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To Begin Anew: Federalism and Power in the Confederate States of America

Geoffrey D. Cunningham

Louisiana State University and Agricultural and Mechanical College, gcunni1@lsu.edu

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TO BEGIN ANEW: FEDERALISM AND POWER IN THE CONFEDERATE
STATES OF AMERICA

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of History

by
Geoffrey David Cunningham
B.A., The Evergreen State College, 2007
M.A., Louisiana State University, 2010
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For Jaina

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ABSTRACT

The leaders of the Confederate States of America proved eager and desirous of the power of the federal government. Rather than constituting an anomalous, ironical, or revolutionary episode in American political history, the Confederacy sought to conserve their definition of American liberty and democracy, with its racial grants, privileges, and sanction of slavery, through the power of government. The embrace of federal power was an intentional, central, and desirable feature of government, and one that Confederates embraced in order to sustain and project their nation and its vision of American democracy.

INTRODUCTION

At a reunion of the Stonewall Brigade in 1892 former commanding General James Walker looked back and observed, “In fact if you take out of the Confederate history the deeds of her armies and the devotion and the sacrifices of the Southern women there is nothing left.”¹ Walker’s comment usefully illustrates the overwhelming degree of attention afforded to the battlefield, with its seemingly innate allure attested to by the unrelenting legion of volumes published on the Civil War. Walker’s observance also highlights the vital contributions and varying roles of women in the Civil War. There is, however, a notable omission in Walker’s preferred rendering of the Confederate past - the complete absence of politics. In memoriam Walker renders the memory of the Confederate government invisible.

Walker’s quote also usefully highlights the degree to which Confederate nostalgia has influenced scholarly interest. Modern scholarship continues to enrich our understanding of the Civil War, with ongoing inquiry resulting in the field’s remarkable and vital diversification. From medicine and death to gender, destruction, and environment, scholarship on the Civil War has never been more exciting and dynamic.² Despite scholars’ rich historical explorations, the question

¹ South Branch Intelligencer (Romney, W.V.) September 9, 1892 quoted in

² Kathryn Shively Meier, *Nature’s Civil War: Common Soldiers and the Environment in 1862 Virginia* (Chapel Hill: The University of North Carolina Press, 2013); Megan Kate Nelson, *Ruin Nation: Destruction and the American Civil War* (Athens: University of Georgia Press, 2011); Jim Downs, *Sick From Freedom: African-American Illness and Suffering during the Civil War and Reconstruction* (Oxford: Oxford University Press, 2015); George Rable, *Civil Wars: Women and the Crisis of Southern Nationalism* (Champaign: University

of how the Confederate government functioned remains misunderstood. While scholars have broadened our understanding of the Confederacy, most works that discuss politics explain why the Confederate government failed rather than how it functioned. As a result there is a tendency to approach Confederate federalism and central state organization as evidence of a venture gone wrong. According to scholars' varying conclusions, the betrayal results from either the failure of leadership, the shortcomings of political culture, the general depravity of planter's parochial worldview, an insistence on state's rights, or merely the irony of unintended consequence. Shifting the analytical approach away from culpability yields important insights.

Confederate leaders embraced federal power and government, viewing its control essential to protect and advance the grants of American liberty as defined by the Constitution. By asserting that eighteenth-century definitions of political liberty were essential to American democracy, Confederates claimed to preserve constitutional liberty and to affix its definitions for all time. Linking racial hierarchy, economic prosperity, and political power through the auspices of federal power constituted the central thrust of Confederate desire. They desired federal control to affix the Constitution's sanction of slavery in order to

of Illinois Press, 1989) Drew Faust, *Mothers of Invention: Women of the Slaveholding South in the American Civil War* (Chapel Hill: The University of North Carolina Press, 2004); Anne Sarah Rubin *A Shattered Nation: The Rise and Fall of the Confederacy, 1861-1868* (Chapel Hill: The University of North Carolina Press, 2007); Leeann Whites and Alecia P. Long eds., *Occupied Women: Gender, Military Occupation, and the American Civil War* (Baton Rouge: Louisiana State University Press, 2009); Stephanie McCurry, *Confederate Reckoning, Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010); Nina Silber, *Daughters of the Union: Northern Women Fight the Civil War* (Cambridge: Harvard University Press, 2011).

perpetuate and project their vision of the nation across the continent and into the future. They did not desire to revolutionize, reject, or transform the government or the political culture of the American state, but to embrace its powers and cement slavery's status as a vital elucidation of white liberty. They sought to conserve and control rather than to transform or revolutionize.

The Constitution's political grants of liberty, according to the breakaway Southerners, were rooted in racial division, which defined the body politic according to race and afforded white citizens the privilege to own slaves and command black labor. Indeed, Confederates argued, this makeup was necessary and essential to creating unity and the model of classical republican virtue set forth by the Founding generation. As Alexander Stephens explained in his vast apologia, *A Constitutional View of the Late War Between the States*, what some viewed as farce, a definition of liberty that rested upon slavery, instead constituted an essential component of the white South's understanding of liberty. Judge Bynum, Stephens' synthetic Republican, interrupted the Sage of Liberty Hall in his fictional salon as he recalled a speech spelling forth this belief: "How can you say any of this?" Bynum interrupts. "Liberty and Equality' seems to me but a mockery...when we know that what he meant was, not the advancement of Liberty at all, but the perpetuation of slavery." Stephens calmly corrects his friend. The Confederacy's object "was the perpetuation of that liberty and equality which was established by the Constitution of the United States...It was the same liberty and equality that the men of 1776 had periled their lives, their

honor, and all that they held, to establish.”³ What Bynum perceived as mockery, Stephens believed constituted the white South’s paramount political conviction. For the maintenance of that vision of American liberty, with the entwining roots of slavery and classical republicanism, Confederates sought the auspices of the powerful federal government to preserve, protect, and facilitate the prosperity of their vision of American democracy. Their chief aim lay not in forsaking or revolutionizing, but preserving. And for that, they required control of the government.

The role of federal power in the Confederacy has long beguiled scholars. Richard Bense’s noteworthy study of the origins of central state development in American political life noted that the Confederacy, not the Union, embraced more federalized and centralized policies. In Bense’s estimation the embrace of such powers owed to expediency and irony. In lacking a dynamic marketplace, the Confederacy was forced to turn to the federal government for solutions. The seemingly staid, hesitant federal powers of the United States Constitution were thus unwillingly thrust into execution through the Confederacy’s efforts at imitation.⁴ Emory Thomas similarly studied the Confederacy’s envelopment in federal authority and found that the experiences of war necessitated an unforeseen and unlikely revolution of values. The experience of war unexpectedly transformed the Confederacy, turning it away from its roots in localism to its

³ Alexander Stephens, *A Constitutional View of the Late War Between the States...* (Philadelphia, 1870) Volume II, 126.

⁴ Richard Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1858-1877* (Cambridge: Cambridge University Press, 1990), x.

awkward embrace of big government, a development most at odds with its founding purpose.⁵ By the late nineties two essay collections on the Confederacy appeared, *Why the South Lost the Civil War* and *Why the Confederacy Lost*. Both collections introduced readers to historical reassessments of Confederate nationalism, emancipation, black enlistment, and military strategy, all of which attempted to explain the Confederate failure. In 2005 Anne Sarah Rubin's work *A Shattered Nation* chronicled the Confederacy's attempt at defining a nationalist ideology. Rubin argued for the relative ease with which Southerners identified slavery as a cause for independence, yet created a national identity separate from the institutions of their national life. The Confederacy, in Rubin's work, achieved a powerful cultural symbolism independent of politics, which allowed separatist sentiments to linger long after the political institutions of the Confederacy had failed.⁶

In 2006 Bruce Levine reignited interest in Confederate emancipation, long a key problem in historical investigations of the national experiment. Not since Robert Durden's 1972 *The Gray and the Black* has scholarship focused so intently on the issue. Then, Durden chronicled what he saw as an evolution in thinking on the part of the Confederacy's leaders who demonstrated flexibility in envisioning

⁵ Emory Thomas, *The Confederacy as a Revolutionary Experience* (New Jersey: Prentice Hall Incorporated, 1971).

⁶ Charles B. Dew, *Apostles of Disunion: Southern Secession Commissioners and the Causes of the Civil War* (Charlottesville: University of Virginia Press, 2001); George Rable, *The Confederate Republic: A Revolution Against Politics* (Chapel Hill: The University of North Carolina Press, 1994); Anne Sarah Rubin, *A Shattered Nation: The Rise and Fall of the Confederacy, 1861-1868* (Chapel Hill: The University of North Carolina Press, 2005).

a South with a malleable racial line. The very fact that white Southerners turned to black Southerners to achieve Confederate independence, in Durden's estimation, offered evidence of lingering interracial goodwill in the South, and the possibility of a different future.⁷ Levine's reassessment instead highlights the agency of slaves to demonstrate how their actions drove the policy and ultimately resulted in the Confederate policy's failure. Levine does not intuit any willingness of white Southerners to forego racial control in their scheme for emancipation and argues that preserving slavery ruled Confederate motives from first to last. That emancipation failed, Levine argues, owed to clear-eyed rationality on the part of the South's enslaved who understood their best hope for freedom lay in Confederate ruin.⁸ The field continues to produce new works apace, as two new collections of scholarly essays appeared in 2009, offering scholars' recent findings on memory, meaning, and motivations for North and South during the Civil War.⁹ Stephanie McCurry's most recent treatment of political power in the

⁷ Robert F. Durden, *The Gray and the Black: The Confederate Debate on Emancipation* (Baton Rouge: Louisiana State University Press, 1972). Durden writes, "Yet Jefferson Davis, Robert E. Lee, and Judah Benjamin, and a host of less famous Southerners displayed greater flexibility about an willingness to begin modifying slavery than most accounts have ever admitted...The tragedy of the unturned or half-turned corner lay not, surely, in the military outcome of the war, for the North would probably have won in any event. The whole episode shows, however, that there was yet a reservoir of good will between the white and black races in the South, which reservoir was very nearly tapped by the Confederacy." xii.

⁸ Bruce Levine, *Confederate Emancipation: Southern Plans to Free and Arm Slaves During the Civil War* (Oxford: Oxford University Press, 2006).

⁹ David H. Donald, ed., *Why the North Won the Civil War* (Baton Rouge: Louisiana State University Press, 1960); Richard E. Beringer, Herman Hattaway, Archer Jones, and William N. Still Jr., *Why the South Lost the Civil War* (Athens: University of Georgia Press, 1986) particularly chapter ten, which addresses state's rights; Gabor S. Borritt, ed., *Why the Confederacy Lost* (Oxford: Oxford University Press, 1992); William J. Cooper and James M. McPherson eds.,

Confederacy focuses on the ways that white masters concentrated power among the male elite, denying legitimacy to women and slaves, and in taking such loyalty for granted embarked on a course of ironic ruin.¹⁰

From the Confederacy's inception to its last gasp attempt to enlist bondsmen as soldiers, federal power played a central role in the history of the Confederate States of America. Confederate leaders pursued the course of independence through the medium of a powerful, centralized, federally supreme government. They built an avowedly imitative nation proclaiming to protect time-honored and defined rights of liberty, by recapitulating the United States Constitution and creating a powerful, central government. From the convention in Montgomery, Alabama to the last general order of Jefferson Davis, Confederates executed federal power with intent. Indeed, the history of the Confederacy reveals that from the executive to the legislative and judicial branch, the Confederacy enjoyed broad grants and wide-ranging instrumentalities of central power.

Writing the Civil War: The Quest to Understand (Columbia: University of South Carolina Press: 1998); William J. Cooper and John M. McCardell, eds., *In the Cause of Liberty: How the Civil War Redefined American Ideals* (Baton Rouge: Louisiana State University Press, 2009) see Chapter Six "Why Did Southerners Secede?" Wilentz writes, "Lincoln's election, in full compliance with the Constitution, directly threatened the future of southern slavery, meaning that the Constitution, for decades slaveholders' friend, was now their enemy. As a direct result of Lincoln's election and of his actions upon taking office, eleven southern states seceded – and the war came." 39; Joan Waugh and Gary W. Gallagher, eds., *Wars Within a War: Controversy and Conflict Over the American Civil War* (Chapel Hill: University of North Carolina Press, 2009).

¹⁰ Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010).

As historian Max Edling's work on the United States Constitution illuminates, the Constitution's provisions to raise and maintain armies, including state militias, in addition to the power to tax and borrow money, contradicts historical interpretations of the United States Constitution as a document of governmental restraint.¹¹ The provisions for a strong, central government, Edling argue, laid the groundwork for a central state based on the European model, whose support of national armies and grants to tax and borrow intended to project and execute power from a consolidated, national center. The Founders were very much concerned with government, which is reflected by the arrangements, grants, and broad instrumentalities to carry out the powers contained within the United States Constitution. The Confederate Constitution's intentional mimicry of the United States demonstrated its own desire to possess the power of a strong, centrally administered government. Indeed, the Davis administration rooted administration's policies that executed federal power in American historical precedent and legal code, an often-overlooked feature that the Confederacy continued in force. The war did not transform the Confederacy's relationship to federal power, but made their desire for power evident.

The first chapter chronicles the experience of secession, laying out the fact that by their words and deeds, secessionists struggled to wrestle the South out of the Union in order to maintain control of the government to conserve slavery,

¹¹ Max Edling, *A Revolution in Favor of Government: Origins of the United States Constitution and the Making of the American State* (Oxford: Oxford University Press, 2008).

upon which rested their economic, social, and political system. Indeed, their articulations for resuming the power of the government in an independent South repeatedly proclaimed the purpose of embracing government to sustain their region's makeup. Attempting to affix select Founders' definitions of liberty, with its emphasis in classical republicanism, constituted the motive of secessionist delegates. Their goal was not a revolution, as they made evidently clear, but rather the preservations of conservative liberty. The experiences of Jefferson Davis, Alexander Stephens, William Lowndes Yancey, and Joseph Brown provide a rich intersection of ideological, institutional, and philosophical viewpoints. Politicians all, these men hailed from different parts of the South and represented different levels of government. Despite their varying approaches to the wisdom of secession, all exhibited a clear desire for a strong federal government to secure and perpetuate their articulated understanding of liberty. They sought not to overthrow government or to repudiate its power, but to harness that power.

The second chapter tells the story of the Montgomery Convention, which revealed the desire of secessionist delegates to preserve the Constitution of the United States and to continue the laws of the United States in force. The delegates' efforts were avowedly imitative. The few reforms adopted resulted not from an attempt to make the government more Southern, but rather to make it more efficient. The wellspring of reform lay not in desires to erect a proslavery empire, but to clarify grants of liberty and to eradicate future dissention based on previous political tribulations. In a fitting example of the convention's wish to clarify the Confederacy's conventional aims, the Montgomery delegates turned to

Jefferson Davis and Alexander Stephens to head the executive. The Confederacy did not mark a radical departure, but rather sought to secure and perpetuate eighteenth-century conventions of liberty and democracy. Even before the first battle, the Confederate Congress looked to the Constitution to nationalize the nation's response to the ongoing crisis at Fort Sumter in Charleston Harbor, South Carolina. Before the first shots, the national government owned the supreme power to decide on the issue of war or peace, not the states. The war did not transform the state, but made its grants of federal power clear.

Chapter three chronicles the Confederacy's use of federal power to respond to the exigencies of wartime. The debates over conscription and suspension of habeas corpus reveal Confederate leaders following their Constitution, which a majority of Southern politicians supported – even inveterate foes of Davis. The ultimately unresolved issue of Confederate politics remained the establishment of a Supreme Court, the power of judicial review. A topic of considerable debate with antebellum antecedents, the row over the court's ability to invalidate state legislation and to interpret the will of Congress provided a divisive episode and revealed the conditional approach to federal politics among the Confederacy's more singularly interesting politicians. In the end, William Yancey, in a remarkable display, sought to harmonize state and federal action, to make government function more harmoniously, and that included defending the prerogatives of the national congress and state legislatures against the scheme for an all powerful Supreme Court.

The fourth chapter follows the legal response to challenges of federal power over the areas of conscription and habeas corpus. Owing to absence of a Supreme Court, decisions remained in state courts. In overwhelming fashion, the Davis administration won every case concerning the supremacy of the federal government. Even North Carolina's Supreme Court, where the most significant and sustained legal challenge to the Confederacy's executive power was sustained, eventually ruled in favor of the administration to the detriment of state's rights proponents. The federal government owned a clear and sovereign grant of power.

The fifth chapter covers the most radical extension of federal power in the Confederacy, slave enlistments into the army. The policy demonstrates the farthest reaches of the Davis administration's use of its executive power. The policy was not without opposition, but in the end Davis, by building an effective coalition to secure its passage comprised of a unique assemblage of state leaders and military officials. That such a coalition proved possible revealed the degree to which politicians and military leaders looked to federal power to further their goals. Using the power of the executive, Davis even amended the legislation to afford bondsmen who enlisted the rights of freedmen and the promise of emancipation. With the Confederacy's collapse arriving just weeks after the policy's passage, the full social ramifications of Davis's actions remained unfulfilled. And in defeat, the Confederacy's former political elite took to the pen with vigor in an effort to salvage their legacy and to rescue the memory of the Confederacy from the opprobrium of its failure. By exalting state's rights, Davis

and Stephens thrust off accusations of treason by claiming secession a legitimate constitutional recourse. They also conflated the cause of the Confederacy as the pursuit of self-government, a favorable endeavor for so-called redeemers who sought to restore white rule in the Reconstruction South. Such efforts rendered the Confederacy largely distinct from its history, making it a safe vessel for nostalgic sentiments that obscured a sustained belief in American democracy's essential racial definition.

As an intellectual project, I focused on the writings and speeches of the main actors. I chose Alexander Stephens and Jefferson Davis because they were the Confederacy's premier political leaders, but also included William Lowndes Yancey and Joseph Brown because of their illuminating historical importance, and due to varying scholarly interpretations of their legacies. These subjects provide a variety of perspectives between national and state politicians, and conventional political actors and maverick politicians. They also offer a broad geographic perspective. Because I was focused on the words, actions, and deliberations, I used newspapers in limited fashion, to either provide a broad context to events, demonstrate evidence of an existing sentiment such as the call for slave enlistments, or in the case of figures of like Robert Barnwell Rhett, to give voice to his dissenting, anomalous ideas.

The Confederacy did not secede to repudiate government, but rather to enshrine racial hierarchy in a government that protected American democracy's purportedly immutable, original grants of liberty. The Confederate elite tenaciously clung to time-honored definitions of the body politic, and to achieve

their farthest desires, they embraced federal, central control. By incorporating the past, with its purportedly immutable definitions of liberty and democracy, the Confederacy hoped to project their vision of American democracy across the continent and into the future. To accomplish this goal, the Confederates required a federal government strong enough to defend the nation, safeguard its values, and spread its institutions. The Confederates believed that they were rescuing American democracy and its form of government, not forsaking it. As the delegates at Montgomery repeatedly stated, they sought to save American democracy by adopting the United States Constitution and to continue its legal code in force. President Jefferson Davis' inaugural pronouncements elucidated an energetic policy with ebullient language, which provided an early and clear example of Confederate leaders favorable and desirable application of federal power. Contrary to some scholars who have treated the Confederacy as a revolutionary, aberrant, or transformational moment, the war proved instead revelatory of Confederates' desire to conserve their definition of American liberty through the power of the federal government. From conscription through the suspension of habeas corpus, federal power was greeted warmly, even by some of Davis' most inveterate critics. The main frictions over federal power occurred not as a result of their application, but rather disagreements over the mechanism of their enforcement. Throughout, Confederates remained committed to the notion of a strong central government, which they believed necessary to preserving and eventually projecting their vision of American democracy across the continent. The Confederates conceived of their project as saving American constitutional government, not forsaking it.

CHAPTER ONE CONSERVING LIBERTY

In the fall of 1796, George Washington announced his resignation from the presidency after two terms. His farewell appeared in the *American Daily Advertiser* on September 19 and presented the country with advice for remaining committed to founding principles. “The unity of government which constitutes you one people is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquility at home, your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize.”¹ Washington, in short, counseled citizens to look after their institutions and commitments. Particularly inveighing against the burgeoning party and sectional loyalties threatening to divide the country, Washington beseeched the young nation to remain committed to the principle of united government. It was a remarkable crystallization of the Founders generally fatalistic view of history. Washington implicitly feared that such disruptive forces would prove lethal to the country.

Sixty-four years after Washington’s counsel, South Carolina secessionists gathered in Charleston. At Institute Hall on Meeting Street, the assembled listened for the verdict of their deliberation, “Slowly and solemnly it was read unto the last word - ‘dissolved...’” The Union was no more. At this, the delegates bellowed “a shout that shook the very building, reverberating, long-continued, rose to Heaven, and ceased only with the loss of breath.” *The Charleston Mercury*

¹ *George Washington Papers at the Library of Congress, 1741-1799: Series 2 Letterbooks, September 17, 1796 Farewell Address 222-3.*

declared the moment a righteous response to the threat of Republican rule: “Conservative liberty has been vindicated...South Carolina has resumed her entire sovereign powers, and unshackled, has become one of the nations of the earth.”² Washington’s fear materialized merely two generations after his admonition.

The Charleston *Mercury* announced that secession constituted a clarification of the conservative principles of constitutional liberty. As white Southerners embarked upon a course of independence, they sought to affix their understanding of liberty as the immutable, essential feature of American political democracy. Quite literally, the Confederate elite desired to conserve eighteenth-century definitions of political liberty, with its racially restricted body politic and the Constitution’s sanction and even incentivizing of slave ownership. This conservative interpretation of American democracy viewed racial inequality as an essential feature of constitutional democracy. With the goal of fixing liberty in mind, secessionists looked to conserve a selective interpretation of the Founding Era’s definitions and understanding. Nascent Confederates claimed Washington, Thomas Jefferson, James Madison, and their interpretation of constitutional liberty as their own. The *Mercury* elucidated the continuity between the

² Charleston *Mercury*, December 21, 1860.

Confederate and the Founders when it hailed, “conservative liberty has been vindicated.”³

This was no exercise in revolution, but in preservation. As secessionists explained, the election of Abraham Lincoln constituted a grave threat to the South. The Republican ideology of free soil and free men not only endangered the economic makeup of Southern society, but the party’s resort, in the words of William Henry Seward, to a “higher law” than the Constitution frightened and enraged white Southerners.⁴ Indeed, it appeared as though the victorious Republican Party sought not only to confine slavery, but also to eradicate it through a moral appeal in disregard of any constitutional limits. As John Daniel, the editor of the *Richmond Daily Examiner*, argued that, “To escape revolution in fact we must adopt revolution in form. To stand still is revolution – revolution already inflicted on us by our fanatical, unrelenting enemies.”⁵ Unlike the Republican Party, which prized individual advancement and societal innovation the Confederacy retained a belief in ordered, fixed, stable societies. Secessionists

³ Charleston Mercury, December 21, 1860.

⁴ George Baker, ed., *The Works of William H. Seward* (New York: 1853). In arguing that the Constitution “does not recognize property in man,” Seward advanced, “But there is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purpose.” Vol. I, 72-4. On the attempts to limit and destroy slavery, see James Oakes, *The Scorpion’s Sting: Antislavery and the Coming of the Civil War* (New York: W.W. Norton and Company, 2014). In particular, Oakes’ argument in chapter one, “Like a Scorpion Girt by Fire,” over abolitionist desires to erect “cordon of freedom” of free states to first confine and then suffocate slavery.

⁵ *Richmond Daily Examiner*, March 6, 1861.

desired not to advance a new definition of liberty, but rather to fix eighteenth-century standards, and their organization of society, for all time.

Jefferson Davis expressed astonishment at the recent growth of revolutionary attitudes toward equality when he resigned from the United States Senate. A wary secessionist, Davis nevertheless spoke to the overarching hope of white Southerners to preserve political liberties and economic prosperity, both of which he argued were entwined in racial inequality. Before Abraham Lincoln turned to the Declaration of Independence as a hallmark of Union purpose, Jefferson Davis staked the South's claim to this document as an affirmation of white Southerners understanding of American liberty. In harkening to the iconic words of his namesake Thomas Jefferson, Jefferson Davis argued that the Declaration of Independence limited the boundaries of the political community. "No man was born – to use the language of Mr. Jefferson – booted and spurred to ride over the rest of mankind," Davis explained, before elucidating the crucial fact that when Jefferson claimed "that men were created equal" he meant "men of the political community."⁶ This was a government against monarchy, not in favor of racial equality. White Southerners, he avowed, seceded to protect this understanding. Later, as provisional president, Davis proclaimed that the Confederacy possessed a "light" that revealed the Constitution's true meaning. "We have changed the constituent parts but not the system of our Government," Jefferson Davis affirmed. "The Constitution formed by our fathers is that of these

⁶ *The Congressional Globe*, 36th Congress, 2d Session, 487.

Confederate States, in their exposition of it, we have a light which reveals its true meaning.”⁷ To begin anew, secessionists affixed the old.

Studying the motivations and aspirations of secessionists has resulted in a diverse historiographical tradition. Traditionally, most historians focus on the role of states’ rights and slavery in explaining the motives for the Confederacy. Frank Owsley’s classic work, *State Rights in the Confederacy*, set the standard by arguing that the commitment to states’ rights constituted a fundamental motive and inherent flaw in the Confederacy. A legion of arguments followed. Two studies of politics focused on the Confederate cabinet, *Statesmen of the Lost Cause* and *Jefferson Davis and His Cabinet*, and both sought either to ascribe blame or exculpate the Confederacy’s executive leadership for the responsibility of defeat.⁸ At the centennial, David Donald edited an essay collection, *Why the North Won the Civil War*, which offered readers a succinct collection of scholarly essays offering various interpretations for the motives and outcome of the war. David Potter’s essay in particular introduced a profound explanation for Confederate defeat, the lack of political parties. His argument helped reignite interest in the political histories of the Union and Confederate governments.

Reassessing this crucial period began with the appearance of Paul Escott’s *After*

⁷ Lynda Crist, ed., *The Papers of Jefferson Davis*, Volume 7, 66.

⁸ Frank Owsley, *State Rights in the Confederacy* (Chicago: The University of Chicago Press, 1925). Burton Kendrick writes, “The fact always to be kept in mind is that the South which started the Confederacy, and dominated its government for four years, was not the South that wrote the Declaration of Independence, play so important a role in framing the Constitution, and provided so much leadership for the United States in its earliest days.” *Statesmen of the Lost Cause* (New York: Little, Brown and Company, 1939) 7. Rembert Patrick’s *Jefferson Davis and His Cabinet* (Baton Rouge: Louisiana State University Press, 1961), refutes Kendrick.

Secession. Escott argues Jefferson Davis, the reluctant secessionist, attempted to forge unity along racial lines but ultimately suffered from an elitist disaffection. Into the void stepped figures such as Joseph Brown, whose populist roots were more attuned to the needs of Confederate yeomen. In Escott's telling Davis' popular disaffection results in an insufficient and ultimately unpersuasive expression of national vision. Emory Thomas' *The Confederacy as a Revolutionary Experience* advances the thesis that the Confederacy started out staid, but the trials of war necessitated discarding the tenets of conservatism, a fundamental refashioning of purpose.⁹ The notion of a strong Confederacy is also one part of the overarching interest of Richard Bense's *Yankee Leviathan*, which traces the development of political institutions. In tracing the genesis of "central, state authority" in American government, Bense finds that fighting the Civil War led to the centralized organization of American government. Intriguingly, he concludes the South was just as centralized, if not more so, than its northern counterpart owing to its forced reliance on state organization rather than a robust market economy.¹⁰ The war, in his estimation, rendered the antebellum government an anachronism.

⁹ Paul Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge: Louisiana State University Press, 1979); Emory Thomas, *The Confederacy as a Revolutionary Experience* (New Jersey: Prentice-Hall, Incorporated, 1971).

¹⁰ Richard F. Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1858-1877* (Cambridge: Cambridge University Press, 1990) x. Later, Bense writes, "...the all-encompassing economic and social controls of the Confederacy were in fact so extensive that they call into question standard interpretations of southern opposition to the expansion of federal power in both the antebellum and post-Reconstruction periods." 95.

George Rable's insightful *The Confederate Republic* explored the political culture of Southern and Confederate politics. In assessing the political culture of the Confederacy on its own terms rather than as a probing explanation for defeat, Rable argues that the Confederacy marked a revolutionary attempt to purify politics by returning to an earlier antiparty age. With an emphasis on the revolution in political culture, Rable sees the Confederate Constitution as a document of reform that accompanies the Confederacy's other changes. Despite Confederate politicians' best efforts, however, political divisions emerged along lines of national unity versus libertarianism as the stresses of war mounted. In the end, Rable concludes that the antiparty framework in no way seriously hamstrung Davis, although the divisions that developed proved petty and ultimately pointed toward the failure of the Confederacy's political culture. In turning to the motivations for war, in 2001 Charles Dew's *Apostles of Disunion* provided the most succinct case for slavery and racism as the motive behind secession. By assembling the secession commissioners' speeches, Dew advances his argument with clarity.

Most recently, Stephanie McCurry's provocative *Confederate Reckoning* argues that the Confederate experiment constituted a remarkable historical anomaly. Studying the Confederacy through a compelling blend of contexts, McCurry argues that the Confederate elite forged a slave owner's republic. The Confederate experience repudiated the emancipatory trajectory of the hemisphere by constituting an undemocratic and revolutionary experience. McCurry argues: "This short-lived Confederate States of America was a signal

event in the history of the Western world. What secessionists set out to build was something entirely new in the history of nations: a modern proslavery and antidemocratic state, dedicated to the proposition that all men were not created equal.” In the end, the revolutionary attempt to deny legitimacy to women and slaves forged a “reckoning” that revealed the poverty of the Confederate vision. The Confederacy in McCurry’s assessment emerges as a rudely stamped offshoot of American democracy whose final act exposes the faults of the white republic.¹¹

Important aspects of the Confederacy’s political system and intentions remain misunderstood. The Confederacy was anything but an anomalous event in American history. On the eve of secession both North and South shared a single government, common definitions of suffrage, racial inequality, and democratic politics. As the Confederate elite articulated, they desired to retain conservative definitions of American liberty, not advance novel ones. Alexander Stephens’s “Cornerstone Speech” elucidated the ways in which the Confederate Constitution preserved longstanding legal and philosophical divisions. As Stephens argued, it was not the Confederates who embedded such notions into the American government, but the Founders. The Confederates sought to perpetuate and sanction such a selective vision of the Founders’ worldview for all time.

To preserve American democracy, and its racially unequal grants of liberty, secessionists and Southern politicians moved along broadly conservative

¹¹ Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010), 1.

lines, protecting the authority and power of the Constitution, evincing a belief in the necessity of government to perpetuate racial inequality. They acknowledged the utility of government as a valuable and desirable instrument. In the act of secession, the South removed impediments to their vision of governing and what followed was not an unforeseen or unintended response, but rather the logical extension of their clearly articulated desires, values, and beliefs. The Confederates sought a government powerful enough to defend their claims and to preserve their vision of American democracy's grants of liberty.

Jefferson Davis inherited the mantle of Southern leadership from none other than the last of the South's political philosophers, John Caldwell Calhoun. Uniting Southern political interest under constitutional protections proved the longstanding wish of the eagle eyed scion of South Carolina. Long a champion of Southern interests, Calhoun exhibited a peculiar nationalism that used federal power to protect the political, economic, and social interests of the South. Modeling a prospective Southern nation upon South Carolina's distinct racial democracy, Calhoun's attempt to unite his region under a common political banner constituted the broad sweep of his intellectual and political legacy. With Nullification the central event in his political life and that of the antebellum history of the Palmetto State and perhaps the South, Calhoun learned invaluable lessons about the danger of political isolation.¹² The master of Fort Hill emerged

¹² Historian William Freehling writes that by "August 1827 [Calhoun] had privately embraced nullification. 'The despotism founded on combined geographical interest,' he wrote to Littleton Walker Tazewell, 'admits of but one

from the Nullification crisis with a novel notion of divided sovereignty within the American republic.¹³ Seeking to protect a conception of the people of the state as sovereign, yet desiring the power and influence of the federal government, Calhoun developed a line of political thinking that attempted to preserve Southerner's grasp of federal power through minority veto. In this respect, as Michael O' Brien argues, "the South Carolinians showed themselves more interested in possessing power than in denying its necessity."¹⁴ Indeed, at the heart of Calhoun's concurrent majority existed the desire to respect federal power, for it provided, in his estimation, a clear sanction of slavery. Calhoun did not repudiate government, but eagerly sought to embrace its favorable benefits to strengthen its legitimacy, and to influence its aims.

Influenced by Thomas Hobbes and Southern philosophers John Taylor of Caroline and Thomas Cooper, Calhoun incorporated a variety of philosophical

effectual remedy, a veto on the part of the local interest, or under our system, on the part of the states.' By accepting the principle of state veto, Calhoun turned away not only from his earlier faith in expansive nationalism but also from his former commitment to government by majority rule." William Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York: Harper and Row Publishers, 1968) 154.

¹³ Calhoun biographer John Niven writes, "Drawing on Madison's *Federalist* 51 (which he incorrectly attributed to Hamilton), his report of 1800 on the Alien and Sedition Act to the Virginia Legislature, Jefferson's Kentucky resolution of 1798...and Barthold Niebuhr's History of Rome, Calhoun focused his attention on the problem of sovereignty. Originally, the states had been completely sovereign but had delegated certain enumerated powers to the national government. These were all specified and hence circumscribed while those retained to the states and the people were not. If the sovereign power were divided, what entity was to be the judge of where the boundaries lay?" John Niven, *John C. Calhoun and the Price of Union* (Baton Rouge: Louisiana State University Press, 1988) 159-60.

¹⁴ Michael O' Brien, *Intellectual Life and the American South, 1810-1860* (Chapel Hill: The University of North Carolina Press, 2010) 203.

and economic tenets into his thoughts on how to preserve the South's interests. Taylor's philosophy proved particularly influential. *Inquiry into the Principles and Policy of the Government of the United States* (1814) disparages power, wealth, and patronage and argues that individuals ought to remain sovereign. The independence of man, Taylor asserts, leads to a virtuous community since atomized members look to individual interests without a corrupting, external force. Taylor's late Enlightenment thinking holds a dismissive view of state and national sovereignty, which he denigrated as "fictitious compacts."¹⁵ Thomas Cooper, the president of South Carolina College, echoed Taylor by quarreling with the notion of political allegiance. Cooper dismissed, "the terms nation, state, community" as "words merely..."¹⁶ The professor argued that the only true subject is the individual, for it is they who are real. Unsurprisingly, Cooper does not believe man can transfer sovereignty. Man, having built states and nations, can at any time withdraw support to build another. Such ideological contributions to Calhoun's thinking proved foundational.

Calhoun took to Taylor and Cooper's musings, yet always felt the pull of national political allegiance. Speaking of Calhoun's interest in federal power, James Henry Hammond thought he exhibited a "superstitious attachment to the Union."¹⁷ Calhoun's report on the tariff of 1824 explained this affection and advanced a vision for preserving Southern interests while maintaining national

¹⁵ O'Brien, *Intellectual Life*. 194.

¹⁶ *Ibid.*, 194.

¹⁷ *Ibid.*, 205.

loyalty. As the country expanded and diversified, Calhoun wrote, "...The more difficult it is to equalize the action of the government." Blending the philosophical with the economic, Calhoun sought the interposition of the states to preserve Southern regional interests. Without interposition he feared the abeyance of constitutional guarantees, for "there is no means by which minorities could compel the major party to observe the restrictions."¹⁸ The restrictions, of course, meant non-interference with slavery. For Calhoun, the Constitution provided the greatest bulwark of slavery.

In order for his vision to work most effectively, Calhoun desired to unite the region under a single political loyalty. He explained the rationale for his reasoning to a patron in the fall of 1838. Praising the Palmetto State's single-party system, Calhoun championed his state's makeup. As a result of its unique single-party politics, he boasted: "We are now enjoying the benefit of so liberal and prudent a course, by being more united than the State has ever been...." Extending such logic to the South writ large, he pleaded: "Would to God that the whole South (the weak and exposed portion of the Union) had adopted the same course, and merged all of their local, and passed differences in one general effort for their common interest." Calhoun understood that through regional unity, the South would possess a remarkable power to wield outsized influence in the national government. As he claimed, "...if we stand fast on our own ground, with the understanding, that we shall either take no part at all, or throw our weight,

¹⁸ Niven, *Calhoun*, 160. Wallace Hettle, *The Peculiar Democracy: Southern Democrats in Peace and Civil War* (Athens: The University of Georgia Press, 2001) 152.

where it will be the most effective to advance our own interests, our control will be felt to the last with powerful effect.”¹⁹ Calhoun’s vision for a lasting and significant South rested upon its ability to control the authority of national institutions.

The appreciation for national institutions was not true for all political actors in the South, particularly those who acquired the label “fire-eaters.” Calhoun’s fellow South Carolinian, Robert Barnwell Rhett, called by many the “Father of Secession” for his vitriolic attacks upon Abraham Lincoln, the Republican Party, and the Union, yearned to destroy the Democratic Party in the South so as to bring about secession and Southern independence. “The South,” Rhett wrote to fellow sympathizer William Porcher Miles, “must dissever itself from the rotten northern element.”²⁰ Once independent, Rhett desired to secure a slaveholding republic to last well into the modern age. Harnessing the power of the press from the pages of his family newspaper, *The Charleston Mercury*, Rhett blasted away at the bonds of unity between North and South. Setting up an independent Southern government remained his longing desire, and he believed that few were more qualified than he to lead such a prospective nation.

Impulsive and unrestrained, Rhett exhibited a lack of discipline that at times undermined his cause. In 1851, just after the death of Calhoun, Rhett

¹⁹J. Franklin Jameson, ed., *John C. Calhoun Correspondence* (Washington, D.C.: 1900), Calhoun to Dr. Danall, October 26, 1838, 406-10.

²⁰ Walther, *Fire-Eaters*, 151.

attempted to drive South Carolina out of the Union in response to the Compromise of 1850. When he failed to do so, he lost his composure and sullenly took to the senate floor in Columbia to howl, “I am a secessionist – I am a disunionist.” Still opposed to his state’s submission to what he condemned as an odious compromise, Rhett thundered, “Others may submit: I will not....I will secede, if I can, from this Union.”²¹ Adding to this display, Rhett brazenly called for reopening the slave trade, but in a rare moment of awareness, Rhett caught himself and urged reconsideration after secession. His exhibition placed him on the fringe. For the remainder of the decade, Rhett set about to bring his slave empire visions to fruition. In the run-up to the election of 1860, Rhett termed John Brown’s raid the “legitimate fruit of the Union” and scolded his state for failing to heed his warning.²² Finally, in December of 1860, Rhett sensed his moment at hand. He urged South Carolina to secede and called upon fellow Southern states to meet at Montgomery, Alabama, to join in the creation of a new Southern confederacy. Even Rhett, the inveterate opponent of the Union, sought a Southern government to facilitate his expansionist empire of slavery. Unlike his fellow South Carolinian Calhoun, Rhett did not exhibit any “mystical” attachment to the Union. What he desired was power to erect an unabashed slave empire.

If anyone matched Rhett’s hatred of Union, it was William Lowndes Yancey. Enjoying the title the “Prince of Secession” for his sterling looks and silver tongue, Yancey sought to destroy party attachments believing national

²¹ Eric Walther, *The Fire-Eaters* (Baton Rouge: Louisiana State University Press, 1992) 145.

²²Charleston *Mercury*, October 1, 1859.

loyalties fatal to the South. Yancey established a United League of Southerners to foster regional ties and loyalty, which enjoyed the enthusiastic support of Rhett. Yancey, however, proved far more dangerous than Rhett or other fire-eaters like Edmund Ruffin, who exhibited an undisciplined, undirected hatred. Ruffin, a Virginian by birth and South Carolina transplant, described his life's impulse as driven by "...unmitigated hatred to Yankee rule."²³ Ruffin, like Rhett, proved impulsive, and their lack of restraint reduced their influence. Yancey stood apart from such undisciplined stridency and had a clear vision to break up the Union. Wary of the loyalty demanded by political parties, he railed against political institutions as corruptive.

Yancey's hatred for institutional parties and the Union began early on in his career. Selected in 1844 to fill a vacant congressional seat in Alabama, Yancey soured on the bargains made by Democratic Southerners to advance national legislation. In protest, he resigned just one year into his term in 1845. Henceforth, Yancey viewed the Democratic Party and the Union with derision. He hoped as early as 1848 that "the foul spell of party which binds and divides and distracts the South can be broken."²⁴ Pennsylvania Democrat David Wilmot's proviso that no land acquired in the war with Mexico could be open for slavery presented Yancey a platform to demonstrate the corrosive effects of party loyalty to Southern interests. The Alabaman responded by proposing his own proviso at the national party's convention in Baltimore. Calling for a prohibition of

²³ Walther, *Fire-Eaters*, 230.

²⁴ Quoted in John McCardell. *The Idea of a Southern Nation: Southern Nationalists and Southern Nationalism, 1830-1860* (New York: W.W. Norton and Company, 1979), 285.

Congressional interference with slavery in the territories, Yancey attempted to foist his policy upon his party's presidential candidates. No candidate agreed to the impolitic stipulation. Upon this singular defeat, Yancey stormed out of a convention for the first but not last time.

As the Democratic Party convened in Charleston, South Carolina, a decade later, Yancey, at the head the Alabama delegation, sensed opportunity. In one of the more famous speeches of his career, Yancey spelled forth the rights of the South that he desired to protect. In bold, suggestive language Yancey proclaimed racial inequality as a benefit bestowing power on the white race. His reputation preceding him, Yancey declared, "There is no disunionist that I know of...there is no disruptionist." Instead, he claimed to have come to the convention "to save the South by the best means present to us," which he duplicitously characterized as through the "organization of the Democratic party, if we shall be able to persuade it to adopt the constitutional basis upon which we think the South alone can be saved."²⁵ The crucial stipulation, "upon which *we* think" explains Yancey's attachment to institutions. Despite professing goodwill, Yancey made clear that his loyalty depended on the party's willingness to accede to his demands.

Yancey believed racial inequality reinforced constitutional liberty and signaled providential blessing. In attempting to highlight this fact for all present, Yancey spoke of the national delegates' evident enjoyment of southern hospitality. Yancey remind them such enjoyment owed to slavery: "I have no

²⁵ *Speech of the Hon. William L. Yancey, of Alabama : delivered in the National Democratic convention, Charleston, April 28th, 1860. With the protest of the Alabama delegation.* (Charleston, S.C.: Walker, Evans, and Company, 1860).

doubt, gentlemen, that each of you here enjoys most pleasantly the hospitalities of this city - even such hospitalities as you pay for so magnificently.” As the delegates laughed, Yancey seized the levity to press his complaint. Forwarding his argument in favor of white mastery, Yancey proclaimed: “Your relations towards them would be just the same in the Territories as they are here. The institution does not interfere with you. It does not belong to you to put your hands upon it. You are the aggressors when you injure it.” Yancey’s point was clear. It was not white Southerners who exhibited rapacious desires. Rather, it was Northerners who sought dominance over another man’s institutions. Appealing to the unity of white supremacy, Yancey closed by speaking of the divine sanction of racial inequality and the South’s amiable vision for the future identity of the nation: “If we beat you, we will give you good servants for life and enable you to live comfortably, and we will take your poor white man and elevate him from the office of boot-black, and from other menial offices which belong to the highest order of civilization – we will elevate him to a place amongst the master race and put the negro race to do this dirty work which God designed they should do.”²⁶ If northern compatriots did not come around to this vision, Yancey urged his Southern compatriots to see through this vision. “Be true to your constitutional duties and rights,” he commanded his regional counterparts. “Yield nothing of principle for mere party success.”²⁷ Such sentiment revealed Yancey, contrary to Davis and Calhoun, as a conditional party loyalist. Yancey remained an adherent of party loyalty only so long as the party held the promise to further his agenda.

²⁶ *Speech of the Hon. William L. Yancey*, 13.

²⁷ *Ibid.*, 16.

Party affiliation was but a means to an end, and any attachment to it only held so long as it promised to benefit his vision.

Yancey pressed exclusively Southern claims throughout the remainder of the convention. When Northern Democrats overrode the intemperate plan to embed the Supreme Court's 1857 *Dred Scott* ruling into their platform, Yancey led fifty delegates from throughout the Deep South out of the convention. The remaining delegates pushed forward with nominations, but Douglas could not secure the necessary two-thirds to win nomination. Exasperated, the convention adjourned without having selected a candidate. The delegates agreed to reconvene in Baltimore later that year, but as a result of the political chaos, Stephen Douglas, John C. Breckenridge, and John Bell all vied for Democratic votes. The results of a splintered Democratic ticket proved predictable. On November 6, Abraham Lincoln carried the election with 1.9 million popular votes. His nearest opponent, Douglas, tallied 1.4 million votes, while the Southern Democrat, John C. Breckenridge, won 850,000 votes. John Bell, the Constitutional Candidate, recorded just shy of 600,000, mostly in the Upper South. In the Electoral College Lincoln won a resounding 180 votes, in comparison to the total 123 votes of all of his opponents combined. In response, South Carolina seceded on December 20.

Throughout the secession crisis, Jefferson Davis remained in Washington, D.C., with his Senate colleagues. Exhibiting a shared sense of the Calhoun's mystical attachment to Union, he strenuously worked to arrive at a last minute

compromise that would upset the fire-eaters. The effort marked, Davis said, “my willingness to make any sacrifice to avert the impending struggle.”²⁸ Uniting with other Southern men like Georgia’s Robert Toombs behind Kentucky relic John J. Crittenden, who still claimed to be a Whig despite the party’s nonexistence, Davis and Toombs gave Crittenden a final chance at a last ditch compromise to placate Deep South secessionists. In the end, the Republican Party, carried to victory on its free soil platform, refused to palliate its policies before assuming control of the government. Mississippi joined South Carolina on January 9. With his position in the Senate no longer tenable, Jefferson Davis appeared before his colleagues on January 10 to expound on his state’s action. Davis defended secession as a reaction to the fundamental overturning of American liberty. Davis believed the time for compromise had passed, “To-day...it is my purpose to deal with events,” he enunciated. The Mississippian called the preservation of present liberties the goal of a Southern Confederacy. Davis expressed disbelief at the unfolding of events in Charleston, where “perfidious” actions were leading the nation to war against a state. This he could not conceive of as anything but demonstrative of the anarchy that foreshadowed Republican government. He protested, “We are left drifting loosely, without chart or compass.”²⁹ Republican victory, Davis implied, resulted in disorder.

²⁸ Lynda Crist, ed., *The Papers of Jefferson Davis*, Volume I, lxi. For the most recent scholarship on the Crittenden proposal, see William J. Cooper, *We Have the War Upon Us: The Onset of the Civil War, November 1860-April 1861* (New York: Alfred A. Knopf, 2012) 105-08.

²⁹ Dunbar Rowland, ed., *Jefferson Davis, Constitutionalist* (Jackson, MS: Mississippi Department of Archives and History, 1923) Volume V, 9.

To stave of the dangerous effects of instability, especially acute in a slave society, Davis defended the right of secession as a legitimate reclamation of sovereignty to preserve Constitutional liberty. This was no revolution, but an attempt at conservation. Davis lamented the loss of Calhoun, who he credited with “telegraphic intelligence.” Calling him “the wisest man I ever knew,” Davis spoke of how Calhoun had foretold of the present trials, though it occurred outside of the national boundaries that Calhoun sought to sustain.³⁰ Davis defended the actions of his state and the Deep South by invoking the sanctioned wisdom of the Founders, placing secession at the end of a lineage of democratic acts. “Mr. Madison put the rights of the people over and above everything else,” Davis affirmed. Quarreling with Sen. Andrew Johnson of Tennessee, whose hostility toward planters led him to speak of secession in violent, revolutionary terms, Davis contended that the South sought a pacific separation. The act of seceding marked a peaceful, legitimate resumption of sovereignty. “The people have never separated themselves from those rights which our fathers had declared to be inalienable,” Davis asserted. The very act of moving through state conventions and electoral politics placed Southerners in league with the Founder’s original steps toward independence.

Davis urged his colleagues to consider the threat posed by Republican ideology. By denying the South the right to spread slavery into the territories, Davis blamed Republicans for subverting the purpose of government to advance a single and ahistorical ideology. It was not overreach of the federal government,

³⁰ *Ibid.*10.

but the selective application of the government's powers that upsets Davis. The Republican platform failed to uphold the Constitution's equal provisions. He bitterly protested against its designs to selectively favor one section over another. "It is by destroying the Constitution; by pulling down the political temple; by forming a consolidated government," that forced the South to act. Davis protested the concentration and application of federal power to serve the interests of free soil ideology over slavery. To reinforce his point about the conservative desire of Confederates to do no more than sustain the Constitution, Davis told his colleagues, "It will be our purpose to commence the erection of another [government] on the same plan on which our fathers built this...in accordance with the Constitution, and in defense of the principles on which that Constitution rests."³¹ In Davis' estimation, the South needed government, and eagerly desired its protection. For that aim, the seceded states proclaimed to carry on the government of their fathers, enshrining liberties bestowed by racial inequality. Whether two nations proclaiming themselves American could coexist, Davis informed his colleagues, "is in your power."³²

Secession commissioners fanned out across the South urging fellow southern states to join in the movement. Despite their various geographical and political backgrounds, the commissioners spoke to a commonality and brought a common message. Whether addressing a Deep South state like Georgia or a

³¹ *JDC* Volume V, 27-8.

³² *Ibid.* 33.

border state like Kentucky, the commissioners advanced secession as a legitimate resumption of sovereignty and offered a Confederate purpose: to preserve racial inequality as a defining feature of their democratic society. J.L.M. Curry of Alabama, a gifted lawyer and politician, set the tone by urging his home state to secede. Curry spoke with clarity and persuasiveness, which resulted in his broadside enjoying republication throughout the South. In calling for separation, Curry offered a definition of a prospective Confederacy by reiterating the words of the court ruling *Johnson v. Tompkins*: “The foundations of the Government laid and rest on the right of property in slaves.”³³ It was not the last iteration of the court’s ruling in the Confederacy. In using the language of the court, Curry argued that “the framers of the Government indulged in no sickly sentimentality or false philosophy” that sought racial equality.³⁴ Indeed, he argued that such conclusions were out of step with original intent. The Founders’ government was not one of free soil and free men, and neither would the Confederate’s. The Founders understood the political and social value of slavery. A prospective Confederacy, Curry promised, would fix that understanding for all time.

In his appeal to the Upper South Stephen Hale of Alabama similarly affirmed secession as the desire to protect racial inequality. In his letter to Kentucky Governor Beriah Magoffin, Hale defended resuming sovereignty upon

³³ Jon L. Wakelyn, ed., *Southern Pamphlets on Secession, November 1860 – April 1861* (Chapel Hill: The University of North Carolina Press, 1996) 37.

³⁴ *Ibid.* 37. The court case is *Johnson v. Tompkins* in Baldwin, Pennsylvania, in which the circuit court ruled that a slave owner possessed the right recapture a fugitive slave without informing or involving local authorities in oversight or apprehension. The phraseology is also later used by Alexander Stephens and becomes infamous as the “Cornerstone Speech.”

states' rights. But he quickly proceeded to explain the purpose of a Confederate government. "Slaves are recognized both as property and as a basis of political power by the Federal compact, and special provisions are made by that instrument for their protection as property." In this respect, maintaining racial inequality proved paramount for white Southerners. "African slavery," Hale affirmed, "forms an important element of their political power, and constitutes the most valuable species of property."³⁵ Indeed, the two were inseparable and formed an essential component of white southerners' definition of liberty.³⁶ In this regard, Lincoln's election justified secession because it threatened to overturn the racial principles upon which the South's conception of liberty and political power were based. Republican rule constituted "the inauguration of new principles and a new theory of government" that stripped Southerners of political and economic power, Hale argued. To reinforce his point, he beseeched the governor to consider the social ramifications of a biracial future:

What Southern man, be he slave-holder or non-slave-holder, can without indignation and horror contemplate the triumph of negro equality, and see his own sons and daughters in the not distant future associating with free negroes upon terms of political and social equality, and the white man stripped by the heaven-daring hand of fanaticism of that title to superiority over the black race which God himself had bestowed?

³⁵ Wakelyn, *Southern Pamphlets*, 92.

³⁶ On this inseparable aspect of liberty and slavery in antebellum Southern politics, see William J. Cooper, *Liberty and Slavery: Southern Politics to 1860* (Columbia: University of South Carolina Press, 2000). Cooper writes, "... before 1860 free, white southerners could not conceive of holding into their own liberty except by keeping black southerners enslaved." Vi.

Will the South, he rhetorically concluded, “resume the powers delegated to the Federal government, and, as sovereign States, form other relations for the protection of their citizens and the discharge of the great ends of government?”³⁷ The great ends were not revolutionary, but conservative and they called upon embracing the power of government to enshrine such purpose. Indeed, Hale called it the “great end of government.” To guarantee such an understanding for all time, he sought Kentucky’s partnership.

In crafting an appeal to the most crucial state in the Deep South – Georgia - William Harris of Mississippi appealed to the Empire State by offering racial inequality as foundational to Southerner’s liberty and political power. Defending secession to Georgians, Harris argued that the Union “...now demand[s], equality between the white and negro races, under our Constitution.” Reiterating this refrain, he asserted that the federal “government stands *totally revolutionized* in its main features, and our Constitution broken and overturned.” Though he did not define those “main features,” Harris made clear his thoughts when he proclaimed, “Our fathers made this a government for the white man, rejecting the negro, as an ignorant, inferior, barbarian race, incapable of self-government, and not, therefore, entitled to be associated with the white man upon terms of civil, political, or social equality.”³⁸ In Harris’ estimation, the seceding states of the

³⁷ Charles B. Dew, *Apostles of Disunion: Southern Secession Commissioners and the Causes of the Civil War* (Charlottesville: The University of Virginia Press, 2001) Appendix Document 2, 100.

³⁸ Dew, *Apostles*, Appendix Document 1, 85.

Deep South acted to preserve this essential racial underpinning of American democracy; it required a government of their own to protect such understanding.

Georgia politician Howell Cobb, the former Speaker of the House of Representatives, governor, and Secretary of the Treasury, seconded Harris' plea. In defining the purpose of secession, Cobb spoke plainly, "I allude to the doctrine of negro equality." Repudiating the designs of Lincoln and the Republican Party, Cobb protested the distortion that turned the Declaration of Independence into a document heralding equality. "All men are born equal,' has been perverted from its plain and truthful meaning, and made the basis of a political dogma which strikes at the very foundations of the institution of slavery," he protested.³⁹ In his plea for independence, Cobb pledged nothing more than a continued reverence for the Constitution. Indeed, his argument was in favor of government. He sought nothing more than to continue traditional Constitutional guarantees. The "Constitution of Washington and Madison" would guide the South and its people in this new endeavor, for "It is not the Constitution and the laws of the United States which need amendment, but the *hearts* of the northern people." Cobb could see no other means to maintain white liberty.⁴⁰

The diminutive Alexander H. Stephens stood in relatively lone opposition to secession. Secession represented a particularly grave threat to Stephens because he did not trust the motives of the fire-eaters and believed they needlessly upset the stability and tradition of government for unclear purposes.

³⁹ Milledgeville *Daily Federal Union*, December 16, 1860.

⁴⁰ Milledgeville *Daily Federal Union*, December 16, 1860.

Secession, in Stephens' opinion, brought out the base instincts and ambitions of Southern politicians. Despite a frail appearance, Stephens proved a formidable politician. Disparaging secessionists, Stephens wrote to a friend, "The truth is that ultra men do not desire any redress of these [sectional] grievances. They would really obstruct indirectly any effort to that end" and "are for breaking up." Stephens believed nothing short of disunion would satisfy their consuming hatred of the North. The fire-eaters, he continued, are "tired of the government ... they have played out, dried up, and want something new."⁴¹ Complaining to J. Henly Smith, Stephens wrote, "We have but little public virtue, heroic virtue or patriotism now amongst our public men. They are generally selfish, looking not to country but to individual aggrandizement."⁴² Looking askance at fire-eaters, Stephens saw vanity and danger abounding. As a result, he warily guarded against allowing the men who most energetically desired a new government to lead the South.

The presidential campaign provided Stephens particular evidence of the madness in Southern political counsels. For Stephens, Douglas proved the best national candidate on the issue of slavery. Douglas shared the South's conviction that natural law fixed the status of black as inferior to white, and he could not understand why the South forsook Douglas, the only candidate who could defeat Lincoln. For Stephens, this development reinforced his view in the rashness of the fire-eaters' course. "Exclusive selfishness and personal ambition had taken

⁴¹ Ulrich B. Phillips, ed., *Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (Washington, D.C., 1913), 526-7.

⁴² *Correspondence TSC*, 457-8.

possession of all,” he could only conclude.⁴³ When a rumor appeared during the campaign that Stephens considered supporting a candidate other than Douglas he bitterly denounced any association with the fire-eating crowd. “Never could I do such a thing until I became as inconsistent and as regardless of my public record and long cherished principles as those who put upon [us] this nomination.”⁴⁴ Stephens, the former Whig and recent Democratic convert supported Douglas to the bitter end over Southern Democrat John C. Breckenridge of Kentucky.

The prospect of a government untethered from conservative values most unsettled Stephens. Little Aleck discerned the feature as the most alarming aspect of the secessionists’ chimerical designs. Stephens’ conservative instincts reinforced his veneration for the United States Constitution for its traditional grants of liberty, in his estimation, constituted the greatest bulwark against the ideological threat of the Republican Party. “...I consider slavery much more secure in the Union than out of it if our people were but wise, ” he wrote to a friend, revealing himself a devotee of Calhoun. Succinctly summing up his appreciation for authority rooted in tradition, Stephens concluded, “We have nothing to fear from anything so much as unnecessary changes and revolutions in

⁴³ Thomas E. Schott, *Alexander H. Stephens of Georgia* (Baton Rouge: Louisiana State University Press, 1988) 294.

⁴⁴ *Correspondence TSC*, Stephens to J. Henly Smith, 488.

government. The institution is *based on conservatism*.”⁴⁵ To forsake the Constitution, in Stephens’ estimation, endangered the South.

Stephens attempted to impart such wisdom to his colleagues in the Georgia assembly. Inveighing against those who passionately desired secession, Stephens delivered his argument in a quiet manner. Marking a notable contrast to the bellowing demeanor of the previous speaker T.R.R. Cobb, who in mimicking Patrick Henry cried out “Liberty or death,” Stephens urged sensibility: “My object is not to stir up strife, but to allay it; not to appeal to your passions, but to your reason.” After this call for dispassionate deliberation, Stephens urged the consideration of a subject of chief importance, conservatism. “Good governments,” he argued, “can never be built up or sustained by the impulse of passion.” Therefore, “Let us...reason together.”⁴⁶ Stephens examined the motivation for secession as well as the rights to be gained by Georgia under an independent Southern government. He did not doubt that the presidential election marked a reversal in Southern fortunes. But, prospective dangers were as of yet mere phantasms. Stephens beseeched the assembly to appreciate such a perspective, “Let us not, on account of disappointment and chagrin at the reverse of an election, give up all as lost; but let us see what can be done to prevent a wreck.” When an audience member yelled out that the “ship has holes,” Stephens implored the crew to plug the leaks, not abandon the vessel with its “richest cargo.” Entreating the audience to repair rather than scuttle, Stephens

⁴⁵ *Correspondence TSC*, 487.

⁴⁶ Richard M. Johnston and William H. Browne, *Life of Alexander H. Stephens* (Philadelphia: J.B. Lippincott and Company, 1878) 564.

proclaimed, “that this Government of our Fathers, with all its defects, comes nearer the objects of all good Governments than any other on the face of the earth.”

Stephens thought it foolish to forsake the government upon the dubious grounds of a legitimately elected president. “In my judgment, the election of no man, constitutionally chosen to that high office, is sufficient cause for any State to separate from the Union.” The liberties at stake were of such import that he thought Georgia “ought to stand by and aid still in maintaining the Constitution of this country.” To act impetuously placed the South in the wrong. Until such a time that the South’s constitutional guarantees were explicitly threatened, Stephens regarded secession as foolish and illegal. Even if Lincoln did move against the South, Stephens explained, he would be thwarted at every step by Constitutional restrictions. Channeling Calhoun’s concurrent power of the minority, Stephens pointed to the fact that the South still possessed numbers in the House of Representatives that could thwart any unconstitutional ambitions on the part of Lincoln and his party. The same held true for the Senate, where, Stephens observed, the South still enjoyed a four-person majority. In this regard, even if Lincoln harbored monarchical plans to destroy Southern liberties he would represent the feckless George III, who in having to ask a parliament of Whigs for a government, ended up “with a cabinet utterly opposed to his views.” If the South would unite in a calculating and deliberate manner, both the Union and the South’s historical constitutional liberties could be saved.⁴⁷ Unable to

⁴⁷ *Life of Stephens*, 567.

conceive how slavery and the South's cherished understanding of racial inequality could be safer outside of the Constitution, Stephens asked the members present if there were any better government on earth. Toombs, lurking behind the podium, cried out "England!"⁴⁸ Stephens calmly rebuked his friend. England, in his estimation, is second best. The Constitution best enshrined Southern liberties through uninterrupted tradition.

Stephens never doubted the futility of his stand. "I see no ray of hope," he told a friend, and predicted that his state would follow the fellow Deep South states.⁴⁹ Stephens delivered one last address urging reconsideration in the name of conservatism, but it was abridged and altogether uninspired. Despite his minority sentiment, Stephens affected the sentiment in Georgia as evidence by Georgian secessionists turning to Governor Joseph Brown to rally support. A remarkable politician, Brown appeared on the political stage from out of seemingly nowhere at the time, north Georgia. From a yeoman family, Brown possessed remarkable intelligence and worked his way through college and then law school. Once he emerged on the political stage, he swiftly climbed the ranks. A state senator at twenty-eight, Brown continued his ascent by becoming a presidential elector at thirty and a judge just three years later. In 1857, as a dark horse Democratic candidate for governor, Brown beat out the more experienced

⁴⁸ *Ibid.* 568.

⁴⁹ *Correspondence TSC*, 526-7.

Benjamin Hill. He was just thirty-six. In 1859, the former ploughboy enjoyed reelection as governor.⁵⁰

Now, on the eve of the secession crisis, the state's secessionist leaders turned to the political wunderkind to breathe new energy into their sagging sails. Brown's appeal appeared in Milledgeville's *Federal Union* on December 9 and spoke to three direct points: the election of Lincoln as sufficient to secede, the undoubted result of abolition as an effect of Republican rule, and the social ills of racial equality. In a direct nod to Stephens, Brown first admitted that the election of Lincoln alone is "not sufficient cause for a dissolution of the Union." But whereas Stephens spoke of the candidate, Brown addressed the Republican Party's ideology. He viewed Lincoln not as a feckless tyrant but as a "representative of a fanatical abolition sentiment – the mere instrument of a great triumphant political party." As the embodiment of a hostile ideology, Lincoln's election was a grave threat, Brown argued. He advanced that the principles the president-elect espouses "are deadly hostile to the institution of Slavery, and openly at war with the fundamental doctrines of the Constitution of the United States." Brown too believed in the protections of the Constitution and viewed their perpetuity as paramount, but with a candidate who threatened slavery and the "fundamental doctrines" of government, he felt the menace more pressing than ever. For that reason alone he argued that the South take the reigns of its own government.

As a product of the laboring class, Brown argued forcefully and at length

⁵⁰ See Joseph Parks, *Joseph E Brown of Georgia* (Baton Rouge: Louisiana State University Press, 1977).

that abolition would harm the South's white laboring class. Trumpeting the manner in which racial inequality promoted prosperity among all among white citizens, Brown embedded his argument in opposition to racial equality by employing George Fitzhugh and John C. Calhoun's economic critiques of capitalism.⁵¹ He decried the vulgar degradations that white laborers would experience as a result of emancipation. Thrust into a marketplace with 4,500,000 new laborers, Brown saw economic catastrophe and societal decline. "It is sickening to contemplate the miseries of our poor white people under these circumstances," Brown wrote. Pivoting from economic uplift to the destruction of social unity, Brown proclaimed all white people, even laborers, "are a superior race, and they feel and know it. Abolish slavery, and you make the negroes their equals, legally and socially (not naturally, for no human law can change God's law)...."⁵² Thus, in Brown's estimation, preserving racial inequality constituted the fundamental cause for which the South resisted the North. Returning to his cherished notion of the government's fundamental principles, Brown appealed for a government that sustained white liberty. Poor white Southerners, Brown proclaimed, "love the Union of our fathers, and would never consent to dissolve it as long as the constitution is not violated, and so long as it protects their rights...." Those rights, Brown argued, were inexplicably not just the rights to own

⁵¹ George Fitzhugh, *Cannibals All! Or, Slaves Without Masters* (Richmond: A. Morris Publisher, 1857) returns to the subject of *Sociology for the South* but in Fitzhugh's own words, in "a more rigidly analytical manner." Fitzhugh pithily sums up the argument of *Cannibals*: "*Labor makes values, and Wit exploits and accumulates them*; and hence to deduce the conclusion that the unrestricted exploitation of so-called free society, is more oppressive to the laborer than domestic slavery." IX.

⁵² Milledgeville *Daily Federal Union*, December 9, 1860.

slaves, but to participate and enjoy the political and social liberties denied to inferior races. That was the wellspring and purpose of American democracy. In order to “protect and preserve our liberties to the last generation,” Brown urged the establishment of a sovereign Southern government.⁵³

Just two days after Brown’s appeal appeared, T.R.R. Cobb, brother to Howell, wrote to the *Daily Federal Union* to urge Georgia to coordinate with fellow Southern states. Even before Georgia seceded, Cobb envisioned a Southern nation. Expressing the wish that the Southern states acting upon their own would soon move together in the name of greater efficacy, Cobb informed the paper that, “while I am free to admit that each State must act for herself and resume by her own independent will her delegated sovereignty, yet I conceive that it is possibly and highly desirable that all of them should assign some common day for such resumption.” In this regard, Cobb did not want a delay from transferring from one Union into another. States’ rights are hardly more than foil for throwing off the yoke of a government that the South did not control. As to the shape of the Southern Confederacy, Cobb spoke clearly and compellingly in favor of a federal government. “I have said that the new Confederacy should be *based* upon the Constitution of the United States.” The reasoning? “Our people love that Constitution...” he pledged, and suggested that delegates be chosen to work on a few necessary changes.⁵⁴ The few changes of which he spoke, he left open. Cobb strongly desired to move almost immediately into another union, from one federal government to another. Georgia seceded on January 19 at the behest of

⁵³Milledgeville *Daily Federal Union*, December 9, 1860.

⁵⁴ Milledgeville *Daily Federal Union*, December 11, 1860.

men like the Cobb brothers and Joe Brown, and over the objection of Alexander Stephens.

With Georgia adding her star to the secessionist standard, Louisiana took up deliberation. Of all the Deep South states, Louisiana proved most impermeable to fire-eating rhetoric. Louisiana's sugar masters depended on the federal tariff for prosperity. This economic tie to federal programs generally insulated the state against the fire-eating denunciations of the Union, but it did not entirely tamp down the rhetoric. On Thanksgiving Day, as the state looked to its neighbors and pondered its fate, Benjamin Palmer took to the pulpit in New Orleans to urge immediate action. Palmer's sermon is, beneath the rhetoric, a call to preserve conservative ends. Asserting that secession enjoyed the sanction of Providence, Palmer famously enunciated that in its execution, "we defend the cause of God and Religion." Yet even Palmer, full of fire and brimstone, spoke of conservation, not revolution. "Thus, if we cannot save the Union, we may save the inestimable blessings it enshrines; if we cannot preserve the vase, we will preserve the precious liquor it contains."⁵⁵ For Palmer, secession conserved a government that protected slavery and racial inequality. In the South's quandary, he counseled action in the name of preservation. Late in January, Louisiana took up Palmer's entreaty.

Amidst the backdrop of secession's march through the Deep South, Texas' John H. Reagan, Davis' future Postmaster General, briefly took to the floor of the

⁵⁵ Benjamin Palmer, *Thanksgiving Sermon Delivered at the First Presbyterian Church, New Orleans* (New York: George F. Nesbitt and Company, Printers, 1861) November 29, 1860.

United States House to expound on the South's course of action. Reagan addressed the present crisis as a result of the Republican Party's ideology and rhetoric. Despite such denunciations, Reagan continued to speak glowingly of the Constitution. While knowing the futility of his unionist sentiment, he nevertheless expressed a hopeless desire to reconcile. But Reagan could not abide the Republican's ideology, "Free negro equality." Such a policy, Reagan objected, "would make us re-enact the scenes of revolution and anarchy we have so long witnessed and deplored in the American Government to the south of us" in Haiti. The Deep South had few options when faced with such overt threats. To that effect, "I stand here today to say that if there be a southern State, or a southern man even, who would demand, as a condition for remaining in this Union, anything beyond the clearly specified guarantees of the Constitution of the United States as they are, I do not know if it." Reagan attested to Southerners' reverence for the United States government. "We do rightly estimate the value of the blessings of this Government. We have loved and cherished the Union," he affirmed.⁵⁶ Reagan remained in favor of government and exhibited appreciation for the protections that federal power provided. But if the South could not win protections from the present government, then he felt it necessary to establish one of their own. No such guarantee proved possible and Texas, the final Deep South state in the Union, seceded on the first of February.

⁵⁶ *Congressional Globe*, 36th Congress, 2nd Session, 389-93.

As the Charleston *Mercury* enunciated on December 26, secession constituted the preservation of conservative liberty. It was not an action to revolutionize government, or reform political behaviors. Rather, it sought to preserve a racially ordered, fixed society where political power, economic prosperity, and social harmony were safely in the hands of Southerners. Secessionists defined the South's aims as conserving traditional authority and institutions, not advancing new ones. The Southern people resumed sovereignty through conventions identical to that of the Founders. At the heart of their desire, secessionists sought to preserve the South's liberties and Constitutional guarantees - this was not a movement that desired revolution or reform.

In responding to the perceived threat of Republicanism, Southerners conformed to the antecedent framework envisioned by Calhoun. Although Calhoun labored mightily to preserve the South's influence within the Union, in the act of independence Southern secessionists followed Calhoun's lead by attempting to unite regional interests under a common government. Despite forsaking the Union, secessionists retained a belief that the Constitution constituted a powerful instrument for protecting and advancing Southern interests by controlling the government, not repudiating its legitimacy. Indeed, they spoke of the desire to preserve current forms of government. As Cobb plainly stated, "All men are born equal has been perverted from its plain and truthful meaning..." To recover American democracy's essential meaning, Cobb and others proposed to set up a government that protected slavery and understood democracy through its grants of racial inequality. Indeed, they argued, the

affixing and clarifying of the racial limits of the body politic preserved the vision of the Founders.⁵⁷

Rather than constituting an anomalous event, the deep-seated secessionist impulse to preserve the Constitution, with its racially unequal grants of liberty and sanction of slavery, guided independence-minded Southerners. They did not desire to overturn the political culture, which in the years since had expanded suffrage beyond property restrictions but still maintained a strict division when it came to race and gender. As Jefferson Davis enunciated, the Declaration of Independence declared the Founders' desire to establish a democratic republic void of inheritance, aristocracy and monarchy. It did not seek equality. During his farewell in the Senate, Davis reiterated his argument that the government of the Founders was a government of racial inequality, for the Constitution sanctioned white mastery, providing not just economic protections for slave ownership, but enhanced political representation. To preserve the definition of American liberties as bestowed by the Constitution, Davis justified secession as an act of continuation, indeed preservation.

Secessionists argued that subverting the Constitution's explicit guarantees of slavery subverted American democracy's roots intended grants of liberty and revolutionized the Constitution's meaning. With Seward's proclamation that the United States Constitution offered no protection to slavery, and furthermore that the Republican Party was prepared to govern from a "higher law" than the nation's guiding document, secessionists felt as though they were helpless to

⁵⁷ Milledgeville *Daily Federal Union*, December 16, 1860.

avert a revolution in definition that threatened to subvert their political, economic, and social order. To frustrate such plans, Davis, Cobb, and the lot of secessionists lent support to an independent South to preserve the purportedly time-honored, original intent of American liberty and democracy. Stephens, the most reluctant among them with his desire to sustain a Union under the Constitution owing to his conservatism, even held racial inequality as a fundamental truth and expression of the government's sanction and protection of white liberty. As a slave owner, Stephens sanctioned white mastery but had envisioned guarding such practices by appealing to the Constitution. He did not forsake government. Rather, like Calhoun, Stephens sought the government's protections. As the *Charleston Mercury* proclaimed, secessionists sought to preserve the notion of conservative liberty. Such a definition remained rooted in the Constitution, which sanctioned white mastery and protected slavery, and as secessionists argued, defined the body politic according to racial grants. To affix such an understanding of government, secessionists sought independence to preserve their understanding of the federal republic, its grants, protections, and instrumentalities. They did not repudiate the government or the Constitution, but rather sought to perpetuate and direct its power for the protection of their vision of the American republic.

CHAPTER TWO “WE HAVE A LIGHT”

To meet the challenge of building a government anew the seceded states of the Deep South came together at Montgomery, Alabama, the first week of February. Ostensibly called to draft a constitution and elect provisional executives, the convention quickly superseded its intended purview. Mirroring the Philadelphia Convention of 1787, the delegates at Montgomery assumed powers beyond their charge to constitute the most powerful legislative body convened by self-proclaimed Americans. With the United States Constitution as their template, the convention set to work drafting a Confederate Constitution. Avowedly imitative, the delegates accomplished this chief task without tarrying. With a familiar constitutional framework in hand, the convention elected Jefferson Davis and Alexander Stephens as provisional executives, demonstrating their clear desire to empower reputable leaders. Reconvening as a Provisional Congress, the men who worked to cement conservative principles in the Southern government guaranteed that they would see their imitative plans through the initial stages of the Confederacy.

Almost immediately, the crisis over Fort Sumter tested the newly constituted nation and revealed the Confederacy's federal mimicry. Davis, worried about the status of the fort from the moment he resigned his seat in the United States Senate, feared that South Carolinians or Union troops would start a war. Upon his selection as provisional president, Davis immediately wrote to South Carolina Governor Francis Pickens, stressing the need for coordination between state and federal governments. Soon after Davis' inauguration the

Confederate Congress, with a powerful Constitution at their behest, nationalized the Palmetto Guard to bring South Carolina's militia under federal control. Thus, the Confederate Congress utilized the provisions of the Confederate Constitution to exert federal authority before the first fighting. And Governor Pickens, understanding this essential fact, acceded to Davis' authority. The Confederacy set off into the responsibility of time with an intentionally powerful federal government to protect Confederate conceptions of liberty and democracy and to safeguard the independence of the nation.

Many scholars viewed the Confederate Constitution as an expression of secessionist state's right principles¹. More recent works have questioned that interpretation. As Donald Nieman argues, the influence of republicanism is the most salient feature of the Confederate Constitution.² Accordingly, he concludes, "the spirit that animated Confederate Constitutional reform, far from being distinctly southern, was well within the mainstream of the American Constitutional tradition."³ Recent works have moved away from this conclusion to sharpen the differences between the Confederate and United States

¹ The most notable pronouncement came with Frank Owsley's 1925 *State Rights and the Confederacy*. That interpretation received reinforcement under Charles Robert Lee Jr. *The Confederate Constitutions* (Chapel Hill: North Carolina University Press, 1963). Lee's substantive review of the constitutional amendment process at Montgomery concludes, "The Confederate Constitutions are principally significant for...represent[ing] the ultimate state rights philosophy and state sovereignty concept..." 150.

² Donald Nieman, "Republicanism, the Confederate Constitution, and the American Constitutional Tradition" in Kermit Hall and James Ely, eds., *An Uncertain Tradition: Constitutionalism and the History of the South* (Athens: The University of Georgia Press, 1989).

³ Nieman, 219.

Constitutions. George Rable characterizes the convention and its Constitution as a clear delineation between Union and Confederate that addressed Southerners' longstanding concerns with political corruption. Rable argues that the Montgomery Convention and Confederate Constitution highlight the South's uniqueness by reflecting its peculiar political regional concerns. The result, writes Rable, is a "distinctly Southern republic."⁴

Stephanie McCurry's most recent treatment of the Confederate Constitution overlooks the convention, instead focusing on the Confederacy's elite and their pronouncements. McCurry, advancing the general theme of the Confederacy as an anomaly, argues that the Confederate Constitution is more than distinctly Southern. In McCurry's assessment, the chief influences are not republicanism or state's rights, but an obsession with slavery. "The new Confederate Constitution left no doubt that slavery was the foundation of the new republic; it was a proslavery Constitution for a proslavery state."⁵ McCurry concludes, the "Confederates' vision of a perfected republic of white men was something new unto this world, the only explicitly proslavery nation-state any agrarian elite ever attempted to build in the modern world."⁶ Such assessment casts the Confederate Constitution, which excluded slaves and women from the body politic, as a most unnatural, reactionary episode in the antebellum political landscape.

⁴ George Rable, *The Confederate Republic: A Revolution Against Politics* (Chapel Hill: The University of North Carolina Press, 1994) 63.

⁵ Stephanie McCurry, *The Confederate Republic: Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010) 78.

⁶ McCurry, *Confederate Republic*, 82.

The Montgomery Convention constitutes an important chapter in the history of the Confederacy. The deliberations among the elite at the convention reveal their intention to begin anew by perpetuating the old. The secessionist delegates did not exhibit a problem with government. Rather, they sought to imitate the United States Constitution to preserve its power under their own government, not to fundamentally reject or revise its provisions, definitions, and supremacy. Preserving the Constitution's grants, structure, and liberties required rebuffing the extremist designs of men like Robert Barnwell Rhett, who desired to advance a historically anomalous, unabashed slave empire replete with a resurrected international slave trade and full political representation, rather than three-fifths, for slaveowners. His fire-eating designs would have marked a departure, but his vision did not achieve reality owing to the evident unwillingness of the delegates to adopt fundamental changes to their definition and understanding of purpose of American governance, democracy, and liberty.

Sectional issues prompted some constitutional reforms at Montgomery. However, most disputes originated not with secession, but with the lack of specificity emanating from the compromises of 1787. Confederate framers reformed the executive branch to eradicate the undue influences of partisanship, patronage, and electioneering. Such concerns were universal throughout the antebellum era, and the delegates' solutions sought to empower officeholders to govern more effectively with the wellbeing of the nation in mind. The delegates approached the tariff with similar aspirations. To deal with that spark of sectional antagonism, the delegates prohibited legislation that privileged one aspect of the

economy over another. Although the delegates drew on episodes provoked by sectional concerns, these reforms sought to make government more functional, not more southern. By revisiting and addressing issues of political corruption, partisanship, and democratic campaigning, the delegates to Montgomery struck for reform, not revolution. They sought to fix government according to the supposed principles and definitions of the Founding generation. The advancement of clear definitions of the body politic and certain provisions of government did not fundamentally alter the purpose, power, or meaning of the government. Indeed, such an occurrence would have constituted the exact opposite motive of the majority of delegates. In the end the Confederate Constitution imitated the federal powers of the United States Constitution and even strengthened certain federal components, like the executive, which now enjoyed the line-item veto and a heightened control over national budgets. The intentional federal nature of the Confederacy is revealed by the independent South's first test of national sovereignty, the siege of Fort Sumter.

Although it was the first to secede, South Carolina was the last state to present its credentials on the morning of February 4 in Montgomery, Alabama. Governor Francis Pickens' announcement introduced South Carolina's delegation to the convention and instructed his state's eight deputies to "submit on our part the Federal Constitution as the basis of a provisional government for such as shall

have withdrawn.”⁷ Forty two delegates from across seven states of the Deep South joined the South Carolinians in accordance with the general outline of Robert Barnwell Rhett’s plan for a convention. Each state sent a delegation corresponding to their representation in the former Congress.⁸ The “Father of Secession” Robert Barnwell Rhett headed the Palmetto State’s delegation. Although South Carolina constituted the heart of the movement, Georgia comprised its brains. Howell Cobb, who had served as governor and cabinet member among other posts, headed the Empire State’s delegation. He was, without doubt, one of the senior most politicians within the South. Georgia also sent Robert Toombs, former member of the House and Senate, and whispers of his ascension to the presidency circulated amongst the gossips at the Exchange Hotel in Montgomery. Toombs cut a remarkable and imposing figure. Upon meeting the formidable Georgian, J.L.M. Curry wrote, “Toombs was fascinating and bright, more suggestive and interesting than anyone I ever heard, except Calhoun.”⁹ Alexander Stephens considered his reacquainted friend genuinely brilliant. He has “brains enough,” Stephens gushed, “if its energy had been properly directed, to govern an empire.”¹⁰ In all, the Georgian delegation possessed strength in numbers with ten delegates and an enviable slate of

⁷ *Journal of the Confederate Congress, 1861-1865* (Washington, D.C.: Government Printing Office, 1904) Volume I, 15. Hereafter cited as *JCC*.

⁸ Only Texas, of course, deviated and sent seven instead of four.

⁹ J.L.M. Curry, *Civil History of the Government of the Confederate States of America with Some Personal Reminiscences* (Richmond: B.F. Johnson Publishing Company, 1901) 19.

¹⁰ Myrta Lockett Avary, ed., *Recollections of Alexander H. Stephens: His Diary Kept When a Prisoner....* (New York: Doubleday, Page and Company, 1910) 427.

seasoned politicians. On the whole, the personalities of the Georgian delegation exhibited restraint, reverence for tradition, and a clear desire to act in as conservative a fashion as possible. Exerting an invaluable moderating presence at Montgomery the Georgia delegation proved vital to explaining the outcome of the convention.

Despite opposing secession, Alexander Stephens found himself a delegate to the convention of seceded states. It was not a post he desired. But with the Empire State electing independence, the Georgia Assembly desired Little Aleck among those at the helm, evincing trust in his conservative instincts if not always following his lead. Before Stephens agreed to serve, he advanced a stipulation. A new Southern government, he insisted, must be modeled on the old. All throughout the debate over secession in Georgia, Stephens held the United States Constitution as the vital exposition and bulwark of Southern liberties. Now, he demanded that a Southern Confederacy, in form “be modeled as nearly as practicable on the basis and principles of the late Government of the United States of America.”¹¹ Expressing uncertainty should this demand be rebuffed, Stephens won two resolutions that called for a continuation of governing arrangements. The new Southern government, Georgia decreed, ought to rest “upon the principles and basis of the Constitution of the late United States of America.”¹² Stephens traveled to Montgomery possessing a formidable tool of

¹¹ *Recollections*, 427.

¹² *Recollections*, 331.

conservative influence. In fact, few men's ideas were more determinative than Stephens' conservative positions.

Despite the concession in hand, Stephens' gloomy disposition persisted, a reflection of his general mistrust of secessionists. Before leaving his plantation Liberty Hall, a richly revealing title that bespoke of Stephens' mindset, he feared: "We shall become demons, and at no distant day commence cutting each other's throats."¹³ Earlier, he had written to J. Henly Smith of his distrust of the fire-eaters' selfish desires. "Our difficulties spring not from the gov'nt, its frame work or its administration so much as they do from the people, the leaders mainly."¹⁴ Now, Stephens constituted one of those leaders. "I shall go to Montgomery," Stephens professed, and "do all I can to prevent mischief...."¹⁵ In his mind that meant frustrating the most extreme designs of the most base secessionists. He thought it "his duty to do all that he could to preserve and perpetuate the principles of our Federal System."¹⁶ By definition Stephens' aspirations were anything but revolutionary, and he most certainly did not harbor a motive to bring about a signal reordering of government along slave lines. He sought, more than anything, to embed the Southern Confederacy firmly within the United States Constitution and its governing tradition.

¹³ Quoted in William C. Davis, *A Government of Our Own: The Making of the Confederacy* (New York: The Free Press, 1994) 16.

¹⁴ *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (Washington, D.C.: 1913) 527.

¹⁵ Richard M. Johnston and William H. Browne, *Life of Alexander H. Stephens* (Philadelphia: J.B. Lippincott and Company, 1878) 384.

¹⁶ *Life of Stephens*, 383.

Of all the men present at the convention, Robert Barnwell Rhett possessed the most radical vision for a Southern Confederacy. Rhett exhibited ideas for a Confederacy that constituted its most potentially extreme definitions. His vision pushed aside concerns about how best to preserve American democracy in favor of advancing the Confederacy as synonymous with slavery. In December, just days before South Carolina severed itself from the Union, Rhett visited the British Consul in Charleston, Robert Bunch, to outline his radical vision. Posing as the leader of a not yet extant Confederacy, Rhett promised to extend Britain “free trade...with import duties of nominal amount” to curry favor with the mill and shipbuilding constituencies of Manchester and Liverpool. Believing in the supremacy of commerce, Rhett sought Bunch’s reaction. Bunch replied favorably “that as a matter of policy Great Britain...was much interested in the success of free trade.” But, while “agreeing in the main” on the policy of free trade, he raised a potential “difficulty of considerable magnitude” stemming from Rhett’s desire to renew the slave trade. Bunch iterated that “Great Britain viewed it with horror” and spoke to the seriousness of its antislavery conviction. At Bunch’s objection, Rhett replied crossly. He told the consul that a prospective Confederacy would never compromise on any issue over slavery since doing so “implied” it was “a moral evil and wrong” – a nonstarter for Southern politicians. After the meeting Bunch wired a report of the visit to Lord John Russell, Great Britain’s Foreign Secretary. Relaying Rhett’s arrogant belief in the indispensability of Southern cotton, Bunch stated, it is the “axiom that all their calculations are based upon.” He also informed Russell that despite raising the issue of Britain’s hostility to slavery, Rhett seemed dismissive. He “did not conceal that the feeling of the

British Public was adverse to the system of slavery,” Bunch wrote, but nevertheless “saw no reason why that sentiment should stand in the way of commercial advantages.”¹⁷

Rhett learned nothing from his conversation with Bunch, for he openly exhibited the same slavery-obsessed desires in Montgomery. Harboring aspirations to radically remake the seceded Southern states into an unabashed slave republic, he championed reopening the slave trade and eliminating the three-fifths clause in favor of full representation for slave ownership, radically strengthening slave owners’ influence in government. Rhett’s vision not only discounted the objections of Bunch, but the sentiments of his Montgomery colleagues. Such impolitic ideas were not unusual for the “Father of Secession.” As one newspaper surmised, Rhett is “all passion, excitement, and fire....”¹⁸ Even the admiring T.R.R. Cobb thought the South Carolinian possessed a “vast quantity of cranks and a small proportion of common sense.”¹⁹ Despite wishing to advance a radical vision, Rhett did not take others into his counsel nor did he solicit opinions. The other members of his delegation kept their distance, even his own cousin Robert Barnwell. Barnwell’s composure proved the opposite of his cousin - an observance not lost on Alexander Stephens. Recognizing Barnwell’s

¹⁷ Edmund C Burnett (ed.), “Despatch from the British Consul at Charleston to Lord John Russell, 1860,” *American Historical Review*, XVIII (July 1913), 784-787.

¹⁸ Benjamin Perry, *Reminiscences of Public Men* (Philadelphia: J.D. Avil and Company, 1883) 131.

¹⁹ Rable, *A Confederate Republic*, 51.

sharp insights, moderation, and elocution, Stephens wrote, “He always has force in point in what he says – speaks with great precision and clearness as well as condensation.”²⁰

As Stephens agreeably discovered, most of the delegates conformed to the standard set by Barnwell. The seceded states in general sent a slate of skilled, conservative-minded men. Former cabinet members, congressmen, judges, and a previous governor filled out the ranks. Of the eventual fifty present, forty-two had college training. Forty-two similarly claimed the law and slave agriculture as their profession, while thirty-three of them considered themselves planters alone. As one historian observed, “Never in its history had the South seen such an assembly of brains, accomplishment, statesmanship, and property.”²¹ Of note, the largest slaveholders came from Louisiana. Four of the Bayou State’s sugar masters – Duncan F. Kenner, Alexander De Clouet, Edward Sparrow, and John Perkins – together owned an astounding 1,975 slaves. Kenner’s plantation *Ashland* alone held 473 enslaved persons, making Kenner the largest slaveholder at Montgomery.²² As sugar masters, these planters possessed an important and often overlooked favorable stance toward federal power. With an evident stake in tariffs that kept Caribbean sugar out of the domestic market, sugar planters exhibited an abiding interest in maintaining federal power. Upon discerning the conservative nature of the delegates, Alexander Stephens wrote to his brother

²⁰ Stephens to Linton, March 3, 1861, Alexander H. Stephens Papers, LC.

²¹ *A Government of Our Own*, 75.

²² *Ibid.*, 75.

Linton in an unusually upbeat manner: “There is more conservatism...than I expected to see, and this increases my hopes.”²³ The coterie of planters, politicians, and lawyers did not harbor revolutionary desires or counterrevolutionary thoughts. Their motives, as they explained, sought to do no more than to continue in force the United States Constitution. Their problem was not with its provisions or explications its power, but rather with the growth of hostile interpretation governing the application of those powers. Fixing that aspect of governance involved removing uncertainty. The end goal retained and clarified the Constitution’s grants of liberty, with its sanction of slavery and white mastery.

The night before the Convention’s formal opening, delegates gathered in the lobby of the Exchange Hotel for informal introductions. During the evenings’ socializing delegates offered cautious ideas on what they hoped to accomplish. The Charleston *Mercury* overheard William Harris of Mississippi convey that the Magnolia State appointed their present congressional representation to serve in the same capacity in the new Southern government.²⁴ Therefore, his state desired to adopt the United States Constitution without delay, to elect a provisional executive – their own Jefferson Davis no doubt - and upon the completion of these acts to return home to allow the other six states to vote upon their congressional representation. De Clouet of Louisiana agreed with the thrust of Harris’ conservative plan. He stated that his delegation looked favorably upon

²³ Stephens to Linton, March 3, 1861 Stephens Papers, LC.

²⁴ Charleston *Mercury* February 6, 1861.

adoption of the United States Constitution and provisional executives without delay.²⁵ Smith of Alabama signaled his sympathy for the Georgia Plan since his delegation welcomed any proposal that did not further unsettle voters.²⁶

Stephens delighted in learning the sweep of these conversations. If Harris, De Clouet, and Smith spoke for their states, Mississippi, Louisiana, and Alabama's plans accorded rather well with his conservative intentions. He did not wish to adopt a Constitution to send back to the states for revision, and then hold elections to ratify the Constitution and staff the government. Too much time would be wasted, and the uncertainty of electoral politics introduced a dangerous volatility at a time when the new government needed to project continuity and authority. Thus, despite the rhetoric of unanimity, democratic politics remained a consideration. Stephens, in lockstep with Toombs, thought that by transforming the convention into a congress, the nascent Confederacy could cement its conservative identity. Such an action ensured that in setting forth, the Confederacy would rely on a coterie of conservative politicians for support.²⁷

Nothing was more inimical to Rhett's radical schemes than the majority holding opinions contrary to his visions. For the fire-eater, the calculating proved alarming. He wanted to launch a resplendent slave republic, not adopt the old Constitution. On February 4, Rhett's *Mercury* charged the Montgomery Convention to adopt radical proslavery provisions. Casting a slave republic as a

²⁵ *Mercury*, February 5, 1861.

²⁶ *Ibid.*

²⁷ *Mercury*, February 8, 1861.

utopia, the *Mercury* suggested that the fate of the South rested upon the deliberations at Montgomery: “It now remains to be seen whether, with slave institutions, the master race can establish and perpetuate free government. Shall the white man here enjoy liberty protected by law, and be free from impertinent interference with private rights – secure under his vine and fig tree.” Invoking the imagery of Micah’s biblical paradise, Rhett’s mouthpiece offered a vision of the Confederacy as a pastoral slave republic. The paper “trusted” that the “wisdom” of the delegates would see the desirability of such a plan, and sought “the speedy establishment of a permanent Central Government for the South – the grand desideratum of our position and its necessities.”²⁸ Even Rhett sought a central, federal government. Yet, while his colleagues envisioned such an arrangement for an imitative, conservative government, Rhett envisaged a government for the purpose of championing a slave empire.

As they set to work on the morning of February 4, the convention acted according to the general plan discussed the previous evening. Rhett bridled at his limited role. Howell Cobb was elected president, not Rhett. Assuming his post, Cobb spoke of the permanence of their action. “It is now a fixed and irrevocable fact. The separation is perfect, complete, and perpetual.”²⁹ After selecting officers to staff their convention, Stephens moved forward with a bill to establish rules for the assembly. Cobb turned to Stephens to head up the committee, and the convention adjourned its business for the day.

²⁸ *Mercury*, February 4, 1861.

²⁹ *JCC* Vol. I, 16.

The committee that set the rules for the convention proved important. Some states instructed their delegates to vote as a bloc, and so the committee had to adopt uniform rules that harmonized such a request. The committee returned to the convention the next day with rules adopted from the United States House and Senate, as well as a manual written by Thomas Jefferson.³⁰ The desire to act and be seen as imitative is clear. Each state essentially voted as a bloc, for it enjoyed one vote. A tie counted as nay. If a state's delegation voted in a tie, their ballot was nullified. Any assembly of states counted as a quorum. Upon approval, away they went, just as the Founding Fathers had done. After the adoption of rules, Christopher Memminger immediately proposed a bill to constitute the assembled body as a congress. At this, Stephens immediately rose to offer an amendment. He struck out the word convention in favor of "Congress." The convention convened a closed session to debate the proposal. In end, Memminger's bill met final approval and the Georgia Plan, with the help of Memminger, triumphed. The convention assumed the powers of a congress, all but assuring conservative vision and leadership.³¹

By February 6, Rhett sensed his vision for an explicit slave empire slipping away. Members of his own state delegation had moved against him, and it now appeared that in addition to usurping congressional powers for conservative ends, Mississippi planned to place Jefferson Davis at the head of the government. The policy of advancing a conservative Confederacy with establishment figures,

³⁰ *JCC* Vol. I, 17-19.

³¹ *JCC* Vol. 1, 20.

or the so-called “Washington policy” as Rhett termed it, provoked outrage. Rhett must have understood he had been outmaneuvered. Georgia had come seeking to preserve the Constitution and met a sympathetic audience. Rhett raged at the setback that turned the convention into a congress. He called the Empire State’s agenda a “usurpation of power,” and his paper thundered against supposedly secret deliberations on the part of Washington politicians to place Jefferson Davis at the helm of a government with an unaltered Constitution and a Congress of compliant conservatives.³² His *Mercury* decried, “The Conventions that created this Convention never supposed that it was not only to frame the fundamental law of a Provisional Government, but to be a part of it themselves.”³³ For the convention to proclaim the power of a congress adopt the United States Constitution rendered secession meaningless.

Rhett rhetorically thrashed at this nightmarish vision. His dream of an extremist Confederacy was being snuffed out by men who had opposed secession or who had endeavored until the last to keep the Union together. “Every principle of right government, and every dictate of policy, seems to be against the Mississippi scheme,” the *Mercury* protested. Behind the “absurdity” of adopting the United States Constitution and electing Davis, Rhett detected a “graver matter” that his conservative colleagues failed to appreciate: “Is it anything else than the policy of reconstructing the Union?” Bordering on the irrational, Rhett predicted that an unaltered Constitution would lead directly to reunion, thus

³² *Mercury* February 6 1861.

³³ *Ibid.*

wiping away decades of his work. With a conservative government that only sought to preserve liberties rather than advance the most far-flung designs of slave mastery, Rhett proclaimed “After all, we will have run round the circle, and end where started.” If delegates did not awake to the menace of conservatism, Rhett promised, “The Union will be restored, with a few guarantees of negroes...and we will again enter upon the broad road of consolidation and ruin.” If the delegates had come to Montgomery to copy the United States Constitution and sit conservative delegates, “the Convention need not sit a week.³⁴” Rhett’s prospective Confederacy constituted the historical anomaly, but that was not the Confederacy unfolding in Montgomery much to his chagrin.

During the convention’s first week, things continued to go badly for Rhett and his extremist vision. As J.L.M. Curry wrote, the South “withdrew not from the Constitution, but from the wicked and injurious perversion of the Compact.”³⁵ That fact proved apparent as the convention set out to adopt a Constitution. Memminger acted as the man at the forefront once more, for he had apparently arrived in Montgomery with a draft constitution that proved nearly identical to the United States Constitution.³⁶ He was selected to chair the twelve-man committee on drafting a provisional constitution, with Stephens joining. As Stephens later wrote, the twelve set out “to sustain, uphold, and perpetuate the

³⁴ *Mercury* February 6 1861.

³⁵ Curry, *Civil History*, 50.

³⁶ *The Confederate Constitutions*, 60-1.

fundamental principles of the Constitution of the United States.”³⁷ The committee finished their work relatively quickly, making only two changes. The president would enjoy the line-item veto, and the Congress could not enact a tariff that benefitted one industry over another. Originally, delegates advanced a ceiling on tariff rates, but Kenner squashed that notion and all acceded to the sugar master’s demands.³⁸ With those two changes, the debate on the Provisional Constitution reached the floor on February 8.

Rhett finally received an opportunity to imprint his designs. He advanced an amendment allowing for the reintroduction of the slave trade at the discretion of Congress. Couched in a conservative appeal, Rhett’s planned to grant Congress the “power to prohibit the importation of African negroes and slaves from any foreign country.” The United States had stopped the importation of slaves in 1808, and Rhett sought to undo that abolition. His language fooled no one. As the votes were called, Rhett’s prospect for a resumption of the slave trade met a resounding defeat, with only South Carolina assenting. The centerpiece of Rhett’s hope was temporarily dashed. A Confederacy that did not proclaim its right to participate in and facilitate the slave trade was not a Confederacy that Rhett desired. There were to be no radical gestures or grand re-envisioning of

³⁷ Stephens, *A Constitutional View of the Late War Between the States* (Philadelphia: National Publishing Company, 1868) Volume II, 339.

³⁸ *JCC*, Vol. I, 35.

Constitutional liberties. The convention cemented this fact on February 8 when after three readings it unanimously adopted the Provisional Constitution.³⁹

The main task accomplished, the convention transformed into an Electoral College to select provisional executives. Rhett and Yancey, although familiar names in secession, did not enjoy support for evident reasons. The two enjoyed reputations for disputation and radicalism, just the opposite of the convention's desire. The most serious consideration for president came down to a choice between Davis and a member of the Georgia delegation. Stephens, having opposed secession, was out. That left Cobb and Toombs. Cobb did not want the post and said as much to his wife on February 6, "I greatly prefer not to be put there."⁴⁰ Between Davis and Toombs, Davis easily won.⁴¹ When the College cast its votes for vice president, Stephens enjoyed unanimous support as recognition for his service at the convention. The Confederacy now had a conservative provisional constitution coupled with similarly conventional politicians. In almost every facet, the convention rebuffed Rhett's designs for a historically anomalous slave nation.

³⁹ *JCC* Vol. I, 39.

⁴⁰ Correspondence TSC, 537.

⁴¹ Stephens claimed in a letter to Linton that Toombs' drinking eroded support. Two days before the election, Toombs apparent "got quite tight at dinner and went to a party in town tighter than I ever saw him – too tight for his character and reputation by far." Stephens to Linton, Feb 23, 1861 Stephens Papers LC. Later, in *A Constitutional View*, Stephens chalked up the loss as owing to the divided nature of Georgia's delegation. *A Const. View* II, 329-32.

The news of the election arrived at Davis Bend late in the afternoon on February 9. Roughly one hundred miles south of Vicksburg at a great oxbow in the Mississippi River, Jefferson Davis and his older brother Joseph lived on expansive riparian plantations, a physical testament to the family's rise from farmers with twelve slaves in 1816 to masters of some of the largest plantations in Mississippi. Joseph, Jefferson's brother, mentor, and patron, bore much of the responsibility for raising the Davis family's fortunes. A successful lawyer turned planter, Joseph's plantation, Hurricane, encompassed 5,000 acres and a workforce of over 300 slaves, which made the elder Davis one of the largest slave owners in Mississippi and throughout the South. Befitting a rise in his fortune, Joseph's success brought about a subsequent desire to match the family's financial accomplishments in social and political circles, and he pinned his hopes on the younger Jefferson. Joseph's solicitude of Jefferson knew few bounds. Joseph underwrote Jefferson's education at Transylvania College before he secured his nomination to West Point at the invitation of Secretary of War John Caldwell Calhoun. Jefferson Davis shipped off to war as an officer in the United States Army against Mexico in 1848, returning a hero for his actions at Buena Vista. Upon his homecoming, Joseph bequeathed Jefferson 900 acres, which he farmed with the labor of 40 slaves before building his own big house, Brierfield.⁴² In the subsequent years Jefferson Davis lived up to his eldest brother's hopes. After briefly serving in the United States House of Representatives, Jefferson Davis triumphed in an election to the Senate in 1847, where he served until 1851.

⁴² William J. Cooper Jr., *Jefferson Davis, American* (New York: Vintage Books, 1st Edition, 2000), 79-84.

After a two-year respite from public office, President Franklin Pierce tapped Davis as his Secretary of War, and in 1857 Davis recaptured his seat in the Senate, which he relinquished upon the secession of Mississippi.

Having just returned home from Washington with a stopover in Jackson, Mississippi, to organize the state militia, Jefferson and his wife Varina were tending to their rose garden when the messenger arrived. As Varina observed her husband, she thought the messenger a portent of ominous news. “He looked so grieved that I feared some evil had befallen our family. After a few minutes’ painful silence, he told me as a man might speak of a death,” she recalled in her memoirs⁴³ Before the convention Davis took the precaution of writing Alexander Clayton, one of his state’s delegates, to state that he did not desire a position within the civil government, intimating that he preferred command in the field. But, Davis closed by stating, “In this hour of my country’s severest trial [I] will accept any place to which my fellow citizens may assign me.”⁴⁴ Ironically, the Confederacy featured a president who did not desire the post and a vice president who had opposed secession.

Despite his professed lack of interest in the high office, few men were more suitable for the presidency than Jefferson Davis. In 1844 Davis launched his political career by campaigning for John C. Calhoun’s presidential bid as a

⁴³ Varina Davis, *Jefferson Davis, Ex-President of the Confederate States of America, A Memoir by His Wife in Two Volumes* (New York: Belford Company Publishers, 1890), V2: 18-19.

⁴⁴ Jefferson Davis, *The Rise and Fall of the Confederate Government* (New York: D. Appleton and Company, 1881) 237-8; *PJD*, Vol. 7, 34-5.

Democratic Elector from Mississippi. Davis continued to march in step with the “Arch Nullifier,” echoing Calhoun’s concerns about the dangers facing the South over the status of slavery in the territories. Following Calhoun’s lead, Davis opposed the Compromise of 1850 and advocated for the South to issue a national ultimatum over slavery’s perpetual protection.⁴⁵ As the election of 1860 unfolded and the prospect of a divided electorate foretold the possibility of a Republican victory, Davis confronted the possibility of secession. Speaking to the voters of the Magnolia State, he pledged to abide by their wishes. Promising that if “Mississippi decides to submit to the rule of an arrogant and sectional North, then I will sit me down...and bear my portion of the bitter trial.” However, if Mississippi voters “decide to resist the hands that would tarnish her star on the National Flag, then I will come at your bidding.”⁴⁶ Davis embodied the fundamental desire of the Montgomery Convention, conservatism. There were few politicians more respectable and esteemed in the Confederacy, and Davis’ political career projected legitimacy and stability. He was the ideal man for Stephens’ vision of a conservative government.

By the time Jefferson Davis answered the call of his countrymen the convention, now a Provisional Congress, created a committee for the adoption of a permanent Constitution to send to the states for ratification. Rhett, having introduced the bill, finally enjoyed a modicum of success as he chaired the committee. He finally possessed the ability to advance his prospective vision for

⁴⁵ Cooper, *JD, American*, 195.

⁴⁶ Quoted in Cooper, *JD, American*, 339.

the nation. As the committee learned, his extremist views included limiting the Confederacy to slave owning states, striking out the three-fifths rule to strengthen the political power of slave owners, denying citizenship to those not born in the Confederacy, limiting the judiciary's purview on congressional legislation, and lowering the threshold for constitutional amendments. It constituted a peculiar mix of purifying the Confederate nation by legislating exclusivity, while making the nation more democratic and constitutionally pliable now that it was secure in the strengthened hands of slave owners. As the Second Committee of Twelve set to work, Harris of Mississippi navigated a bill through the Provisional Congress to adopt the laws of the United States. Now, the Confederacy set off by not just aping the Constitution, but also the legal code of the former Union.⁴⁷ A crucial development, one whose consequence is routinely overlooked yet far-reaching, continuing the legal code of the United States embedded old arguments into the Confederate nation. On February 28, Rhett presented a draft of the permanent Confederate Constitution to the Congress. At this, Congress attended the business of governing in the morning and reconvened as a convention in the afternoon.

The first change was evident, for the newly penned preamble began, "We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government...invoking the favor and guidance of Almighty God – do ordain and

⁴⁷ *JCC* Vol. I, 41.

establish Constitution for the Confederate States of America.”⁴⁸ Although usually referred by scholars as evidence of the states’ rights composition of the Confederacy, the preamble also directly referenced a permanent federal government. J.L.M. Curry spoke with clarity about his conception of state’s rights and its attitude toward central authority. As Curry put it “The seceding States were not dissatisfied with the Constitution, but with its administration, and their avowed and manifest purpose was to restore its integrity....” Therefore, as the delegates set out to draft new Confederate arrangements, “The permanent Constitution was framed on the States Rights theory to take from a majority in Congress unlimited control....”⁴⁹ Rebalancing congressional authority proved the paramount desire. And what the congress lost, the executive gained. Neither change strengthened the hand of the states in government. The Confederate Constitution rebalanced federal powers, but did not shift prerogatives to the states.

While the reforms of the first day generally strengthened the hand of the executive, on the second day of revisions, Lawrence Keitt advanced South Carolina’s agenda to increase the political power of slave owners. Keitt’s amendment bluntly sought to accord slave master’s full political representation for their bondsmen, rather than three-fifths. Such reapportionment would radically strengthen the hand of planters in government. Here was a government for slave masters. Stephens immediately moved against the revision, and the next

⁴⁸ *JCC* Vol. 1, 851.

⁴⁹ J.L.M. Curry, *Civil History of the Government of the Confederate States of America...* (Richmond: B.F. Johnson Publishing Company, 1901) 69.

day, with the aid of Duncan Kenner, the convention buried Keitt's revision "for the present" with the design to scuttle the proposal indefinitely. Exalting the political power of slave owners proved fundamentally impolitic. It not only threatened the Confederacy's democratic aspiration but also might give pause to Border States thinking of rallying to the Confederate standard. And so, by March 5 the delegates had arrived at the end of Article I with Keitt's revision still sidelined. Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas approved the article, with the three-fifths provision intact. Only South Carolina opposed. The motion to radically empower slave owners overwhelmingly failed.⁵⁰ A final noted excision in the Confederate Constitution is the omission of the "general welfare" language, which some scholars see as the influence of state's rights convictions. However, it is important to note the removal of general welfare was balanced by retention of the "necessary and proper" clause. Historian Charles Robert Lee Jr. argues that the simultaneous omission and preservation owed to delegates signposting for later judicial cases and wrote that the inclusion of necessary and proper emanated from "the belief that Southern judges would look closely when considering any legislation based on implied powers."⁵¹ If that was the intent, the clause had the exact opposite effect desired by state's rights activists, for the courts unanimously granted the federal government expansive purview and authority.⁵²

⁵⁰ *JCC I*, 868.

⁵¹ *Confederate Constitutions*, 95.

⁵² See Chapter Four.

The changes made to the executive branch followed the delegates' general concerns with a reluctance to alter the fundamental structure of the United States Constitution. Evincing comfort with authority, the convention invested the executive with considerable control over the budget, requiring a majority vote of Congress for budgetary measures not introduced by the president. It also accorded the president with the line-item veto, an instrument of considerable power. Both provisions strengthened the fiduciary authority of the executive over the government, and the item veto presaged future constitutional reform.⁵³ The convention also sought to furnish the executive with more control to stabilize and better manage the affairs of government. It concerned the universal problems inherent in republican structures that relied upon campaigning to elect office holders. To limit the influence of popular politics and reduce electioneering, Confederates hoped to focus the executive office on governance by lengthening the term of office to six years while prohibiting reelection.⁵⁴ These changes addressed collective political concerns, rather than the parochial interests of the South alone.⁵⁵

⁵³ In *Clinton v. City of New York*, 524 U.S. 417 (1998) the Supreme Court rejected the national executive line-item veto.

⁵⁴ Rhett wrote, "The re-eligibility of the President was not without danger, as the re-eligibility of the Consuls of Rome opened the way to the Roman Empire." "The Confederate Constitution," *De Bow's Review* Volume 6 Issue: 11 November 1869, 933.

⁵⁵ Forty-six state governors possess the item veto. Indiana, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont are the six excluding states.

With these revisions complete, the Convention turned to a final remaining issue of import. How would the Constitution define the Confederacy? As an expansive, continentally focused American republic? Or would it turn inward, restricting citizenship and placing high thresholds for expansion by legislating exclusivity? This argument over the essential nature of the Confederacy stretched over three days in early March and marked the last effort of Rhett to advance a purified, unabashed, slave republic. For a convention notable for its alacrity, the time accorded the issue is remarkable. Arguing that allowing free states into the Confederacy invited the snake into the garden, Rhett sought a purified identity for the Confederate nation. The proposals he advanced limited the Confederacy to states with slavery, and citizenship to those born in the Confederacy. A united Georgian bloc of Stephens, Cobb, and Toombs opposed Rhett's vision. They regarded the Confederacy as an expansive republic with evident desires to grow beyond present geographic boundaries. Smith of Alabama also thought of the Confederacy as an essentially expansionist republic. Indeed, he hoped that as a paragon of Constitutional government, "some of the great Northwestern States, watered by the Mississippi, will be drawn...to swell the number and power of this Confederation."⁵⁶ If Rhett's proposals triumphed, the Confederate nation would certainly look different. As the debate unfolded, Cobb drew upon his legislative skills to hammer out a compromise, introduced by John Shorter of Alabama, which outlined an expansive and potentially heterogeneous Confederacy by

⁵⁶ Robert Hardy Smith, *An Address to the Citizens of Alabama, on the Constitution and Laws of the Confederate States of America* (Mobile: Mobile Daily Register Print, 1861) 20.

resolving that a majority of Confederate States approve new states, regardless of whether they met the standards advanced by Rhett.⁵⁷ This compromise allowed both sides to claim success. The convention also decided as a counterpart that the federal government would provide legislation on citizenship and naturalization, which shifted standards to the federal level. The action appreciably extended the authority of the federal government and limited the power of the states to determine their composition. Ultimately, the dreams of continental expansion proved far more overpowering than the visions of a purified slave republic. These reforms retained fundamentally open citizenship standards in an imperially minded Constitutional democracy.⁵⁸

Having completed the revisions, Howell Cobb rose on March 11, to call the question of the Permanent Constitution. All states, in symbolic unity, signaled their approval. In just over one month the seven seceded states, with the United States Constitution as their template, advanced a thoroughly imitative Constitution. In most aspects, the Confederate Constitution reflected roughly eighty years of historical debates and proved characteristically American in its solutions. The Confederacy remained wedded to the principle of republicanism and democratic forms of government. It retained a bicameral legislature, an executive, and an independent judiciary. Perhaps most importantly, the Convention strengthened the powers of the executive and Congress over the states. It also shielded the presidency from electoral pressures while according it

⁵⁷ *JCC* Vol. I, 895.

⁵⁸ *JCC* Vol. I 885-6.

considerable oversight over finance and the Congress. In the end, the revisions advanced refuted common perceptions of the Confederacy as a decentralized states' rights government. The delegates also overwhelmingly turned back Rhett's vision for a purified, anomalous slave empire. With these tasks complete, the Provisional Congress returned the Constitution to the states for ratification.

That the delegates accomplished their tasks in six weeks demonstrated a clear desire to move beyond potentially destabilizing arrangements such as party identity and political factions. "Conciliation and harmony among ourselves are of the most vital importance," Georgia Governor Joe Brown instructed.⁵⁹ Wiping out the existence of political parties within their new nation, the secessionist delegates hoped to inaugurate a political system whose hallmark of accord, much like the government of the early republic, would prevent corruption. The spirit of unanimity made for a powerful and harmonious convention. As A.B. Roman wrote to his governor, "Action...will be the motto in this first stage of the proceedings."⁶⁰ As his letter intimated, speed necessitated consensus, a feature made possible by a widespread belief in the utility and desirability of powerful, imitative, federal government. Howell Cobb wrote to his wife to similarly boast of accord: "I can say to you that whilst there are differences of opinion, there will in the end be great unanimity and our final action will prove satisfactory. I feel the

⁵⁹ *A Government of Our Own*, 20.

⁶⁰ A.B. Roman to Duncan Kenner, February 3, 1861, La Villebeuvre Family Papers, Hill Memorial Library, Louisiana State University.

greatest confidence in the entire success of our great movement.”⁶¹ Cobb’s prediction held. Though Rhett bridled at the setbacks and turned to his newspaper to amplify his discontent, the convention resulted in the creation of an evidently imitative United States republic.

Jefferson Davis caught the ferry from Brierfield on February 11, stopping at Vicksburg to board the train for Montgomery amongst secessionist pageantry. Sixteen years earlier, Davis feted John C. Calhoun in the sentinel city on the Mississippi. Now, Davis bore Calhoun’s mantle. During the winding journey to Montgomery, the status of the Upper South and possible outbreak of hostilities in Charleston Harbor dominated Davis’s thoughts. Fort Sumter was controlled by US troops, and the incoming Republican president proved guarded. Davis confessed, “My quiet hours are mostly spent in thoughts of Charleston harbor.”⁶² Neither Davis nor Abraham Lincoln could afford to let the impasse continue. Either the Confederacy did not constitute a nation capable of protecting its borders, or the Union no longer included the territory of the Southern states. The president-elect reached Montgomery late in the evening on February 16. Cannon fire greeted his arrival and a jubilant crowd gathered to hear Davis assure them that the separation was complete, the Confederacy perpetual. At the hotel, Davis encountered another assembly. This time Davis stressed the bonds among white southerners and assured them of the strength in a racial homogenous society. He

⁶¹ *Correspondence TSC*, February 6, 1861.

⁶² Davis to Pickens, January 20, 1861, quoted in Davis, *A Government of Our Own*, 28.

called out, “Fellow Citizens and Brethren of the Confederate States of America – for now we are brethren not in name, merely, but in fact – men of one flesh, one bone, one interest, one purpose, and of identity of domestic institutions.” The fitness of the Confederate course turned slavery, Davis pledged, from a former source of division into a source of social strength. Davis assured his countrymen that owing to the Confederacy’s maintenance of a racially divided society, “We have henceforth, I trust, a prospect of living together in peace, with our institutions a subject of protection and not of defamation.”⁶³ Indeed, for Davis, slavery proved an example of Constitutional liberty and the South’s perpetuity of the institution marked its commitment to the racially divided society of the Founders. As evidence of the fitness of this decision Davis promised, “We shall have nothing to fear at home, because at home we shall have homogeneity.”⁶⁴

On the morning of February 18, Stephens’ forty-ninth birthday, the soon-to-be vice president joined Jefferson Davis as they rode in an open carriage to the Alabama state house. Davis’ inaugural outlined an optimistic, even energetic policy of government and affirmed the Confederacy’s imitative values. Speaking of their conservatism with pride, Davis avowed, “With a Constitution differing only from that of our fathers in so far as it is explanatory of their well-known intents.”⁶⁵ With a restorative government free of political and social divisiveness,

⁶³ Dunbar Rowland, ed., *Jefferson Davis, Constitutionalist* (Jackson, Miss.: Mississippi Department of Archives, 1923) Vol. V, 48.

⁶⁴ *JDC*, V 48.

⁶⁵ Lynda Crist, ed., *Papers of Jefferson Davis Project* (Baton Rouge: Louisiana State University Press, 1992) Vol. 7, 46-50.

Davis advanced a spirited policy: “To increase the power, develop the resources, and promote the happiness of the Confederacy...” The homogenous quality of society freed the Confederacy from governing policies inimical to their interests. Indeed, Davis affirmed the positive aspects of this powerful unity, outlining the new government’s policy in language reminiscent of a social compact. “The welfare of every portion shall be the aim of the whole.” As Davis arrived at the end of his remarks he returned to the broader theme of imitation. “We have changed the constituent parts, but not the system of government. The Constitution framed by our fathers is that of these Confederate States,” he pledged. To close, Davis championed the Confederacy’s united, purified Constitutional government and claimed an exceptional metaphorical attribute. Davis proclaimed to the assembled, “We have a light which reveals its true meaning.”⁶⁶ The source of that light he left unspoken, but in conjunction with his sentiments of homogeneity and “well-known intents,” Davis ostensibly thought the light one of racial inequality, of a body politic limited to white mastery with the institution of slavery serving as an expression of liberty and a bulwark of virtue. That was the chief accomplishment of secession and the convention. The Confederacy was an American republic rooted in Constitutional liberty, which preserved immutable definitions of the body politic by race to bestow power, liberty, and prosperity upon those deemed fit for racial mastery.

⁶⁶ Lynda Crist, ed., *Papers of Jefferson Davis Project* (Baton Rouge: Louisiana State University Press, 1992) Vol. 7, 50.

Just days after South Carolina seceded from the Union, United States Army Major Robert Anderson led a small force from his exposed defenses at Fort Moultrie to the more defensible Sumter farther out in Charleston Harbor. Enraged by Major Anderson's actions, as well as the clemency shown by Governor Francis Pickens that permitted Union soldiers to trade for foodstuffs in Charleston's market, South Carolina's hotspurs insisted upon a response. Leading the charge to action was none other than the chief agitator himself, Robert Barnwell Rhett. In late January, before he headed off to the convention in Montgomery, Rhett confronted governor Francis Pickens and harangued his longtime adversary on the need for military action. "Certainly, Mr. Rhett; I have no objection!" Pickens sardonically rejoined. "I will furnish you with some men, and you can storm the work yourself." Having hoisted Rhett upon his impetuous demands, Rhett balked: "But, sir, I am not a military man!" Pickens, with a history of dealing with the irascible Rhett, coolly rejoined, "Nor I either, and therefor I take the advice of those that are!"⁶⁷

No doubt to Rhett's frustration, the man whose advice Pickens sought was Jefferson Davis. Pickens wrote Davis on January 23 informing him of the dire military situation in his state. "I found everything in confusion...everything was on a small militia scale," he confessed. South Carolina had taken the plunge without due preparation. Pickens underscored the fact that sentiments within the state demanded action and informed Davis that if "the Convention at

⁶⁷ Robert Barnwell Rhett, Jr. to George W. Bagby, January 31, 1861 quoted from William C. Davis, *Rhett: The Turbulent Life and Times of a Fire-Eater* (Columbia: University of South Carolina Press, 2001) 419-20.

Montgomery can give us our rights and our possessions without blood, I shall rejoice, but if not, blood must follow.” Pickens informed Davis that he instructed his delegation to move with haste to assemble a duplicate government and not tarry in electing provisional executives. Pickens eagerly sought a Commander-in-Chief to bring about an effective national coordination as soon as possible. He frankly informed Davis: “I think you are the proper man to be selected at this juncture....”⁶⁸ Three weeks after his letter’s dispatch to Davis, Pickens had both his imitative government and his desired Commander-in-Chief.

Before his acclimation, Davis wired Pickens to urge forbearance. His words sought to salve the Palmetto State’s wounded vanity, and in late January he told the governor, “The little garrison in its present position presses on nothing but a point of pride, and to you I need not say that war is made up of real elements.”⁶⁹ Pickens understood and busied the Palmetto Guard with refortifying Fort Moultrie. By February 22 with Davis at the helm of the national government, the Confederate Congress strengthened the hand of the Commander-in-Chief by according him control over the contested federal forts. By latching on to the fort’s federal status, Congress provided Davis the power to oversee the military operations of the states. If there were to be a war, it would be the result of a deliberate, nationally coordinated endeavor and not a result of state action. Just five days later, Davis wrote to the Congress to ask for federal control over the military situation throughout the Confederacy. He wrote, “To distribute the arms

⁶⁸ *JDC* Vol. V, 45.

⁶⁹ *JDC* Vol. V, 39-40.

and munitions so as best to provide for the defense of the country it is needful that they be placed under the control of the General Government.”⁷⁰ Congress acceded to his wish, and Davis asserted the prerogative of the executive over the powers of the governors. Secretary of War, Leroy Pope Walker, dispatched Congress’ authorization to the state governors, informing them of the nationalization.

Even before the first fighting began, Davis and the Congress utilized the powers of the Constitution to federalize and coordinate the states into a concerted, nationally directed effort. Pickens wrote to Davis after Congress’ act of February 22 to inform him that he accepted his newly subsidiary role. “I have the fullest confidence that you and the Congress will do everything that may be due to the honor and the rights of South Carolina,” Pickens obliged.⁷¹ On April 10, Davis’ War Department wired General Beauregard, his appointed commanding general, to demand Sumter’s surrender, “...and if this is refused, proceed, in such manner as you may determine, to reduce it.”⁷² The Confederate Constitution, it was clear, accorded considerable federal power to the national executive, and granted the Congress the power to exert federal authority over the states. The first fighting at Sumter was not an exhibition of the triumph of state’s rights. South Carolina might have taken the lead in secession, but assumed a subsidiary role under a powerful, supreme federal government of its making.

⁷⁰ *JCC I*, 88.

⁷¹ *JDC V*, 58.

⁷² *Official Records of the War of the Rebellion*, Series I Volume I, 297.

As the convention of seceded states demonstrated, the delegates exhibited an overwhelming desire to retain the United States Constitution with as little disruption as possible. Every attempt of Robert Barnwell Rhett to push the Confederacy away from the center of respectability to the fringe of anomaly was turned back by the delegation. In this regard Alexander Stephens, opponent of secession and reluctant delegate, proved vital in ensuring that the Confederate Constitution remained as imitative and as close to the United States Constitution as possible. And it was Stephens and Toombs whose Georgia plan usurped the powers of the states to endow the convention with the powers of a Congress, thereby ensuring that the conservative work that the delegates undertook continued to be overseen by the same members throughout the provisional period of government. Other delegations vitally contributed to this vision, such as Harris from Mississippi, whose clear agenda of electing Jefferson Davis, one of the most conservative, respectable, and legitimizing choices, aided the Georgia delegation's motives. Finally, the efforts to retain the legal code in force of the United States marked yet another moment of mimicry, another reach for continuity, and another expression of the intentional claim of an American identity.

Of the changes that occurred in Montgomery, most can be seen to have strengthened rather than reduced the authority of the federal government. The executive revisions, although disallowing reelection, rendered the office potentially powerful, demonstrating a desire for a firm, authoritative head of

government. The various congressional reforms also ensured that the national congress, not the states, would exercise oversight in determining definitions of citizenship and national expansion. Although scholars have traditionally treated the war as baptismal, Montgomery stands as a vital chapter in fleshing out the intent of the Confederacy's national makeup. The Constitutional reforms that took place owed not to war, but instead owed to the long memory of national disputes. Liberated from sectional divisions, the Montgomery delegates were free to pursue the government of their desires. For the overwhelming majority those pursuits involved the articulation of a strong, central, federal republic.

Despite a preamble proclaiming the sovereignty of the states, the Confederate Constitution did not legitimize secession. Rather, as the language of the preamble itself avowed, the Confederacy constituted a perpetual, federal republic. The reforms spoke as much to the unresolved disputes of 1787 as they did from the sectional crises that dogged the republic from 1820 until South Carolina's secession. The solutions proved universally American, for they sought to explicate, according to the opinion of delegates, the original intent of the Founding Fathers. There is, perhaps, no more universal American enterprise than intuiting original intent. Thus, the delegates' aim was not merely to salve the wounds inflicted by the Republican Party, but to endeavor to solve more longstanding sources of dispute. By clearing up the understanding over Constitutional liberty, the proper definition of the body politic, and proclaiming the perpetuity of a racially distinct body politic, the Confederate founders placed themselves in a lineage that they believed hailed directly from the nation's

original thinkers. In uniting interests under a common government, the delegates exhibited pride at resuscitating the political atmosphere of the eighteenth century and gloried at their virtuous resurrection. Disallowing party identity returned to the parting counsel of George Washington and made evident his desires. The Confederates had, according to their beliefs, rendered the government of the Fathers a reality by conforming Confederate governing institutions to the Founders' wishes. Most importantly, they took the Constitution as their guide, complete with its sanction of slavery and racial inequality. By perpetuating such definitions and grants of liberties, the Confederates claimed to have saved the republic. Or, to use the words of Davis, they rescued the Constitution with the "light" that Confederates alone possessed.

CHAPTER THREE THE GOVERNING RACE AT WAR

Where James Madison failed Jefferson Davis succeeded. In the Confederacy, ever mindful of history, the precedent for conscription advanced by James Monroe achieved fruition under Jefferson Davis. Davis' elder brother Joseph dispatched a letter to Jefferson glorying in the news. "I am gratified to hear of the passage of the conscription law," Joseph wrote. Ever the student of politics, he could not help but gush, "In this you are more fortunate than Mr. Monroe in Madison's administration."¹ As the Davis brothers' communication indicated, the Conscription Act proved a defining moment for the Confederacy became the first self-styled American government to successfully assert the government's right to the life its male citizens. That the precedent originated by Secretary of War James Monroe achieved fruition under Jefferson Davis is a profound example of the Confederacy's imitative approach to governance and the desirability to use federal power.

By vesting the federal government with the power to enroll and sustain a national army, Davis embraced a policy that advanced a more centralized vision for conscription than his northern foe. The Confederate Congress supported the administration's policy, and several even acclaimed the energetic executive policy. The parallel progression of the Union and Confederate governments, with their resonating calls for a draft and the suspension of *habeas corpus*, demonstrated the common governing links between the two self-proclaimed

¹ Joseph Davis to Jefferson Davis, April 20, 1862. Lynda Crist, ed., *The Papers of Jefferson Davis*, (Baton Rouge: Louisiana State University Press, 1995) Vol. 8, 148.

American governments. That the Confederacy preempted and indeed superseded the Union in advancing federal control over the creation of a national army is not surprising. After all, the Confederate elite felt that it was not the Constitution that had failed them, but rather the political system.

While Davis adroitly utilized the past to lay the groundwork for his administration's policies, the responses of the Confederacy's foremost politicians proved conditional. Alexander Stephens traversed the South to champion the Confederate government and its traditional grants of liberty. Returning home to Georgia in 1861 to advocate the new Confederate Constitution, Stephens spoke forthrightly and infamously on the purpose of the Southern government in order to encourage ratification. And a month after his address in Georgia, the vice president continued on to Virginia, where he urged Old Dominion to cast its lot with the Confederacy. While Stephens exhibited pride of authorship, the intrusion of military concerns revealed his concern with constitutional government. In particular, Stephens recoiled at the prospect that war might lead to the abeyance of civilian control, an essential feature retained from the United States Constitution. As the Confederacy embraced military policies to meet the exigencies of war, Stephens believed the federal government had a clear and supreme right to possess conscripts and to levy taxes, but he argued that the government must procure such rightful provisions through channels that sustained civil liberties.

William Lowndes Yancey, one of the chief agitators in the antebellum era and an iconic opponent of party identity, first set off on behalf of the Confederacy

as a diplomat in April 1861. Returning in late March 1862, the wordsmith of sectional disruption took up politics once more as a Confederate States Senator from Alabama. To face the exigencies of wartime politics, one of the most radical of antebellum politicians sought a return to democratic convention. Upon his return to Congress, Yancey disavowed the antiparty composition of Confederate politics. Repudiating his previous convictions, Yancey called for open dissent and a return to institutional affiliations. Upon the failure of this singular pleading, the former vanguard of radical sentiments exhibited a remarkable change, and throughout the remainder of his career, Yancey facilitated harmonious state and federal relations. Realizing that the Confederate future depended upon the smooth interaction of both, he dedicated his efforts to aid government function. The notion of a Confederate Supreme Court, however, brought back the Prince's fire. An unresolved issue that stretched back to the Confederate Founding, whose antecedents originated with the nation's original founding, as a framer of government Yancey sought to preserve the power of the states and the Congress at the expense of the judicial branch.

The Confederacy's response to the struggle for national existence has invited various interpretations from scholars. Richard Bense's focus on "war mobilization and state formation" resulted in a surprising conclusion when it came to the subject of the Confederacy. For Bense, the Confederate States' response to the demands of wartime invites questions as to assessments of the South's supposed hostility to central, federal power. Bense writes, "...[T]he all

encompassing economic and social controls of the Confederacy were in fact so extensive that they call into question standard interpretations of southern opposition to the expansion of federal power in both the antebellum and post-Reconstruction periods.”² With the Confederacy retaining fundamental structures of American government, Bensel asserts, “...the most striking feature of this new framework was that it ‘prescribed for the Confederacy much the same kind of union which the Southerners had dissolved,’ a document that under the pressure of civil war proved fully expansive as that in the North.”³ Bensel thus implies an irony to the Confederacy’s federal organization, and concludes that the intensity of war transformed the Confederate Constitution into an instrument of unintentional centralization.

Emory Thomas similarly treats the Confederacy’s reaction to centralization as anathema to the South’s prewar convictions. In *The Confederacy as a Revolutionary Experience*, Thomas’ estimation, the war “revolutionized Southerners’ antebellum notions of state rights.”⁴ Thomas recounts the hostility heaped at Jefferson Davis as an example of the perceived betrayal of principles. While dismissing the transformation as the result of any single individual, Thomas concludes, “Goaded by the demands of ‘modern’ total war, the Confederate government abandoned the political system it was called

² Richard Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (Cambridge: Cambridge University Press, 1995) 95.

³ *Ibid.*, 101.

⁴ Emory Thomas, *The Confederacy As a Revolutionary Experience* (Columbia: University of South Carolina Press, 1991) 59.

into being to defend.”⁵ Not desiring to advance a hypothesis as to why those changes occurred, Thomas asserts, that as a result of wartime experience, a “political revolution happened.”⁶

George Rable’s emphasis on political culture locates a revolutionary change within Confederate politics, but in a way fundamentally different from either Bensel’s state formation or Thomas’ emphasis on state identity. By situating the arguments over centralization in political culture, Rable argues that the debates over conscription and habeas corpus challenged the premise of the Confederacy’s politics. For Rable the difficulty of conforming to wartime realities reveals the latent and opposing ideological differences dividing Confederate politicians. The debates over the application of federal power reveal the tension between two essential ideological poles, national defense versus libertarian autonomy.⁷ For the remainder of the war, Confederate politics breaks down between competing poles.

Stephanie McCurry’s recent inquiry into Confederate politics finds that the Confederate response to wartime tested ambitions, identity, and core Confederate presumptions about loyalty. Like Rable, McCurry focuses on charting the changes in the political culture and writes, “The demands of nation building in war would unleash a new crisis of legitimacy and create a heightened context for political loyalty that would test not just the unity of the people but the

⁵ *The Confederacy As a Revolutionary Experience*, 78.

⁶ *Ibid.*, 77.

⁷ George Rable, *The Confederate Republic: A Revolution Against Politics* (Chapel Hill: The University of North Carolina Press, 1994) 301.

very definition of the people itself.”⁸ In McCurry’s estimation, the experience of making war undermined Confederate’s presumed identity. Such an interpretation stresses peculiarity and irony, advancing an implicit betrayal of political convictions.

To meet the exigencies of wartime, the Confederate political culture responded in predictable fashion. Davis continued to employ federal power in a strategic fashion consistent with his antebellum views. His embrace of federal power to meet the demands of wartime in the Confederacy did not constitute a fundamental turn of character, betrayal of previous political convictions, or overthrow of Confederate intent. Davis turned to the Constitution and to the Confederate Congress to articulate a policy of national survival. Such a development placed the Confederacy within political convention. Indeed, the parallel developments of conscription and the suspension of habeas corpus in the Union and Confederate governments demonstrated the extent of the Confederacy’s conventionality. Both nations looked to a common set of governing principles and instruments. According to Davis, neither conscription nor the suspension of habeas corpus constituted a grasp at extra-legal authority. And, according to the reactions of the Confederacy’s leading politicians, neither policy amounted to a crisis or fundamental challenge to their vision of government. Exercising constitutional power for the defense of the nation fulfilled the intent of the Constitution. The response to the war constituted neither a crisis of identity, nor a revolution in character. Rather it revealed the fundamental character of the

⁸ Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge, Mass: Harvard University Press, 2010) 83.

Confederacy's imitative sanction of federal power. And the continual grants afforded by congress reveal that while Confederate politics was not without disagreement, the divisions proved neither revolutionary nor disruptive.

That Jefferson Davis turned to an earlier episode of American history to guide the Confederate future is not at all surprising. Joseph Davis' plantation in Mississippi, Hurricane, featured one of the best-stocked libraries of the state. Filled with volumes on American presidents and the writings of Thomas Jefferson, the library was a repository of early American political history. Varina recalled how around the family hearth, Joseph and Jefferson often discussed readings and political ideas.⁹ Joseph's congratulatory letter over the passage of Confederate conscription demonstrated Davis' engagement with history. With the Confederacy's claim to national heritage, Davis turned to the model for national conscription that emerged in 1814 from the pen of one of Constitution's hesitant signees. With American fortunes at their nadir in the War of 1812, Secretary of War James Monroe dispatched a missive to Senator William Giles of Virginia, the head of the Military Affairs Committee, just after British forces rampaged along the Potomac River. Secretary Monroe warned, "It may fairly be presumed that it is the object that the British Government...to diminish the importance, if not destroy the political existence, of the United States." To prevent the nation's destruction Monroe urged Congress to conscript 100,000 men for a standing federal army.

⁹ Varina Davis, *Jefferson Davis, Ex-President of the Confederate States of America: A Memoir* Vol. I. (New York: 1890) 192-3.

Anticipating constructionist counterarguments, Monroe declared the “conservation of the State is a duty paramount to all others” and argued “Congress have a right, by the constitution, to raise regular armies.” Wading into the debate over the nation’s genesis, Monroe contended that the Philadelphia Convention sought to resolve the issue of insufficient national defense. With his line of argument offering the privilege of insight born from experience, Monroe castigated strict constructionist views as “repugnant to the uniform construction of all grants of power, and equally so to the first principles and leading objects of the federal compact.” Simply put, Monroe labeled opponents of state power ignorant. “The commonwealth,” Monroe concluded in language usually reserved for his state but now transposed to mean the nation, “has a right to the service of all its citizens.”¹⁰ Congress, influenced by recent events, did not require a great deal of persuasion. Monroe’s proposal swiftly passed through both houses, yet his vision for a national army met an inconclusive end when the Senate agreed to Monroe’s desired three-year term while the House only assented to a single year. While in reconciliation the war ended and the bill never became law. Monroe, however, had advanced an important precedent.

Davis had a long history of dealing with the principle of federal power in his antebellum career. In fact, most Southerners’ strategic approaches to federal power are generally overlooked. From the removal of Native Americans in Southern states to the Mexican-American War to the Compromise of 1850, Southern politicians repeatedly championed beneficial applications of federal

¹⁰ *American State Papers*, Military Affairs: Volume 1, 514-16.

power. As historian Adam Rothman argues, the federal government proved essential to the expansion and settlement of land inhabitable for conversion into plantation agriculture.¹¹ Evidence of the desire for federal power continued throughout the 1850s when Southern politicians routinely denounced state's rights. Davis' own Secretary of State, Judah Benjamin, then a senator from Louisiana crystalized this sentiment when he sardonically observed: "Who would have ever expected, a few years ago, to have heard it said...by Senators from the north, that State tribunals were vested with jurisdiction...to determine upon the constitutionality of laws enacted by the Congress of the United States." Benjamin enjoyed the spectacle of highlighting northern sympathies for state's rights, and his statement publicized Southerners comfort with federal powers when they advanced particularly southern interests.¹²

As the war assumed frightening dimensions, Davis turned to the powers granted by the Constitution to make manifest the preamble's promise of perpetuity. Historically, Davis demonstrated comfort with the use of federal power so long as it advanced broadly nationalist or Southern aims. As Secretary of War Davis advocated a robust military policy, as John Calhoun had done

¹¹ Adam Rothman, *Slave Country: American Expansionism and the Origins of the Deep South* (Cambridge: Harvard University Press, 2005). In particular see chapters four and five in which Rothman chronicles the defeat of the Red Sticks after the War of 1812 and following massive government land sales that facilitated the expansion and consolidation of slave agriculture from the Carolinas to Texas. Rothman writes, "Slaveowners benefited from vigorous policies of national building pursued by the United States government – especially the conversion of millions of acres of Indian land into marketable real estate." 166.

¹² Congressional Globe, 33rd Congress, Second Session, 219-20.

before him. Speaking before an audience in New York, Davis urged the construction of an intercontinental railroad to facilitate the extension of American power to the western reaches of the continent. Arguing that national aspirations muted state's rights reservations, Davis viewed the facilitation of American hegemony as a legitimate endeavor of government. Calling the premise of national defense "one of the great ends of our Union," the Mississippian urged others to see the wisdom of his view. "Our Constitution was formed to bind the States together, to provide for the common defense, to concentrate the power of all for the protection of each, to throw their united shields over every State," he avowed. For nationalist benefits, Davis proved an eager applicant of federal power.¹³

Whereas most treatments of Davis' attitude restrict his permissiveness to military ends, his actions upon returning to the United States Senate reveal a disposition to also use federal power to protect slave interests in the territories. To facilitate the spread of slavery under the banner of property protection in 1859, Davis prepared a policy position urging Southern Democrats to insist upon federal action. Drafted with an eye toward the coming presidential election, Davis' resolution not only undermined his in-state rival Albert Brown, who called for a federal slave code, but also crucially targeted Stephen Douglas, his party's prospective nominee for president, by detailing the extent to which Douglas would have to alter the Freeport Doctrine – the notion that settlers of a territory

¹³ Lynda Crist, ed., *Papers of Jefferson Davis*, V, 30-31; Dunbar Rowland, ed., *Jefferson Davis, Constitutionalist*, II, 249-51.

could effectively exclude slavery by refusing to pass laws protecting it - to win Southern Democrats' support.

President James Buchanan, the head of the Democratic Party, assented to Davis' proposals and touched upon their principle when he opened the 36th Congress. Buchanan advanced *Dred Scott* as "the final settlement...of the question of slavery in the territories." The Supreme Court's ruling, Buchanan submitted, protected the right of citizens "to take his property of any kind, including slaves into the common territories."¹⁴ Davis's resolution rendered the court 's ruling a reality. He drafted seven resolutions, two of which explicitly called for federal intervention on behalf of slave property should "the judiciary and executive" fail.¹⁵ Without laws explicitly protecting slave property, it was a fair presumption that slave owners would keep out of the territories, thus ensuring that the territory would enter the Union as a free state. To assert Southern claims over the western reaches of the country, Davis demanded the federal government directly protect slave property, thereby increasing the chances that the territories, once planted with slaves, would join the Union as slave states. It was a crafty application of federal power that allowed Davis to claim principle while furthering Southern aims.

As President Davis exhibited the same practical attitude toward federal power. In his inaugural Davis defined the Confederate government in ebullient language. Proclaiming, "We have entered upon the career of independence, and it

¹⁴ James D. Richardson, ed., *Messages and Papers of the Presidents, Vol. 5* (Washington, DC, 1897-1917), 656.

¹⁵ *Congressional Globe*, 36th 1 Session, 658.

must be inflexibly pursued,” he offered that “there should be a well-instructed and disciplined army, more numerous than would usually be required on a peace establishment.”¹⁶ Davis’ Hamiltonian tone did not go unnoticed. In the beginning, Davis worked with Congress to create a national army of one-year state volunteers. Davis initially sought three-year terms – vastly superseding Lincoln’s call for ninety-day men, but could not overcome the confidence of Southern congressmen like Francis Bartow, Chairman of the Military Affairs Committee, who astoundingly believed six months sufficient. In the end, Bartow relented to a single year at the president’s urging.¹⁷ The expiration of the terms of service coming in March of 1862 proved especially perilous. Out west United States General Ulysses Grant won a resounding series of victories at Forts Henry and Donelson along the Tennessee and Cumberland Rivers, vanquishing the Confederate defenders in degrading fashion and opening a broad swath of the South to Union penetration. Closer to the capitol, Roanoke Island met a similarly shocking fate owing to woeful manpower shortages. In addressing the Congress now at Richmond in late February 1862, Davis called the twin defeats “humiliating.” He found it particularly difficult to accept the news of defeat at Donelson, saying, “I am not only unwilling but unable to believe that a large army of our people have surrendered without a desperate effort....”¹⁸ Against the

¹⁶ *JDC IV*, 358-61.

¹⁷ Jefferson Davis, *Rise and Fall of the Confederate Government* (New York: 1881) Volume I, 304.

¹⁸ James D. Richardson, ed., *Messages and Papers of the Confederacy...1861-1865* (Nashville: 1905) Vol. I, 189-191.

backdrop of setbacks and expiring terms, the Union Army of the Potomac menaced the Confederate capital with its march up the Virginia peninsula. For Davis, the peril necessitated examining the federal powers at his disposal. On March 28, just two weeks after establishing a permanent constitution, Davis asked Congress for the unprecedented passage of a national conscription law.

The challenges of survival did not fundamentally alter or overturn the Confederate designs for a government, but made federal sovereignty evident. In fact, the bill's justificatory language cited the lack of cohesive state laws as necessitating federal control. Davis spoke of the need for federal supervision to keep "adequate forces in the field." His call to action sought to take advantage of popular sentiment by channeling it into the creation of a standing federal army. Enemy incursions had "animated the people with a spirit of resistance...that it requires rather to be regulated than stimulated," Davis proclaimed. He built wide support for his conscription bill by gathering the approval of his most illustrious military counsels. Thomas "Stonewall" Jackson made his approval known, and Robert E. Lee worked with Judah Benjamin on the draft's language.¹⁹ The administration's proposal appeared before the Confederate States Senate on March 29 and asked that men between 18 and 35 years be subject to national military service.

Edwin Sparrow of Louisiana warmly greeted the policy and championed the executive's robust policy. Indeed, he most appreciated that it "it evinced energy of purpose on the part of the administration in the prosecution of the

¹⁹ Wilfred Buck Yearns, *The Confederate Congress* (The University of Georgia Press: Athens, 1960) 64-5.

war....”²⁰ John Clark of Missouri seconded Sparrow, for he exhibited weariness with the inefficient multiplicity of state rules. Clark praised the bill, for “enable[ing] the government to obviate the circumlocution and delay in transferring troops, in many of the States, under existing laws.” Indeed, for Senator Clark, smiting state provisions proved the vital attribute. While proclaiming “respect” for the “sovereignty of the states,” Clark thought the pride of states “secondary to the sovereignty of the people.” “Let us first establish individual rights, and then the rights of the States,” Clark entreated.²¹ For both men, the Confederate Constitution retained federal power for the guaranty of the nation’s perpetuity. They greeted such applications joyously.

Upon these favorable pronouncements, Senator W.S. Oldham of Texas registered displeasure. Oldham avowed that he “did not believe that Congress had the power, except through the States, to force citizens into the army of the Confederate States.” Disregarding the indictment of inefficiency, Oldham countered, “This was not circumlocution; it was the theory of government.” As Oldham later explained, he feared that national conscription paved the way toward military rule. He did not harbor ill will toward the president, and in fact met with Davis repeatedly throughout the war, believing him a sound president.²² Rather, Oldham wrote, “I opposed [Davis’] measures from the dictates of

²⁰ *Southern Historical Society Papers*, Vol. 45, 256-6.

²¹ *SHSP*, Vol. 45, 266.

²² Hon. W.S. Oldham, “Last Days of the Confederacy,” *De Bow’s Review*, Vol. 6 Issue 10, (1869) 863-4.

judgment. I believed at the time that they would work mischief....”²³ To prevent the military from aggrandizing power Oldham stood in opposition.

Louis Wigfall, no friend of Davis, supported the call for conscription by rebutting the notion that the federal policy threatened to lessen civilian control of government. Wigfall clarified that the Confederate Constitution accorded the federal government a supreme grant for the defense of the nation and chided his fellow Texan for articulating state superiority as “the theory of our government.” Swatting away such arguments, Wigfall accused state’s rights literalists like Oldham of inhabiting a fantasy. He avowed that he too remained a “State rights man, but he could not close his eyes to the Constitution, or admit that we were living in the Confederacy under a loose league...” This was a powerful centralized government, Wigfall’s argument advanced, not an atomized collection of sovereign states. To demolish the constructionist argument, Wigfall pondered how states might conduct war:

No State Government has the right to make war, raise armies, or conclude treaties of peace. These rights were expressly conferred upon the Confederate Government. There was no limitation upon the power. It was full, plenary and ample.²⁴

The provisions of the Confederate Constitution demonstrated the erroneousness of state’s rights as a philosophy of government.

Denigrating the “demagoguery” over states’ rights, Wigfall decried limiting governing philosophies as political fictions. He impugned the system of

²³ Ibid. 863-4.

²⁴ *Southern Historical Society Papers* (1925), Number VII, Volume XLV, 267-8.

uncoordinated state provisions as “extra-constitutional, if not unconstitutional.” At any rate, he “had heard enough about it; and by relying upon it, the country is without an adequate army.” Decrying the mawkishness of republican sentiments, Wigfall desired an effective army, which he argued could not be brought about through patchwork appeals to provincialism. “No troops can be carried effectively into the field who elect their officers,” he bemoaned. Even the Founders had come around to such a view, Wigfall argued, for such a position “was the doctrine of Washington, Jefferson, Hancock...”²⁵ In this regard Confederate conscription followed the tradition undertaken by the Founding generation. Such action did not repudiate the legacy of the Founding Fathers, but rather followed their lead. This was not a crisis of identity, but a direct aping.

To close, Wigfall turned to the substantive. Quoting statistics on the army’s lack of strength, he scolded his colleagues: “Cease this child’s play.” While the Congress dithered, the enemy advanced. “No man has any individual rights, which come in conflict with the welfare of the country,” Wigfall affirmed before forwarding that the federal “government has as much right to exact military service as it has to collect a tax to pay the expenses of the government.” Volunteerism and pleas for international aid were useless: “We are waiting here for Providence, or foreign governments, to help us. We lean upon a ‘broken reed.’” Against this forceful remonstrance, W.S. Oldham protested that he did not “come here to be lectured” on the principles of government.²⁶ Wigfall

²⁵ *Southern Historical Society Papers* (1925), Number VII, Volume XLV, 268.

²⁶ *Southern Historical Society Papers* (1925), Number VII, Volume XLV, 267-8.

apologized for his temperament, but not his conviction. He rejoiced at the administration's bill, believing it high time that the federal government seize upon its constitutional obligation to provide for the nation's defense. The Confederate Congress adopted the Conscription Act on April 16. The final vote in the Senate revealed the support of 19 senators with 5 in opposition, while the House passed conscription with a clear majority of 54 yeas to 26 nays.²⁷ The president had his bill, delivered by a congress that viewed the federal government supreme in its powers.

Whereas Jefferson Davis set to work after his inauguration shoring up the Confederacy's defenses by appealing to the federal provisions of the Constitution, Alexander Stephens embarked upon a tour of Southern states in order to urge ratification of the Confederate Constitution and to solicit additional states to join the Confederacy. His remarks reveal him relatively unconcerned about the Confederate nation's response to war, for he took to the states to champion his nation's cause. March 1861 found Stephens at home in Georgia, urging the people who had sent him to Montgomery to ratify the Confederate Constitution that he had returned with. Speaking to an overflowing audience at the Athenaeum in Savannah, Little Aleck highlighted the Confederate Constitution's protection of time-honored liberties. In a fit of inspiration, Stephens praised the Confederate Constitution for preserving not just the grants of the United States Constitution,

²⁷ JCC Vol. 2, 154; JCC Vol. 5, 228.

but also, “All the great principles of Magna Carta are retained in it.”²⁸ Quite explicitly, Stephens sold the Confederate Constitution on its merits as an imitative, reverent expression of traditional English rights. The philosophy of government meant a great deal to Stephens, and by turn he advanced the cause of the Confederacy as the cause of preservation.

But in one vital area the Confederate Constitution offered a different definition of the body politic that Stephens felt the need to explain. To spare his audience the tedium of reciting all of the changes, he moved with haste to this singular alteration. By fixing the grant of American democracy according to race Stephens proclaimed that the Confederacy solved the great quandary of American government. In praising the Confederate Constitution he joyed that it put to rest “*forever*, all the agitating questions relating to our peculiar institution...” Recalling the prescience of Thomas Jefferson, who once “forecasted” slavery as “the rock upon which the old union would split” Stephens observed, “What was conjecture with him is now realized fact.” But Stephens saw certainty where Jefferson evinced doubt. The Founders, he noted, saw slavery as a “violation of the laws of nature,” a view fundamentally at odds with the Confederacy. “Those ideas” Stephens rejected as “fundamentally wrong.” “They rested upon the assumption of the equality of races. This was an error,” Stephens determined. Instead, he proclaimed the Confederacy’s “foundations are laid, its cornerstone rests, upon the great truth that the negro is not equal to the white man; that

²⁸ Henry Cleveland, ed., *Alexander H. Stephens In Public and Private With Letters and Speeches, Before, During, and Since the War* (Philadelphia: 1866) 717-29.

slavery, subordination to the superior race, is his natural and moral condition.”²⁹ In this lone aspect, Stephens declared that the Confederacy superseded the wisdom of the Founders. Indeed, the Confederacy’s contribution the lineage of English rights and American democracy owed to the notion that liberty is conferred according to race. “This, our new government, is the first, in the history of the world,” Stephens joyed, “based upon this great physical, philosophical, and moral truth.”³⁰ Embracing a government that secured a racially exclusive grant of liberty was the essential question before the Georgia Assembly, which they viewed favorably.

After his success Stephens retired to his plantation Liberty Hall, but in April Davis summoned him back to Montgomery on account of the firing at Sumter. Upon his return Stephens learned that Davis desired him to travel to Virginia to address Old Dominion’s secession convention called in response to Abraham Lincoln’s demand for 75,000 volunteers from the states. Stephens departed once more as an ambassador of the Confederacy. The vice president’s appearance was somewhat anticlimactic for he arrived in Richmond on April 22, several days after the Virginia convention decided in favor of secession. The convention remained in session, however, to hear Alexander Stephens’ address. The state constituted the strongest historical link to the men, ideas, and government that the Confederacy purported to perpetuate. Stephens offered adulatory pronouncements of Virginia’s tradition and legacy. To encourage

²⁹ Cleveland, ed., *Stephens In Public and Private*, 721.

³⁰ *Ibid.*, 721.

reciprocity, he assured the assembly of the deep conservatism of the Confederate government. “We quit the Union, but not the constitution – this we have preserved,” Stephens avowed in a pledge of the Confederate government’s conventional makeup.³¹

Stephens also addressed the convention’s concerns about the influences of extremism in Confederate counsels. As a means of explicating the Confederacy’s genuine desire to imitate the United States Constitution, Stephens asked the assembly to see if they did not agree with the Constitution’s limited changes – “they are all of a conservative character,” he proclaimed. “None of the changes introduced are of a *radical* or downward tendency,” he promised, insinuating that although radicals like Robert Barnwell Rhett remained in the government, his vision of the Confederacy as a slave empire had been defeated. And so Stephens dismissed any pretension that the present Confederacy “sprung from some of the hot heads down South.”³² He urged those who harbored such thoughts to read the Confederate Constitution, which he had brought, to see if the changes were not as he told them. This was not a movement of radical or revolutionary aspirations. As he promised, it was decidedly conservative.

With the assembly having expressed reservations on the issue of radicalism, Stephens turned to the area of Confederate singularity, its affixing of race as the principal qualification to the body politic. In language befitting his

³¹ Henry Cleveland, ed., *Alexander H. Stephens In Public and Private With Letters and Speeches, Before, During, and Since the War* (Philadelphia: 1866) 729-45.

³² *Ibid.*, 735.

formal audience, Stephens spoke to the philosophy behind the changes in governance. “The condition of the negro race amongst us presents a peculiar phase of republican civilization and constitution liberty” Stephens noted. By restricting the body politic to those he termed the “governing race,” the Confederacy resolved the problem of race in American political life. In his words, “No truth is clearer than that the best form or system of government of any people or society is that which secures the greatest amount of happiness, not to the greatest number, but to all the constituent elements of that society, community, or State.” There was little doubt about the Confederacy’s definition of the constituent elements of society. “Our system, therefore [?], so far as regards this inferior race, rests upon this great immutable law of nature. It is founded not upon wrong or injustice, but upon the eternal fitness of things.” Through a series of clipped affirmations, Stephens heralded the Confederate’s embrace of purported racial truths. As a government, the Confederacy rested upon a foundation of irrefutable inequality: “As a race, the African...is not his equal by nature, and cannot be made so by human laws or human institutions.”³³ From the wellspring of exclusion, Stephens professed that the Confederacy eradicated dissent among the body politic.

Implying that tailoring laws and dedicating government to advance equality were doomed to fail, Stephens twisted the words of Republican William Henry Seward, who declared that the Republican Party’s platform on race and slavery drew its principles from a higher law than the Constitution. Now

³³ *Stephens In Public and Private*, 741.

Stephens returned the phrase, contorting its definition to sanction the Confederacy's fastening of racial inequality. "We stand upon that higher law," Stephens sardonically intoned.³⁴ Although he had dropped the corner stone phraseology, Little Aleck reaffirmed his belief in the righteousness of explicating and fixing American democracy's grant of liberty by race. Swayed by that vision of American government, the Virginia convention sought popular ratification of the convention's decision to secede. Upon the conclusion of this address, Stephens returned to the Congress, which soon relocated to the Virginia capitol.

The increasing scale of war did not fundamentally revise Stephens' notions of Confederate identity, its Constitution, or functions of government. Throughout legislation drafted to meet the exigencies of war, the Constitution remained the instrument that governed political behaviors and policies and Stephens remarked little on its effects. The bill for the suspension of habeas corpus, for instance, passed the Confederate Senate without comment from a presiding Stephens. And at the congressional recess, Stephens returned to Georgia to encourage his state's support for the produce loan, whereby planters and agriculturalists could purchase bonds by pledging part of their expected proceeds. Before the adjournment of Congress in April 1862, Stephens affirmed: "Independence and liberty will require money as well as blood. The people must meet both with promptness and firmness."³⁵ Throughout June and July Stephens took to the

³⁴ *Stephens In Public and Private*, 742.

³⁵ Richard Johnston and William Browne, *Life of Alexander H. Stephens* (Philadelphia: J.B. Lippincott and Company, 1878) 403.

stump, making at least a dozen speeches to raise funds for the government. He knew that for the government to succeed, for his definition of liberty to persevere, the Confederate people must sacrifice for the state. For most of the summer, Stephens remained evidently unconcerned about military overreach. Instead, Stephens endeavored to enrich the coffers of government.

Although Stephens remained silent on the first habeas corpus restriction, its quick conjunction with conscription raised his alarm. Upon his return to the capitol in mid August, Stephens expressed concern about the growing influence of military necessity in Confederate politics. Stephens, although never opposing a national army, wanted conscription carried out in alignment with the states to prevent military aggrandizement. Writing to the *Augusta Constitutionalist* in August before he departed for Richmond, the vice president expressed disagreement with the policy that advanced conscription through federal jurisdiction. “The citizen of the state owes no allegiance to the Confederate State Government,” he wrote. The only time a Confederate citizen could be compelled to answer the call of allegiance was when it originated from “his State.”³⁶ Thus, Stephens desired the policy turned over to the states, where civilian governors would administer enrollment, not national conscription officers. Having returned to Congress, Stephens alerted his colleagues to the dangers of their decisions. He informed Linton that he threw himself into the work, “I have not been idle.”³⁷ For

³⁶ Quoted in Thomas Schott, *Alexander H. Stephens of Georgia, A Biography* (Baton Rouge: Louisiana State University Press, 1988), 361.

³⁷ August 17, 1862 Alexander H. Stephens Papers, LC.

the diminutive but spirited Georgian, the threat of military despotism imperiled the Confederacy's highest aspirations. As such, he directed his energies toward Congress, the body responsible for approving the federal decrees.

That fall, evidence of Stephen's concern about military overreach manifested in his home state when Commanding General of the Army of Tennessee, Braxton Bragg, appointed Mayor James Calhoun "civil governor" of Atlanta under the pretext of martial law. Calhoun wrote to Senator Ben Hill to inquire of his new duties. Hill, unsure of how to advise Calhoun, in turn passed his letter on to Stephens. The vice president penned a blistering response to the unwitting Calhoun. Stephens wrote, "I am not at all surprised at your being at a loss to know what your power and duties are in your new position." Calhoun's befuddlement, Stephens stated, owed to the fact that the appointment of "civil governor" was extralegal, an office "unknown to the law" and a "nullity." Informing Calhoun "you, by virtue of it, possess no rightful authority; and can exercise none" the vice president eviscerated the entire military arrangement. "General Bragg has no more authority for appointing you civil governor of Atlanta...than any street walker in your city."³⁸

It was not, as Stephens wrote to Richard Johnston, that he possessed a cynical assessment of the military. Rather, he confided, "...my dear sir, it is the principle involved. We live under a constitutional government, with clearly-

³⁸ Alexander Stephens to James Calhoun, September 8, 1862 in Cleveland Henry, *Alexander H. Stephens in Public and Private: With Letters and Speeches, Before, During, and Since the War* (Philadelphia: 1866) 747-9.

defined powers.”³⁹ “Martial law,” the vice president opined, “sets at defiance the Constitution itself.”⁴⁰ Continuing to channel his frustrations at the obsequiousness of Congress, Stephens thought their behavior exasperating. “It is strange what ignorance prevails on this subject,” a dejected Stephens wrote Linton in remarking upon Congress’ actions. Indeed, he seemed to despair on the subject of congressional competence. In a downcast assessment of the trajectory of government, which Stephens feared headed toward despotism, he complained, “How little the representatives of the people know of the nature of Government under which they live.” Upset over Congress’ “lamentably ignorant” state, Stephens privately complained to Linton, “The whole ground has to be gone over with these children in politics and statesmanship.”⁴¹ It was not, as Stephens made clear, that he opposed the Confederate nation or the military. Rather, just as the Founders insisted, Stephens demanded civilian control over the military. Stephens believed that the government had the right to possess these men. It does, and it clearly owns the supreme right in his opinion. But the national government must acquire conscripts through proper channels, the states. His greatest criticisms of the Congress and Davis’ policies owed to their proclivity to lean upon military power. Stephens strove to maintain a government of conservative values and forms where civil liberties triumph. The points he raises guard constitutional liberty, not repudiate or exalt the national government or states’ rights. He churlishly wrote to Dick Johnston, “Better, in my judgment, that

³⁹ *Life of Alexander H. Stephens*, 419-20.

⁴⁰ *Ibid.*, 419-20.

⁴¹ September 7, 1862, Alexander Stephens Papers, LC.

Richmond fall...than that our people should submissively yield obedience to one of these edicts of our own generals.”⁴² Stephens prized the Constitution, and endeavored to preserve it as the sole source of legitimate governing authority. It was not possible, in his estimation, to sustain the liberties of which he so proudly spoke without maintaining civilian control.

Although Stephens denounced martial law and the federal administration of conscription, he returned to Georgia once more as a spokesperson for the government. To close the woeful gap in supplies needed by soldiers, Stephens exhorted his fellow Georgians to donate money, shoes, and clothing to sustain soldiers. He also urged the populace to keep heart, pointing to the American Revolution as an example of adversity overcome. On his own plantation, Stephens proved an exemplar, dedicating an increasing share of his fields to grow foodstuffs for soldiers. He similarly pledged several hundred dollars to purchase shoes for all the soldiers from his home county. He clearly had not abandoned the cause or his interest in the effective functioning of government. Rather, he strove to sustain the government through popular appeals and personal action. Stephens sought to secure Confederate adherence to constitutional governing principles, and to sustain its soldiers so as to vindicate its quest for independence.

Stephens did not lose himself in the abstract world of political principles in as the calendar turned to 1863. In addition to worrying about civilian control over government, Stephens expressed his growing concern about the deteriorating

⁴² *Life of Alexander H. Stephens*, 419-20.

state of Confederate finance. With inflation rising, Stephens knew the Confederate government needed to drive currency out of the market. The only real solution, Stephens understood, lay in direct taxation – a most decidedly federal policy. “Capital by itself has little patriotism above the brute instincts to self preservation,” Stephens wrote to Senator Raphael Semmes as a means of expressing his concern with the general unattractiveness of Confederate bonds.⁴³ Despite raising concerns over the draft because he felt that state allegiance ought to form the exclusive avenue by which citizens served the nation, Stephens’ solution to the problems facing the Confederate treasury showed his clear desire to support the federal government and not stand upon abstract constitutional principles.

Not believing anything short of direct taxation sufficient to alleviate the woefully inflationary trajectory of Confederate finance, Stephens urged for a change in treasury policy. The solution, according to Stephens, lay in levying a direct tax through a wide reading of the same law that allowed Congress to raise and support armies. By asserting a generous interpretation of the grant of constitutional provisions, Stephens advanced that “with as little violation of either the spirit or letter of the clause as...is now used in the conscription of men,” the Congress could extend its reach not just to men but also to goods.⁴⁴ Such a stance evidently stood at odds with state’s rights constructionists. It was not, as Stephens told Johnston, that he opposed the government, Davis, or the military.

⁴³ Alexander Stephens to Raphael Semmes, January 4, 1863 quoted in Schott, 366.

⁴⁴ *Ibid.*, 367.

Rather, it was “the principle” of constitutional rule that he held so dear. Maintaining the Confederacy’s constitutional government and its grants of liberties required a military and stable finance, which Stephens recognized. He responded to the demands of war by insisting on civilian rule while personally working to strengthen the ledger of the government to better supply and sustain the military upon which the Confederate future depended.

William Lowndes Yancey’s homecoming from his ambassadorship marked his return to politics. Assuming his seat in the Senate in late August of 1862, Yancey began his tenure by openly questioning the wisdom of the South’s antiparty organization. It must have been quite a surprise to hear the so-called “Prince of Secession,” the man who had channeled his inexhaustible contempt for party identity for over a decade assert a newfound appreciation for party identification. Yancey’s position not only repudiated his previous legacy, but also the admonition of Washington and the attempt to model the Confederacy as closely as possible on the early American republic. Expressing dissatisfaction with the current state of affairs that he feared yielded too uncritically to military demands, Yancey professed: “I am now fully convinced that we have too much secrecy in our legislation.”⁴⁵ Reconciling himself to the fact that his previous

⁴⁵Speeches of William L. Yancey, Esq., Senator from the state of Alabama: made in the senate of the Confederate States.... (Montgomery: Montgomery Advertiser, 1862) 10.

political convictions about the dangers of party proved misguided, Yancey proposed to end the secrecy that shrouded many congressional decisions.

In calling for the development of a loyal opposition, Yancey declared: “[I]t has been a republican argument, that parties keep up a healthy public sentiment, and aid to check improper assumption of power by those in office.” Although such sentiment escaped him in his antebellum years, in reversing course Yancey affirmed: “As to factions, I have but little fear of them.” Coming to terms with the necessity of political institutions, Yancey advocated opening debates to allow “the healthful sunlight of an enlightened public opinion” to register its influence.⁴⁶ Yancey felt Congress’ attachment to secrecy enabled surreptitious loyalties. Seeking the cleansing light of day, the Alabaman pushed his colleagues to raise the voting threshold for closed sessions. Despite his pleading, Yancey’s colleagues did not desire to resume party politicking, stump speeches, and the institutional politics. In fact, such a course threatened the very tenets of the original political system that the Confederates had claimed to resurrect. Yancey watched as his motion failed the Senate by the margin of 17-4, signifying that his days as a vanguard of Southern politics were in the past.

By September Yancey had moved on from the defeat, instead devoting himself to harmonizing Confederate political divisions over the Conscription Act. His turn of character constituted a remarkable change, for the trials faced by the Confederacy appeared to have chastened the former fire-eater. Avowing the constitutionality of conscription, Yancey swept aside legal grounds for protest. “I

⁴⁶ Speeches of William L. Yancey, 15.

have not read or heard of any argument against it, which I conceive tenable,” Yancey concluded, undercutting strict constructionist’s arguments. Yancey sought most of all to kindle a harmonious relationship between the central government and states. By pleading for the federal government to handle its prerogatives with a defter touch, Yancey warned that “collisions” between federal and state officers “are remembered as humiliations.” His stressing of the personal nature of politics highlighted that in the absence of party organization, divisions often assumed personal natures. Yancey counseled that “like old wounds” the conflicts “occasion a jealous and watchful conduct towards the Confederate Government...which, in the end, may disrupt the Government.”⁴⁷ The federal government, he warned, disregarded the considerations of state officials at its peril, for much depended on their support. In order to sustain “the smooth and harmonious action of all the parts of our complex Government in favor of a common cause...” Yancey advocated a compromise. To placate the states and retain constitutional authority for federal prerogatives, he proposed revising conscription by turning responsibility for enlistment over to the states, much as the Union government had done. After calling for the federal government to moderate its approach, Yancey took to patriotic appeals to encourage the enlargement of the army so as to carry the Confederate state to a final victory. He fantastically proposed to “strengthen the army so ‘that they shall rush through the Yankee capital, blow up every vestige of its public buildings, and pass on into the heart of the enemy’s great cities, and in the midst of his treasures, and in the

⁴⁷ Speeches of William L. Yancey, 19.

citadel of his power dictate a peace.”⁴⁸ If anything, Yancey inhabited a position of calling for more vigorous federal action through calculating appeals to partnership and conciliation.

Echoing Stephens, Yancey labored to ensure the proper constitutional balance between the states and the federal government. As Yancey avowed, “The State governments, are an essential part of the complex system of government known as the Confederate States.” Without them, he sustained, “there can be no Senate.” Opposing the use of unlimited powers when “the ‘National life is in danger,’” Yancey pushed back against blanket justifications for military powers that threatened to obviate the role of the states:

Mr. President, I here enter my solemn protest against the introduction into our political vocabulary of such a phrase as ‘the National Life.’ Sir, we have no national life. ‘National Life’ is but another term for sovereignty. A nation is a Sovereign State; the Confederacy is not a Sovereign State...It has no national life to defend.⁴⁹

The calls to defend the national life, Yancey declared, permitted the Congress to uncritically authorize grants of power that disregarded the states and the proper balance of powers within the federal system. “We should remember that State sovereignty, which in some respects is the strongest, may yet become the weakest point in our organic system,” he warned.⁵⁰ Yancey did not desire a repudiation of the national government, but worried about the obviation of civilian control. “I

⁴⁸ *Ibid.*, 21.

⁴⁹ Speeches of William L. Yancey, 19.

⁵⁰ *Ibid.*, 22.

deny, *in toto*” Yancey declared, “that the war power is paramount to the civilian power, either of the Confederate or State governments.”⁵¹ Seeking “harmony” Yancey proposed a self-described “peace offering” that endeavored to assuage the concerns of state governors while still according the federal government the states’ manpower by organizing some troops under three-year state enlistments.⁵² Throughout, he sought to safeguard the nation from fears of military usurpation.

The last exertion of Yancey involved the establishment of the federal judiciary. Left unresolved after the initial outlines hammered out by the Provisional Constitution, the Confederate Senate hoped to establish a Supreme Court. Yancey feared that the court’s establishment would override the separation of powers and render the federal nature of the republic a fiction. Wigfall, ever caustic and extreme, began reading John Adams’ Alien and Sedition Act to offer his protest of the judiciary’s power.⁵³ Thus Wigfall, the man who welcomed conscription, drew the line at judicial review. As the debate over the Confederate Supreme Court revealed, the men moved along a spectrum of opinion that championed the cause of national preservation while defending civilian checks upon government consolidation of power. It was not a simple binary, but a complicated negotiation between federal power’s legitimate authority and limits.

⁵¹ Speeches of William L. Yancey, 24.

⁵² *Ibid.*, 19-20.

⁵³ *SHSP* Vol. 47: 210.

In Yancey's opinion, nothing less than the survival of state sovereignty and a truly balance federal republic lay on the line. To allow federal judges to decide on the legality of state and congressional intention constituted the type of usurping power that the Confederacy sought to restrain. "When we decide that the State Courts are of inferior dignity to this court, we have sapped the main pillar of this Confederacy," Yancey avowed as he pushed back against the judiciary bill advanced by Benjamin Hill's committee.⁵⁴ Yancey spearheaded the opposition, advancing amendments to limit the court to three justices, to equalize low salaries, and most importantly to prohibit judicial review. The personal politics of the Confederacy lent a spiteful quality to the debate. The Confederate Constitution and antiparty atmosphere proved flexible enough to withstand the debates over habeas corpus and conscription. Yet, on the issue of judicial review, the atmosphere of consensus failed. Yancey thundered at Hill, whose committee advanced the bill. The two engaged in acrimonious denunciations, which devolved into personal recrimination and political smears. In one particularly dishonoring episode Yancey ridiculed Hill and distorted his record. The old fire had welled up and exploded in an exhibition reminiscent of his previous political stunts. Robert Barnwell, feeling Yancey's acrimony too severe, insisted on an apology for violating the rules of debate. When Yancey refused Hill threw his inkwell at Yancey, severely lacerating Yancey's face. Blood spilled forth as the two men lunged at each other. R.M.T. Hunter had to call for the Sergeant-at-arms. The "jealous and watchful" conduct Yancey warned about became reality before his very eyes. Just weeks after his quarrel with Hill, Yancey fell ill. For years he

⁵⁴ *SHSP* 47: 211-12.

supposedly suffered from an infection of the kidneys.⁵⁵ This time, he would not recover. As Yancey languished, resolution on limits of judicial review remained elusive. He died just short of his fiftieth birthday.

The governing race's experience with the exigencies of wartime clarified the federal makeup of their Constitution. Federal power was not an inimical feature of the Confederate Constitution, but rather a fundamental component. Jefferson Davis, with his military, political, and administrative experiences, turned to the Confederate Constitution and historical precedence to formulate the administration's response to war. The Confederate Congress repeatedly approved federal power, from conscription to the suspension of habeas corpus. As one of the chief influences on the Confederate Constitution, Alexander Stephens spent most of 1862 championing the Confederate nation. By 1863 he exhibited weariness with the demands for military necessity, worrying about their impact on democratic rule and liberty. In response, Little Aleck stressed the principle of constitutional liberty and energetically guarded provisions maintaining civilian control. Despite his denunciations of martial law and the federal provisions for conscription, Stephens remained a key proponent of the Confederacy. He urged his fellow Confederates to seize federal power to levy a direct tax by the same rationale that it claimed the lives of able-bodied men. As he made clear, the federal government rightfully owned a superior claim to the

⁵⁵ Eric Walther, *William Lowndes Yancey and the Coming of the Civil War* (Chapel Hill: The University of North Carolina Press, 2010) Yancey told his son that "for years he had endured 'bleeding piles.'" 368.

nation's men and moneys. Despite his historical reputation, Stephens' denunciations sought to perfect and safeguard the Confederate nation, not to repudiate the legitimacy of government.

Yancey had labored for over a decade to bring about the Confederacy and upon accomplishing the feat of independence. Yancey served the Confederacy by departing for London as a diplomat, and then in a return to institutional politics, he strove to bridge the tension between constitutional grants of federal authority and state authority. Once identified with the cause of disunion, party elimination, and Southern separatism, Yancey conformed to the practice of governing and sought to conciliate rather than unsettle. He desired to balance constitutional powers with civilian oversight, to create a strong national army to wage offensive war, and to embed its creation through the states. His ultimate act, seeking to frustrate the creation of a Supreme Court capable of overriding state legislation and intuiting congressional intent owed to his desire to preserve the federal checks of power and to prevent future usurpation of power. Yancey did not occupy a single ideological position, but moved along a spectrum of political sentiment. Generally chastened by his return to formal politics and the exigencies of wartime, Yancey's career as a Confederate Senator is notable for his efforts at conciliation. Throughout, Yancey did not inhabit a consistently oppositionist attitude. Yancey never considered himself a foe of Davis or the administration and on his deathbed sought reassurance of Davis' continued friendship. Yancey even bequeathed Davis his possession of George Washington's spyglass. Davis, in turn, thanked Yancey's widow for the gift and informed her that he would cherish

it, just as he had Yancey.⁵⁶ It was an anticlimactic end to a career filled with ambitious visions, robust exertions, and outrageous outbursts.

The experiences of Davis, Stephens, and Yancey reveal that the war did not radically transform the Confederate State. Rather, the war made clear the grants for federal power. Davis, ever the conventional politician, turned to precedent, personal experience, and the Congress to formulate the administration's response to war. As Stephens spoke, the Confederacy fixed the body politic according to race. Its overwhelming conservatism, however, left provisions for federal power intact. Only when the threatening hydra of military despotism threatened to upend his cherished government of liberty did he recoil. And even then, the limits of his denunciations remained confined to military overreach. Yancey too understood the provisions for federal power inherent in the government and sought to harmonize the politics of the Confederacy. Like Stephens he guarded against military usurpation and sought modifying policies that supported the federal government while offering conciliating measures to the states. He could not, however, abide the creation of a court that proclaimed the power to sit in judgment of congressional and state legislation.

On the whole the elite of the governing race demonstrated widespread comfort with applications of federal power. Davis looked to the Congress and to historical precedent, a fact made clear by the generally widespread agreement that greeted his policy proposals, especially in the area of congressional confirmation. Throughout their conditional response to the exigencies of

⁵⁶ Walther, 371.

wartime, neither Stephens nor Yancey proved inveterate opponents of federal power. Rather, they worked to conciliate policies to sustain civil liberties while affording the nation its clearly sovereign right to embrace the instrumentalities necessary to defend the nation. The reactions of the elite did not break down along strictly binary positions. Rather, they measured their response according to context. They proved, in that regard, predictably political.

CHAPTER FOUR “JUDGES BEFORE KINGS”

In the argument over the Confederacy’s war powers, Jefferson Davis drew aspersions as a Hamiltonian. Georgia’s governor Joe Brown hurled the loaded epithet at the nation’s chief executive in the midst of a remarkable exchange of correspondence that lasted from the spring of 1862 to the summer of 1863. Throughout the discussion, Davis and his cabinet articulated a vigorous defense of the Confederate Constitution’s federal powers to the wily state governor. As Brown’s epistles lengthened into 1863, they sparked an important political and legal debate about the nature, identity, and intent of the Confederate government.

Though commonly conceived as a champion of states’ rights, the lengthy correspondence from Brown reveals his desire to retain political significance. In a governing atmosphere void of political parties and stripped of patronage, Brown’s jeremiads sought to accomplish a single-minded purpose: to preserve a system of political clients within an antiparty Confederacy. By invidiously guarding the state militia, its officer corps, and the right to deem officials indispensable to the operation of his state, Brown coveted the power to maintain a system of patronage under the rhetorical guise of state’s rights.¹ As evidence of the success

¹ The issue of patronage is receiving critical reassessment by scholars. Georgia was second only to North Carolina in terms of military exemptions. For a discussion of the patronage system at work in North Carolina, where Zebulon Vance enjoyed wide celebrity for his patronly power, see Gregory Downs’ *Declarations of Independence: The Long Reconstruction of Popular Politics in the South, 1861-1908*. In particular, chapters one and four chart how attitudes toward patronship that began under the politics of slavery continued into the Reconstruction era as a desirable, stabilizing force.

of Brown's exertions, in the fall of 1864 Jefferson Davis received word from Judge Andrew Gordon Magrath's opinion that as many as 30,000 men in Georgia and the Carolinas avoided national service owing to the crafty application of the detail system that allowed exemptions for individuals who produced goods essential to the war effort. Furthermore, Governor Brown maintained 9,000 officers for the state militia, second only to Governor Vance in North Carolina.² The resolution for these contests of power between the federal and the state governments centered upon state courts, for the political stasis in Richmond prevented the establishment of a Confederate Supreme Court. The political divisions exposed by conscription demonstrated the Confederacy as foremost a contest over power, not principles. Resolving that dispute fell to state courts, which offered a definitive ruling on the federal nature of the Southern Confederacy.

The legal history of the Confederacy offers one of the more interesting and under appreciated perspectives into Confederate politics and governance. The state of North Carolina in particular offers a most telling example of the legal and political intersection of Confederate makeup. As the site of the most pronounced legal challenges to federal power, the cases and ultimate rulings of the state's supreme court offered the sharpest legal challenges to federal power yet even these failed to result in a reversal for the Davis administration. The best treatment of the wartime North Carolina Supreme Court is Jennifer Van Zant,

² *O.R. Series IV, Vol. III, 652; O.R. Series IV, Vol. III 866.*

“Confederate Conscription and the North Carolina Supreme Court.”³ Van Zant writes that the North Carolina court relied upon “precedent and their principles in construing the statutes of the Confederate Congress.” The problem with that interpretation, as pointed out by Mark Neely, is that the North Carolina Supreme Court constitutes an extreme outlier owing to the overwhelmingly influence of a single justice, Judge Richmond Pearson.

Mark E. Neely’s *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism* is a broad and thoroughly engaging examination of the legal history of the Confederacy. On the issue of the North Carolina court, Neely argues that the jurisprudence of Chief Justice Pearson remains anomalous, for the state courts in the Confederacy generally ruled in favor of the federal administration, which Neely concludes as evidence of the overwhelming desire on the part of Southerners to enjoy peace and order. Neely’s cautions against historical interpretations that take Southern rhetorical protests about the degradation and subjugation at face value. As such, Neely approaches the subject of federal power cynically, concluding the notion of Confederate Constitutionalism, with its purported roots in civil libertarianism, a myth.

The political divisions between Governor Joseph Brown and Jefferson Davis are often portrayed as an example of Brown’s success as a populist and Davis’ failure as a popular, inspiring politician. Paul Escott’s *After Secession* finds Brown the singular rising star among state governors owing to his success in providing sustenance and aid to the people of Georgia. The row with Davis did

³ Jennifer Van Zant, “Confederate Conscription and the North Carolina Supreme Court.”³ *The North Carolina Historical Review*, Vol., 72, No. 1 (Jan., 1995) 54-75.

not owe to ideology, according to Escott, but to Brown's realization that he stood to gain by meeting the needs of the people. "Brown's opportunity to gain the people's affection arose from their need," Escott writes.⁴ "Of all the state governors, [Brown] stood out as the most vigorous, determined, and effective defender of the common people."⁵

Despite the discomfiting political realities for state's rights rhetoricians, as a replica of the United States Constitution the Confederate Constitution operated as intended. Davis reached for constitutional grants of federal power to defend the nation, which the Congress consistently granted throughout the Confederacy's existence. And while the episodes with Brown may be viewed in light of state rights collisions, what is apparent about Davis' row with Brown is Brown's motive to preserve his powers of patronage, among the last inducements to loyalty left in an antiparty political climate. Brown was not unwilling to provide the national government with troops, but was reticent to do so without first obtaining some benefit. Brown was an opportunistic leader whose chief motive was to sustain the power of his office and advance his personal ambition. To the extent that serving the needs of the people allowed him to extend and sustain his own power, he proved a successful governor. But his efforts were not selfless or done out of concern for state's rights.

Owing to the lack of a Confederate Supreme Court, the Davis administration's policies achieved resolution through an appeal to state courts.

⁴ *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge: Louisiana State University Press, 1978) 160.

⁵ *Ibid.*, 159.

As the rulings of state courts reveal, the administration enjoyed an overwhelming rate of success across a broad swath of the Confederacy. State supreme courts overwhelmingly found the Confederate Constitution an instrument of broad grants and strong instrumentalities to aid the execution of federal powers. State's rights proponents, consigned to test the issue of state sovereignty over conscription and habeas corpus, found their arguments obliterated by the courts. The legal interrogation of the Confederate Constitution found absolutely nothing therein to validate state's rights as a governing philosophy.

As the conflict with Union forces in Charleston Harbor stretched into the spring of 1861, the Confederate Congress invested Jefferson Davis and his administration with military authority, thus removing the state militia of South Carolina from command. Brown received the news on March 1, 1861, when Secretary of War Leroy Pope Walker informed state executives of Congress' bill to federalize the war effort. "Under this act," Walker instructed, "the President directs me to inform you that he assumes control of all military operations in your State."⁶ Just eleven days after the dispatch, Brown replied, seeking an exchange of policy views. Writing to Secretary of War Walker to inquire whether the Confederate government would accept Georgia's regiments with officers intact, Brown clouded his self-interest with a pledge of compliance. "I have appointed the officers for the two regiments and they are now actively engaged enlisting soldiers," he wrote, presaging the issue of maintaining his powers of

⁶ *The Confederate Records of the State of Georgia*, Volume III, 17.

benefaction.⁷ Brown desired to know whether he would be allowed to continue to appoint officers, a right that passed to the president under the new law. “I cannot, in justice to the privates who had enlisted,” Brown asserted, “tender the regiments unless they are received with the officers which I have appointed.” Should the War Department accede to his terms, Brown promised, Georgia’s regiments “are now at your service and subject to your order.”⁸

Brown’s letter revealed that the governor surreptitiously appointed officers to regiments that lacked men. Walker responded that the War Department could only accept staffed regiments. Never one to accede to a lessening of power, Brown refused to comply and the issue remained deadlocked until May 21 when Robert Toombs interceded, lecturing Walker that “technicalities must not stand in the way of harmony.”⁹ Suggesting that Walker overlook the letter of the law in favor of its spirit, Toombs preserved harmony between the administration and his home state for the present. Though Walker bowed to Toombs’ negotiated solution, he did not let the incident pass unnoted. He dispatched a letter to Brown with Congress’ bill along with the third article of the Confederate Constitution to “prevent misapprehension in the future.”¹⁰

⁷ *The Confederate Records of the State of Georgia*, Vol. III, 23.

⁸ *Ibid.*, 23.

⁹ Quoted in William C. Davis, *A Government of Our Own: The Making of the Confederacy* (New York: Free Press, 1994) 214.

¹⁰ *The Confederate Records of the State of Georgia*, Volume III, 36. The resolution passed on February 13 read; “That this Government takes under its charge the questions and difficulties now existing between the several States of this Confederacy and the Government of the United States relating to the occupation of the forts, arsenals, navy-yards, and other public establishments,

Throughout the opening days of April, Brown continued to harangue the War Department on the point of mustering troops in the state of Georgia, insisting that his point was merely legal. “When the troops leave Georgia they are under no law till they are mustered into the service. The officers object to leave the State till it is done.”¹¹ In professing to look after his constituents, Brown challenged the will of the administration over the right to appoint officers for regiments headed for service in the national army. Indeed, no other state executive issued raised such protests. Walker, irritated, curtly replied to the recalcitrant Brown, “I cannot make an exceptional case of the Georgia troops.” The secretary then demanded that Georgia’s enlistments be mustered into federal service.¹²

Brown’s attempt to retain the vestiges of patronage could not be so easily overcome. On April 18 he again wrote to the War Department promising to meet his quota if Walker agreed to the stipulation that the officers he appointed remain. “I have a division of volunteers nearly organized,” Brown informed the Secretary of War. “Will you accept them by division and brigades?” he inquired, claiming that to do so “would greatly facilitate” the transfer of troops.¹³ An

and that the President of this Congress be directed to communicate this resolution to the governors of the States.” *JCC* Vol. 1, 47.

¹¹ *The Confederate Records of the State of Georgia*, Volume III, 36.

¹² *Ibid.*, April 3, 1861, 38.

¹³ *The Confederate Records of the State of Georgia*, Volume III, April 18, 1861, 53.

overwhelmed Walker responded that he did not have time to consider Brown's request. In the face of Walker's exasperation, Brown proved relentless.

The tough-minded Georgian fired another missive to the department on April 27 asking to be appraised of law's specific language that transferred the rights of appointing officers and surgeons to the nation's chief executive, despite Walker having included the act of congress in the earlier dustup that Toombs resolved. He also sought to know whether Walker acted consistently with other state troops. On April 29 Walker offered a retort that ignored much of Brown's protest: "I appoint them."¹⁴ The secretary signed off without salutation, evidently exhausted. Having predicted peace, the responsibilities of his office were proving too much for the lawyer turned administrator. Faltering, Walker resigned just six months into his term.

Judah Benjamin briefly stepped in as the acting secretary, and sustained the administration's argument with Brown. Possessing a sharp mind and commendable industry, Benjamin carried forth the administration's case that Congress nationalized the war for the coordination of a common defense. Throughout the administration's exchange, Benjamin concealed the fact that the military faced acute manpower shortages owing to Davis' strategy of defending all points along the Confederate border.¹⁵ Believing such a strategy necessary to

¹⁴ *The Confederate Records of the State of Georgia*, Volume III, April 25, 1861, 62.

¹⁵ "[Davis] believed he had to maintain a visible military presence throughout his country, or he would face 'dissatisfaction, distress, desertion of soldiers, opposition of State Govts.'" Quoted from William J. Cooper, *Jefferson Davis, American* (New York: Vintage Books, 2001) 379.

retain allegiance from the far reaches of the Confederacy, Davis' insistence stressed the logistical capacity of the military, which was quickly revealed by the defeats at Forts Henry and Donelson, the Confederate route at Roanoke, and the creeping advance of George B. McClellan's Union Army up the James River toward Richmond, the Confederacy's capitol after Virginia's secession in mid April.

Amidst the cascading Union advances, the Confederate Congress grew restive and political considerations interceded momentarily. Seeking to understand the reasons for the reversals of arms, criticism focused on Secretary of War Benjamin. Rather than reveal the woeful state of the shortages, Benjamin accepted responsibility and resigned.¹⁶ Appreciative of Benjamin's skill and devotion, Davis moved Benjamin into the newly vacated State Department after R.M.T. Hunter won a seat in the Confederate Senate. It seemed Hunter had little interest in the largely symbolic office and left after less than one year. In just two years Davis was already on his third secretaries in the departments of war and state.

¹⁶ The Confederate House assembled a special committee to investigate responsibility for the debacle at Roanoke, which claimed the life of O. Jennings Wise, the son of the former governor of Virginia and current political general, Henry Wise. In its ruling, the committee could not ascertain with certainty the party responsible, so it concluded, "from the testimony...that whatever blame and responsibility is justly attributable to any one for the defeat of our troops at Roanoke Island on February 8, 1862, should attach to Maj. Gen. B. Huger and the late Secretary of War, J.P. Benjamin." Official Records, Series I, Volume 9, 190-1. Judah Benjamin biographer Roubert Douthat Meade believes Jefferson Davis the committee's real target, with the censure of Benjamin serving as a warning that Congress would not look kindly on Davis exerting sole influence on the War Department. Meade, *Judah P. Benjamin, Confederate Statesman* (Baton Rouge: Louisiana State University Press, 1943) 228.

With the political make up of his cabinet resolved, Davis addressed the issue of manpower shortages by moving forward with a conscription bill drafted by General Robert E. Lee. By December of 1861 Lee expressed his desire for the central administration of the war effort. He wrote, "I think it only necessary to repeat more emphatically than I perhaps have been able to do in person the urgent necessity of bringing out the military strength of the State and putting it under the best and most permanent organization." In order to achieve independence, Lee penned, "The Confederate States have now but one great objective in view...Everything should yield to its accomplishment."¹⁷ The estimable Virginian thus proved an early and consistent proponent of federal power.

The act granted the Confederate government the compulsory service of male citizens ages 18-35. As the new law went into effect, Davis needed to appoint a new Secretary of War. Having lost one Virginian, he turned to another. Davis selected the grandson of Thomas Jefferson, George Wythe Randolph. A proponent of Southern independence, Randolph authored Virginia's conscription act of 1861, an ordinance that created and regulated state forces. His experience, Davis hoped, would accord vital knowledge in executing such a bill on a national level.¹⁸ As the new secretary, it fell to Randolph to inform Brown on April 15, 1862 of the Conscription Act, a bill certain to arouse Brown's ire for it surpassed

¹⁷ *Official Records of the Rebellion*, Series 1, Vol. 6, 350.

¹⁸ George Green Shackelford, *George Wythe Randolph and the Confederate Elite* (Athens: University of Georgia Press, 1988) 68.

all of Brown's previous reservations about the abating influence of his office. Although Brown was now tangling with the scion of Thomas Jefferson, his desire to remain firmly in control of appointing officers continued. By this stage, however, Davis waded into the dispute. On the 17 of April, President Davis wrote to Governor Brown to urge him to turn over his state's regiments while organized rather than releasing recruits to Confederate authorities as a mob. Davis' pleading was to no avail. Having acted by the letter of the law, Brown cheekily informed the War Department in a letter dispatched on the same day as Davis' urging cooperation that he had turned out his state troops in handing them over to federal authority. As a result, General John Jackson of Georgia was now without command, and among his former soldiers "there is great dissatisfaction...some are almost mutinous." Worry not though, Brown penned, "Jackson's appointment by the President to the command of the division, as it was, would have a most happy effect at a critical moment."¹⁹ Yet again Brown sought any means to keep his prerogatives alive, even to the extent that his actions bordered on outright defiance.

An exasperated Davis could do little but chastise the unrepentant governor. It was not until April 22 that Brown informed Davis of his view about conscription's attack upon the traditional powers of his office. He protested that conscription constituted the very consolidation that Georgia sought to escape. Furthermore, he asserted that federally administered conscription stripped his office of its ability to shield vital positions within state government from the

¹⁹ *The Confederate Records of the State of Georgia*, Volume III, 190.

nation's grasp. The remonstrating Brown argued, "The conscription act...places it in his [meaning Davis's] power to destroy her State Government by disbanding her law-making power." Asserting that the Founding Fathers intended to codify the supremacy of the states, the contentious Georgian advanced a specious argument that all men of the state were members of its militia since they constituted its potential manpower pool. To remove men from the state, as the Conscription Act permitted, undermined the militia and exposed the state's citizens to invasion to say nothing of subjecting its male citizens to the capricious dictates of federal authority. All of this, he complained, destroyed the principle of self-government. With his tautological logic, Brown argued that the present arrangement overthrew the Founders' intent to place the national government in a subservient position to the states.²⁰

Brown understood the legislation as shifting control and influence from the states and thus sought to share power by appealing to the rhetoric of state's rights. Brown did not inhabit an immovable, principled position, the evidence of which is revealed by his supplicating closing. Pledging fidelity if Davis would permit him to continue exercising unfettered control over the appointment of officers, Brown would gladly, "reserve the question of the constitutionality of the act and its binding force upon the people of this State for their consideration at a time when it may less seriously embarrass the Confederacy in the prosecution of

²⁰ *The Confederate Records of the State of Georgia*, Volume III, April 22, 1862, 192-5.

the war.”²¹ In closing with this astonishing suggestion, the supposed paragon of states’ rights principles revealed himself as a consummate politician willing to barter away principle for power.

Davis’ response objected to Brown’s suggestion of an arrangement. He gently chastised Brown by disputing the Georgian’s reading of the law by distinguishing the right to raise a national army as separate from the right to call out the state militia. Davis insisted that the issues not be conflated and closed by affirming that the subject was not open to exemption. “[The] intent of Congress is to me, as to you, to be learned from its acts....” The law deserved compliance, not subversive arrangements.²² Davis’ censorious retort enraged Brown. If Davis would not bend the spirit of the law, then Brown intended to attack its very letter. On May 8 he wrote a lengthy response refuting an argument that no one had advanced: “State rights and State sovereignty must yield for a time to the higher law of necessity.” In all of the correspondence from Davis, Walker, Benjamin and now Randolph, the administration asserted a clear and consistent message. Congress acted out of its constitutional prerogatives to provide for the national defense. The administration was not pursuing an extralegal course, but rather the directive of the Congress. When confronted by national crisis, Congress turned to the Constitution, and not beyond it. The notion of “necessity” is a fabrication of Brown’s, for the federal government, as Davis advanced, possessed a clear and compelling legal right to pursue the course of federal conscription. But even in

²¹ *The Confederate Records of the State of Georgia*, Volume III, 196-8.

²² *Ibid.*, April 28, 1862, 200-1.

this moment of purported dispute, Brown revealed that he was prepared to concede the principle if the federal government merely offered him the right to continue administering conscription.

Having previously sought a power sharing arrangement, Brown now took up all points in opposing the unchecked abatement of his influence. Lecturing Davis, Brown argued that calling out the militia and raising men for national defense “are all contained in the same section of the Constitution, and by a well known rule of construction, must be taken as a whole and construed together.” Harping on this novel point since it served as the only legal defense for his position, Brown asserted that since the federal executive could only raise an army through the militia, it was subject to the oversight of the governor. Brown unsurprisingly joyed at his conclusion. “The States,” he affirmed, “shall appoint the officers.” Again, for Brown it was not misgivings about power that provoked disobedience, but who would administer such power.²³ The letter of May 8 from Brown to Davis offers a remarkably extended thesis of Brown’s attempt to advance a constitutional basis from which he could defend his views. Brown remains content with the purpose of enlisting Georgian’s for service in a national army, but sought to play a role in selecting officers and filling regiments. Letters passed between Brown and the War Department throughout the remainder of May with Randolph doing his best to calm Brown’s concerns yet firmly adhering to administration policy. The Constitution granted the executive the power to meet the exigency of national defense. The clarity of the law was occluded only in

²³ *The Confederate Records of the State of Georgia*, Volume III, 212-21.

the eyes of Brown. Unable to accede to delegation and piqued at Brown's continual challenge to his authority, Davis provided Brown with a final, definitive rebuttal.

Davis finally answered Brown as the governor's arguments attracted the attention of Confederate malcontents. Determined to stamp out the embers of dissent, Davis wrote Brown by speaking of the broad consensus among the delegates at Montgomery to sustain the old Constitution's governing arrangements. Not to be lectured on original intent, Davis touched on the broadly accepted notion that the Constitution gave the federal branch supreme authority in a time of war. Davis succinctly defined the national government of the Confederacy as "combin[ing] the power of the several members."²⁴ Though the president's point was plain, Davis asserted federal power as the very reason for the Southern states joining in a federation. To safeguard the perpetuity of that nation, Davis underlined his convictions through a series of avowals. "I see nothing which confines Congress to one class of men," he began. Continuing to speak of Congress' right to raise an army, he furthered, "I see no limitation by which enlistments are to be received of individuals only." Adding, "I find no limitation of the time of service." Davis closed his thought with a final flourish: "I discover nothing to confine Congress to waging war within the limits of the confederacy, nor to prohibit offensive war." The governor's logic, Davis concluded, "appears to me unsound."²⁵ Carrying Brown's argument to its logical

²⁴ *The Confederate Records of the State of Georgia*, Volume III, 233-46.

²⁵ *The Confederate Records of the State of Georgia*, 240-1.

conclusion, Davis pointed out his alarming implications. If the militia could only be called to national service in defense, this suggested that the framers had not provided the United States or the Confederate States of America with the means to expand. “Surely,” Davis delighted, “this cannot have been the intention of the framers of our compact.”²⁶ For Davis, at least, the Confederacy appropriated the federal arrangement of power so as to remain an expansionist empire.²⁷ The Confederacy sprang forth from the right to spread its institutions and to partake in expansion.

Brown replied to Davis’ forceful repudiation by admonishing Davis for his Hamiltonian tone. “You enunciate a doctrine which I must be pardoned for saying, struck me with surprise,” an acerbic Brown noted. Such sentiment “was first proclaimed, I believe, almost as strongly, by Mr. Hamilton in the *Federalist*.” After a tendentious defense of his own views, Brown hammered at Davis’ position. The Conscription Act strikes “a blow at the very existence of the State, by disbanding the portion of her militia left within her limits.” he declared. Hiding behind the issue of invasion and slave insurrection, Brown protested, “I felt it an imperative...that I could not permit...State officers to be compelled to leave their respective commands and enter the Confederate service as

²⁶ *Ibid.*, 245

²⁷ Walter Johnson’s *River of Dark Dreams, Slavery and Kingdom in the Cotton Kingdom* (Cambridge: Belknap Press of Harvard University Press, 2013) traces the desire of what he terms “re-openers” to renew and expand slave trading and to project the power of slave owners throughout the continent and ultimately beyond. Their effort was but one component of “an imperial vision of the future of slavery, patriarchy, and white supremacy.” 418.

Conscripts.” Davis, eager to snuff out Brown’s agitation, published their correspondence. The standoff led Secretary Randolph to quip, “We might as well drive out our common enemy before we make war on each other.”²⁸

As their exchange of letters drew to a close in the summer months, the administration turned the issue over to the courts in Georgia while Brown sought support from a familiar target of his obsequiousness, Alexander Stephens. Writing to the vice president, a supplicating Brown professed, “I entered into this revolution to contribute my humble might to sustain the rights of the states.” Upset with Davis for publishing the correspondence without permission, Brown objected to the portrait of him revealed by their communication and turned to Stephens for approbation of his arguments. Brown complained, “It was not fair to publish part of the correspondence...Can it be that the object was to obtain a verdict of the people without permitting the whole case to go to the jury?”²⁹ Many of Stephens’ close friends objected to Brown’s unashamed ploys for Stephen’s affections. J. Henly Smith thought Brown “a dirty low-down man” whose evident motives distasteful.³⁰ Fellow Georgian Cobb went further, calling the wily Brown “a miserable demagogue.”³¹ As Stephens’ biographer Thomas Schott writes, “Brown, an oleaginous politician, who when cornered could have taught a chameleon some tricks, recognized Stephens’ popularity with the people. So he

²⁸ *C.R. Ga.*, III, 248-9.

²⁹ Brown to Stephens, July 2, 1862, Stephens Papers, Robert E. Woodruff Library, Emory University.

³⁰ October 16, 1861 Smith to Stephens, Stephens Papers, LC.

³¹ Correspondence TSC, 568.

had assiduously courted his opinions and played shamelessly to his vanity. Little Aleck...found such blandishments difficult to resist.”³² Clearly the portrait of Brown as a solipsist portrayed him in an unpatriotic light. Brown sought to defend against such condemnation by avowing that he acted out of states’ rights principles, not ambition.³³ With Stephens in Richmond, it fell to Linton to align the trio’s dissenting opinions.

In the wake of the publication, the outmaneuvered Georgian mocked Davis for the manner in which he broke off their communication. Responding to Davis’ letter announcing his intent to turn the controversy over to the courts, Brown chastised Davis for closing, “I cannot share the alarm and concern about State Rights which you so evidently feel, but which to me seem quite unfounded.”³⁴ Brown fired back, “I regret that you cannot.” Revealing states’ rights as less a principle than a condition, Brown suggested Davis had succumbed to the temptations of his own office. “The views and opinions of the best men are influenced more or less by the positions in which they are placed,” he wrote, and with mock surprise accused the president of perfidiousness: “It is probably not unnatural that those who administer the affairs and disburse the patronage of a

³² Thomas Schott, *Alexander H. Stephens of Georgia: A Biography* (Baton Rouge: Louisiana State University Press, 1988) 342.

³³ For an interesting perspective see, Joseph H. Parks, “States Rights in a Crisis: Governor Joseph E. Brown Versus President Jefferson Davis,” *The Journal of Southern History*, Vol., 32, No. 1 (Feb., 1966) 3-24. Parks maintains that Brown remained a divided figure. He worked toward and earnestly “desired peace and security, yet he opposed the development of concentrated power which alone might guarantee these desires.” Parks’ estimation heavily relies on the sincerity of Brown’s rhetoric.

³⁴ *C.R. Ga.*, III, 285-6.

confederation of States should become to some extent biased in favor of the claims of the Confederacy when its powers are questioned.”³⁵ As Davis could perceive no advantage in response, he left the issue to the state courts.

The Confederate Constitution called for the creation of a Supreme Court, but in the halcyon days of 1861 Confederate leaders postponed the establishment of a Supreme Court until the approval of the permanent constitution. Broaching the subject required caution, for inveterate fire-eaters like Louis Wigfall issued “venomous attacks” upon Chief Justice John Marshall for establishing judicial review and federal authority, though he remained quiet about his likely sympathy with the rulings of Roger Taney.³⁶ Secessionists worried about reestablishing similar precedents within the Confederacy, thus making any definitive resolution unlikely.³⁷ The desire to avoid fracture had played into the hands of traditionally minded men like Alexander Stephens and Christopher Memminger. Despite the success of a conventional agenda, the lack of a supreme court left the divisions between the states and the Confederate government up to the various state courts to resolve. These conservative delegates pushed for the continuation of previous governing arrangements at Montgomery, resulting in the largely unaltered

³⁵ *C.R. Ga.*, III, 286-91.

³⁶ Publications of the Southern History Association (Washington, D.C.: 1900) Vol. 4, 84-7. The issue of United States legal precedent is one of some confusion among recent scholars, but remains a subject of import due to the Provisional Congress’ decision to continue the legal code of the United States in force.

³⁷ See J.G. de Roulhac Hamilton, “The State Courts and the Confederate Constitution,” *The Journal of Southern History*, Vol. 4, No. 4 (Nov., 1938) 425-48. It is at the hands of state courts, writes Roulhac, that the “Confederate States received its only definitive interpretation.”

adoption of the United States Constitution. Moreover, their conventional agenda met further success when the Confederate delegates retained United States legal precedence. Such a move, done with intent to place the Confederate legal system on as traditional a footing as possible, had far-reaching consequence. It provided firm ties to the old government, and embedded old arguments about the nature of federal power into the new Confederate republic.

As 1863 dawned Senator Benjamin Hill grew tired of the unsettled nature of the Supreme Court and urged its establishment. He cajoled his colleagues, calling it “high time the judicial department be thoroughly organized, for it has been a limping concern long enough.” Just after the establishment of the permanent Congress Thomas Semmes had put a bill before the Confederate Congress for just such consideration, but it languished. Upon hearing word of Hill’s bill, Louis Wigfall expressed his hostility. An opponent of establishing the court when a delegate in Montgomery, Wigfall sustained his assault against the Supreme Court of the United States as responsible for secession. In his own words, “If Marshall had been a small, weak man, there would have been no ‘monstrous despotism’ to engender dissolution.”³⁸ In an effort to forestall the court’s establishment, Wigfall quarreled with the proposed salary range for judges. Such a move, he explained, owed to his desire to avoid an intellectually rigorous bench. “I do not think it desirable to have the first talent in this court,” Wigfall pronounced. “Had Marshall attended to the small business of his court, the Union would not now be disrupted.” For the inveterate fire-eater, the course

³⁸ Publications of the Southern History Association (Washington, D.C.: 1900) Vol. 4, 88-9.

of judicial review “warped into the monstrous despotism from which we found it necessary to break away.” Pointing to the fundamental purpose of his obduracy, he concluded: “It is said by an old writer that the Book of Judges went before the Book of Kings. I have the same opinion of the courts.”³⁹ Wigfall did not believe states’ rights could survive probing legal examination.

With Congress unable to come to a resolution, the contentious political arguments about the limits of federal power fell to state courts to resolve. In Georgia, the argument between Davis and Brown came down to the case *Jeffers v. Fair*. Davis’s chief contention with Brown owed to the governor’s assertion that the power to raise an army and the power to call out the militia fell under the same purview of constitutional authority. With the state militia an undoubted prerogative of governors, Brown had sought a legal avenue for exerting state control over the federal government by making it dependent on the state to raise an army. As Davis saw it, no such intention existed, and collapsing the clauses into a single meaning was misguided. With this proxy argument over federal power before the court, Georgia’s justices interrogated the purpose of the Confederacy as outlined in the Constitution. In turning directly to the language of the Constitution, the court intuited the guiding principle of Confederate nationhood as: “The Confederate States shall guaranty to every State that now is, or hereafter may become, a member of this Confederacy, a republican form of government.” If the premise of the Confederacy included a guaranty of republican government as the bonding element, it proceeded to ask: “Can a

³⁹ *Southern Historical Society Papers*, Volume 47, 208-9.

republican form of government be maintained without the necessary instrumentalities?”⁴⁰ Without federal power the court wondered, by what means could the states guarantee a common commitment to republican government? Indeed, if each state could claim the power to review federal law, interpret the intent of congress, or circumvent obligations for a common defense, then the very guarantee of republican government seemed doubtful.

In following the premise of a federated commitment to republican government, the Georgia Supreme Court questioned the validity of states’ rights. The justices wondered how states’ rights as a governing philosophy might be executed. Taking up Brown’s proxy argument through Jeffers the court wondered, by what standard might government actions be judged? And, upon whose authority might grants of power be ruled as legitimate or over-extended? The selective quality of states’ rights worried the judges:

Those who would thus limit the power of Congress, seem to forget that voluntary enlistment is not mentioned as a means in the Constitution. Upon what then rests their limitation? Clearly on their own notions of fitness and propriety. And upon these points of view how variant are men’s ideas!⁴¹

Finding serious qualms with the capricious quality of states’ rights, the court turned to both the preamble of the Confederate Constitution and the sixth clause of Article 6 because states’ rights proponents held out both as indicating the state-centric foundation of the republic. The preamble asserted, “each State acting in its sovereign and independent character, in order to form a permanent

⁴⁰ Jeffers v. Fair, 33 GA 347 (1862).

⁴¹ Jeffers v. Fair, 33 GA 347 (1862) 352.

Federal Government...do ordain and establish this Constitution.”⁴² Further reinforcing their view of the Constitution’s limits on state sovereignty, the language contained within Article 6 stated: “The power 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.”⁴³ In the eyes of states’ rights supporters, these constitutional clauses affirmed the basis of states’ rights within the Confederacy.

Interrogating such a perspective, the Georgia court returned to the issue of “instrumentalities,” or the grants of power necessary to carrying out obligations within the Constitution. What troubled the justices about Brown’s argument was the fact that as a philosophy of government, states’ rights seemed too broadly construed. When specific grants of power and their limiting qualities were investigated the bolstering arguments for states’ rights derived their legitimacy from conviction and platitudes, not from a close reading of statutes. As such, the judges concluded that states’ rights “are referable to no criterion, measurable by no standard. Something more weighty than vague abstractions must be invoked to induce us to fetter the government in the exercise of a power, upon the vigor of which depends our national existence.”⁴⁴ Such a revelation proved devastating for the legal cause of states’ rights, and revealed the difficulty of attempting to advance a limited definition of government in the area of national defense.

⁴² *Jeffers v. Fair*, 33 Ga. 347 (1862), 367.

⁴³ *Ibid.*, 367.

⁴⁴ *Ibid.*, 369.

In language nearly identical to that by which Davis defended federal power to Brown, the court reasoned that the framers of the Constitution unquestionably would not have created obligations without granting the power to fulfill responsibilities. In the specific language of the court, “As a general grant of power includes the means necessary to its exercise, so a general reservation of power includes its necessary instrumentalities.” In one sweeping sentence the court found the exalted phrases of states’ rights proponents unpersuasive.⁴⁵

Having fairly demolished states’ rights as a guiding principle of governance, the justices demonstrated their lack of patience with such arguments. Namely, they held that the Constitution adopted by the Confederacy contained broad sanctions of federal power to defend the nation. In the sentiment of the court:

If the true construction of the Constitution be, that in deference to State sovereignty the Confederate Government must depend upon the separate, unconcerted action of the several States for the exercise of powers granted to it in the general comprehensive terms, it is but the shadow of a government, the experiment of Confederate Republics must inevitably fail, and the sooner it is abandoned the better.⁴⁶

With this astonishing statement the Georgia court eviscerated states’ rights arguments. It also added in firm language, “If the doctrine set up of late be true, this is the weakest and most contemptible government on earth; it is neither fit for war or peace, it has failed of all the ends for which governments are

⁴⁵ Jeffers v. Fair, 33 Ga. 347 (1862), 368.

⁴⁶ Ibid., 364-5

established.”⁴⁷ In sweeping away the very contention of states’ rights as a governing principle in the Confederacy, the court ruled the Constitution clear in granting sovereign federal powers to guaranty the perpetuity of the nation.

Despite Davis’s success in Georgia, the administration faced a serious test from North Carolina, where the composition of North Carolina’s court amplified the power of its judges, for North Carolina capped the time and frequency of the court’s full sessions and allowed its judges to independently hear cases while not in session. These rulings, “in chambers,” bore the force of law until the full court vacated them during a regular session. In the provincial town of Richmond Hill north of Charlotte near the state line with Virginia, Chief Justice Richmond Pearson held court. Absent a higher national court, Judge Pearson’s state Supreme Court rulings carried a weight magnified in his state.⁴⁸ With wartime exigencies and the illness of fellow Justice Matthias Manly during the summer session of 1863, Pearson’s power went unchecked for a considerable stretch. While South Carolina courts heard but a single case, North Carolina issued rulings for an unparalleled forty-six cases concerning habeas corpus between 1863-4 owing to Pearson’s proclivity to hear cases that challenged federal power.⁴⁹

⁴⁷ *Jeffers v. Fair*, 33 Ga. 347 (1862), 370.

⁴⁸ Jennifer Van Zant, “Confederate Conscription and the North Carolina Supreme Court,” *The North Carolina Historical Review*, Vol., 72, No. 1 (Jan., 1995) 54-75.

⁴⁹ Mark E. Neely, Jr., *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism* (Charlottesville: University of Virginia Press,

Judge Pearson took full advantage of his situation. Hearing cases far beyond the normal scope of jurisdiction, Pearson announced his legal opposition to the extent of federal wartime powers with his June 1863 decision in the case of John Irvin. Irvin had hired a substitute during the first Conscription Act but was arrested after Congress revised the provisions of the Conscription Act in May 1863, making his substitute eligible on his own right.⁵⁰ *In re Irvin* Judge Pearson ruled that the September revision did not apply to men already in the army. Rather, its application was limited to those not yet enrolled. Pearson thus rejected the attempt of Congress to make the principal individual liable by ruling that Congress lacked the requisite legislative purview to abrogate a contract.⁵¹ Pearson's decision announced North Carolina as the surprise battleground for legal challenges to federal authority.

The Confederate Congress' delay in renewing Davis' ability to suspend *habeas corpus* in 1863 allowed to Pearson to issue writs. With Pearson's actions compounded by the nascent stirrings of a peace party in the Tar Heel State, Attorney General Thomas Bragg, a native North Carolinian, resigned from the cabinet in order to return home and act as an emissary between Governor Zebulon Vance and Jefferson Davis. Upon arrival Bragg took up work with the

1999) 64. In particular, see Chapter Five, "Unaffected...by the Condition of Our Country."

⁵⁰ James Matthews, ed., *The Statutes at Large of the Confederate States of America.... DOES THIS FOOTNOTE NEED FINISHING?* (Richmond: 1863) 158.

⁵¹ Hamilton C. Jones, Esq., *Cases of Habeas Corpus, Decided by the Supreme Court of North Carolina, at the June Term, 1863* (Salisbury, N.C.: J.J. Bruner, 1863) 59.

district attorney in Raleigh, where he learned the staggering scope of the legal challenges facing the administration. Bragg informed Davis that an astounding number of *habeas* cases awaited trial, “some thirty,” of which twenty-seven belonged to Pearson.⁵² The administration inveighed against Pearson’s in Irvin and continued to conscript able-bodied men. Pearson responded by hearing *In re Meroney* in 1863 Pearson openly accused the administration of detaining Meroney’s in an attempt to challenge his authority. The judge’s ruling on July 9, offered a portent of his dissatisfaction with the federal government and stinging criticism of the executive’s purported behavior. “It is said that the arrest of Meroney was ordered in disregard of the decision in the matter of Irvin, because the Secretary of War does not consider the construction given...’a sound exposition of the act.” With matters of conscription having seemingly assumed a contest of wills, Pearson shot back, “Who made the Secretary of War a judge?”⁵³ Pearson granted Meroney’s exemption, overtly challenging the executive with an aggressive demonstration of his court’s unyielding nature.

Pearson continued to ratchet the pressure. *In re Bryan*, Pearson ruled that state courts had the right to review congressional acts when it involved the citizens of the state. The judge recapitulated his ruling from *Meroney*, arguing that Congress could not grant the Secretary of War the powers of a judge. Given the absence of a Confederate Supreme Court, since any collisions of understanding would go unresolved. Pearson ruled his court held jurisdictional power to

⁵² Quoted in Neely, *Southern Rights*, 69.

⁵³ Jones, *Cases of Habeas Corpus*, 59.

construe writs of *habeas corpus*. Justice Battle assented to Justice Pearson's in ruling in favor of Maroney, yet Battle did so by affirming the legality of the Conscription Acts. Citing *The Federalist* as indicative of original intent, Battle held that the authority to review remained within the state and quoted Hamilton's Federalist Number 82, which outlined the use of concurrent jurisdiction between the state and federal governments. Simply, Hamilton outlined how state courts possessed the right of review, unless explicitly prohibited by Congress. Quoting the passage specifically, Battle concluded: "The States will retain all *pre-existing* authorities which may not be exclusively delegated to the federal head....And under this impression, I shall lay it down as a rule, that the State courts will *retain* the jurisdiction they now have, unless it appears to be taken away in one of the enumerated modes." Invoking *The Federalist* introduced a provocative link between new and old arguments over federal sovereignty. As a source of authority, turning to *The Federalist* offered a potentially discomfiting portent to state's rights advocates, with Hamilton's assertions of the right of judicial review and favorable assessments of federal power.⁵⁴

The court battles continued to escalate in Maroney's wake. *In re Russell* Daniel Lindsay Russell Jr., an intemperate eighteen-year old son of a well-connected North Carolina planter, quarreled with a senior officer and absconded in the aftermath. Russell was captured while claiming to be transferring units, which lead Confederate authorities to strip Russell of rank and hold him until

⁵⁴ Jones, 30, 59. On Hamilton and the right of judicial review, Federalist No. 78.

court martial. Family connections came to the rescue, however, when Governor Vance tapped the intemperate Russell as commissioner for Brunswick, his home county. Upon word of his appointment Russell sued for his release and sought the distant court of Judge Pearson. Pearson, who lived 200 miles from Brunswick, unsurprisingly obliged to hear the case. Given the relatively straightforward fact that Governor Vance selected Russell to serve as a county commissioner, an office exempt from conscription, Pearson ruled in Russell's favor. However, in ruling in favor of Russell, Pearson asserted state sovereignty as the principle of law and offered a most suspect logic for his legal opinion. "The Confederate government is a creature of the States," he avowed before claiming a privileged view of original intent, which he discerned "from the very nature of things." Pearson found it "absurd to suppose, that the intention was to make a grant of power, which would enable the creature to destroy its creation, and cause the existence of the States to be dependent on the pleasure of Congress." With this declaration, Pearson granted Russell his release.⁵⁵

The next case on Pearson's docket, *In the matter of Cain*, challenged the legality of Congress' suspension of *habeas corpus*. In suspending *habeas corpus*, Congress afforded conscription officers the right to detain absconded conscripts, even in the face of legal writs, since they acted under the authority of the President. Pearson parsed *habeas corpus* by noting that there were in fact three different definitions of the writ, and ruled that in the circumstances where the plaintiff is held without a clarification of criminal acts, the suspension is illegal

⁵⁵ In re Russell, 60 N.C. 388 (1864).

and the accused must be produced before the court.⁵⁶ Pearson asked: “Will it be said Congress has power to pass an act, and then make it a crime to apply for a civil remedy to test its constitutionality, and to suspend the privilege of *habeas corpus*, so as to exclude the question from the *Courts*? (! ! !) I shall leave the proposition stated nakedly, to be looked at in silence, as the best mode of exposing its error.”⁵⁷ After *Pearson’s* Cain ruling Jefferson Davis wrote to Bragg expressing displeasure, astonishment, but most of all resolve. The president opened his letter by sounding a note of optimism, writing that since Pearson’s decision Congress had renewed the suspension of *habeas corpus*, which Davis hoped shifted the legal authority clearly in his favor. He also expressed outrage at Pearson’s assertion that a state’s judicial branch possessed the authority to ascertain the intent of congressional legislation. But Davis expressed optimism that since Pearson’s ruling occurred during the court’s vacation, it stood a good chance of being overturned in full session. Despite such sanguinity, Davis informed Bragg that should Judge Pearson continue to prove obstinate the administration would seek to vacate his authority. “I do not believe that his decision is right,” the chief executive confided. “The public interest will not suffer

⁵⁶ *Habeas Corpus ad subjiciendum*, the “writ of right” and “bulwark of liberty,” is the writ that Pearson ruled vital in this case. Quoted from, H.C. Jones and P.H. Winston, *North Carolina Reports Volume LX... Cases Argued and Determined in the Supreme Court of North Carolina, From June Term, 1863, to December Term, 1864, Inclusive* (Raleigh: 1878), 143-4.

⁵⁷ *Ibid.*, 150.

by awaiting the result of the appeal.... I shall not shrink from the issue.”⁵⁸ If Pearson sustained his wayward rulings, Davis was prepared to arrest the judge.

Having recovered from his illness, Judge Manly came to Davis’ aid. Joining Battle and Pearson in a full session in June 1864, Manly and Battle overruled Pearson’s *Cain* decision by pointing to Congress’ authority to pass conscription.⁵⁹ Although at times Battle shared Pearson’s sympathies, he wrote the majority opinion, *Gatlin v. Walton*, finding the grant and exercise of federal power as legitimate. Justice Battle’s decision quoted directly from the United States Constitution and *The Federalist*. He wrote that the war powers are given in “the most unlimited terms,” before venturing on to cite the “23d No. of the Federalist,” in which Battle assented to Hamilton’s opinion: “These powers ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies, and the correspondent extent and variety of the means, which many be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power, to which the care of it is committed.’ This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it, and may be obscured, but cannot be made plainer, by argument or reasoning.” Pearson offered his dissent, but from that moment forward, Pearson’s influence waned and North Carolina’s court rulings returned to norm with Manly and Battle moderating the acrimonious

⁵⁸ *Official Record*, Series 4 Volume 3, 200-1.

⁵⁹ Jones and Winston, *North Carolina Reports, Cases Argued and Determined in the Supreme Court of North Carolina...* 332.

Pearson. For a brief period, North Carolina had been the site of a pointed challenge to federal authority, but the overwhelming weight of the law ultimately crushed the challenge within the state.

Adding to the federal administration's quiver, South Carolina and Texas state courts also ruled conscription and the suspension of *habeas corpus* the rightful constitutional prerogatives of the federal government. In Texas in particular, *Ex parte Coupland* included an astonishing affirmation of federal power. The "power to raise and support armies is an express constitutional grant to the Congress of the Confederate States, and there is no limitation as to the mode or manner of exercising it," the ruling proffered. The court also found, "The general government is not dependent upon the will either of the citizen or of the State, to carry into effect the power to raise and support armies."⁶⁰ There was hardly be a more sweeping statement in support of the executive and Congress' use of federal power.

Brown understandably recoiled at these decisions. He accused his state court of deciding the case *ex parte*, and rebuked the ruling as demonstrative of ineptitude.⁶¹ Alexander Stephens joined Brown, expressing astonishment at the court's decision, believing the finding to be as sweeping as it was misguided. According to Stephens, "Such a rehash of Old Federal doctrine as this decision presents I have not met with in many a day. If its principles be correct, on what

⁶⁰ 168-9 Moore, *Ex Parte Coupland* 26.

⁶¹ Brown message to the Legislature, quoted in Albert Burton Moore, *Conscription and Conflict in the Confederacy* (Columbia: University of South Carolina Press, 1996) 170.

ground can our court justify our present position toward the Federal Government? It must be a rebellion.”⁶² Stephens dare not interrogate the logic of the court’s decisions further in that regard. He had exerted such effort in Montgomery to instill the old Constitution in the new Southern Confederacy. Having pushed for a conservative document of federal power, he recoiled at its applications that he felt upset the balance of civilian authority and control over the military.

In the wake of the ruling Brown complained about the lessening significance of state office and expressed surreptitious desires to seek national office. Brown admitted to C.B. Wellborn, “I am free to say that I have but little relish for the Executive office since the Conscription Act has taken it out of my power to be of service to our glorious cause in our time of trial.”⁶³ Despite such earnestly professed convictions to safeguard states’ sights, Brown desired most of all to remain at the center of political action. Although his spirited defense of state prerogatives won plaudits from some corners of the Confederacy, Brown’s contest with the president resulted in a cool reception from state legislators, who warily guarded against Brown’s posturing. His ambition thwarted, Brown declined to campaign against Davis and instead ran for an unprecedented fourth term as Georgia’s governor.

⁶² Richard M. Johnston and William H. Browne, *Life of Alexander Stephens* (Philadelphia: J. P. Lippincott and Co., 1878) 430.

⁶³ Joseph H. Parks, *Joseph E. Brown or Georgia* (Baton Rouge: Louisiana State University Press, 1977) 211.

In a resounding success for the administration of Davis, Southern state courts affirmed the Confederate Constitution's broad grant of federal powers. Their rulings elucidating the Confederate Constitution as an instrument establishing consolidated and sovereign federal powers just as Davis argued, envisioned, and executed. Furthermore, as in the case of the Texas court, the standing of states' rights as anything but a rhetorical stance was summarily demolished. Despite the potential for chaos, the rulings of the thirty-seven state justices in the nine states of the Confederacy largely upheld federal prerogatives. In the end, state supreme courts ruled that the Confederate Constitution granted the federal government expansive and supreme power over the states for common defense.⁶⁴ In facing the litigation over the federal powers at his disposal, Davis did not lose a single case over the Conscription Acts. Despite having to rely on a variety of state courts, all affirmed the administration's stance and in the process thoroughly dismissed any legal existence of states' rights.

⁶⁴ The Confederate government did not lose a single case over the Conscription Acts: *Ex parte Hill* (1863), Ala.; *Ex parte Tate* (1864), Ala; *In re Emerson* (1864), Ala; *In re Pille* (1864), Ala; *Ex parte Bolling* (1865), Ala; *Jeffers v. Fair* (1862), Ga; *Barber v. Irwin* (1864), Ga; *Cobb v. Stallings* (1864), Ga; *Parker v. Kaughman* (1865), Ga; *Daly and Fitzgerald v. Harris* (1864), Ga; *Simmons v. Miller* (1864), Miss; *Gatlin v. Walton* (1864), N.C.; *Ex parte Coupland* (1862), Tx; *Burroughs v. Peyron* (1864), Va.

CHAPTER FIVE “CONSOLATION”

As the Confederacy’s fortunes darkened in the winter of 1864, Jefferson Davis appeared before the Confederate Congress to call for a most radical revision of national policy. With perhaps as much as two-thirds of the army absent and the Confederacy only able to field one-quarter of the manpower of the Union, Davis turned to the final recourse, enlisting slaves.¹ Calling his proposal a “radical modification in the theory of the law,” the president pushed the Congress to extend federal power into an avowedly domestic sphere. Supported by his military counsels and state governors, Davis pursued a consistently nationalist approach to defend the life of the nation. Even, it seemed, when the federal policies he sought challenged the identity of the nation.

From conscription to habeas corpus, federal power enjoyed a consistent, central role in the political life of the Confederacy. Indeed, the steady expansion of federal power in the United and Confederate States mirrored each other throughout the first years of war until the Union advanced the Emancipation Proclamation in 1863. By February 1865, Davis called for the Confederacy to match the Union’s provision in a demonstration of the general copacetic comfort with federal power. Moreover, the last, most extensive application of national

¹ See James A. Seddon to Jefferson Davis, November 8, 1864, *Official Records of the War of Rebellion*, Series IV, Volume III, 756-71. Seddon writes Davis stating that without legislation providing for the enlistment of slaves, the Confederacy had exhausted available manpower. For the best discussion of the difficulty of maintaining manpower in Robert E. Lee’s Army of Northern Virginia see Joseph T. Glatthar *General Lee’s Army From Victory to Collapse* (New York: Free Press, 2008), particularly chapters thirty-three and thirty-four, 421-56.

power in the Confederacy came at the behest of state newspapers, governors, and state legislatures. Federal power was not an example of the Confederacy gone wrong or a betrayal of founding identity, but rather the culmination of democratic aspirations to preserve the Confederate nation.

In defeat, the Confederacy's former leaders became the first generation of Americans to lose a war, an odious precedent. To cast off the opprobrium Joseph Brown, Jefferson Davis, and Alexander Stephens exerted enormous energy in rewriting history. Ignoring the last episode of Confederate political life and the broad sweep of federal authority in the Confederacy, the discredited former leaders sought to recover their legacies by highlighting the issue of self-government, a fashionable phrase in the "redemption" of state governments throughout the South after Reconstruction. Through thousands of pages of dissembling, the former Confederate elite fictionalized a nostalgic image of the Confederate past that divorced the purpose and the role of government from actual events. They endeavored to make the memory of the Confederacy into a fiction fit for future consumption. Penning vast apologies, the trio offered laments that accepted the defeat of the Confederacy and even the loss of slavery, helping to make the memory of the Confederacy safe for veneration by removing its most objectionable component. By defending secession as an act of self-government, the former Confederates obliquely dismissed the charge of treason, conflating the Confederate past and the redeemer present, which sought to recover of white civil government. Though they accepted the loss of independence

and the institution of slavery, for those former Confederates that desired, the essential ideology that sustained the Confederacy remained.

The first scholarly exploration of emancipation in the Confederacy emerged with Nathaniel Stephenson's "The Question of Arming the Slaves" in 1913. The work corrected popular accounts and offered a much-needed scholarly narrative of the legislative course of Representative Ethelbert Barksdale's bill. Stephenson, however, overlooked Major General Patrick Cleburne's proposal, instead focusing on the high politics in Richmond where he argues Secretary of State Judah Benjamin led the emancipation policy, with Davis offering only hesitant support. Stephenson writes by the final stages of the war "Benjamin was...the Confederacy's premier, the originator to a great extent of its policy" to emancipate slaves.²

Robert Durden's landmark 1972 work *The Gray and the Black* offers scholars a rich collection of primary source material. Durden's impressive assemblage provides readers with ample evidence of this most extraordinary episode in Confederate history, which is portrayed as a remarkable moment of lost potential when the Confederacy's political leaders ventured something brave. Durden writes, "This was probably the fullest and freest discussion of slavery in which the South as a whole ever engaged, and it was a critical turning point in southern, and indeed American, history. Yet the South refused to turn – or

² Nathaniel Stephenson, "The Question of Arming the Slaves," *The American Historical Review*, XVIII January 1913, 295-308.

rather, it half turned in the chaotic closing weeks of the war and then later forgot all about the uncharacteristic flirtation with unorthodoxy.”³ Slave emancipation, in Durden’s estimate, constituted something more considerable than a mere play to national survival. It offered, at the very least, the possibility of a much richer future. In memory, however, this last federal policy was lost among the nostalgic renderings of the Lost Cause and the white South returned to orthodox views on racial supremacy.

More recent scholars have returned to Confederate emancipation to balance the historical narrative with the actions of slaves and black soldiers. Bruce Levine’s *Confederate Emancipation* artfully blends the narratives of slaves, black soldiers, and planters by recounting how historical actors with cross-purposes shaped the Confederacy’s policy and its outcome. Levine argues that the composite narratives of white Southerners reveal the reactionary and desperate aspects of the policy, which help explain its failure to elicit broad support. Similarly, bondsmen understood the desperate nature of the policy, and in a calculated approach felt the Confederacy’s failure a more promising means of acquiring freedom. Levine writes, “The combined (if very differently motivated) opposition of masters and slaves consigned this long and hotly debated black-troops plan to impotence and oblivion.”⁴ Confederate emancipation failed, Levine concludes, because both masters and bondsmen perceived the policy as inimical

³ Robert F. Durden, *The Gray and the Black: The Confederate Debate on Emancipation* (Baton Rouge: Louisiana State University, Paperback Edition 2000) xii.

⁴ Bruce Levine, *Confederate Emancipation: Southern Plans to Free and Arm Slaves During the Civil War* (Oxford: Oxford University Press, 2006) 15.

to their interests. Planters wished to sustain the institution, while slaves understood their best chance at freedom in Confederate defeat. Levine assesses the postwar period moment when planters, no longer possessing title over freedmen, worked to reassert their legal right to hold captive former slaves through labor laws and black codes. The ideology of mastery remains despite the downfall of its formal institutions.

The most recent scholarly analysis of Confederate emancipation is Stephanie McCurry's *Confederate Reckoning*. Rebutting scholars' treatment of Confederate emancipation as an episode where the Confederacy faced either accepting slave soldiers or the end of the nation, McCurry argues that the Confederacy attempted to do both – to preserve their institution and their nation.⁵ Slave enlistment is the primary and indeed exclusive goal of the policy, the sustenance of the nation always the singular motive. McCurry finds the end of the Confederacy ripe with historical irony. “The Confederate States of American was driven by “the stern ‘logic of events’ into a process of slave enlistment and partial emancipation that literally eviscerated the original national project.”⁶ The Confederacy collapsed, McCurry surmises, because of the poverty of its national vision, whose tinge of arrogance failed to consider the desires of its marginalized populations.

The policy of Confederate emancipation is striking for a number of reasons, and in no small measure for what it reveals about the Confederacy's

⁵ Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War* (Cambridge: Harvard University Press, 2010) 332.

⁶ McCurry, *Confederate Reckoning*, 310.

relationship to federal power and its view of the purposes for that power. With federal power sustained by the Confederacy from first to last, from conscription to habeas corpus, the copacetic stance exhibited by this last, desperate grasp at slave enlistments is remarkable. Additionally, the manner in which Davis embraced the policy deserves a degree of attention, for the policy did not originate from Richmond, but rather from the military, from state governors, and from legislators who looked to the federal government for solutions. Davis' embrace of slave enlistments was not a policy foisted on an unwilling populace. Rather, the administration was periodically confronted with multiple proposals that sought to harness the power of the government to advance the means by which slaves would be accepted as enlistments into the army. Ultimately, the Davis administration's slow approach helped to build enough support to override the reservations of an earnest number of opponents. And in a final flourish of executive power, Davis acted on personal conviction and in counsel with fellow executives and military leaders to push the policy to the extreme by promising emancipation and the rights of freedmen to slave enlistments. By the end, popular and personal appeals for federal power are a regular feature of Confederate politics, placing it firmly within the continuity of the American political landscape.

In the immediate postwar period the former Confederate elite struggled to overcome the opprobrium of defeat while the white South dedicated itself to overthrowing racially diverse state governments, not respecting their sovereignty. Furthermore, despite a final policy that promised a different future, after the

white South's return to political power state legislatures began efforts to reinstitute legal control over former bondsmen through the passage of black codes and vagrancy laws. As the Confederacy's former leaders reappeared in public, their memorials sought to rescue the memory of the Confederacy by offering fictionalized, nostalgic renderings that divorced the memory of the Confederacy from the purposes for which it fought. In joining in the vast literary undertaking of the Lost Cause, Davis, Stephens, and Brown no longer evinced support for slavery or Confederate independence. Both institutions were firmly in the past, and well enough. The Confederacy's political history and its repeated embrace of federal power to sustain the sovereignty of the nation proved a convoluted, best-forgotten issue in Reconstruction. Despite the consistency of federal power in the Confederacy, in memoriam states' rights were heralded to legitimize secession and the notion of self-rule, which sought to overthrow Reconstruction state governments throughout the South. As the author of the cornerstone comments, Alexander Stephens maintained the Confederacy as preserving an immutable definition of American democracy according to race. To make the Confederacy safe for veneration Stephens highlighted the notion of self-government, a phrase whose usage perfectly encapsulated his conditional support of federal power. He proved neither a champion of state's rights nor an eager applicant of federal power. Instead, he promoted his vision of balanced government. Peculiarly, neither Brown nor Davis exhibited any interest in lingering over the topic of their wartime dispute – federal versus state power. In retrospect, each can only muster enough interest to reprint previous correspondence. The overriding concern of both men is to be remembered as

Confederate stalwarts. Brown sought to be heralded through his contributions to the nation as state governor, while Davis continued to proclaim the merits of the nation, even in its defeat. Both desired a lasting legacy that viewed their labors as earnest efforts to preserve Southern independence. How they did so and to what ends they sought to accomplish remained unspoken, particular so for Davis, whose final endeavor in according slaves the rights of freedmen and emancipation in exchange for military service offered a potentially discomfiting legacy as a champion of white Southern political values.

On March 19, 1864, State Representative Linton Stephens introduced a bill before the Georgia State House condemning the federal administration of conscription. The protest recapitulated arguments long since settled by congressional approval and court rulings and discerning politicians detected the elder Stephens' sentiments sprinkled throughout, with its appeals to support the government but desire to restore civilian control. Remedying the policy of conscription by affording states primary control, the protest intimated, would lead to a renaissance of support. The resulting excitement, the Stephenses incredulously promised, "Would constantly weaken and sooner or later break down the war power of our enemy...."⁷ A fantastical assertion but one that

⁷ *Official Records of the War of the Rebellion*, Series 4 Vol. 3, 237.

demonstrated a continued adherence to both Confederate victory and constitutional principle.⁸

Imbuing the remonstrance with significance, Governor Brown appended his name to the protest, glorying in his newfound political company. Where Stephens offered a retreat, the governor advanced a novel call for peace. Seeking to extend the power of states, Brown incredibly proposed that states begin independently negotiating peace settlements with the Union government. Twisting history to suit his ends, Brown defended his policy by asserting that state governments enjoyed a legitimate recourse to “make to the Government of our enemy an official offer of peace on the basis of the great principle declared by our common fathers in 1776.”⁹ The possibly dizzying array of eleven independently negotiated settlements aside, Brown groped for any means to advance his ambition, even the unacknowledged precedent for state’s rights, the Hartford Convention.¹⁰ If Brown could not play a part in the execution of the war, then he demanded a role in its resolution.

Brown found himself at the center of just such a state peace proposal later that summer. Union General William Tecumseh Sherman, triumphant and

⁸ Ben Hill wrote Alexander Stephens: “I know I must thank *you* for it. The whole country will owe you an everlasting debt for it. Gov. Brown can never pay you in kind for the great benefit you have bestowed upon him. You have given him a grandeur of conception, an enlargement of views, and a perspicuity of power and style to which he never could have reached. His only trouble can be the footprints are *too plain not to* be recognized.” Hill quoted in Joseph Parks, *Joseph E. Brown of Georgia* (Baton Rouge: Louisiana State University Press, 1977) 279.

⁹ *OR Series 4 Vol 3, 237.*

¹⁰ Elizabeth R. Varon, *Disunion: The Coming of the American Civil War, 1789-1859* (Chapel Hill: The University of North Carolina Press, 2008) 38-9.

unencumbered after his victory at Atlanta in September, pledged to lay waste to Georgia should it sustain its rebellion. As Sherman set out to plan the coming campaign Joshua Hill, a former colleague of Sherman's brother Senator John Sherman, sought permission to travel through Union lines to recover the body of his fallen son. Sherman granted Hill permission, along with an invitation to dinner. Over the course of conversation during the evening Hill confessed that "further resistance on the part of the South is madness." He told Sherman "he hoped Governor Brown, of Georgia, would so proclaim it, and withdraw his people from the rebellion, in pursuance of what was known as the policy of 'separate State action.'"¹¹ Sensing opportunity, Sherman pursued the policy of a separate peace with Brown. With the aid of Hill, Sherman dispatched three personal friends of governor to travel to Milledgeville to personally deliver his offer of clemency.

With Sherman's offer in hand, Brown faced the dilemma of salvaging his state or imperiling his political career. Owing to the political danger, Brown sought the refuge of national identity. His printed response appeared in Milledgeville's intriguingly titled newspaper, *Confederate Union* at the end of September. Announcing Georgia's continuing resolve, Brown thanked Sherman for the consideration but evaded the issue of separate state peace by stating since Sherman "is only a General commanding an army in the field, and I the Governor of a State, neither the Constitution of his country nor of my own, confers upon us

¹¹ William Tecumseh Sherman, *Memoirs of General W.T. Sherman* (New York: Library of America, 1990) 612.

any power to negotiation a treaty of peace.”¹² Having dodged his long-held commitment to state’s rights, Brown nevertheless insisted upon his state’s sovereignty. His response, however, tipped the limits of even his own claim for state independence. He wrote, “Georgia possesses the sovereign power to act *separately*, her faith...is pledged by strong implication, to her Southern sisters, that she will *not exercise this power without consent* on their part...”¹³ Thus by Brown’s very articulation Georgia, having entered into a nation, did not possess the ability to conduct its own diplomacy. On this matter the federal government enjoyed the supreme, indeed only, voice.

Atlanta’s fall and Governor Brown’s flirtation with a separate state peace compelled Jefferson Davis to embark on a tour of the South in late September. The president sought to restore vigor to a theater reeling from the loss of Atlanta and Georgia’s flirtation with submission. Davis addressed public crowds and privately encouraged state governors to partner with his government. Although later accounts disparaged Davis’ skills as a politician, few moments are more telling and noteworthy than his successful exhortations while on his last tour of the Confederacy. The president repeatedly pressed the flesh of voters and in a remarkable appeal urged the women of the South to return their men to the army. Davis called for a renewed sacrifice from those that he had acknowledged, “Like Spartan mothers of old had given up all.”¹⁴ Davis’ political appeal resulted

¹² *Confederate Union*, Milledgeville, Georgia, Sep 27, 1864.

¹³ *Ibid.*

¹⁴ Quoted in Cooper, *Jefferson Davis, American*, 531.

in a conference of six governors at Augusta, Georgia in October as Davis made his way back to Richmond. With Virginia Governor William Smith presiding, the governors of North and South Carolina, Georgia, Alabama, and Mississippi pledged more than continued support for the administration. They suggested their willingness to support a potentially revolutionary federal policy to arm slaves. Their resolution forthrightly called out the manner in which slavery had become a liability, while obliquely referring to their desired course of future action: “That the course of the enemy in appropriating our slaves who happen to fall into their hands to purposes of war, seems to justify a change of policy on our part...to appropriate such of them to the public service as may be required.”¹⁵ The meaning of public service left undefined, all that remained was for Davis to take up their call and place the power of the federal government behind the policy.

Upon returning to Richmond in October it did not take Davis long to set to work laying the groundwork for slave enlistments. Threatening to displace the cornerstone of the Confederacy less than a month after his return, Davis crafted a policy that first originated from the field in 1864. To address the Confederacy’s manpower shortages Major General Patrick Ronayne Cleburne, an Irish born brigadier general, composed a plan to accept slaves into the army in exchange for emancipation.¹⁶ Presenting his “memorial” to the general staff of the Army of Tennessee during their winter respite, Cleburne argued that the war overturned prewar conceptions about the advantage of slavery. Cleburne asserted that by

¹⁵ New Orleans *Picayune*, November 2, 1864 quoted in Durden, 99-100.

¹⁶ *OR*, Ser. I, Vol. 52 (2), 586-92.

promising freedom, the Union capitalized on the efforts of slaves who demanded freedom. As a result, “slavery, from being one of our chief sources of strength at the commencement of the war, has now become, in a military point of view, one of our chief sources of weakness.¹⁷” Indeed, slaves fed on the South’s “granaries” while aiding and abetting the Union at every turn. To counter this most unexpected and alarming development Cleburne sought a daring shift in policy. In order to “adequately to meet the causes which are now threatening ruin to our country,” the Irish born general along with fourteen officers signed a memorandum that proposed to “immediately commence training a large reserve of the most courageous of our slaves....”¹⁸ Like the “helots of Sparta” Cleburne believed that slaves offered “the allurements of a higher reward” would prove valiant in battle.

Cleburne understood his proposal as a direct challenge to the Confederacy’s political identity. While acknowledging the assertion that, “Republicanism cannot exist without the institution,” Cleburne countered, “Even were this true, we prefer any form of government of which the Southern people may have the molding, to one forced upon us by a conqueror.” Freedom, in his estimation, meant more than preserving slavery. As a result, Cleburne argued that the federal government must embrace a radical policy. He was not naïve in the ramifications of his policy, its politics, and corollary consequence:

If, then, we touch the institution at all, we would do best to make the most of it, and by emancipating the whole race upon reasonable terms, and within such reasonable time as will prepare both races for the change, secure to ourselves all

¹⁷ *OR*, Ser. I, Vol. 52 (2), 586-92.

¹⁸ *Ibid.*

the advantages, and to our enemies all the disadvantages that can arise, both at home and abroad, from such a sacrifice.¹⁹

Cleburne thus encouraged the nation to entrust the army with the responsibility to reveal the fitness of adopting the revolutionary policy. Commanding General Joseph Johnston, who understood the dangerous ramifications of Cleburne's proposal, cut short all discussion. But word of Cleburne's memorial slipped through the camp and eventually made its way to Richmond. Davis initially ordered all discussion of the Cleburne Memorial "suppressed."²⁰ Ten months of mounting reverses, however, obligated revisiting the policy.

On November 7, Davis challenged Congress. He told the assembled that his "present purpose is to invite your consideration...of a radical modification in the theory of the law."²¹ Asking for authorization to enlist 40,000 enslaved persons into noncombatant roles, Davis sought to expand upon his earlier enlistment of 20,000 enslaved persons as teamsters, nurses, and general laborers. In calling to expand the ranks by 20,000 more, Davis proposed an ambiguous expansion of roles. Broadening the scope of federal policy, Davis sought an inducement for service beyond mere recompense. Desiring to overturn a policy that viewed slaves "merely as property," Davis countered, "The slave...bears another relation to the State – that of a person." Davis thus nudged the Congress to broaden their views of bondsmen by offering an indistinct,

¹⁹ *OR*, Ser. I, Vol. 52 (2), 586-92.

²⁰ For background on the enigmatic Cleburne see Craig L. Symonds, *Stonewall of the West: Patrick Cleburne and the Civil War* (Lawrence, Kansas: University Press of Kansas, 1997) 181-91. On Jefferson Davis' response, William J. Cooper Jr., *Jefferson Davis, American* (New York: Vintage Books, 2001) 555.

²¹ *Messages and Papers of the Confederacy*, Vol. I, 493.

unspoken goal.²² Allaying concerns about the extent of the social revision he had in mind, Davis maintained his belief in racial inequality as the political and social foundation of the nation. Racial inequality, the president affirmed, “Embraces the stability of our republican institutions.”²³ Davis evidently did not desire a social revolution, but sought to advance a view of the slave as more than mudsill. With a mind toward the political difficulty of advancing such a radical policy, Davis did not initially go as far as Cleburne by calling for complete emancipation. His beseeching of the Congress for federal powers to overturn the cornerstone of Confederate political ideology proved extreme enough to elicit a backlash.

Howell Cobb, former president of the Montgomery Convention and an ally of Davis, discerned the proposal as an existential threat. Writing to Secretary of War James Seddon, Cobb protested against any consideration to arm slaves, labeling it a “most pernicious idea.” He attacked the plan as a betrayal of Confederate principle and pleaded with the administration to appreciate the irreversible political and social ramifications:

Use all the negroes you can get, for all the purposes for which you need them, but don't arm them. The day you make soldiers of them is the beginning of the end of the revolution. If slaves make good soldiers our whole theory of slavery is wrong.²⁴

Cobb's dissent demonstrated the deep concerns presented by a fundamental reconsideration of the white republic. If slaves were capable of honorifics, their

²² *Messages and Papers of the Confederacy*, Vol. I, 494-5.

²³ *Ibid.*, 496.

²⁴ J. Franklin Jameson, ed., *The American Historical Review*, Volume VI (New York: 1896) 97.

presumed inferiority was laid false, a treacherous development for a government that advocated the eternal fitness of racial inequality. By according slaves with arms and the potential for valor, the Confederate nation gambled on its future, inviting questions as to the purpose of sustaining a nation that did not defend purportedly immutable principles.

Judah Benjamin, Davis' Secretary of State, offered a model that attempted to place slave soldiers in the field while sustaining a core belief in white supremacy. Writing to his old classmate from Yale Frederick Porcher of Charleston, Benjamin sought Porcher's aid in bolstering the administration's position in the press. The secretary confided to Porcher the wisdom of Cleburne's observance that slaves had turned against the South. "The drain of that source of our strength is steady, fatal, and irreversible..." the Secretary of State affirmed.²⁵ Lest they adopt a new course, he assured his friend the South would collapse in no small measure due to the actions of slaves. Benjamin concealed his radical proposal for the federal government to take direct ownership of slaves by terming it a restrained approach. Concluding that the best solution was one "settled by degrees," Benjamin affirmed the administration's goal as one where "...the Confederacy should become the owner of as many negroes as are required for the public service and should emancipate them as a reward for good services." After settling on this most extraordinary piece of purportedly cautious legislation, Benjamin promised that an encompassing federal policy offered numerous benefits:

²⁵ *O.R.* Series 4, Vol. 3 959-60 J.P. Benjamin to Frederick Porcher December 1, 1864.

We might then be able, while vindicating our faith in the doctrine that the negro is an inferior race and unfitted for social or political equality with the white man, yet so modify and ameliorate the existing condition of that inferior race by providing for it certain rights of property, a certain degree of personal liberty, and legal protection for the marital and parental relations, as to relieve our institutions- from much that is not only unjust and impolitic in itself, but calculated to draw down on us the odium and reprobation of civilized man.²⁶

Benjamin touted the wisdom of the administration's policy for its ability to avoid fundamental and potentially upsetting revisions. By promising to ameliorate the future status of slave enlistees, Benjamin proclaimed that the Confederacy gained all of the advantages of a new source of military manpower while retaining its belief in racial inequality.

Although in his message before the Congress Davis had maintained the importance of slavery among domestic audiences, just two months later in February he and Judah Benjamin, seizing the broadest reading of executive power, hatched a surreptitious plan to offer full abolition in exchange for foreign recognition.²⁷ The proposal constituted a remarkably underappreciated application of executive power. To carry this sensitive proposal abroad, Davis selected Louisianan Duncan Kenner, Chairman of the House Ways and Means Committee. Kenner proved an inspired choice. Soon after the fall of New Orleans in 1862 Kenner personally approached Davis with a plan to arm slaves, but the

²⁶ *O.R.* Series 4, Vol. 3 959-60, Benjamin to Porcher December 1, 1864.

²⁷ Durden termed the scheme, "a desperate gamble of dubious constitutionality." 148.

president encouraged Kenner to keep such ideas private.²⁸ Kenner demurred to Davis' demand, yet in February 1865 Davis returned to the Louisiana planter with the abolitionist proposition. The clandestine communiqué carried by Kenner pledged that the Confederacy would move against "*objections not made known to us, which have for four years prevented the recognition of our independence....*" To assure foreign audiences of the earnestness of the proposal, Davis and Benjamin pledged, "*no sacrifice is too great, save that of honor.*"²⁹ With the Confederacy stumbling toward ruin, Davis' desperate plea failed to move foreign powers. Just how Davis would have eradicated the institution is unclear, but the promise to do so offered a fitting example of the extent to which Davis felt comfortable employing the promise of federal power for the defense of the nation.

While the executive branch worked to secure recognition abroad in exchange for abolition, at home state governments pushed the federal government to adopt a more liberal policy. In response to progressive defeats and Union occupation, Alabama, Louisiana, and Mississippi all publicly toyed with arming slaves at various stages of the war. As early as 1863 in Jackson, Mississippi, the *Mississippian* inaugurated southern newspapers' call for an effective and equal response to the Union's Emancipation Proclamation. "We must either employ the negroes ourselves, or the enemy will employ them against

²⁸ Kenner approached Davis just after the fall of New Orleans in April 1862. Durden, 148.

²⁹ *Messages and Papers*, Vol. II 694-7.

us,” the *Mississippian* concluded.³⁰ By August official governing bodies joined the call. That month the Alabama Assembly voted on a resolution urging Congress to work on a policy to “[use] in some effective way a certain percentage of the male slave population of the Confederate States....³¹” The assembly specifically sought the attention of the “President and Secretary of War of the Confederate States to this subject as requiring immediate and energetic action...”³² That fall, Louisiana Governor Henry W. Allen pushed the matter more directly. Responding to his colleagues’ pleading for troops, Allen replied that he had none to give. As such, he wrote, “The time has come for us to put into the army every able-bodied negro man as a soldier.”³³ By January 1865 Virginia Governor William Smith took the lead on Allen’s proposal by permitting federal conscription of Virginia’s slaves. Smith’s bill languished for three months as state legislators pondered the ramifications. Passing in early March, Virginia permitted “her able bodied male free negroes between the ages of eighteen and forty-five...to be called for on the requisition of the General-in-Chief of the Confederate Armies....”³⁴ With states having cleared the way, the federal government soon followed.

The desire for action on this most charged of subjects was far from unanimous. Rhett condemned Davis and the state of Virginia for trading away

³⁰ *Mississippian*, September 9, 1863 quoted in Durden, 30.

³¹ *O.R.* Series IV, No. 2, 767.

³² *Ibid.*, 767.

³³ *O.R.* Series I, Vol. 41 Part 3, 774.

³⁴ Durden 249.

Confederate identity. “When Virginia wants a sword to assist in her defense, Carolina’s will ever be the first unsheathed. But, we are no *followers*,” they thundered in the *Charleston Mercury*. Explaining their obstinacy, Rhett proclaimed, “It was on account of encroachments upon the institution of slavery by the sectional majority of the old Union, that South Carolina seceded from that Union.” To “barter away” the institution that “30,000 dead South Carolinians” sought to preserve was incomprehensible. South Carolina, the obdurate former fire-eater proclaimed, “stands upon her institutions – and there she will fall in their defense.”³⁵ “The soldiers of South Carolina will not fight beside a nigger – to talk of emancipation is to disband our armies.”³⁶ Such pronouncements were rarely so bold. The sentiment crystalized Rhett’s general disfavor for moderation, and with his fanatical call, pronounced defeat preferable to amendment.

For the administration the calls to resist change proved tantamount to, in the words of Judah Benjamin, “antiquated patriotism.”³⁷ The war turned slavery into a liability and necessitated Confederate response. Speaking before a crowd at the African Church in Richmond, Confederate legislators held public meetings after the failure of the Hampton Roads Peace Conference to reinvigorate morale through public demonstrations.³⁸ On February 6 Jefferson Davis took to the stump to call for total sacrifice. “All must now be laid on the altar of the country,”

³⁵ *Charleston Mercury*, January 13, 1865.

³⁶ *Ibid.*

³⁷ *Richmond Dispatch* February 10, 1865, quoted in Durden 194.

³⁸ Historian Robert Durden calls the displays akin to “revivals,” 188.

the president proclaimed, putting forward the proposal rather politically. But Davis' speech was anything but staid, and his appearance even moved longtime foe Edward Pollard, who called it "the most remarkable speech" of his presidency.³⁹ The next day Judah Benjamin took to the lectern on behalf of the executive. He shared the stage with R.M.T. Hunter, who reiterated his opposition. Hunter relied on the supposed expertise of racial ideology to explain his opposition, "Those best acquainted with the negro's nature know that perish he must in time off the face of the earth; for, in competition with the white man, the negro must go down."⁴⁰ After calling the administration's proposal an invitation to racial extermination, Hunter dismissed the a policy as misguided philanthropy, "How many cruelties are committed in thy name?" Benjamin moved directly to the issue at hand, forsaking abstract principles and theories. The stout secretary returned the focus of the meeting to the plain reality, "War is a game that cannot be played without men." Sweeping away theoretical discussions, Benjamin pushed on, "Where are the men?" Telegraphing the administration's rationale for their policy, Benjamin asked the audience to assess the situation for themselves and to see if they did not agree with the administration's course: "Look to the trenches below Richmond. Is it not a shame that men who have sacrificed all in our defense should not be reinforced by all the means in our power? Is it any time now for antiquated patriotism to argue a refusal to send them aid, be it black or white?" At this a voice cried out "Put in the niggers," to which Benjamin responded by listing the reinforcements slave

³⁹ *Ibid.*, 188.

⁴⁰ Richmond *Examiner* February 10, 1865 quoted in Durden 192.

enlistments could supply to the army. As a foreign-born Jew who had risen to the top of Southern politics, Benjamin closed by offering a portent of a potentially different Confederate future, “I feel that the time is rapidly coming on when the people will wonder that they ever doubted.”⁴¹

In conjunction with the revival occurring in Richmond, the Confederate Congress once more took up debate on Davis’ policy. On February 10 Senator Ethelbert Barksdale of Mississippi introduced a bill before the Confederate Congress. Learning from a debacle in the House that saw a similar bill featuring emancipation turned back, Barksdale moderated his bill by omitting emancipation. He also employed the powerful support of General Robert E. Lee.⁴² Knowing of the gravity of his influence, Lee penned a letter to Congressman Barksdale that he knew would be released to the public in which he championed the notion that slaves “under proper circumstances, will make efficient soldiers” and with “good officers and good instructions, I do not see why they should not become good soldiers.” And while Barksdale’s bill did not include emancipation as a reward for service, Lee expressed strong support for the president’s plan to reward service with emancipation by stating that he felt it only right that “...those who are employed should be freed.”⁴³ Now congressmen who voted against the legislation also took a stand against the expressed wishes of the General-in-Chief.

⁴¹ Richmond *Dispatch* February 10, 1865 quoted in Durden, 193-4.

⁴² Durden, 240.

⁴³ Quoted in Durden, 206.

Lee's support revealed the degree of his nationalist proclivities, which lent considerable weight to the president's policy. But opposition remained stiff, requiring the governor of Virginia to once more pave the way. Just as he had shepherded the bill through his own legislature, Virginia Governor Smith directed his state's senators, R.M.T. Hunter and Allen T. Caperton, to reverse their opposition. Hunter, Davis' former Secretary of State, sustained his vigorous opposition to arm slaves and constituted the chief obstacle to its passage. Hunter expressed dismay at slavery's continued agitation. "When we left the old Government," Hunter professed that he "thought we had gotten rid forever of the slavery agitation." He assumed the Confederacy ended "the agitation of the slavery question, which had become intolerable under the old Union..." But much to his dismay, that promise failed and Hunter expressed bewilderment at the irony. "If we are right in passing this measure we were wrong in denying to the old government the right to interfere with the institution of slavery and to emancipate slaves."⁴⁴ On March 7 owing to the urging of the Virginia legislature Hunter signaled the end of his opposition but let it be know that he received instruction to "vote against his conviction."⁴⁵ Hometown newspapers chided Hunter for the indulgence, believing he stood in the way of the state's expressed

⁴⁴ *Ibid.*, 454.

⁴⁵ On R.M.T. Hunter's comments, *The Southern Historical Society Papers*, Volume 52, 453.

desire. With Hunter and Caperton's begrudging support, the bill passed by a single vote in the Confederate Senate.⁴⁶ Federal power reigned supreme.

In March, Davis amended the legislation's omission of emancipation by using his executive authority to issue General Order Number 14. Bringing the bill into alignment with his earlier desire granting emancipation in exchange for loyal service, Davis' enabling orders required the enslaved to sign a pledge proving a willingness to fight on behalf of the Confederacy, along with the written consent of the slave owner to surrender their property to the state. Davis' orders instructed: "No slave will be accepted as a recruit unless with his own consent and the approbation of his master by a written instrument conferring, as far as he may, the rights of a freedman...."⁴⁷ Such a significant enabling piece of legislation offered a fitting addendum to the Confederacy's embrace of federal power. The Confederacy not only promised emancipation to slaves who enlisted, but Davis, as president, accorded slaves the rights of freedmen to enter into legal contracts. Recruitment began in Richmond in late March, just weeks before the Confederacy's ultimate collapse. The final application of federal power failed to affect the outcome of the war, and the Confederacy surrendered mere weeks after mustering two regiments. The Confederacy began the war by proclaiming to be preserving immutable definitions of American democracy, but ended the war attempting to desperately test that principle.

⁴⁶ *Journal of the Confederate Congress*, Volume 4, 671.

⁴⁷ General Order No. 14, *OR Ser 4 Vol 3*, 1161-3.

The opprobrium of defeat proved fierce for the first self-proclaimed Americans to lose a war. To combat the legacy of failure, former Confederate leaders took to the pen. No figure struggled more with his Confederate legacy than former vice president Alexander Stephens. In defeat Stephens attempted to insert an inviolate and unyielding motive of virtue to make the Confederacy safe for veneration and public loyalty. Stephens' immediate attempt to grapple with his legacy occurred while a prisoner at Fortress Monroe. His world having crumbled and the possibility of treason hanging over his head, Stephens' diary entry on June 6 offers a remarkable insight to his thinking on Confederate purpose and his attempt to craft a narrative of which to be proud. Stephens began the day by singing the opening lines of Thomas More's hymn, "Consolation":

This world is all a fleeting show,
For man's illusion given;
The Smiles of Joy, the tears of Woe,
Deceitful shine, deceitful flow –
There's nothing true, but Heaven!

The incantation alarmed the guard, which set Stephens to reflection. An ardent reader, Stephens sought solace by explaining the abundant newspaper stories expressing "wonder and surprise...at the suddenness and completeness of the collapse of the Confederate Cause."⁴⁸ Stephens professed that despite the totality of defeat, Confederates constituted a remarkably principled people, for "no people on earth were ever more united, earnest, resolved to resist to the last extremity." Confederates, Stephens insisted, drew strength from their steadfast

⁴⁸ Myrna Lockett Avary, ed., *Recollections of Alexander H. Stephens His Diary Kept When a Prisoner at Fort Warren, Boston Harbor, 1865....* (New York: 1910), 165.

faith from a conviction in “the right of self-government.” Their defeat necessitated a new struggle to retain control over government, and self-government became the rallying cry of so-called redeemers.

Stephens argued that despite their loss, Confederates remained principled actors. Even in the face of military authoritarianism, whose “first great blow was conscription! With this came impressments, suspension of habeas corpus, military arrests and imprisonments, martial law.” Still bitter over the manner by which federal conscription occurred, in defeat Stephens castigated Davis for overriding Stephens’ vision of constitutional government. Criticizing Davis for his reliance on federal authority, Stephens thought the executive’s proclivities to lean upon central authority constituted “as deadly a blow at independent State organization, State’s Rights, or State sovereignty....”⁴⁹ Despite such facts, Stephens heralded Southern soldiers who took to the field “to maintain the Sovereignty of their own states, which had quit the Union but had rescued the Constitution. This ark of the covenant of their fathers was in their hands, and it was to preserve this (containing the life-giving principles of self-government) from destruction and pollution that they rushed to the ranks....”⁵⁰ Such an articulation allowed Stephens to claim fealty to the Constitution and to distance himself from the opprobrium of defeat. His insistence upon the principle of self-government proved a convenient dodge against charges that the government was one of his crafting. And in fact, Stephens presided silently as the first applications

⁴⁹ *Recollections*, 169.

⁵⁰ *Recollections*, 169.

of federal power and military authority passed the Confederate Senate. In memory Stephens retreated into principles that exalted the heroism and dedication of the white South. “What I affirm is, that the Southern people were actuated by no disloyalty to the Constitution, to the principles it contained, or to the form of government thereby established.”⁵¹ Like Thomas More, Stephens insisted he and the white South were not traitors, but principled actors striving to uphold a standard.

By exalting self-government, Stephens adroitly sought to displace the cornerstone of slavery in the memory of the Confederacy. He avowed, “The slavery question had but little influence with the masses.”⁵² The diminution of slavery’s importance was certainly not something evinced by Stephens at the Hampton Roads Peace Conference just months earlier, where he pressed a series of questions to President Abraham Lincoln about the future of the institution. In Stephens’ remembrance, Lincoln informed the Confederate delegation that with the development of the Thirteenth Amendment, “I would go home and get the Governor of the State to call the Legislature together, and get them to recall all the State troops from the war; elect Senators and Members to Congress, and ratify this Constitutional Amendment prospectively, so as to take effect – say in five years...” Lincoln apparently concluded his point by remarking, “Whatever may have been the views of your people before the war, they must be convinced

⁵¹ *Ibid.*, 171.

⁵² *Ibid.*, 163-5.

now, that Slavery is doomed.”⁵³ It was a suspect rendering of the conversation for it proved inconsistent with Lincoln’s policy. However, it demonstrated the extent of Stephens’ conviction in the institution and the ideology, even at such a late hour in the life of the Confederacy.

Stephens’ postwar desire to distance himself and the Confederacy from slavery most conspicuously ran up against his historic role in clarifying racial inequality as the singular purpose of Confederate nationhood. To explain away the contradiction, Stephens figuratively returned to the Athenaeum in Georgia in 1861. In reflection, Stephens downplayed the importance of his remarks by disavowing their accuracy. Stephens expounded, “As for my Savannah speech, the setting forth ‘slavery’ as the ‘corner-stone’ of the Confederacy” they were the result of “extemporaneously” delivered remarks. Even though Stephens corrected the reporter’s remarks and did not offer a clarification as his comments enjoyed wide distribution throughout the northern press, in retrospect he maintained innocence. While advancing that “slavery was without a doubt the occasion of secession,” he asserted that sectional hostility deepened over the failure to enforce the Fugitive Slave Act. With northern states subverting their obligations through so-called personal liberty provisions, Stephens argued that the South became bitter about the lack of federal enforcement. In Stephens’ ornate

⁵³ *A Constitutional View of the Late War Between the States...* (Philadelphia: 1868) Volume II, 614. The informality of the Hampton Roads Conference has led to doubts about the recollections of Stephens. Without notes or secretaries, it is impossible to state with certainty what was said. Stephens’ recollection is found in, *A Constitutional View*, II 599-615. Michael Vorenberg’s *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment* doubts the veracity of Stephens’ recollection. See pages 223-5.

phrasing, by “refusing to comply with Constitutional obligations as to rendition of fugitives from service, a course betraying total disregard for all constitutional barriers and guarantees,” Southern distrust mounted. The source of discontent therefore lay not with too much federal power, but rather the lack of its application.⁵⁴

Stephens’ also defended his cornerstone sentiments as elucidating nothing more than a historical truth. He sought to demonstrate that the Confederacy perpetuated the “relation of the black to the white race, which existed in 1787.”⁵⁵ It was not the Confederacy but the Founders who had introduced such notions. In defending the “order of subordination” that “was nature’s great law,” Stephens advanced that the Confederacy was built upon timeless racial principles. Indeed, in memorial he avowed, “...philosophy taught that order as the normal condition of the African amongst European races.⁵⁶” All he desired to make evident was how the Confederate Constitution codified and perpetuated those truths. Seeking absolution from slavery, Stephens did not disavow the ideology of racial inequality, but rather he offered after the fact condemnations of its practice: “My own opinion on slavery, as often expressed, was that if the institution was not the best, or could not be made the best, for both races, looking for the advancement and progress of both, physically or morally, it ought to be abolished.”⁵⁷ Stephens

⁵⁴ *Recollections*, 173.

⁵⁵ *Ibid.*, 173-4.

⁵⁶ *Recollections*, 174.

⁵⁷ *Recollections.*, 174.

clearly accepted the defeat of the Confederacy and the end of slavery, but he did not surrender his views on race. Those he sustained throughout redemption.

Granted his release from prison, Stephens returned to Georgia and took up his pen with resolve. The first volume of his expansive memoir, *A Constitutional View of the Late War Between the States*, appeared in 1868. The title page telegraphed the thrust of the work: “Times change and men often change with them, but principles never!”⁵⁸ *A Constitutional View* continues to wage a defense of the legitimacy of secession. Composed in the style of Plato’s dialogues, Stephens creates a fictional trio of synthetic characters to explore the constitutional basis for state separation. To move directly to the “philosophical” causes of the war, Stephens sweeps aside the role of slavery to recapitulate familiar episodes of political collision in the antebellum era. Contending that while slavery was “the main exciting proximate cause” of secession, Stephens affirms, “It was not the real cause” of the war. In Stephens’ retelling, constitutional principle is at the center of the Confederate drama. Yet, Stephens cannot dispense with slavery and white supremacy, for they constitute his own declared ideology of the Confederacy. By the second volume one wonders why Stephens’ guests have not pressed more directly to this point, foregoing the needless retellings. In the fourteenth colloquy Stephens is finally called to account. Stephens demonstrates his continued belief in the eternal fitness of racial inequality by offering a theological defense for slavery and racial inequality. “I know of but one sure standard in determining what is, and what is not sin or

⁵⁸ Stephens, *A Constitutional View* Vol. I, x.

sinful. That standard is the written law of God...” Stephens maintained.⁵⁹ From Abraham to Job to Paul, the fictional Stephens spins tales of biblical sanctions of slavery to place the Confederacy safely within the confines of religious sanction. It soon becomes clear that the strength of such conviction transcends history. While Stephens is offering a retrograde apology for the failings of the Confederacy, he is attempting to rescue the wisdom upon which antebellum Southerners and Confederates relied to sustain their society. Once more returning to his infamous Cornerstone Speech, Stephens no longer distances himself from the sentiments, and repeats his comments as a means of explicating their supposedly timeless quality: “With us, all of the white race, whether high or low, rich or poor, are equal in the eye of the law. Not so with the negro. Subordination is his place.”⁶⁰ Institutions and even governments might be transient, but not principles. An incredulous Judge Bynum finally interrupts Stephens during yet another reiteration of a Southerner’s speech: “How can you say any of this? ‘Liberty and Equality’ seems to me but a mockery...when we know that what he meant was, not the advancement of Liberty at all, but the perpetuation of slavery.” Rising in defense of his own foil, Stephens avowed the central object of the Confederate States “the perpetuation of that liberty and equality which was established by the Constitution of the United States.”⁶¹ What Bynum interprets as a mockery, Stephens explains as the white South’s

⁵⁹ *A Constitutional View*, Vol. II, 80.

⁶⁰ *Ibid.*, 85.

⁶¹ Stephens, *A Constitutional View* Vol II., 126-7.

paramount conviction - the immutable grant of liberty afforded by race. Although the government and the institution that white Southerners had sought to perpetuate failed, the ideological racial principle sustaining them remained.

Stephens' literary exertions did not result in critical acceptance of his revisionist renderings. Judge S.S. Nicholas, one of the many legal critics who reviewed *A Constitutional View*, dismissed Stephens' indulgences as a feeble attempt at covering the past. Unmoved by his arguments Nicholas granted, "Mr. Stephens has a perfect right to use his time and talents in self-justification as an aider of the rebellion." Stephens, however, had a problem with credulity. Chiefly, if the South seceded because it felt separation the only recourse to avoid federal usurpation, then reunification was a false sentiment. And if the South sought reunification in order to legitimize secession as a demonstration of their fidelity as Americans, then they ought to be halted in their tracks.⁶² He explained, "No hearty restoration...of the Constitution can be rationally expected so long as it is even suspected that, in the pursuit of constitutional restoration, Southern men are looking to it as a means for the ultimate recognition of the right of secession." Conversely, "If Southern men of influence concur that the right of secession is the only barrier against Federal usurpation, then they can have little motive for aiding Constitutional restoration."⁶³

As Nicholas argued, the South had failed in its quest to assert a rival understanding of the Constitution. The Union's victory invalidated secession.

⁶² Alexander Stephens, *Reviewers Reviewed; A Supplement to the "War Between the States," Etc....* (New York: 1872), 40.

⁶³ *Reviewers Reviewed*, 52.

Southerners could accept this fact and reclaim their citizenship, or they could sustain the fiction of secession as legitimate recourse to federal power. But they could not logically do both as Stephens attempted. Despite Nichol's logical destruction of Stephens' argument, Little Aleck returned to the United States Congress in 1873, resuming his familiar seat. His return to national politics represented his rehabilitation. He renewed his pledge of fidelity to the United States Constitution, but never distanced himself from his racial sentiments and the notion that government ought to preserve such distinction. Alexander Stephens passed away in 1883 at the age of seventy-one, having won the governorship of Georgia the year previously.

In defeat the ambitious Joseph Brown refashioned his political identity. To thrust off the malodor of his previous obstinacy, Brown commissioned a campaign biography in 1879 to offer voters a fresh perspective of the four-time governor. With the advent of the postwar South Brown embraced commerce and industry by transforming himself into a banking lobbyist - a notable feat since he had begun his career as a critic of banks. His newfound attitude also resulted in a post as a railroad executive and coal promoter. But Brown went even further than an economic transformation. Joining men like former General James Longstreet to raise his attractiveness as a candidate, Brown left behind the defeated Southern Democrats to join the triumphant Republican Party in an astonishing yet revealing exhibition of ambition. Although Brown's effort at transformation resulted in an initial electoral defeat, he received an appointment to the state

supreme court and from the bench returned to the fold of Democratic Party politics through ingratiating efforts in the disputed election of 1876. His dizzying revolution as a public figure nearly complete, Brown sought a return to political power.⁶⁴

On the eve of his desired return to public life in 1878, Brown received word of the untimely passing of Linton Stephens. A wistful Brown wrote to Robert Toombs, “You & Alec & I have each but a short time to remain here.” The melancholy Brown reminisced about the men’s past political battles. Eventually touching on the subject of Jefferson Davis’ forthcoming memoir, Brown feared that if Davis were given the final word, he will “assail us with a good deal of bitterness & stab with a Joab blade whenever he can.” Concerned about his particularly disputatious role, Brown dreaded that Davis’ revenge, which will “attribute much of the failure to what he will term the hostile movement in Georgia & elsewhere &...blacken as far as he can our reputation.”⁶⁵

Looking to counteract a wrathful Davis, Brown solicited Toombs to coauthor a history of Georgia. He called his project essential to “preserve all the facts of history necessary to our vindication.” But the past had been hard enough on the political career of Toombs and the once formidable Georgian evinced little interest in revisiting the painful period. Promising Brown that his “conduct during the war will fully vindicate you from all aspersions of Mr. Davis,” Toombs

⁶⁴ For a biographical account of Brown’s restoration to public life see Joseph H. Parks, *Joseph E. Brown of Georgia* (Baton Rouge: Louisiana State University Press, 1977) Chapters 18-21.

⁶⁵ Quoted in Parks, *Brown*, 579.

doubted Davis' desire for recrimination. "I do not think he will assail you and I am sure he will never assail me while I live," the still bellicose Toombs crowed. His assurance did little to assuage Brown's fears and he pushed ahead with his project, placing an amateur biographer, Herbert Fielder, under contract in 1879.⁶⁶ Brown earnestly desired to place his version of history in the hands of the public before Davis'. Fielder's amateurish inexperience, however, delayed publication and Davis' memoir's own arduous path reached conclusion in 1881. Davis' desired rendering revealed Brown's concerns warrantless. The former president earnestly sought absolution rather than slander. He wanted to be favorably remembered by history, and not to settle former scores.

Despite the fact that he escaped Davis' censure, Brown still desired to settle the past on his own terms. He acquired Fielder's incomplete manuscript and set to work culling and editorializing by excising most mentions to slavery.⁶⁷ When Brown did cover slavery's abolition he did so with such astonishing insouciance that the peculiar institution's finality is presented as a change of legalese. "At the time this constitution was framed" permitting Georgia's reunification, "the idea of African slavery in this country was a thing of the past."⁶⁸ With this breezy acceptance, the Confederate past is quickly sanitized and the sketch never looks back. Brown also did not linger over states' rights.

⁶⁶ *Brown*, 580.

⁶⁷ "Parks writes, "Finally, Brown purchased the manuscript, deleted irrelevant chapters on slavery and states' rights..." 580.

⁶⁸ Herbert Fielder, *A Sketch of the Life and Times and Speeches of Joseph E. Brown* (Springfield: 1883), 414.

Although he had subsisted on its agitation throughout the war, in peace Brown championed Georgia's contribution to the national effort and proclaimed his role in partnering with the federal government. Seeking to correct his record, Brown wrote: "It is not true, in fact, that the civil administration of this State obstructed the Confederacy or hindered its plans or enterprises...."⁶⁹ He desired, in retrospect, to be remembered as a champion of the Confederate state, not the obstacle to its efficient functioning. As such, he offers but a few prefatory remarks on the correspondence with Davis. In hindsight, the episode is relegated to a repress, for his row constituted nothing more than a "difference in opinion between men who were each intent on independence for the South."⁷⁰ Brown's desire to be seen as an advocate of national independence and an indispensable contributor to the national effort is remarkable for demonstrating how much the Confederacy's rehabilitation owed to its ability to provoke nostalgic sentiments.⁷¹ Sentiments which Brown adroitly desired to capture to carry him to political victory.

In turning the figurative page, Brown's capital qualities triumph in the New South. Having dispatched his record, Fielder's ostensible prose gushes over Brown's character, highlighting his business success and his "mental habit; that is, *one thing at a time*."⁷² Unwittingly, although Fielder meant to highlight

⁶⁹ Fielder, *Sketch*, 258.

⁷⁰ Fielder, 355.

⁷¹ Fielder, Ch. XII.

⁷² Fielder, *Sketch*, 493.

Brown's business acuity, he hit upon a key insight into Brown's longevity and success. Brown was not a figure who lived by abstract virtue. He did not linger of principle, nor did he inhabit a world of absolutes. Brown accorded his Confederate past and his championing of state's rights two chapters of reprinted material in the biography, all of which is prefaced by Brown's convoluted protestations of loyalty and dedication to the South. Brown desired to be seen as an unyielding champion of his state and his region, and at the collision of both he sought to smooth over the memory of his quarrels with palliating appeals to patriotic nostalgia. Brown moved ever onward, and only dealt with his past when it threatened the future. Brown's postwar conduct underlined his suspect attachment to the political issues that defined his Confederate career, demonstrating Brown's adroit understanding of a situation and his unique ability to turn a moment to his advantage. With the Lost Cause ascendant, Brown hitched his future to its rising fortunes.

Nearly a decade passed after the end of the war before Jefferson Davis returned to public life with the publication of his vast apologia. Jefferson's brother Joseph had broached the subject upon Jefferson's release from prison in 1867, but the defeated leader begged off claiming, legitimately, ill health. Davis also did not wish to immediately revisit such painful times. With publishing houses urging Davis to write and a family needing his support, Davis eventually hired an assistant and set to work. At a decade removed from the war's end he began the project of reassembling his scattered papers. Jefferson Davis conceived

of his memoir in much the same vein as Stephens, to rescue the legitimacy of the Confederacy. Before setting ink to the page Davis proclaimed, “My motive in writing is the Justification of the South in the act of Secession and in the prosecution of the war.”⁷³ He was no traitor, but a preserver of principle.

To create a political legacy of which to be proud, Davis denied Confederate culpability in inaugurating the Civil War. Davis took to a favorite metaphor of Abraham Lincoln’s, whose parable of the shepherd, sheep, and wolf imparted the difficulty with defining American liberty. Twisting the meaning, Davis advanced, “The attempt to represent us as the aggressors in the conflict which ensued is as unfounded as the complaint made by the wolf against the lamb....”⁷⁴ Davis countered, “He who makes the assault is not necessarily he that strikes the first blow or fires the first gun.”⁷⁵ The Confederacy constituted the aggressive party at Sumter, but Davis offered that the North’s repeated violations of Constitutional obligations constituted the true first blow against the government, and any such conclusion that rested on Confederate culpability offered only the narrowest appreciation for history.

Davis joined in the effort to sidestep the issue of slavery. Taking a line from Stephens’ book, Davis too penned that while “slavery may have served as an

⁷³ Quoted from William Cooper, *Jefferson Davis, American* (New York: Vintage Press Edition, 2010) 660.

⁷⁴ Jefferson Davis, *The Rise and Fall of the Confederate Government* (New York: 1881) Volume I, 292.

⁷⁵ Davis, *Rise and Fall*, 292.

occasion, it was far from being the *cause* of the conflict.”⁷⁶ For Davis slavery, like Sumter, constituted a superficial distraction, “operating as a lever upon the passions, prejudices, or sympathies of mankind” with the result that misimpression “has been spread, like a thick cloud, over the whole horizon of historic truth.”⁷⁷ To achieve clarity and to arrive at a substantive appreciation for the events surrounding the war and the Confederacy’s purpose necessitated taking a long view. In particular, Davis intently focused on the decade preceding secession to elucidate the justification for Southern and Confederate motives. In particular, Davis decried the North’s unwillingness to abide by constitutional obligations over slave protection in the territories. “No power was ever given to the General Government to interfere with [slavery]” Davis thundered in his memoir, still harboring resentment over this issue. Rather, he affirmed that the Constitution contained “an obligation...to protect it.”⁷⁸ Even in retrospect federal power remained desirable, indeed vital to proving the equality and institutions of the South. Despite the passage of nearly a decade, Davis still resented the lack of federal enforcement to protect slavery. All along, he admitted, the South wanted the federal government’s powers exercised for their benefit. The real first blow lay not in government overreach, but paralysis.

Davis, like Brown, sidestepped the chief political division of his presidency. In his chapter on the two men’s divisions, Davis similarly diminished

⁷⁶ *Rise and Fall*, 78.

⁷⁷ *Ibid.* 80.

⁷⁸ Davis, *Rise and Fall*, 80.

his collision with Brown. Offering an unoriginal reprinting of their well-known correspondence, Davis' prefatory comments on conscription granted that the governor's objection constituted an "unexpected criticism." Writing that while Brown raised "a constitutional issue of high importance," Davis contented himself with acknowledgement, calling the governor's protests an issue over the "harmony of cooperation," before brusquely setting the issue aside to speak of General Robert E. Lee's sanction and the policy's enactment.⁷⁹ The issue with Brown owed to questions of harmony, not legitimacy. Davis' postwar silence signaled his continued belief that the execution of federal power constituted an intentional and legitimate constitutional grant. In the era of redemption, however, it was not politic to speak of the sovereignty of national power, so the expression remained incomplete.

In the closing pages of his memoir, Davis turned to the most controversial and divisive topic of his presidency, the prospect of arming enslaved persons for military service. Hinting at the discord sparked by Confederate slave enlistments, Davis claims to have told a former Confederate senator: "If the Confederacy falls, there should be written on its tombstone, 'Died of a theory.'"⁸⁰ It is an ambiguous statement and one that historians have interpreted as a lament that Confederates remained more devoted to local identity than to an independent nation. With his final policy proposal, Davis threatened to push the Confederate state in a potentially radical direction. In memoriam Davis fell silent, unwilling to offer

⁷⁹ *Rise and Fall*, 506.

⁸⁰ Davis, *Rise and Fall*. 518.

insight into how he proposed to execute the policy and the reason for his amending order, which accorded slave enlistees the rights of freedmen and the promise of emancipation. The portent of a radical future remained closed off from reconsideration. Davis desired to be remembered for his struggles on behalf of the Confederacy and its fundamental conviction in the immutable nature of American democracy's racial grants, not his last attempt at challenging such fundamental convictions.

The Confederacy spent the final year of the war testing the limits of its identity and federal power. Davis, the military, political leaders, and state governors all pushed the nation to embrace slaves as soldiers, a controversial policy for a nation predicated upon fixing eighteenth-century standards of racial exclusivity and republicanism. The trajectory of Confederate politics suggested the ways in which the final federal reach was not out of step with its tradition of legislating, for the Confederacy preempted the Union government in every major policy decision except slave emancipation. That the eventual policy resulted from the calls from the field and state governors demonstrated the general congeniality with which federal control was accepted, even desired, among a sufficiently recognizable Confederate constituency.

With collapse arriving mere weeks after the enlistment bill, the Confederacy avoided the ramifications of its last-ditch designs. To hoist off the burdens of defeat, to regain their political careers and resurrect their legacies, the Confederacy's chief politicians joined in a literary movement aimed at recasting

the Confederacy as a principled, heroically Sisyphean endeavor. For politicians like Brown, the specific recall of Confederate endeavors was best left in the past. But through hazy exhortations, Brown appealed to the sentiment, nostalgic emotions to further his career once more. His biography served in part to turn the page on specifics, and in place of actual history to redefine his legacy by its many contributions to the war effort. Brown recast row with Davis and his long correspondence over states' rights as a principled partnership defending the Confederacy's goal of self-government.

Alexander Stephens also sought to come to terms with the legacy of the Confederacy through a retelling of history. His lengthy publications stretched into the thousands of pages, and yet for all of Stephens' desire to impart a principled motive to avoid the epithet of traitor, his most absorbing moments involved defending the Confederacy and its perpetuation of racial inequality. While Stephens accepted the transience of the South's institutions, Stephens retained his belief in racial inequality. His postwar writing conflated the Confederate struggles with those of the Reconstruction white South, the endeavor of both he cast as essentially preserve self-government. The maintenance of his underlying racial ideology provided a lasting measure of consolation.

Jefferson Davis proved the most reluctant in defeat. Never seeking office nor desiring a return of his citizenship, Davis maintained to the last the righteousness of the Confederacy. As president he had overseen a powerful, centralized, federally robust government and had done his best to preserve independence and affix eighteenth-century definitions of liberty. Striving to

sustain the racial grants of republicanism involved, in the end, a wager to hazard the strict color lines of the white republic. In 1865 Davis believed Confederate ideology strong enough to sustain the admission of free slave soldiers, but in the postwar period he took to memorializing that failed to consider how the Confederate future might have looked upon the success of his last policy. The last chapter of Confederate history faded, leaving Davis free to memorialize his desired representation of the past. Davis exhibited unrepentant pride in his Confederate exhortations, and remain convinced in the fitness of the Confederacy's purpose to the last of his days.

CONCLUSION

Speaking to an audience in Baltimore in the spring of 1864, Abraham Lincoln expressed the problem of describing liberty. “The world has never had a good definition of the word liberty, and the American people, just now, are much in want of one. We all declare for liberty; but in using the same *word* we do not all mean the same *thing*.”¹ Lincoln explained his sentiment by calling upon the parable of the wolf and the sheep. “The shepherd drives the wolf from the sheep's throat, for which the sheep thanks the shepherd as a *liberator*, while the wolf denounces him for the same act as the destroyer of liberty, especially as the sheep was a black one. Plainly the sheep and the wolf are not agreed upon a definition of the word liberty; and precisely the same difference prevails to-day among us human creatures.”² Agreeing with Alexander Stephens, Lincoln presented white Southerners’ conception of liberty as inextricably defined by white supremacy, which afforded economic prosperity and political advantage.

Jefferson Davis continued to stand by the role of the wolf in defeat, convinced in the fitness of the antebellum South and the Confederacy’s definition of liberty. In this manner, the effort to preserve American liberty constituted the first genuine political conservatism in American life. In order to affix the Founders’ selective constitutional definitions of liberty and racial inequality, Confederates laid claim to the nation’s heritage. Sustaining a government of their own, and one strong enough to defend and project the Founders’ immutable

¹ Roy P. Basler, ed., *The Collected Works of Abraham Lincoln* (New Brunswick, New Jersey: Rutgers University Press, 1953) Volume 7, 301-2.

² *Ibid.*, 302.

definitions and institutions, required a central state. In setting out to begin anew, the Confederacy affixed purportedly timeless definitions of American democracy bound by racial identity. The Constitution protected and indeed incentivized slave ownership. Its presence, Confederate politicians repeatedly avowed, created a virtuous, homogenous society. Preserving that definition of liberty required a robust federal republic.

Historian William Novack's persuasive article, "The Myth of the Weak American State" offers an equally suggestive pattern for the Confederacy.³ As Novak argues, the course of American history reveals the strength and central role of the central state in nearly every major episode of national expansion. As a direct imitation of the United States Constitution, it should come as no surprise that federal power played a central role in the Confederacy. Indeed, to sustain and advance its convictions, Confederate leaders embraced federal power, replete with its powers to tax and raise armies. As Davis maintained in his correspondence with Brown, the Founders had done so with a mind toward national expansion. The Confederate framers at Montgomery retained such provisions for like-minded expansionist purposes as well.

Just as the Founders had envisioned an empire of liberty, the Confederacy envisioned its own national expansion. As Davis expressed in his inaugural, his administration promised to pursue an energetic policy, one that exercised federal power for the benefit of sustaining and expanding and protecting the state and its homogenous society. Having created a society of "one flesh," the Confederates

³ William J. Novak, "The 'Myth' of the Weak American State," *The American Historical Review*, Vol. 113 No.3 (June 2008), 752-72.

proclaimed to have rescued an essential component of American government. Having affixed the body politic by a racial grant, the Confederacy proclaimed to have rid itself of the troubling divisions of the antebellum era. Free from sectional antagonism, Davis promised to pursue the general welfare with vigor.

Although scholars traditionally treat the existence of federal power in the Confederacy as an unintended irony, as evidence of the national project's unfitness, the creation of a sovereign, supreme federal government constituted the desire of the delegates at the secession convention in Montgomery, Alabama. With Alexander Stephens at the helm, the delegates usurped the fire-eaters' intended purpose and set forward an avowedly imitative, conventional government. Preserving the United States Constitution with as few moderations as possible enjoyed overwhelming support. And the few changes adopted did not make the state more southern, but made it more functional, less divisive, and ultimately more responsive to the needs of its exclusive democracy.

A necessary component of defining the Confederate nation included sustaining slavery. White supremacy constituted the clear ideology and central purpose of the Confederate government. Indeed, the Confederacy's true novelty lay in embracing governmental institutions to support racially exclusive ends. Robert Barnwell Rhett arrived at the convention in Montgomery desiring just such a slave republic, but at every turn he found his schemes for a resplendent empire of slavery frustrated. The delegates had not come with desires to remake the American government, but rather to clarify and fix its grants of liberty

The Confederate comportment with federal power proved a defining, enduring, and desirable feature of its government. As Richard Bense wrote, the Confederacy embraced a more state-centric approach to fighting the Civil War than even the North, although he felt that the demands of wartime explained this development. Rather, as the Confederate Constitution and the debates over its ratification revealed, the Confederacy sought an imitative government, replete with strong federal instrumentalities. Slaveowners were not afraid of government, but covetous and desiring of its authority. Throughout the antebellum era, Southern politicians repeatedly hailed the beneficial applications of federal power when it cleared Indian lands and turned them over to public auction. As historian Adam Rothman notes, the federal government played an indispensable role in the construction of the antebellum Deep South.⁴ Similarly, Southern political leaders bemoaned the obstruction of federal power, specifically the lack of equal applications of federal power to protect slavery in the territories and to return purportedly fugitive slaves. To preserve the American Republic, the Confederate States of America seceded from the Union, laying claim to the Constitution and the nation's heritage.

The exigencies of war did not warp the purpose of Confederacy, but rather made its grants of federal power evident. As Davis' correspondence with Joseph Brown revealed, the Confederate government was not one that viewed its national purpose in limited fashion. His line of argument intimated that the Confederacy, much like the American Republic, adopted a sovereign federal

⁴ Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge: Harvard University Press, 2005).

government so as to permit the military the means by which the Confederate republic might expand, projecting into the southern and western hemispheres. Indeed, one of the chief elements that provoked such discord in antebellum politics was the suggestion that slavery ought to be limited, confined to its geographical borders in the South. To limit slavery's ability to expand diminished its future, offering nothing but the promise of political dependency and ultimate subjugation. Fearful and refusing to abide by such portent, the Confederates retained a powerful government and the right to expand their nation and institutions. As the legal history of the Confederacy revealed, all such grants enjoyed clear, intended legal sanction.

In defeat, the denial of the South's right to expand slavery into the territories still remained a subject of considerable scorn for Davis and Stephens. But with the Confederacy rendered asunder, the former Confederate elite reconciled themselves to the loss of their independent nation and its institutions. The underlying ideology of white supremacy, however, remained an important and continued benediction. Highlighting the Confederacy's struggle as one aimed at self-government helped to make the memory of the Confederacy safe for veneration by removing the stain of its failure and its embrace of slavery. The Confederacy had ended the war attempting a bold scheme that promised to upend its hold on racial supremacy. In defeat, Confederate leaders turned away from any discussion of their exercise of federal grants, and the portent of a diverse society by conflating the cause of Confederacy and the Reconstruction South as equally vital efforts to sustain control over government. Southerners did

not seek to repudiate the legitimacy of the federal government, but rather to harness its power to their own purposes.

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VITA

Geoffrey David Cunningham was born in Portland, Oregon and received his Bachelor of Arts degree from The Evergreen State College in 2007. In 2010, he earned a Master's Degree from Louisiana State University. He published an article on the antebellum career of Judah P. Benjamin in the journal *American Jewish History*.