the adoption of this Constitution, or a citizen thereof born in the United States prior to the 20th of December, 1860, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have

attained the age of thirty-five years, and been fourteen years a resident within the limits of the Confederate States, as they may exist at the time of his election.

(8) In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice President; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President; and such officer shall act accordingly until the disability be removed or a President shall be elected.

(9) The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the Confederate States, or any of them.

(10) Before he enters on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the Confederate States, and will to the best of my ability, preserve, protect, and defend the Constitution thereof."

Sec. 2. (I) The President shall be Commander-in-Chief of the Army and Navy of the Confederate States, and of the militia of the several States, when called into the actual service of the Confederate States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the Confederate States, except in cases of impeachment.

(2) He shall have power, by and with the advice and consent of the Senate, to make treaties; provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the Confederate States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

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

(4) The President shall have power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; but no person rejected by the Senate shall be reappointed to the same office during their ensuing recess.

Sec. 3. (I) The President shall, from time to time, give to the Congress information of the state of the Confederacy, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the Confederate States.

Sec. 4. (I) The President, Vice President, and all civil officers of the Confederate States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

Section I. (I) The judicial power of the Confederate States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 2. (I) The judicial power shall extend to all cases arising under this Constitution, the laws of the Confederate States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the Confederate States shall be a party; to controversies between two or more States; between a State and citizens of another State, where the State is plaintiff; between citizens claiming lands under grants of different States; and between a State or the citizens thereof, and foreign states, citizens, or subjects; but no State shall be sued by a citizen or subject of any foreign state.

(2) In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

(3) The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been

committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Sec. 3. (I) Treason against the Confederate States shall consist only in levying war against.them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

(2) The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV

Section I. (I) Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Sec. 2. (I) The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.

(2) A person charged in any State with treason, felony, or other crime against the laws of such State, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

(3) No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such slave belongs,. or to whom such service or labor may be due.

Sec. 3. (I) Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives and two-thirds of the Senate, the Senate voting by States; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

(2) The Congress shall have power to dispose of and make allneedful rules and regulations concerning the property of the Confederate States, including the lands thereof.

(3) The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several Sates; and may permit them, at such times, and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected be Congress and by the Territorial government; and the inhabitants of the several Confederate States and Territories shall have the right to take to such Territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.

(4) The Confederate States shall guarantee to every State that now is, or hereafter may become, a member of this Confederacy, a republican form of government; and shall protect each of them against invasion; and on application of the Legislature or of the Executive when the Legislature is not in session) against domestic violence.

ARTICLE V

Section I. (I) Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention, voting by States, and the same be ratified by the Legislatures of two- thirds of the several States, or by conventions in two-thirds thereof, as the one or the other mode of ratification may be proposed by the general convention, they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.

ARTICLE VI

I. The Government established by this Constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified; and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.

2. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the Confederate States under this Constitution, as under the Provisional Government.

3. This Constitution, and the laws of the Confederate States made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the Confederate States, shall be the supreme law of the land; and the judges in every

State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

4. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the Confederate States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the Confederate States.

5. The enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people of the several States.

6. The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people thereof.

ARTICLE VII

I. The ratification of the conventions of five States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

2. When five States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Constitution shall prescribe the time for holding the election of President and Vice President; and for the meeting of the Electoral College; and for counting the votes, and inaugurating the President. They shall, also, prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the Provisional Constitution shall continue to exercise the legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.

Adopted unanimously by the Congress of the Confederate States of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, sitting in convention at the capitol, the city of Montgomery, Ala., on the eleventh day of March, in the year eighteen hundred and Sixty-one.

HOWELL COBB, President of the Congress.

South Carolina: R. Barnwell Rhett, C. G. Memminger, Wm. Porcher Miles, James Chesnut, Jr., R. W. Barnwell, William W. Boyce, Lawrence M. Keitt, T. J. Withers.

Georgia: Francis S. Bartow, Martin J. Crawford, Benjamin H. Hill, Thos. R. R. Cobb.

Florida: Jackson Morton, J. Patton Anderson, Jas. B. Owens.

Alabama: Richard W. Walker, Robt. H. Smith, Colin J. McRae, William P. Chilton, Stephen F. Hale, David P. Lewis, Tho. Fearn, Jno. Gill Shorter, J. L. M. Curry.

Mississippi: Alex. M. Clayton, James T. Harrison, William S. Barry, W. S. Wilson, Walker Brooke, W. P. Harris, J. A. P. Campbell.

Louisiana: Alex. de Clouet, C. M. Conrad, Duncan F. Kenner, Henry Marshall.

Texas: John Hemphill, Thomas N. Waul, John H. Reagan, Williamson S. Oldham, Louis T. Wigfall, John Gregg, William Beck Ochiltree.

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