VIEWS OF JEFFERSON DAVIS CONCERNING SLAVERY, STATE SOVEREIGNTY, AND SECESSION AND THEIR INNOVATION IN THE CONFEDERATE CONSTITUTION

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PREFACE

> The social problem of maintaining the just relation between constitution, government, and people, has been found so difficult, that human history is a record of unsuccessful attempts to establish it.
>
> ——Jefferson Davis

The fallacy has often been imprinted upon our minds that the South should bear the total responsibility for instigating the war between the States during the nineteenth century. We have been led to believe that the Confederate States were in the condition of revolted provinces. We are also left with the false impression that the bloodthirsty Southerners would revert to any drastic measures in order to increase and extend their domestic institution of slavery. These hypotheses, and many more like them, are typical of the many generalizations which had provoked misunderstandings between the Northern and Southern States during the mid-nineteenth century. Neither section can be totally exempted from its peculiar behavior during this era of American history.

In my opening quotation, I have attempted, in an admittedly vague way, to express my purpose for making this study on Jefferson Davis. In the last analysis, I feel that many of the controversies which arose in the decade before the Civil War were due to the unsuccessful efforts of the North and South to maintain just relations among themselves, especially in regard

to the interpretation of the United States Constitution. Since it would not be feasible to discuss all issues of controversy between the North and South, and because the innumerable opinions of those who witnessed that trying decade would be impractical to present, I have resolved to concern myself with the positions of one Southerner, Jefferson Davis, whom I feel is the epitome of many Southern desires of the time. In the study of Jefferson Davis, I will be concerned only with his views on slavery, states' rights and secession, which, I feel, were the important issues that increased the tension between the States and which led to the greatest misapprehensions. However, I feel that it is not sufficient to stop here. I must reiterate the fact that much of the misunderstanding resulted from a sectional interpretation of the United States Constitution. For this reason, Chapter V will specifically deal with the United States and the Confederate States Constitutions, since in a constitution are the aspirations and ideals of a people best expressed.

I hope that through this study the positions of the Southern Confederacy may be seen in an altogether different light from that in which many may have presented them.

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CHAPTER I

INTRODUCTION

Beginnings

> Jefferson Davis was born in 1808. He died in 1889. During the intervening period of over fourscore years, by his stainless personal character, by his unflagging and unselfish devotion to the interests of the South; by his unsurpassed ability as an exponent and champion of her rights and principles, as well as his distinguished public services in peace and war, and his high official station, he was universally regarded, both at home and abroad, as pre-eminently the representative of a great cause, and a great people.[1]

It would be quite presumptuous to immediately consider Jefferson Davis' attitudes concerning slavery, state sovereignty, and secession, before the major events of his life are briefly surveyed in order to determine to what degree these events have influenced his philosophy.

Samuel Emory Davis and his wife, Jane, were residents on a small farm near Augusta, Georgia. The sandy soil in that area was not as productive as the couple had calculated it should be in comparison to the amount of labor they and their three African slaves had put to it. After hearing alluring reports of the fertile soil of Kentucky, Samuel Davis decided to sell his place and move to Kentucky in 1793. Settling first in Merced County in the Blue Grass region, the family moved after a short stay to Christian County in the southwestern part of the state, where Samuel became a tobacco planter and horse breeder. It was here

that Jefferson Davis was born on June 3, 1808, the tenth and last child of the family. Though he was Kentucky-born, Jefferson's memories began in Mississippi. Before he was two, his father decided to move again, this time to the Deep South, where he heard fortunes were to be made in cotton. The family first moved to Bayou Teche in Louisiana, but because of the plague of malarial mosquitoes, they made their way to Woodville, Mississippi.[2] It is here that Jefferson spent his early boyhood.

Academic and Religious Background

When he was five, Jefferson Davis' education began in a typical log-cabin school about one mile from his home. After two years Samuel Davis was thoroughly dissatisfied with Jefferson's rudimentary instruction. Realizing his son's potential abilities, his father sent him to St. Thomas' Academy in Lexington, Kentucky, feeling that a first-rate education would not be achieved in the backwoods of Mississippi. This thousand mile journey took several weeks by horseback from his home in Woodville.[3] Saint Thomas' was operated by Dominican friars and Jefferson soon realized that he was the sole Protestant in the Catholic institution. Davis has recorded his own impressions:

> The Kentucky Catholic School, called St. Thomas College, when I was there, was connected with a church. The priests were Dominicans. They had a large property; productive fields, slaves, flour-mills, flocks, and herds. As an association they were rich. Individually, they were vowed to poverty and self-abnegation. They were diligent in the care, both spiritual and material, of their parishioners' wants.[4]

Besides being instructed in English and Latin grammar, he was

taught how to speak well. He came to respect his Dominican teachers and admired their discipline and authority as instilled by the Catholic faith. In fact, there was a time that he seriously thought about adopting the Catholic religion but this never materialized.[5] After this incident, Jefferson Davis never felt inclined to join any church until he was fifty-two when he became an Episcopalian. Before his conversion, his simple faith in God's grace sustained him in his trials. His religion was the love of God and man and his creed was the gospel. When nine years old, he left St. Thomas and went back to Woodville where he attended Wilkinson County Academy until he was thirteen. Davis has said of the instructors at Wilkinson:

> The dominies of that period were not usually university men. Indeed their attainments and the demands of their patrons rarely exceeded the teaching of "the three R's"...[6]

In 1821, Davis embarked in his college career at Transylvania University at Lexington, Kentucky. It was at that time the most important institution of learning west of the Alleghenies. At Transylvania there were three departments of law, medicine, and theology, besides the regular academic work. Davis himself has said: "There I had completed my studies in Greek and Latin, and learned a little of algebra, geometry, trigonometry, profane and sacred history and natural philosophy."[7] It was here that he formed the habit of omnivorous reading and attained more than a superficial knowledge of American history, especially in its economic and constitutional departments. Because he was so devoted to reading, only rarely did he engage in sports.

The Honorable George Jones of Iowa, in a memoir of Davis, wrote:

> Jefferson Davis and I were classmates at Transylvania University, Lexington, Ky., in 1821....At that time young Davis was considered by the faculty and by his fellow-students as the first scholar, ahead of all his classes, and the bravest and handsomest of all the college boys.[8]

Davis had passed his examinations for the senior class with honors when he learned he had been appointed a cadet at West Point. His father had used his influence with Congressman Rankin of Mississippi to secure his son's appointment. So Davis, although he had had original plans to study law at the new University of Virginia, left for his military career. The question may arise as to how Davis could attend so many outstanding educational institutions? Unquestionably the determining influence was Joseph Davis who was Jefferson's older brother by twenty-four years. Through Joseph's successful law practice and banking interests at Natchez, he could well pay the expenses for his brother's education. Joseph had taken a personal interest in his younger brother's capabilities and wished him to carry on the family fortune which he had established.

> Thus Jefferson Davis, in his opportunities, his equipment of ideas, and political and constitutional convictions, was the achievement of this masterful and successful brother, generally esteemed the richest man in Mississippi, and in many ways the state's leading citizen.[9]

On September 1, 1824, at the age of sixteen, Jefferson Davis entered West Point for four years of training.

> I had consented to go to the Academy for one year, and then to the University of Virginia, which was just beginning to attract attention in quarters remote from it.
>
> But at the end of the year, for various reasons, I preferred to remain, and thus continued for four years, the time allotted to the course.[10]

Davis was strongly influenced by the strict soldierly routine which was later manifested in his Presidential activity.[11] So far as the official records indicate, Davis made no great success in scholarship at West Point. He did develop an abiding interest in military affairs, philosophy, and history, but he graduated twenty-third out of a class of thirty-three. His behavior on one or two occasions almost resulted in his dismissal. He did graduate from West Point in 1828.

> When graduated, as is the custom at West Point, we were made brevet second lieutenants, and I was assigned to the infantry, and, with others of the same class, ordered to report to the School of Practice at Jefferson Barracks, near St. Louis, Mo.[12]

Jefferson Davis spent the years 1828-1835 on the frontier posts in Wisconsin, where there was the usual amount of Indian fighting, fort building, and scouting. He developed a romance with Sarah Knox Taylor, the daughter of his commander, Colonel Zachary Taylor, and in 1835 he left the army to marry her. The newlyweds went back to Mississippi to take up residence at Brierfield, a thousand-acre cotton plantation given to Jefferson by his brother Joseph.

> ...[Jefferson Davis] with his friend and servant James Pemberton...and ten negroes whom he bought with a loan from his brother, went to work on "The Brierfield" tract, so called because of the dense growth of briers which were interlocked over the land. The cane was too thick to be uprooted or cut, and they burned it, and then dug little holes in the ground and put in the cotton-seed, which made an unusually fine crop, and the price of cotton then rendered it very remunerative.[13]

Sarah Davis survived the marriage only three months when she died of malarial fever at the age of twenty-six. Jefferson Davis was fortunate enough to recover from the same sickness.

Political Philosophy and Service in the U.S. Government

The tragedy of the death of his wife caused Jefferson Davis to enter upon a life of semi-seclusion. During the years 1835-1845, he spent time managing his plantation. He rarely left the plantation. Sometimes a year would elapse without his leaving the plantation. His older brother Joseph took a deep interest in his younger brother.

> Both men were lovers of books. Jefferson had real training of the mind, the fruit of Transylvania and West Point. Joseph had read law, had the lawyer's aptitude for reason, and was by nature a thinker if not a student.[14]

At Brierfield Davis became an extensive reader especially in the fields of politics and history. Government became the unremitting subject of study. His brother Joseph had collected the writings of Hamilton, Madison and the other founding fathers, as well as all the histories, biographies, and speeches of Southern and Northern giants. Such writings were read, discussed, and debated day after day by Jefferson and Joseph.

> The brothers considered the Constitution a sacred compact, by which a number of sovereigns agreed to hold their possessions in common under strict limitations; and that, as in any other partnership or business agreement, it was not to be tampered with or evaded without the sacrifice of honor and good faith.[15]

Both men were staunch States Rights Jeffersonian Democrats,[16] the party line which they inherited from their father. Jefferson Davis was obviously a supporter of states' rights, since he said that sovereignty resided alone in the states, and that Congress had only delegated powers. He further stated that in the theory

of American Republicanism

> ...the people never do transfer their right of sovereignty, either in whole or in part. They only delegate to their governments the exercise of such functions as may be necessary, subject always to their own control, and to reassumption whenever such government fails to fulfill the purposes for which it was instituted.[17]

Jefferson Davis felt that the State was the only independent corporate unit through which the people could exercise their sovereignty.

It was at Brierfield that Davis became devoted to the social system of the South. Jefferson Davis inherited his attitude toward slavery, as he had inherited much of his political ideology, from his father, who had been a follower of Thomas Jefferson. The historian, William Dodd, has said that Thomas Jefferson favored the institution of slavery in 1820.[18] Slavery was considered a necessity for a firm economy in the cotton-growing South. Born and reared among happy blacks, Davis had also known the satisfied slaves employed by the Dominican friars at St. Thomas. He was convinced that slavery was a necessary steppingstone to the Negro's eventual freedom. He believed that Negroes benefitted by their contact with white civilization. Varina Howell Davis, in her Memoir, gives her own account of her husband's treatment of the slaves at Brierfield:

> Corporal punishment was not permitted on "the Brierfield," and was never inflicted except upon conviction of the culprit by a jury of his peers. The sentence was, even then, more often remitted than carried out. There was an absurd case occurred which showed the fallibility of the jury. A fine hog had been killed, and it was traced to a negro's house, who was a great glutton. Several of the witnesses swore to a number of accessories to the theft. At last the first man asked a private interview

> with his master, and in a confidential tone said: "The fact of the matter is, master, they are all tellin' lies; I had nobody at all to hope (help) me; I killed the shote myself, and eat pretty near the whole of it, and dat's why I was so sick last week." Mr. Davis's sense of humor saved the thief, and he went off to his quarters without a caution....[19]

Davis based his concept about the origin of slavery on the Bible.[20] According to the book of Genesis, Noah had condemned all of the sons of Ham to an everlasting servitude. This was the reason and the sufficient justification of the existence of four million slaves in the United States.[21]

By the year 1843, Davis' reputation as a scholar together with the tradition of planter participation in politics, won him a last minute Democratic nomination for the Mississippi State Legislature. It seemed rather common that after the interests of the planter and cotton, there was practically nothing except politics to occupy men of position, intelligence, and ambition. This was also true in the case of Davis. In his 1843 nomination, Davis found an issue to his liking in territorial expansion[22] and proved himself to be a strong and popular orator. In 1845[23] he received the nomination for the House of Representatives for the State of Mississippi and won by advocating sound currency, low tariff, and territorial expansion. The following appeared in the Vicksburg Sentinel, June 30, 1845, concerning his nomination:

> Six months ago we expressed the wish of this section of the state to have Jefferson Davis on our next Congressional ticket. Our wish has been gratified; and triumph and satisfaction rest on the countenance of every democrat among us.
>
> A native of our soil, a free-hearted, open, manly,

> bold Mississippian, and a Democrat to the core, he is destined to be the pride and ornament of our state.[24]

Davis' tenure in the House of Representatives was short since the Mexican War erupted in 1846 and he accepted command of a volunteer regiment known as the "Mississippi Rifles." As a colonel in the Mexican War he led his men in the battles of Monterey and Buena Vista and was distinguished for his gallantry and military skill. After suffering a wound in the foot, he returned to Mississippi where he was hailed as a war hero.

Davis was appointed by the governor of Mississippi in 1847 to the vacancy in the United States Senate created by Senator Jesse Speight's death, and in the next year the Mississippi legislature elected him for the remainder of the unexpired term. It was during this time that he became more a sectionalist than a nationalist. The Wilmot Proviso[25] and the Compromise of 1850[26] turned his energies toward the defense of slavery, and he felt that secession was not a revolution but a legal remedy. He saw the division between the North and South enlarging and trusted that he might be helpful as a Senator. He favored the preservation of the Union so long as the Constitution remained in the form and with the meaning it had when it left the hands of its authors. Davis voiced his convictions well and was an excellent debater. Varina Davis speaks of her husband:

> The suddenness with which my husband sprang at once into the political arena, and found his adherents ready armed to cooperate with or follow him, has often been a matter of surprise. Perhaps it was the years of continuous study and calm comparisons of opinion with a wise and prudent man like his elder brother, which gave him the certainty of thought that led to the fluency that

> flows from it....Though no man was less open to the accusation of saying all he believed, he sincerely thought all he said, and, moreover, could not understand any other man coming to a different conclusion after his premises were stated. It was this sincerity of opinion which sometimes gave him the manner to which his opponents objected as domineering.[27]

It was this dispute over the Compromise of 1850 which ultimately coerced Davis into signing a vigorous protest to denounce the Compromise and which compelled him to resign from the Senate. The following is an excerpt from a letter of Davis to James Alfred Pearce, M.D., in which he refers to his position in the Congressional session of 1850:

> "P.O.Palmyra, Miss.,August 22, 1852
>
> "My Dear Sir:
>
> "...If I know myself, you do me justice in supposing my efforts in the session of 1850 were directed to the maintenance of our constitutional rights as members of the Union, and that I did not sympathize with those who desired the dissolution of the Union. After my return to Mississippi in 1851, I took ground against the policy of secession, and drew the resolution, adopted by the democratic States Rights convention[28] of June, 1851, which declared that secession was the last alternative, the final remedy, and should not be resorted to under existing circumstances. I thought the State should solemnly set the seal of her disapprobation on some of the measures of the 'Compromise.'
>
> "When a member of the U.S. Senate, I opposed them because I thought them wrong and of dangerous tendency, and also because the people...and the legislature... required me to oppose them...."[29]

In the year 1851, Davis accepted the Democratic nomination for the governorship of Mississippi. After defeat in the gubernatorial race, Jefferson returned to his plantation until his interest in Franklin Pierce's candidacy brought him back into politics. He became Secretary of War in the Pierce Cabinet in 1853 where he worked to protect slavery within the Union. Upon

the expiration of his term as Secretary of War, Jefferson Davis returned to the Senate in 1857 and became a recognized spokesman for the South. He openly and defiantly served the cause of slavery extension and proclaimed slavery both as an economic and a moral good. At the same time he had a sincere love for the Union and an unwillingness to see it broken by radical Northern or Southern action. By 1860, Davis represented the Southern wing of the Democratic party and introduced resolutions which became the platform of southern men. He advocated as an essential attribute of State sovereignty, the right of a State to secede from the Union,[30] and felt that it was the duty of Congress to provide adequate protection for slave property. After the election of Lincoln, Davis was no more than a cooperative secessionist. He held that the Southern States should meet to determine a new policy and repeatedly warned that there could be no peaceful secession. By January 5, 1861, Davis joined other Southern senators in urging each State to secede as soon as possible and to provide the means of organizing a Southern Confederacy. The Convention of the States was held at Montgomery, Alabama, on February 4, 1861. It drew up a provisional Constitution[31] and on February 9, an election was held for the executive officers. Jefferson Davis was elected President and the Honorable Alexander H. Stephens of Georgia as Vice-President. The following is Davis' response upon reception of the news that he had been elected President:

> While these events were occurring, having completed the most urgent of my duties at the capital of Missis-

> sippi , I had gone to my home, Briarfield, in Warren County, and had begun..."to repair my fences." While thus engaged, notice was received of my election to the Presidency of the Confederate States, with an urgent request to proceed immediately to Montgomery for inauguration.
>
> As this had been suggested as a probable event; and what appeared to me adequate precautions had been taken to prevent it, I was surprised, and, still more, disappointed....I had not believed myself as well suited to the office as some others. I thought myself better adapted to command in the field....It was therefore that I afterward said, in an address delivered in the Capitol before the Legislature of the State, with reference to my election to the Presidency to the Confederacy, that the duty to which I was thus called was temporary, and that I expected soon to be with the Army of Mississippi again.[32]

As the President of the Confederate States, Davis had a great influence and responsibility. After he left the Senate in 1861, he had wished to command an army for the new nation and this desire was seconded by the Mississippi convention. Both Jefferson and his wife welcomed the thought that he was to be in command of armed forces rather than in public administration. However, the Montgomery convention unanimously elected Jefferson Davis as the President. In his biography of Jefferson Davis written in 1868, Frank Alfriend says:

> Of the public conviction as to his preeminent fitness, there could not be a question. His character, his abilities, his military education and experiences, had long been recognized throughout the Union, and his exalted reputation was a source of just pride to the South. No Southern statesman presented so admirable a combination of purity, dignity, firmness, devotion, and skill—qualities for which there is an inexorable demand in revolutionary periods.[33]

Many of these qualities Davis attained as master of his estate at Brierfield. He had emerged from this period as a tried executive, which added to his scholarly attainments and military

training. This made him an unusual character, one to whom people would turn for leadership. Davis' critics claimed that he had become too involved in the military as chief executive of the Confederacy, that his constant interference in army matters and his endless bickerings with his generals exercised an unhappy effect upon Confederate campaigns, especially in the last year of the war. Thus it seems possible that Davis' military training had an influence on history which no one at that time could foresee. Allan Nevins, in his Statesmanship of the Civil War writes:

> The main task of Jefferson Davis—as he well knew—was not to manage the detailed military operations of the Confederacy; it was to create a Southern nation. He well knew that in order to do this he would have to meet a flood of difficulties and would in particular have to ride roughshod over the radical believers in State sovereignty. His main task tended always to fall into the background of his mind.[34]

Davis' type of mind was considered autocratic, arrogant, self-confident, and better fitted to give command in war operations than to cooperate with a group of civilians in managing a government. As the President of the Confederacy, Davis was the great defender of the Southern cause. He was dedicated to the strong principles of democracy and believed in the strong protecting the weak. Davis himself has said of the new Confederacy that it was formed that

> ...the rights of person and property [may not be] disturbed...that the transition from the former Union to the present Confederacy may not [proceed] from a disregard on our part of just obligations, or any failure to perform every constitutional duty [but] ...if we may not avoid war, we may at least expect that posterity will acquit us of having needlessly engaged in it.[35]

Such were his views as he entered office. As the war wore on, he lost considerable support due to his advocacy of general conscription. Too often he took the blame for other's errors and he kept silent for the sake of unity. Some of his critics stated that Davis had been a candidate for the Presidency of the Confederate States as a result of a misunderstanding or of accidental complications and that he had an inadequate conception of the magnitude of the war to be waged. However, the Honorable J. A. Campbell of Mississippi later wrote in 1870 in the defense of Davis:

> If there was a delegate from Mississippi or any other State who was opposed to the election of Jefferson Davis ...I never heard of the fact. No other man was spoken of for President in my hearing. It is within my personal knowledge that the statement 'that Mr. Davis did not have a just appreciation of the serious character of the contest between the seceding States and the Union' is wholly untrue. Mr. Davis, more than any other man I ever heard talk on the subject, had a correct apprehension of the consequences of secession, and of the magnitude of the war to be waged to coerce the seceding States.[36]

After the war, Davis was captured in southern Georgia in 1865, and was taken up to Fort Monroe for imprisonment. His captors accused him of having a hand in Lincoln's assassination.[37] He was cruelly treated and some Southerners considered him as a martyr for the Southern cause. He remained in prison for two years. It was not until February, 1869, that the United States Government finally and publicly pronounced him free from the possibility of legal prosecution. After his prison release in 1867, Davis joined his wife Varina in Canada, then went to England and began to look for a job—but unsuccessfully. He went

back to Tennessee and served as president of an insurance company. The Panic of 1873 put the insurance company in financial debt so Davis resigned and worked for a time in a company preparing to exploit mineral interests in Arkansas. After this endeavor, he finally settled down in the late 1870's at Beauvoir, Mississippi, where he spent much time in reading and writing.

During his stay at Beauvoir, Jefferson Davis delved into a considerable amount of resource material and historical data in order to compile his two-volume work, The Rise and Fall of the Confederate Government, which was published in 1881. In his own words, Davis wrote this work

> ...to show that each of the States, as sovereign parties to the compact of the Union, had the reserved power to secede from it whenever it should be found not to answer the ends for which it was established. If this had been done, it follows that the war was, on the part of the United States Government, one of aggression and usurpation, and on the part of the South, was for the defense of an inherent, unalienable right.[38]

Davis felt that the whole truth about the war and the events that led up to it should be laid in the open so that crimination and recrimination might cease. And so his incentive to undertake the work was the explicit desire to correct misunderstandings "created by industriously circulated misrepresentations as to the acts and purposes of the people of the General Government of the Confederate States."[39]

Davis' death occurred at New Orleans on December 6, 1889. His funeral services were worthy of the illustrious character of the deceased statesman.

CHAPTER I: NOTES

[1]Varina H. Davis, Jefferson Davis, Ex-President of the Confederate States of America: A Memoir (2 vols.; New York: Belford Company, Publishers, 1890), I, 1.

[2]Ibid., pp. 7,8. Davis has said of Woodville: "The part of the county in which my father resided was at that time sparsely settled....The population of the county, in the western portion of it was generally composed of Kentuckians, Virginians, Tennesseans, and the like; while the eastern part of it was chiefly settled by South Carolinians and Georgians."

[3]Ibid., p. 9. Davis: "In that day (1815) there were no steamboats, nor were there stage-coaches traversing the country. The river trade was conducted on flat- and kneel-boats....The usual mode of travel was on horseback or foot."

[4]Ibid., p. 13

[5]In fact, it is still unclear as to what induced Davis' Baptist father to place him at St. Thomas' in the first place.

[6]Davis, A Memoir, p. 18.

[7]Ibid., p. 27.

[8]Ibid., p. 27.

[9]Burton J. Hendrick, Statesmen of the Lost Cause: Jefferson Davis and His Cabinet (New York: The Literary Guild of America, Inc., 1939), pp. 15, 16.

[10]V.H.Davis, A Memoir, p. 36.

[11]One of the fascinating aspects of the comparison between Davis and Lincoln is that Davis was a trained soldier and Lincoln was an amateur. Being a trained soldier, Davis tried to be a soldier during his presidency and the outcome was the ruin for his cause. Being wholly untrained, Lincon came before long to see that there were things he could not do, and so he let the soldiers do them.

[12]Davis, A Memoir, p. 36.

[13]Ibid., p. 163.

[14]N. W. Stephenson, "Theory of Jefferson Davis," American Historical Review (October, 1915), 79.

[15]Davis, A Memoir, p. 172.

[16]Politics, political parties and principles were simple in the overwhelming importance of the supreme issues of the time. The slavery problem had a faint but perceptible beginning in the Presidency of John Q. Adams in 1825. At that time the Democratic party was first divided in its attitude toward the Constitution. Adams supported a Federal or central power while President Jackson supported the protection of the rights of the people and of the individual states against Federal aggression. The Adams party then became the National party and Jacksonian principles were termed Democratic.

[17]Jefferson Davis, The Rise and Fall of the Confederate Government (2 vols.; New York: D. Appelton and Company, 1881), I, 141.

[18]William E. Dodd, Jefferson Davis (Philadelphia: George W. Jacobs and Company Publishers, 1907), p. 55.

[19]V.H.Davis, A Memoir, pp. 175, 176.

[20]cf. Chapter II.

[21]Hendrick, Statesmen of the Lost Cause, p. 43.

[22]With the acquisition of new territory, the question arose as to whether the states should be slave or free. Davis maintained that Congress did not have the right to interfere at all with slavery in the territories of the U.S. since slaves were identified as private property. (cf. Chapter II.)

[23]It was also during this year that Davis married Varina Howell who was a member of the utmost social rank. This marriage identified him conclusively with the local aristocracy.

[24]Dunbar Rowland, Jefferson Davis, Constitutionalist: His Letters, Papers and Speeches (10 vols.; Jackson, Miss.: Mississippi Department of Archives and History, 1923), I, 21.

[25]The Wilmot Proviso stated that neither slavery nor involuntary servitude would ever exist in any part of the territory which might be acquired by the War with Mexico.

[26]The Compromise of 1850 consisted of five main proposals: (1) California should be admitted as a free state; (2) territorial governments should be established in the rest of the Mexican cession without restrictions as to slavery; (3) the area of the slaveholding state of Texas should be cut down from

379,000 to 264,000 square miles, but in return she should receive ten million dollars to pay her war debt contracted before 1845; (4) the slave trade should be prohibited in the District of Columbia without the consent of Maryland; and (5) a new fugitive-slave law should be passed making the recovery of runaway slaves much easier than under the old law of 1793.

[27]V.H.Davis, A Memoir, p. 199.

[28]When the question arose as to whether Mississippi should acquiesce in the Compromise legislation of 1850 or whether it should join the other Southern States in a Convention to decide as to the best course to pursue in view of the threatened usurpation of the Federal Government, Davis advocated a Convention of the Southern States.

[29]V.H.Davis, A Memoir, pp. 471, 472.

[30]Jefferson Davis, from his address on leaving the Senate, Jan. 5, 1861, in Davis, The Rise and Fall, I, 221.

[31]cf. Chapter V.

[32]V.H.Davis, A Memoir, II, 17, 18.

[33]Hudson Strode, Jefferson Davis: American Patriot, 1808-1861 (New York: Harcourt, Brace and Company, 1955), p. 404.

[34]Allan Nevins, The Statesmanship of the Civil War (New York: The Macmillan Company, 1953), p. 17.

[35]From Davis' Inaugural Address, February 18, 1861, quoted in James D. Richardson, A Compilation of the Messages and Papers of the Confederacy (Nashville: United States Publishing Company, 1906), p. 33.

[36]V.H.Davis, A Memoir, II, 42, 42.

[37]Had Lincoln lived, it is probable that Davis would not have been pursued in the southern flight. The assassination, however, changed the course of events. Investigation by the War Department convinced Secretary Scranton and the judge advocate general, Joseph Holt, that the murder had been committed with the knowledge and approval of Davis along with some of the Confederate officials. Consequently, a proclamation was issued offering a reward for the arrest of the Confederate President and an active pursuit resulted in his capture.

[38]J.Davis, Rise and Fall, II, 764.

[39]Ibid., I, v.

CHAPTER II

DAVIS AND THE QUESTION OF SLAVERY

A Domestic Institution in the South

In 1850 sixteen out of every hundred persons in the United States were Negroes, and fourteen of these sixteen were slaves. All of these slaves were either wholly or partially of Negro descent. The total number of slaves was 3,204,000 and the total number of free Negroes was 434,000. There were no slaves in the States north of the Mason-Dixon line but in the States of the upper South there were forty-eight slaves to every one-hundred persons, and in the lower South, seventy-three slaves to every one-hundred free.

These facts carry two important implications. First, the slavery question in the United States was linked with a question of race. In other societies where slavery had existed, nothing comparable occurred. It is possible that such societies may have had distinctions of both race and status, but the two did not fuse and reinforce each other as it did in the United States. It was in the United States that the racial quality of the Negro automatically suggested a status of slavery and where the status of slavery was associated exclusively with the Negro group in the population. This sectional conflict was basically economic

rather than political in nature,[1] and in the final analysis, even the ideological controversy over slavery was secondary to the struggle for national predominance between the defensive adherents of Southern agrarianism and the champions of Northern industrialism.

Toward the turn of the nineteenth century it seemed that the institution of slavery had outlived its usefulness. There appeared to be little in the system to make it keep pace with the march of events. More and more the planter of the South was in a position to realize its economic unsoundness. However, with the invention of the cotton gin in 1793 by Eli Whitney, events changed considerably. This new invention made the cultivation of cotton economically practicable. Southerners soon saw once again the demand for slave labor due to the marked revitalization of the plantation system. Slavery was pronounced as a positive good and Southerners formulated an elaborate pro-slavery argument that found sanction for slavery in selections from Scripture, in historical references to slavery among ancient peoples, and in scientific theories of the slaves' biological inferiority.[2]

Financially, the slaves of the South were valued at $1,600,000,000[3] in 1850, which was more than half of the total worth of all real and personal property in the region. Economically, slave labor cultivated the bulk of the staple crops which formed the backbone of the southern system and provided the principal export product of the United States. Davis spoke of the economics of slavery in his speech before the Democratic

State Convention at Jackson, Mississippi on July 6, 1859:

> Though the defense of African slavery (thus it is commonly called) is left to the South, the North are jointly benefitted by it. Deduct from their trade and manufacturers all which is dependent upon the products of slave labor, their prosperity would fade, and poverty would come upon them....[4]

While the Northerners argued about the injustices of slave labor, the Southerners argued back about the inhuman labor conditions in the industrialized North. The Southerners attested that their laborers were cared for, whereas in the North the employee was treated impersonally by the employer and there was little attempt to perfect laboring conditions. Jefferson Davis, like many other Southerners, paralleled John C. Calhoun in his belief that irresponsibility of wage employment for the employee was absent under chattel slavery. Calhoun argued that there were forces in all societies that made for authority on one side and subordination on the other. Under feudalism, the principle worked through a kind of natural ordering of class, function, and duties. However, under capitalism, the ordering process is accomplished only through "the untrammelled motive of gain, with the exploitation and ultimate starvation of labor as its result."[5] This was the condition toward which the Northern laboring classes were headed and the Southern arrangement of outright lifetime bondage could thus be seen as the truly humane, rational, and beneficient solution for the slaves. So long as capital owned labor, the owner had not only a responsibility for, but a deep interest in the laborer's well-being.

Socially, slavery served as the foundation upon which

the elegant superstructure of plantation life was erected. To become a large planter was the aspiration of many youths. The plantation was the center of the social life. However, in reality, the yeoman (or small farmer) constituted the backbone of Southern society. It was the poor yeoman farmers who were thought to be against the institution of slavery and would consequently array themselves on the side of the so-called Union men. Davis could not believe that the poor men of the South could be so blind to their own interests. Davis felt that the poor man was equal to the rich man in everything save that he did not own as much property. Even in this particular aspect, the road of wealth was open to them and it was possible for the poor man to attain it. Davis also believed that there was no white man in a slaveholding community who was a menial servant of anyone. If a poor man ever labored for the rich, he did so upon terms of distinction between him and the negro. The white laborer was always on the level with the employer whereas the negro was not since the distinction between classes throughout the slaveholding states was a distinction of color.[6]

Davis had always thought, and sincerely believed, that the institution of slavery was necessary to the equality of the white race. Distinctions between classes have always existed where civilization has been established among men. Menial tasks have to be performed by someone, and everywhere the world over those class of people who have performed menial tasks have been looked upon as those in a state of inferiority. Davis believed

that it was the presence of a lower caste——meaning those controlled by the higher intellect of the white man——that gave a superiority to the white laborer. Menial tasks were to be performed by those lower by their mental and physical organization. Davis felt that an attempt to bring the negroes up to a level with the white man would present sheer disaster. One of the reconciling features in the existence of that particular institution called domestic slavery is the fact that it raises the white man by the presence of the lower race.

The basic attitudes of the South toward slavery of course form much too complex a subject for brief analysis. Putting all else aside, it would perhaps be roughly fair to say that the more enlightened Southerners were fighting for the right to deal with the joint problems of slavery and race adjustment in their own time and on their own terms. Most informed men realized that soon it would have to be modified and eventually relinquished. They knew the South could not maintain it very long after it ceased to serve a useful economic and social service, but they wished the hour and method by which they should decree its gradual extinction. Davis was in harmony with the general consensus.

> Had you made no political war upon us, had you observed the principles of the Confederacy as States, that the people of each State was to take care of their domestic affairs...to be left perfectly free to form and regulate their institutions in their own way, then, I say, within the limits of each State the population there would have gone on to attend to their own affairs, and have had little regard to whether this species of property or any other was held in any other portion of the Union. We are on the defensive.[7]

Davis was also of the opinion that the South was a natural habitat for slavery. He stated that all thirteen colonies had legally permitted slavery but that those in the North soon proved ill-disposed to the continuance of the slave labor while the converse was true of the South. The North had commercial interests which demanded merchants and free workers rather than slaves. The North consulted their own interests and therefore sold their slaves to the South, prohibiting slavery within their own borders. Davis said in a speech to the Confederate Congress on April 29, 1861:

> The South were willing purchasers of a property suitable to their wants, and paid the price of the acquisition without harboring a suspicion that their quiet possession was to be disturbed by those who were inhibited not only by want of consitutional authority, but by good faith as vendors....[8]

Davis believed that as soon as the Northern States had prohibited African slavery within their borders and had reached a sufficient number in population in order to give their representation a controlling voice in Congress, a persistent and organized system of hostile measures against the rights of the owners of slaves in the Southern States was inaugurated and gradually extended. In fact, even by the year 1850 Davis felt that the South had become such a permanent minority in both Houses of Congress that she had to find the power to enforce the observances of her constitutional rights elsewhere.

As may be gathered from what has been mentioned earlier, Jefferson Davis definitely believed in the inferiority of the black race. The following excerpt, from Davis' address on

leaving the Senate, quotes at length his concept concerning the equality of the negro race:

> ...it has been a belief that we are to be deprived in the Union of the rights which our fathers bequeathed to us——which has brought Mississippi to her present decision. She has heard proclaimed the theory that all men are created equal, and this made the basis of an attack upon her social institutions; and the sacred Declaration of Independence has been envoked to maintain the position of the equality of the races.[9] The Declaration of Independence is to be construed by the circumstances and purposes for which it was made. The communities were declaring their independence; the people of those communities were asserting that no man was born...booted and spurred, to ride over the rest of mankind; that men were created equal——meaning the men of the political community; that there was no divine right to rule; that no man inherited the right to govern; that there were no classes by which power and place descended to families; but that all stations were equally within grasp of each member of the body politic. These were the great principles they announced; these were the great principles for which they made the declaration; these were the ends to which their enunciation was directed. They have no reference to the slave....When our Constitution was formed, the same idea was rendered palpable; for there we find provision made for that very class of persons as property; they were not put upon the footing of equality with white men—— not even upon that of paupers and convicts; but, so far as representation was concerned, were discriminated against as a lower caste, only to be represented in the numerical proportion of three fifths. So stands the compact which binds us together.[10]

Treatment of Slaves

Although the Abolitionists decried the immorality and injustice of the treatment of slaves, the South presented a completely different side to the matter. Davis claimed that the slaves, in moral and social condition, had been elevated from brutal savages into docile, intelligent, and civilized agricultural laborers. Southern slavery, it was iterated and reiterated,

was a humane and beneficial system that well supplied the needs of the black man. It extended its patriarchal care to the weak and the aged. Slavery provided the slave not only with bodily comforts but also with careful religious instruction. Under the supervision of a superior race their labor had been so directed as to allow a gradual and marked improvement of their own condition. The negroes had no responsibility to worry about, they had no debts, and when they were old they were taken care of as a member of the household. In fact, the purchase of a slave was an exchange from a savage master in Africa to a civilized master in America. Although the above opinions of Davis present a pleasant picture of the slave as a benefactor of the Southern way of life, the pitfall of making generalizations must be avoided. Even though Davis himself was very compassionate in the treatment of his own slaves, this is not to imply that this was universally true. Critics of the system contended that slavery was invariably vicious and brutalizing, imposing abuse on the slaves and evoking every sadistic strain in the personality of the masters. Those who were in a position to understand best the meaning of slavery were able to explain it least, for the slaves were seldom literate and enjoyed few opportunities to record their experience in articulate form. However, a Federal Writers Project interviewed some ex-slaves in 1930 to find out about the story of their lives. The following is an excerpt from the narrative of an ex-slave, Jenny Proctor, age 87, San Angelo, Texas, who tells of her experiences as a slave in Alabama.

> I's hear to tell of them good slave days, but I ain't never seen no good times then. My mother's name was Lisa, and when I was a very small child I hear that driver going from cabin to cabin as early as 3 o'clock in the morning, and when he comes to our cabin he say, "Lisa, Lisa, git up from there and git that breakfast...." We had old ragged huts made out of poles and some of the cracks chinked up with mud and moss and some of them wasn't. We didn't have no good beds, just scaffolds nailed up to the wall out of poles and the old ragged bedding throwed on them. That sure was hard sleeping, but even that feel good to our weary bones after them long hard days' work in the field.... [S]oon as I was ten years old, Old Master, he say, "Git this here nigger to that cotton patch."[11]

The Slave Trade

For three centuries—sixteenth, seventeenth, and eighteenth—the African slave trade was one of the most valuable elements of international commerce. Portugal, Spain, Holland, and Great Britain had competed for it. Great Britain not only protected the slave trade, but denied to the thirteen colonies the right to prohibit the importation of negro slaves into their respective territory. Even the people of the Northern States had engaged in the importation of African slaves. By the year 1800, public sentiment had generally turned against the slave trade. The economic need for it had dwindled. The slave trade was undoubtedly the most inhuman feature of the slavery system. At least plantation slavery could assume a "fatherly" character but the slave trade never could. There were even more Southerners who deplored it, trying to minimize its importance and denounced the slave dealers.

The slave trade was almost the only aspect of slavery upon which there had been an earlier series of amendments. By

one of these compromises of the Constitution the importation of slaves prior to the year 1808 could not be forbidden by Congress. With the coming of the year 1808, when the period of the compromise would terminate, there was a presentation of resolutions from seven States to prohibit the further importation of slaves. The legislature of North Carolina was the first to propose this amendment in 1804. Massachusetts followed in 1805. Vermont, New Hampshire, Tennessee, Maryland and Pennsylvania presented similar resolutions. By the year 1808, every Southern State had enacted laws prohibiting the importation of slaves. In 1820, the Congress declared the slave trade to be piracy. It withheld from the person engaging in the trade the protection of the Government and withdrew from such an individual the right to be tried under the laws and by the courts of his own land. In 1860-1861 there were numerous amendments proposed prohibiting the African or foreign slave trade. That the South was ready to grant this concession is made very evident by the fact that the foreign slave trade was prohibited by the Confederate Constitution.[12]

Although many were in general agreement with the slave resolutions, Jefferson Davis was in total disagreement. In a defiant address to the Democratic State Convention at Jackson, Mississippi, in July of 1859, Davis pronounced the law of 1820—in forbidding the slave trade—both insulting to the South and unconstitutional.[13] He felt that it would be best to leave the importation of slaves to the decision of the various states.

Davis claimed that the right of free trade throughout the United States was derived from the Constitution, and that the Constitution forbade any interference by Congress with the slave trade. In considering the slave as private property, Davis felt that the owner of such property could do what he wanted with it—including the auctioning of this property. Davis remarked on September 10, 1850, in the District of Columbia concerning slaves as property:

> I will...content myself with denying now, as I have denied at all times, the power of Congress to discriminate in relation to property or to declare what is or is not property. There were certain specific powers granted to the Federal Government, and it has no right to attempt a discrimination by which the use of a particular property is then to be restricted, its value diminished, or its possession destroyed.[14]

Concerning the foreign slave trade, Davis did not think that Congress could forbid importation of a particular class of people since it had no authority over the trade of other nations. It could not be a police of the seas to destroy a trade between two foreign nations or to brand as evil a traffic which has existed from the earliest period of human history.

On June 18, 1860, Davis had the following to say concerning the resolutions against the slave trade:

> I say that humanity had nothing to do with the declaration against the continuance of the slave trade. If we had considered the purposes of humanity alone, we should have continued it indefinitely. As to the interest of the African, it is his interest to be brought from a barbarian master and turned over to such Christian government as he will find in this country. Cared for in all his physical wants, cultivated to as high an intellectual standard as he can reach, he has attained, in the condition of slavery in the United States an elevation which that race has had nowhere else,and from which they

> commence to descend as soon as they are left to themselves; for it will be recollected that the colony of Liberia has been formed by those Africans that had been trained in this country and taken for their peculiar good qualities....And yet, sir, these slaves, thus trained and thus selected from the mass of their class, have been known to be regularly retrograding from the time they landed on the coast....I say, then, sir, it was not humanity, but it was policy. We did not choose that our country should be overrun with the African race. We chose that the white man should own this country; that the negroes be permitted as laborers among them to such numbers as the interests and wishes of the whites might dictate; but that policy required that the trade should be closed, because we believed that we had already obtained nearly as many as it was desirable to have, and that we would guard against the future by preventing that influx which avarice might dictate. It was, therefore, policy, and sound policy, which, for one, I have no disposition to discontinue.[15]

From such remarks it may be ascertained that, although Davis believed that the slave trade could be ended for a period of time ——that is, when the labor supply was sufficient——this in no way meant that the trade could be prohibited for all time. The individual State had the right to limit the trade within its own boundaries when there was a surplus and to resume the trade when there was a lack.

Biblical Defense of Slavery

The Biblical arguments for slavery were taken from both the Old and New Testaments. First came the argument of divine decree. God had decreed slavery before it had come into existence. God said: "Cursed be Canaan; a servant of servants shall he be unto his brethern."[16] The arguments of divine sanction followed. God had both ordained and sanctioned the practice of holding slaves. The Patriarchs from Abraham to Moses were

slaveholders who counted their slaves among their goods. Abraham held many slaves. God, moreover, had ordained the relation of slavery in the covenant entered into with Abraham. Under the covenant, the practice of slaveholding was not only recognized but its protection provided for. The Mosaic law distinguished between the servitude of the Hebrew and of an alien.

> The servants you have, men and women, shall come from the nations round you; from these you may purchase servants, men and women. You may also purchase them from the children of the strangers who live among you, and from their families living with you who have been born on your soil. They shall be your property and you may leave them as an inheritance to your sons after you, to hold in perpetual possession. These you may have for slaves; but to your brothers, the sons of Israel, you must not be hard masters.[17]

This above passage was used as the primary biblical defense of slavery. This scriptural passage authorized the buying, selling, the holding and bequeathing of slaves as property. Since this passage was considered part of God's revelation to all men, then it was applicable to the Southerner as well. Davis was in general agreement with these scriptural arguments. On March 8, 1850, Davis said:

> It is enough for me...to know that [slavery] ...was sanctioned in the Bible, in both Testaments, from Genesis to Revelation; that it has existed in all ages, has been found among the people of the highest civilization, and in nations of the highest proficiency in the arts.[18]

Arguments for slavery drawn from the New Testament strengthened the scriptural justification of slavery. Christ came to fulfill and not to destroy. Therefore, he sanctioned the institutions and relationships existing at his time which he did not expressly condemn. Notwithstanding the fact that slavery

flourished in every known part of the world and that Christ and the Apostles were continually coming in contact with it. Christ did not condemn slavery on the Sermon on the Mount or in any other formal enumeration of sins given by him or the Apostles. Certainly had they considered it an evil they would have stated so. On the other hand, Christ tacitly approved it on the occasion when he healed the slave of the Roman centurion while he spoke no word of freedom. Finally in the precepts of the New Testament, the Apostles taught submission of the slave to his master, and by so doing recognized the relation as being compatible with Christianity. The example made most use of was taken from the Epistle of St. Paul where he tells the story of sending back the runaway slave, Onesimus, to his master Philemon. On many other occasions the Apostles exhorted the slave to be obedient and abide peacefully by his lot.

Davis strongly agreed with the biblical sanctioning of slavery, and stated that it was divine wisdom which had allowed this institution to exist.

> Slavery existed then in the earliest ages, and among the chosen people of God; and in Revelation we are told that it shall exist till the end of time shall come. You find it in the Old and New Testaments—in the prophecies, psalms, and the epistles of Paul; you find it recognized —sanctioned everywhere. It is the Bible and the Constitution on which we rely, and we are not to be answered by the dicta of earthly authorities to teach and to construe the decrees of God.[19]

Constitutional Prohibition in the Territories

The discovery of gold in California in 1848 brought a frantic inrush of the population, a demand for statehood, and a

showdown in Congress over the future of slavery in the territories. The main source of tension between the North and South was the struggle over acquiring either free or slave States, because the larger proportions on either side would mean greater Congressional control or a further increase in political power for either section.

The territorial question in relation to slavery was very important since it was to determine whether the South could ascend in its political power or remain stagnant. The Missouri Compromise of 1820 was the first major issue to determine the balance of power between the North and South. The admission of the State of Missouri was of great importance in itself. In the first place, there was an equal number (eleven each) of free and slave states in the Union at the close of 1819, making an even balance in the Senate between the North and South. Secondly, the admission of Missouri as a slave state would set a precedent for future states to be carved out of the Louisiana Purchase. Thirdly, the Louisiana Purchase Treaty of 1803 had guaranteed to the inhabitants of the territory the protection of their liberties, property and religion. The question was asked whether the Congress could in fairness deprive the planters in Missouri of their "property" in slaves by providing for the emancipation of all the Negroes born in the new State? Did the clause of the Constitution which reads, "New States may be admitted by the Congress into this Union"[20] give Congress the power to prescribe what kind of property the inhabitants of those states should

hold or not hold? The Southern orators in the Senate answered all of these questions in the negative. The dispute on these issues was temporarily settled when the Missouri Compromise bill was passed by Congress in 1820. This bill excluded slavery north of the parallel 36° 30' (excluding Missouri) and allowed slavery south of this line. The balance of power between free and slave states remained the same.

When the Compromise bill of 1850 was passed thirty years later, the North and South again benefitted. By the admission of California as a free State the North finally gained control of the Senate,[21] in which the balance of power between free and slave states had been maintained for thirty years. On the other hand, the new Fugitive Slave Act put the whole power of the Federal Government behind the South for the return of its runaway slaves. The South gained admission for slaveholders into the territories of Utah and Mexico, but it was a region in which slavery was never likely to go.

Despite the general gains of the South in slave territory, Davis felt that the general trend was in favor of the North. Davis believed that the South should have the right to extend slavery into all of the new territories of the United States instead of just portions of them. In reality then, when Davis asserted that Congress had no power over slavery within the States or Territories,[22] he was in a way, declaring all resolutions concerning slavery in the Compromise bills of 1820 and 1850 as null and void. Davis based his arguments on the

United States Constitution. It was the Constitution which recognized property in slaves and it was one of the compromises of the Constitution which declared that the slave property in the Southern States should be recognized as property throughout the United States. This would imply that the slaveholder could take his private property into any section of the country. As a property recognized by the Constitution, the Federal Government was bound to admit it into all of the Territories and to give it such protection as other private property receives.

In a speech which was delivered on October 11, 1858, Jefferson Davis said:

> What power has Congress to declare what shall be property? None, in the territory or elsewhere. Have the States by separate legislation the power to prescribe the condition upon which a citizen may enter on and enjoy the common property of the United States? Clearly not. Shall those who first go into the territory, deprive any citizen of the United States subsequently emigrating thither, of those rights which belong to him as an equal owner of the soil? Certainly not.[23] Sovereignty jurisdiction can only pass to those inhabitants when the States, the owners of that territory, shall recognize the inhabitants as an independent community, and admit it to become an equal State of the Union. Until then the Constitution and laws of the United States must be the rules governing within the limits of a territory. The Constitution recognizes all property; gives equal privileges to every citizen of the States; and it would be a violation of its fundamental principles to attempt any discrimination.[24]

Davis went on to say that the Federal Government was the agent of all the States and that it would be irrational to think that they could be bound by its acts, especially when it tries to overthrow that which it was its duty to uphold.[25] On January 19, 1860, Davis declared that Congress must protect slavery in the Territories when the Territories fail to do so and he also

declared that no State had the right, by itself or through a combination of citizens, to intermeddle with the domestic institutions of other States. He iterated that it was the special duty of the Senate to resist all discriminations with respect to property or persons in the Territories. His resolutions also asserted that a people of a Territory might not decide for or against slavery until admission as States, and finally, that it was unconstitutional to interfere with the recovery of runaway slaves. In effect, then, Davis was convinced that the existence of slavery was to be decided by state sovereignties only, being beyond the range of federal jurisdiction, and above the power of the territorial governments. He accredited the South for showing some willingness to consider the Missouri Compromise as a compact, and to extend and continue it, but he did not think that this could be acceded by those who demanded the total extinction of slavery from the territories.

When the Mexican Territory was up for grabs in 1848, the dispute between the free and slave factions arose once again. Davis declared that the new territory, jointly owned by all of the States, should be open to slavery since it was the constitutional rights of the owners of slaves to take that species of property into the Mexican Territory. On June 18, 1850, Davis had introduced an amendment to the compromise bill of 1850 providing

> That all laws, or parts of laws, usages, or customs, preexisting in the Territories acquired by the United States from Mexico, and which in said Territories restrict, abridge, or obstruct the full enjoyment of any right of person or property of a citizen of the United States, as recognized or guaranteed by the Constitution or laws of

> the United States, are hereby declared and shall be held as repealed.[26]

Although Mexico, as a sovereign State in her own right, had abolished slavery in her territory, Davis claimed that he right to do so died with the transfer of her territories to the United States. By the transfer of the territory, the sovereignty of Mexico was withdrawn and the sovereignty of the United States was immediately over the country and filled its place. On another occasion, Davis spoke about the right of the extension of slavery into the territories:

> ...we of the South are an agricultural people, and we require an extended territory. Slave labor is a wasteful labor, and it therefore requires a still more extended territory....We have a right, in fairness and justice, to expect from our brethern of the North, that they shall not attempt, in consideration of our agricultural—if that alone be considered—to restrict the territory of the South. We have a right to claim that our territory shall increase with our population ....Nobody asks the Federal Government to compel its [slavery's] introduction, or to plant slavery in the Territories, or to engage in the slave trade, in order to furnish material for extending the institution into any new territory. All that we assert is the right of the Southern people to go with that species of property into the territory of the United States. That, therefore, is the right denied.[27]

The Kansas-Nebraska bill was passed in the year 1854. This bill provided that the territories of Kansas and Nebraska were to be left open to the people of all the States, with every species of property to be recognized by any of them. The climate and soil were to determine the current of immigration and to secure to the people themselves the right (by means of the Constitution) to form their own institutions according to their own will as soon as they should acquire the right of self-govern-

ment, that is to say, as soon as their numbers entitled them to organize themselves into a state prepared to take its place as an equal, sovereign member of the Federal Union. The Kansas-Nebraska bill infuriated the Northern extremists since it permitted that "immoral" institution of slavery in the territories and was a direct blow at the Compromise of 1820 which had declared that the territory which was north of the parallel line 36° 30' was to remain as free territory, and that territory south was to either remain free or permit slavery.

Despite the continual struggle between the North and South on the question of slavery, Davis clearly expressed his intentions for keeping the sections united into one Union. The question of slavery was one facet expressing the South's desire for its individual rights. It was Davis' desire not to agitate but to save the Union. He cherished the attachment to the Union, but desired it as it was formed by the founding fathers. The legislature of Mississippi passed the following resolution on May 8, 1850:

> The Union must and will be preserved. The Slave States, in resisting such dangerous and destructive usurpations of the Federal Government, are defending the Constitution and Union. Their position is wholly defensive——defensive of their domestic relations and their private rights of property; defensive of their laws, upon which these domestic relations and rights of property are founded; defensive of their social and political existence as States; defensive of the Constitution and Union; defensive of law, order, and good government, of the right of the people to govern themselves by governments and laws of their own making throughout the world...[28]

Indeed it was their desire to preserve the Union and to leave slavery to the natural course of events. But with distrust rapidly mounting on both sides, the days of the Union were indeed numbered.

CHAPTER II: NOTES

[1]The problem of slavery soon became dependent on Constitutional interpretation. Many Southerners demanded protection of their slaves since they were "private property."

[2]Davis was among those who found arguments for slavery in scriptural, historical, and biological references, but his main concern was the Constitutional protection of this institution.

[3]David M. Potter and Thomas G. Manning, Nationalism and Sectionalism in America, 1775-1877: Select Problems in Historical Interpretation (New York: Henry Holt and Company, 1949), p. 153.

[4]Dunbar Rowland, Jefferson Davis, Constitutionalist: His Letters, Papers and Speeches (10 vols.; Jackson, Miss.: Mississippi Department of Archives and History, 1923), IV, 63.

[5]Stanley M. Elkins, Slavery: A Problem in American Institutional and Intellectual Life (New York: Grosset and Dunlap, 1963), p. 214.

[6]From Davis' speech given at Aberdeen, Mississippi, on May 26, 1851, commentated on by the Monroe Democrat, as quoted in Rowland, Constitutionalist, II, 73.

[7]Remarks of Davis in reference to the Kansas Message, February 8, 1858, quoted in Rowland, Constitutionalist, III, 173.

[8]Ibid., V, 71.

[9]The new libertarian trends of the eighteenth century, which found expression in the Enlightenment, the American Revolution, and the French Revolution, developed a doctrine of human rights that could not be reconciled with slavery.

[10]Jefferson Davis, The Rise and Fall of the Confederate Government (2 vols.; New York: D. Appelton and Company, 1881), I, 224.

[11]Potter, Slavery: A Problem, p. 163.

[12]cf. Chapter V

[13]Allan Nevins, The Emergence of Lincoln: Prologue to Civil War 1859-1861 (New York: Charles Scribner's Sons, 1950), p. 33.

[14]Rowland, Constitutionalist, I, 534, 535.

[15]Ibid., IV, 522, 523.

[16]Gen. 9:25.

[17]Lev. 25:44-46.

[18]Rowland, Constitutionalist, I, 315.

[19]Ibid., I, 317.

[20]Art. IV, Sec. 3 of United States Constitution

[21]Davis had wished to extend the Missouri Compromise line of 36° 30' all the way west to the Pacific Ocean. This would then give the slaveholding South approximately half of the land area of the State of California. But according to the Compromise of 1850, the entire State went to their northern rival. Many Southern Senators, including Davis, said that the bill was an odious discrimination against the property of the fifteen slaveholding States and that the exclusion of slavery from the territory of the United States was an object so high and important as to justify a disregard, not only of all the principles of sound policy but also of the Constitution itself. On March 6, 1850, the Legislature of Mississippi passed the following resolution:

> "Resolved, that the admission of California into the Union as a sovereign State, with its present Constitution, the result of the...false and unjust policy on the part of the Government of the United States would be an act of fraud and oppression on the rights of the people of the slaveholding states; and it is the sense of this Legislature that our Senators and Representatives should, to the extent of their ability, resist it by all honorable and constitutional means." Quoted in Rowland, Constitutionalist, I, 331.

[22]Ibid., I, 337.

[23]This is clearly an allusion to Jefferson Davis' strong dislike of "squatter sovereignty."

[24]Rowland, Constitutionalist, III, 324.

[25]Ibid., I, 226.

[26]*Ibid.*, IV, 272.

[27]From the speech of Davis in the United States Senate on February 13 and 14, 1850, concerning slavery in the territories, quoted in *Ibid.*, I. 296.

[28]*Ibid.*, I, 337.

CHAPTER III

IDEAS CONCERNING STATE SOVEREIGNTY

The Compact of the States

Although the question of slavery had an important influence on the ever-growing conflict between the North and South, the recognition of the States' Rights was considered by many to be the root of all the other superficial problems and diversities. For the South, State sovereignty was a means of establishing their self identity—of proving to the North that they had the sovereign right to regulate and govern their own domestic affairs. Davis felt that the sovereignty of the States was the great principle which lay at the foundation of the Constitution. It was this mutual respect which allowed the States to enter into a compact.[1]

Davis defended state sovereignty on the grounds of the compact of the States. It was in 1776 that the colonies declared themselves to be "Free and Independent States."[2] As such, they contracted an alliance for their common defense and secured the recognition of Great Britain of their separate independence. Each State was to be recognized independently and not as one of a group or nation. Davis agreed, stating in an address to the United States Senate on May 7, 1960, that

> The Declaration of Independence was made by the colonies, each for itself. The recognition of their independence was not for the colonies united, but for each of the colonies which had maintained its independence.[3]

In 1778 the Articles of Confederation were adopted subsequently to the Declaration of Independence and the second article stated clearly that "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Constitution expressly delegated to the United States in Congress assembled."[4] This new government under the Articles of Confederation was soon found inadequate especially for the financial necessities of the government, so it became necessary to reorganize it. A Convention of the States met in 1787 to amend the Articles of Confederation. Davis noted that the delegates met not to organize a new Government, but to amend the Federal Constitution which existed. This was to guarantee to each State its sovereignty, freedom, and independence. The delegates[5] drafted a constitution which included an amendment stating that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[6] The independence declared by the colonies and recognized by the mother country (Great Britain) in the Articles of Confederation was thus reasserted in the Constitution of the United States.

The Government of the United States was a compact between the sovereign members who formed it. If there was one feature which was common to all the colonies, it was the desire

for community independence. It was for this that the Puritans, Protestants, Catholics, and Quakers left their homelands in order to attain their independent right to do as they pleased in their domestic affairs.[7] Davis was of the opinion that the Federal Government, as such, possessed inherently no power whatever. All of its powers were held by delegation only, which was from the separate States. These powers were all enumerated and all limited to specific objects in the Constitution. The theory of our Constitution, stated Davis,

> ...is one of peace, of equality of sovereign States. It was made by the States and made for States;...they [the delegates] declared that everything which had not been delegated was reserved to the States, or to the people—that is, to the State governments instituted by the people of each State, or to the people in their sovereign capacity.[8]

Davis asserted that sovereignty itself, which was the great source of all political power, still resided where it did before the compact was entered into, and that was with the States separately, or with the people of the several States respectively. By this compact, the sovereign powers which were to be exercised by the Federal Government were not surrendered by the States. These powers were delegated. The sovereign States by voluntary engagements agreed to abstain from the exercise of certain powers themselves and entrust them to the general Government for the mutual benefit of all of the States. As an agent to the States, the Federal Government was to conduct foreign affairs and provide for the common defense. However the individual States were to have full power over local affairs. Davis said

that in forming this more perfect union of the constitution, the contracting powers

> ...formed an amended compact, without any surrender of these attributes of sovereignty, freedom, and independence, either expressed or implied: on the contrary that, by the tenth amendment to the Constitution, limiting the power of the Government to its express grants, they distinctly guarded against the presumption of a surrender of anything by implication.[9]

Jefferson Davis was strongly in love with this Union of the States. He stressed the fact that the South was devoted to the compact which the founding fathers had made. He stated that the States, as sovereigns, had laid down the foundation of the Union. As equals they had formed and finished the structure, and as equals, they wished to enjoy the protection it was deigned to afford.

> To that Union an allegiance is due, to that Union it has been and will cheerfully be rendered; but if its foundations be changed, if it be dedicated to another use, the obligation then no longer exists. Of that fact the States as sovereign members of the confederacy must judge.[10]

The most important specific statement of the Constitution was its Preamble. The opening phraseology of "We, the people of the United States" has been interpreted as meaning the people as a collective body, or as a nation ordaining and establishing the Constitution of the United States. This interpretation constituted, in the beginning, the most serious difficulty in the way of the ratification of the Constitution. The people were not the people as composing one great body, but the people as composing thirteen sovereignties. If it had been a consolidated government, the assent of the majority of the

people would have been sufficient for its establishment, and those States which did not adopt it would be bound by the majority. If this had been the case, no State would have had the privilege of freely choosing to support it. However, as it truly is, no State has been bound by the government unless it had consented to do so. This argument was presented to emphasize the sovereignty and independence of the individual States.[11]

Origins in the United States Constitution

In the last analysis, the Southerners could always fall back on the argument of the tenth Amendment to the Constitution[12] in defense of the powers of the States. At least the State would possess those powers which were not specifically delegated to the United States as a whole. This would include the right of the State to govern and regulate its own domestic affairs.

Much of the confusion over State sovereignty can be traced back to the meaning of the term "sovereign" or "sovereignty." The definition of Burlamaqui, says Davis, is simple and satisfactory. Burlamaqui states that

> ...sovereignty is a right of command in the last resort in civil society. But when once the people have transferred their right to a sovereign [i.e., a monarch], they can not, without contradiction, be supposed to continue still masters of it.[13]

The original seat of sovereignty is in the people. This definition, says Days, is in strict accord with the theory of American Republicanism, the peculiarity of which is that the people never do transfer their right of sovereignty, either in whole or in

part. The people delegate to their governments the exercise of such of its functions as may be necessary, subject always to their control, and this delegated power can be retracted if the government should fail in fulfilling the needs of the State.

Davis believed that the only political community in this country, through which the people could exercise their sovereignty was the State. The States were sovereign and independent when they were united under the Articles of Confederation. Davis was aware of the arguments which stated that the States possessed only a partial, imperfect, and mutilated sovereignty. This was often termed a "divided sovereignty" in which two authorities operated simultaneously upon every citizen—one was the authority of the State government acting for the people of the State and the other was the authority of the central government acting on behalf of the people of America as a whole or for the people of the States as an aggregate. It seemed plausible that where authority was divided then sovereignty was likewise divided.[14] Davis said that these theories of divided sovereignty and delegated sovereignty only created a confusion of ideas and led to unfounded conclusions. Such theories, stated Davis, led to such concepts as the people investing their governments with sovereign authority and the States surrendering part of their sovereignty to the United States. Davis postulated that no government was sovereign since all governments derive their powers from the people and exercise them in subjection to the will of the people. He said that the founders of the American republics

never conferred, nor intended to confer sovereignty upon either their State or Federal Governments, but on the people of the States. Davis said that if the people of the States, in forming the Federal Union, had surrendered or transferred part of their sovereignty, to whom did they transfer this sovereignty? It could not have been to the people of the United States as an aggregate since there were no such people in existence and they did not create or constitute such a people by a merger of themselves. It could not have been to the Federal Government since the people did not recognize the sovereignty of any government. The people did not transfer their sovereignty but retained, and intended to retain their sovereignty in its integrity—undivided and indivisible.

Jefferson Davis continually defended the opinion of the States Rights men of the South. He was aware of Northerners labelling states rights as the extreme and ultra opinion of the South but he continually brought up past historical incidents which clearly documented the fact that the Northern States had also considered the concept of states rights as precious to the vitality of the country. The proud spirit of independence was manifested in the colonial history of the United States. In a speech Davis delivered at the Grand Ratification Meeting on October 11, 1858, he said to the citizens of Massachusetts:

> ...you assented to the formation of our present constitutional union. You did not surrender your state sovereignty. Your fathers had sacrificed too much to claim as the reward of their trials that they should merely have a change of masters. And a change of masters it would have been had Massachusetts surrendered her State sov-

> ereignty to the central government, and consented that the central government had the power to coerce a State. But if this power does not exist, if this sovereignty has not been surrendered, then, I say, who can deny the words...[for]the cause of State independence and the rights of every community to be the judge of its own domestic affairs? This is all we have ever asked—we of the South, I mean,—for I stand before you one of those who have been called the ultra men of the South, and I speak, therefore, for that class.[15]

It was very clear, then, that the founders of this government were the true Democratic States Rights men. The Democracy of the land was states' rights, and states' rights was Democracy. The Declaration of Independence, stated Davis, embodied the sentiment which had lived in the hearts of the people for many years before its formal assertion. The founding fathers had asserted that great principle of the right of the people to choose the government for themselves, since the government rested upon the consent of the governed. As far as Davis was concerned, state sovereignty had never been surrendered and the federal government had never obtained from the constitution the power to coerce a State. "The Constitution gave an army for the purposes of common defense, and to preserve domestic tranquility; but the Constitution never contemplated using that army against a State."[16] Davis believed that the founding fathers would never have entered into a confederate government which had within itself the power of coercion. Davis agreed not to remain one day in such a government after he had the power to leave it.

Davis alluded to the past historical facts in the formation of the Constitution by which the Northern States wished to protect their sovereignty. The original constitution of the

State of Massachusetts declared that:

> The people inhabiting the territory formerly called the Province of Massachusetts Bay do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign, and independent body politic, or State, by the name of The Commonwealth of Massachusetts.[17]

In fact, it was the Massachusetts' Convention that recommended an article which stipulated that it be explicitly declared that the powers not delegated to the United States were to be reserved and exercised by the individual States. Even Madison, who was a strong advocate of the Constitution included the following amendment proposed to the First Congress: "The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively."[18] The State of Rhode Island proposed in her long-withheld assent to the Constitution:

> That Congress shall guarantee to each State its SOVEREIGNTY, freedom, and independence, and every power, jurisdiction, and right, which is not by this Constitution expressly delegated to the United States.[19]

Davis reiterated that the State-rights men of the South were the friends of the Union—the friends of that great principle of state sovereignty which alone could sustain or perpetuate the Union. In a speech delivered on September 10, 1853, at Hartford, Conneticut, he spoke of his own political position as a State-rights man, claiming that State sovereignty was essential to true republicanism. Davis asked the question whether Conneticut, in joining the Union, had surrendered her State Sovereignty.

> Would she to-day give up her well-established rights as a State? Every son of Conneticut will respond with a hearty No! and this makes him a State-rights man

at heart, whatever his profession may be.[20]

Whatever the case, Davis believed that the fathers of the Constitution had regarded sovereignty as the vital principle of the American system and he did not find a single instance in which they applied to any political organization except the States. It was Davis' ambition to safeguard this principle for the South. He clearly demanded for the South their constitutional rights and a free and fair exercise of equality in the Union. For this he labored in the Senate. Even in 1850 Davis was aware of the great injustices the South had been subjected to:

> It is not enough that our rights are disputed, our growth and prosperity and equality in the Union attacked as the cause of an enemy, that the burdens and benefits of the Government are distributed with a partial and unjust discrimination against us, but to this, to these, shall the arraignment of our motives be added.[21]

It was for these harsh injustices and infringements on their State rights that Davis finally advocated secession from a compact which had failed in providing equality to all of the States for which purpose the compact had been established.

CHAPTER III: NOTES

[1]Jefferson Davis' speech in the United States Senate, delivered May 7, 1860, as found in Jefferson Davis, The Rise and Fall of the Confederate Government (2 vols.; New York: D. Appelton and Company, 1881), I, 573, 574.

[2]The Declaration of Independence as quoted in Richard D. Heffner, A Documentary History of the United States (New York: The New American Library, 1952), p. 18.

[3]Davis' speech in the United States Senate, delivered May 7, 1860, quoted in Davis, Rise and Fall, I, 571.

[4]Ibid., I, 86.

[5]The delegates to the Convention of 1787 did not represent the people of the United States as a mass, but they represented them as people of the several States as States. In other words, when the Constitution was formed it was referred, not to the people in mass but to the States individually and it was ratified and approved by each of them individually. (North Carolina and Rhode Island rejected the Constitution although they later acceded to it.)

[6]Art. X of the Amendments to the United States Constitution (included in the Bill of Rights.)

[7]Speech of Jefferson Davis on the resolutions concerning the relations of the states, delivered May 8, 1860 to the United States Senate, in Dunbar Rowland, Jefferson Davis, Constitutionalist: His Letters, Papers and Speeches (10 vols.; Jackson, Miss.: Mississippi Department of Archives and History, 1923), IV, 254, 255.

[8]Remarks of Jefferson Davis on Senator Powell's resolution, December 10, 1860, as quoted in Rowland, IV, 548, 550.

[9]Davis, Rise and Fall, I, 157.

[10]A letter from Jefferson Davis to S. Cobun and others, written at Brierfield, November 7, 1850, quoted in Rowland, Constitutionalist, I, 593.

[11]Davis, Rise and Fall, I, 122.

[12]Art. X of the Bill of Rights

[13]Principes du Droit Politique, Chapter V, Sec. 1, as quoted in Davis, Rise and Fall, I, 141.

[14]Ibid., I, 253.

[15]Speech of Davis at the Grand Ratification Meeting, Faneuil Hall, October 11, 1858, quoted in Rowland, Constitutionalist, III, 319.

[16]Remarks of Davis on Special Message on Affairs in South Carolina, January 10, 1861, quoted in Ibid., V, 8.

[17]Davis, Rise and Fall, I, 143.

[18]Herman V. Ames, The Proposed Amendments to the Constitution of the United States During the First Century of Its History (2 vols.; Annual Report of the American Historical Association for the Year 1896.; Washington: Government Printing Office, 1897), II, 166.

[19]Davis, Rise and Fall, I, 148.

[20]Rowland, Constitutionalist, II, 262.

[21]Ibid., I, 342.

CHAPTER IV

RIGHT OF SECESSION

Derivation in the United States Constitution

Davis contended that the right of a State to secede from the Union was not against the Constitution or incompatible with it. Once again he based his argument on the Tenth Amendment of the United States Constitution. Since there was no power expressly delegated to the United States Government to prohibit secession, such a power remained as reserved to the States or to the people. In other words, secession was to be justified upon the basis that the States were sovereign, and secession was a necessary attribute to State sovereignty.

The Southern States, stated Davis, had the rightful power to withdraw from the Union into which they had voluntarily entered as sovereign communities. However, as soon as this Union failed to accomplish the purposes for which it was formed—whenever the powers of the Federal Government were abused or turned against a particular State—then that State, as a free and independent sovereignty, could rightfully withdraw from a Union which did not properly serve her interests. Davis said that the Government of the United States was but the agent of the States. Its powers, limitations, and instructions were all

contained in the written constitution. The people were the principal, and they were the only ones who possessed the power to alter, reform, or totally change that constitution. In any controversy between the sovereign people and the government, which was their agent, the people alone could be the arbiter of differences.[1] If secession of a State was necessary, then the State could retain the powers which she had once delegated to the Federal Government on her behalf.

Davis also referred to the compact of the Union in defense of secession. The compact of the States which formed the Union was in the nature of a partnership between individuals without a limitation of time. This meant that if there was no provision for this compact to continue for a specified length of time, then the partners could dissolve this compact whenever they wished to do so. If there had been a provision for this compact to continue for a certain time, then the partners would have been bound to keep the compact for the specified time.[2] This argument would imply that a State could secede from the Union because there was no stipulation forcing her to remain in it.

The question was often asked why there was no mention of the right of secession in the United States Constitution? "The States are not named in it; the word sovereignty does not occur in it; the right of secession is... [also] much ignored in it...."[3] To this question, Davis asked why sovereignty or right of secession were not then expressly renounced in the Constitution if the States were intended to surrender them? Sovereignty and right of secession certainly existed even though they were

not explicitly mentioned. Davis felt that it would be a less rational conclusion to say that right of secession ceased to exist because it was not mentioned. It would have been extraordinary, he said, if any express provision for the secession of the States and the dissolution of the Union had been incorporated into the Constitution. Its founders undoubtedly desired and hoped that the Union would be perpetual. The argument was that such a provision would be a means of destroying instead of preserving the Union. They had no intention of making arrangements for its termination. Therefore, it was necessary in the Constitution to affirm the right of secession, because it was an attribute of sovereignty, and the States had reserved for themselves all powers which they had not delegated to the Federal Government.

The people of the several States had the right to resume their powers which they had delegated to the Federal Government. The people of the State of Virginia, in ratifying the Constitution, expressly declared and made known

> ...that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them, whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them and at their will.[4]

New York and Rhode Island also declared that the powers of the Government may be reassumed by the people when it should become necessary to their happiness. Davis pointed out that, by inserting such declarations in their ordinances, Virginia, New York, and Rhode Island officially declared their interpretation of the Constitution as recognizing the right of secession by the

resumption of their grants of power. There was an attempt to construe these declarations concerning the right of "the people" to resume their delegations of power as having reference to the idea of one people in the aggregate. But Davis strongly denounced such attempts. To him, "the people of the United States" meant the people of each sovereign State who had agreed to unite in the compact. The people of their respective States, who had delegated certain powers to the Federal Government in ratifying the Constitution and acceding to the Union, reserved to themselves the right, in the event of the failure of that Government, to resume those powers by seceding from the same Union.[5]

Davis stated that the dangers to the Union had sprung to a large extent, not from too great a restriction on the exercise of the powers granted to the Federal Government, but from too little restriction. The Federal Government, claimed Davis, was usurping the powers delegated only to the States. If this were to continue, the government would eventually destroy the States instead of securing the blessings of liberty.

Davis also posited the following hypothesis. If no such right of secession existed, if it was forbidden by the Constitution, then it would be wrong to secede from the Union. In this instance, force could be applied to the State which was attempting to withdraw from the Union. However, this would be in direct contradiction to the Tenth Amendment of the Constitution. The Federal Government has no delegated power from the States to coerce a State. Such power would be preposterous. Only the

States retain such a power as provided in the Tenth Amendment. If the States could be coerced to remain in the Union, then they would have lost their sovereignty.[6] To strengthen his argument further, Davis made reference to the Convention which formed the Constitution. It was proposed to confer upon Congress the power to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles of the Constitution. However, when this proposition came to be considered, James Madison observed that a Union which contained such a proposition was bound for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment. As a result of Madison's defense, the former proposition was never again revived.

Another objection made to the right of secession was based upon the inconsistent ideas with regard to allegiance. The argument states that the citizen owes a double allegiance, partly to the State of which he is a member, and partly to the Union. The State could no more release the citizen from his obligations to the Union that the United States could absolve the citizen from his duties to the State. Some defenders of this argument went further in saying that allegiance of the citizen was due to the Union only, that such allegiance was paramount, and that the allegiance to the State was only subsidiary. Davis said that the true allegiance of the citizen was due to the sovereign only. The sovereign to which he alluded meant the people of the State to which the citizen belonged. This was the people

who constituted the State Government which protected him in the enjoyment of his personal rights. This was also the people who had reserved to themselves sovereignty. The obligation to support the State or Federal Constitution and the obedience due to either the State or Federal Government were alike derived from and dependent upon the allegiance due to the sovereign people. If the sovereign people should abolish the State government and establish a new one, the obligation of allegiance would require the citizen to transfer his obedience accordingly. If the sovereign should withdraw from the Union, the allegiance of the citizen would require him to follow the sovereign.[7] His relation to the Union arose from the membership of the State of which he was a citizen, and ceased whenever his State withdrew from it. The citizen could not owe obedience to an association from which his sovereign had separated and withdrawn him.

Davis asserted that it was the inalienable right of a people to change their government, whenever it ceased to fulfill the purposes for which it was ordained and established. Under our form of government, he stated, secession should have been a peaceful remedy. The withdrawal of a State from a league has no revolutionary characteristic. The government of the State remains unchanged as to all internal affairs. It is only its external relations which are altered.

Finally, there were two moral obligations upon a seceding State which existed. First of all, a seceding State should not break up the partnership without a good and sufficient

cause and second, the State should make an equitable settlement with former associates in order to avoid the infliction of loss or damage upon any of them.[8] As far as Davis was concerned, neither of these obligations was violated or neglected by the Southern States in their secession.

Secession a Peaceful Remedy

To those who would claim Davis to be the defiant defender of secession in the hope of disunion from the North, let them be corrected! Davis did not desire secession from the Union, because he loved the Union. He spoke of secession as the ultimatum into which the South would be forced if the Federal Government continued to usurp the powers inherent in the sovereign States.[9]

As early as 1847, Davis was aware of the tendencies of distrust prevalent in the North toward the Southern States, but he felt that there was still enough good feeling to remedy the situation. Nevertheless, he feared that it might become necessary for the people of the South to eventually unite themselves to dissolve the ties with the North for the preservation of their rights as guaranteed by the Constitution.[10] Davis' home State of Mississippi called a convention of nine Southern States in June, 1850, at Nashville, Tennessee. Davis declared that it was for patriotism and the preservation of the constitutional union that the convention convened. Resolutions were adopted which affirmed their attachment to the Union, and the Convention delegates called on their fellow Southerners to unite for "their

holy purpose of preserving the Constitution."[11] Although Davis was willing to join all Southerners in preserving their constitutional rights, he was unwilling to go to the ultimate resort of disunion unless it became vital to do so. As a Senator for the State of Mississippi in 1850, he was convinced that it was his duty to sustain both the Union and the Constitution. As far as disunion was concerned, he said:

> I have nothing to say about disunion. It is an alternative not to be anticipated——one to which I could only look forward as the last resort; but it is one, let me say, which, under certain contingencies, I am willing to meet....[12]

It was mentioned earlier in this chapter that Davis believed that the citizen owed his primary allegiance to the people of the sovereign State to which he belonged. Jefferson Davis, as a citizen and representative of the State of Mississippi, acknowledged the right of the people of his State to claim his allegiance whenever they chose to assert it. If this was the case, then Davis would gladly travel on the road of secession if his State should choose to do so.[13] But it was only on this account that he would support secession from the Union.[14]

Davis could not stomach the cries of the Northerners who labelled him and his fellow Southerners as disunionists. Davis said that the Southerners were the ones who were defending the Union. It was they who were adhering to the Constitution as the founding fathers had wanted it, in order to preserve that most precious commodity, state sovereignty. If anyone should be called a disunionist, it should be those who were responsible

for the usurpation by the Federal Government of those powers which belonged rightfully to the States. In reference to the Constitution, he said:

> If the Constitution can be warped and wrung until its nature is altered, and the States still be coerced to adhere to the Union, they have lost the sovereignty they won by the battles of the revolution, and the possession of which enabled them to enter into a confederation.[15]

In a letter written on November 19, 1850, Davis expressed his support of the plan indicated by the Mississippi State Convention of October, 1849. The plan called for a convention of the State of Mississippi to consider their present condition in regard to secession, and to adopt the necessary measures in case such procedures had to be taken. Such measures were to provide for the defense of the State and to provide for a convention of the slaveholding States which should unite all those States willing "to assert their equality, and right to equal protection in, and equal enjoyment of, the common property."[16] If the States were so united, said Davis, they should demand of the other States such guarantees as would secure to them the safety, benefits, and tranquility which the Union was designed to confer. In this way, the minority, as well as the majority, could live in equality under the federal compact. The South as a minority could thus be guaranteed the protection of her public and private interests. This is what Davis wished. He did not desire the destruction of the Union. He felt that if the adjustment of the controversy between the North and the South were postponed, the last opportunity for a peaceful solution

would be lost, and the issue would have to be settled by blood. Davis said that if he had to give up the Union in order to preserve the Constitution, then this is what he would do. He continued in his letter:

> ...to preserve the Union, the principles, the spirit of the Constitution must be preserved. I do not think the North has given us reason to expect this service from that quarter; how shall the South effect it? This, to my mind, is the question to which we should direct our investigation.[17]

Davis preferred to go out of the Union with the Constitution intact rather than to abandon the Constitution in order to remain in the Union.

While Davis was running in the gubernatorial race for the State of Mississippi in 1851, most of his platform was formed by the resolutions of the Democratic State Rights Convention held in June of 1851. In their fifteenth resolution, they spoke of State secession:

> While we assert the right, we consider it the last remedy, the final alternative, and declare that the exercise of it, by the State of Mississippi under existing circumstances, would be inexpedient, and is a proposition which does not meet the approbation of this Convention.[18]

One could speculate from this particular resolution that the people of Mississippi did not contemplate secession. If secession had to be resorted to as the last alternative, then it was certainly hoped to be a peaceful remedy. Because Davis held that the decision for the dissolution of the Union remained in the hands of the individual State, he remained relatively quiet on the question. As far as his own State of Mississippi was con-

cerned, he said that the honor of his State and his own honor did not permit him to think about the dissolution of the Government of which he was a part, especially as a Representative of his State. He always held that the true position of the South was to stand upon the defensive and to fight behind the barriers of the Constitution. If his State of Mississippi should secede, then Davis would offer his services to his seceding State.

On April 9, 1857, Davis wrote that he still hoped that the Constitution would prevail.[19] He continued to avow his love for the Union. However, the South was continually being indicted by the North an an aggressive power, but Davis could not perceive the aggression to which the Southern States had been unjustly subjected. He claimed that the North was instigating a political war against the institutions of the South which they had inherited, and if this agitation continued, it would tend to lead slowly and steadily to the separation of the States. In October of 1858, Davis reiterated the need for each section to control its own domestic institutions while at the same time faithfully struggle as a part of the united whole for the common benefit of all. This would certainly lead to unity and cooperation on behalf of both sections.[20]

When Davis addressed the Mississippi Legislature on November 16, 1858, he continued to hold the opinion that the separation of the State of Mississippi from the Union should be the last alternative. However, he is more definite in expressing that although the disruption of the Union would be a calamity,

he admitted that it would not be the greatest calamity. It is at this time that he clearly saw the need of preparation for a possible war.

> The maintenance of our rights against a hostile power is a physical problem and cannot be solved by mere resolutions. Not doubtful of what the heart will prompt, it is not the less proper that due provision should be made for physical necessities.[21]

Davis said that such preparation would strengthen them, and that in the event that separation should be forced upon them, they would be able to meet the contingency with whatever remote consequences that would follow it. However, Davis still had confidence that Mississippi's patriotism would hold her to the Union as long as it was constitutional.

On November 10, 1860, Davis wrote to R. B. Rhett, Jr., stating that if an independent State would secede from the Union without the support of her neighboring States, such a State's secession would probably prove fruitless.[22] Davis believed that the planter States of the South should unite sooner or later for the protection of their interests. If they were united, he said, they would not only have the ample power for their own protection, but they——because of their exports——would be able to become the ally of all commercial and manufacturing powers.

It was on January 10, 1861, the day after Mississippi seceded from the Union, that Davis once again addressed the United States Senate in defense of secession. This time he spoke of the two modes of dissolving the Union. He claimed that only one mode of dissolution up to that time had been contemplated.

This was the separation of the individual State from those to whom it was united. The other method of the dissolution of the Union was in the destruction of the Constitution by means of forming a consolidated government. Davis said that the very meaning of the word "union" implied the junction of several States. Consolidation, however, would destroy the Union, and Davis claimed that consolidation would be far more fatal to popular liberty than the separation of the States. Davis once again stressed the fact that the Southern States were leaving the Government in accordance with the Constitution and in defense of the principles on which that Constitution rested. Davis claimed that the platform on which the Northerners elected their candidate for the Presidency clearly denied the Southerners their equality. He said that this platform refused to recognize their domestic institution of slavery or allow for the protection of their property.[23] Davis believed that such a platform was upheld on the basis of sectional hostility and non-equality. Davis continued:

> Our fathers united with yours on the basis of equality, and they were prompted to form a union by the fraternity which existed between them. Do you admit that equality? Do you feel that fraternity? Do your actions show it? They united for the purpose not only of domestic tranquillity, but for the common defense; and the debates in the convention which formed the Constitution set forth that the navigating and manufacturing interests of one section, and the better defense in the other, were the two great objects which drew them together.... Did we unite with you in order that the powers of the General Government should be used for destroying our domestic institutions? Do you believe that now, in our increased and increasing commercial as well as physical power, we will consent to remain united to a Government exercised for such a purpose as this?[24]

Davis also mentioned in his address how he had striven to avert the catastrophe which the South was being forced into, but he regretted that he was unable to avert it. He admitted that neither the North nor the South could live peaceable together, but persisted in asking the North to let the South separate from them peaceably. If this could not be done, he said, then "a war is to be inaugurated the like of which men have not seen."[25]

Davis addressed the United States Senate for the last time on January 21, 1861. He said that the people of the South were denied the principles upon which the Government was found. They were denied the right to withdraw from a government which perverted the power delegated to it and which threatened to destroy their own rights. Davis claimed that the Southern States were seceding from the Union not in hostility to Northerners or to injure any section of the country, but "from the high and solemn motive of defending the rights...[they] inherited, and which it...[was their] duty to transmit unshorn to...[their] children."[26] He emphasized the fact that he had no hostility toward the Senators from the North and expressed the hope for peaceable relations with them, although he had to part. In his final plea to the Senators, he begged that the Southern States may not be forced into the disaster of war, but if it should come, they would put their trust in God, in their hearts, and in their strong arms in order to vindicate their equal rights.

At the time Jefferson Davis addressed the Senate for the last time, the States of South Carolina, Mississippi, Florida,

Alabama, and Georgia had already left the Union. Louisiana was to follow on January 26 and Texas on February 1.[27] The Conventions of these States[28] were to meet on February 4, 1861, for the assembling of a congress of the seceding States, to which each State Convention appointed delegates, acting as the direct representatives of the sovereignty of the people. This congress of delegates elected Davis as the President of the newly formed Government,[29] and on February 18, Davis delivered his inaugural address at Montgomery, Alabama, on assuming office. The following was cited by Davis in relation to secession:

> The declared purpose of the compact of the Union from which we have withdrawn was to 'establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure blessings of life to ourselves and our posterity'; and when, in the judgment of the sovereign States composing this Confederacy, it has been perverted from the purposes for which it was ordained, and ceased to answer the ends for which it was established, a peaceful appeal to the ballot-box declared that, so far as they are concerned, the Government created by that compact should cease to exist. In this they merely asserted the right which the Declaration of Independence of July 4, 1776, defined to be 'inalienable.' Of the time and occasion of its exercise they as sovereigns were the final judges, each for itself.[30]

Davis continued in his address that the Southern States resorted to the remedy of separation as a necessity and not a choice. It was now their prerogative to conduct their own affairs for the perpetuity of the Confederacy.

In an address to the Confederate Congress at Montgomery on April 29, 1861, Davis said that the seceding States had exercised their right of self-preservation in leaving the Union. The Confederate States, he said, determined in their conventions

that the wrongs which they had suffered required that they should revoke the delegated powers to the Federal Government which they had ratified in their several conventions. As a result, they rightfully resumed their rights as sovereign and independent States and dissolved their connection with the other States of the Union.[31]

The historian who attempts to answer the question as to why the Southern States seceded from the Union must recognize the predicament into which the nation had fallen. The Southern States were correct when they said that their domestic institutions were no longer safe in the Union. However, Davis and the majority of the Southern people failed to realize that their domestic institutions were not safe anywhere in the emerging world of the nineteenth century. Furthermore, secession was no longer a remedy for their troubles in the age of growing national consolidation. "They would find out...that organization, efficiency, technology, and urban industrialism wins war in this age regardless of individual courage and sacrifice."[32]

CHAPTER IV: NOTES

[1]David M. Potter and Thomas G. Manning, Nationalism and Sectionalism in America, 1775-1877: Select Problems in Historical Interpretation (New York: Henry Holt and Company, 1949), p. 271.

[2]Parsons, "Right of a Citizen," Chapter XX, Section 3, in Jefferson Davis, The Rise and Fall of the Confederate Government (2 vols.; New York: D. Appelton and Company, 1881), I, 168, 169.

[3]Davis, Rise and Fall, I, 172.

[4]Ibid., I, 173.

[5]Ibid., I, 174.

[6]cf. Davis' letter to B. Pendleton and others, November 10, 1850, in Dunbar Rowland, Jefferson Davis, Constitutionalist: His Letters, Papers and Speeches (10 vols.; Jackson, Miss.: Mississippi Department of Archives and History, 1923), I, 579-581.

[7]It is interesting to note that Davis was willing to back his State of Mississippi if she should decide to secede from the Union, but he did not want her to secede alone, because she would, in that event, have the Union against her without any of its benefits (cf. Davis' speech at Aberdeen, Mississippi, May 26, 1851, in Ibid., II, 80, 81.)

[8]Davis, Rise and Fall, I, 185.

[9]In reality, we see that there was a continuous destruction of the balance of power between the North and South from 1815-1861. Representation for the North continued to grow during these years, resulting in legislation for the sectional advantage of the North rather than that of the general welfare.

[10]Davis to C. J. Searles, written at Brierfield, September 19, 1847, in Rowland, Constitutionalist, I, 95.

[11]Speech of Davis to the United State Senate, February 13, 1850, quoted in Ibid., I, 301.

[12]Davis on the Compromise Bill of 1850, June 27, 1850, quoted in Ibid., I, 381.

[13]cf. Davis letter to S. Cobun and others, written at Brierfield, Mississippi, November 7, 1850, in Ibid., I, 592,593.

[14]Davis felt that the right to secede from the Union, and the expediency to do so, were two different questions.

[15]From a letter of Davis to B. Pendelton and others, November 10, 1850, quoted in Rowland, Constitutionalist, I, 580.

[16]Jefferson Davis to B. D. Nabors and others, from the Mississippi Free Trader, November 30, 1850, quoted in Ibid., I, 599.

[17]Ibid.,I, 600.

[18]Davis to the people of Mississippi, October 8, 1851, quoted in Ibid., II, 105.

[19]Allan Nevins, The Emergence of Lincoln: Douglas, Buchanan, and Party Chaos, 1857-1859 (2 vols.; New York: Charles Scribner's Sons, 1950), I, 20.

[20]cf. Davis' speech at the Grand Ratification Meeting, October 11, 1858, in Rowland, Constitutionalist, III, 321.

[21]Speech of Davis before the Mississippi Legislature, November 16, 1858, in Ibid., III, 359.

[22]Davis to R. B. Rhett, Jr., Warren County, Mississippi, November 10, 1860, in Ibid., IV, 542.

[23]Davis was obviously alluding to the protection of the slaves "as property" in the territories.

[24]Remarks of Jefferson Davis on the Special Message on Affairs in South Carolina, delivered to the United States Senate on January 10, 1861, quoted in Rowland, Constitutionalist, V, 29.

[25]Edward Boykin, Congress and the Civil War (New York: The McBride Company, 1955), p. 271.

[26]Davis' address on leaving the United States Senate, delivered January 21, 1861, quoted in Davis, Rise and Fall, I, 224.

[27]Arkansas, North Carolina, Virginia, and Tennessee (in that order) seceded from the Union after the attack on Fort

Sumter. However, the slaveholding States of Missouri, Kentucky, West Virginia, Maryland, and Delaware did not secede from the Union.

[28]cf. Chapter V.

[29]cf. Chapter I, p. 12.

[30]From Davis' Inaugural Address, February 18, 1861, quoted in Varina H. Davis, Jefferson Davis, Ex-President of the Confederate States of America: A Memoir (2 vols.; New York: Belford Company, Publishers, 1890), II, 25.

[31]Davis' address to the Confederate Congress, Montgomery, Alabama, April 29, 1861, in Rowland, Constitutionalist, V, 73.

[32]George Harmon Knoles, ed. The Crisis of the Union, 1860-1861 (Binghampton, New York: Louisiana State University Press, 1965), p. 65.

PART II: THE CONFEDERATE CONSTITUTION

Chapter V. Innovations in Confederate Constitution

CHAPTER V

INNOVATIONS IN THE CONFEDERATE CONSTITUTION

Convention of the Seceding States

The convention of the Southern delegates from the seceding States convened at Montgomery, Alabama, on February 4, 1861. The convention consisted of a committee of two men from each of the seven seceded States, headed by R. B. Rhett of South Carolina. The first task of this provisional congress was to adopt a provisional government to be known as "The Confederate States of America." This was done on February 8, 1861. There was little difficulty in arriving at this result since most of all of the seceding States had declared a wish that their proposed new government should be modelled on that of the United States. The next task of the convention was to prepare a provisional constitution for the new Confederacy.[1] The powers conferred upon the Confederate States were adequate for the performance of this duty, the immediate necessity for which was obvious and urgent. This Provisional Constitution was adopted on February 8, 1861, and was to continue for one year, unless superseded at an earlier date by a permanent Constitution. On the following day an election was held for the chief executive officers, resulting in the election of Davis as the provisional President and the Honorable

Alexander Stephens of Georgia as the provisional Vice-President.

The conservative temper of the people of the Confederate States was conspicuously exhibited in the most important product of the early labors of their representatives in the Confederate Congress. Although the Provisional Constitution was hastily prepared and was intended for temporary use only, it was so well adapted for the purposes which it was designed to serve, that many thought it would have been wise to continue it in force indefinitely, or at least until the independency of the Confederacy should be assured. However, the Confederate Congress prepared the permanent Constitution and by March 11, it had been submitted and ratified by the people of the Confederate States. While the permanent Constitution was in preparation, the Provisional Government proceded with the affairs of State. The Montgomery assembly acted as a Congress by day and as a Constitutional Convention by night. Jefferson Davis selected his cabinet at this time, making appointments according to the ability of the men with an effort to give representation to as many of the States as possible.[2]

The legislation of the Confederate Congress furnishes the best evidence of the temper and spirit which prevailed in the organization of the Confederate Government. The Montgomery Congress wisely retained the main fabric of the Federal law in order to ease the transition from the Union to the Confederacy. To do this, the Congress enacted the following on February 9, 1861:

That all the laws of the United States of America

> in force and in use in the Confederate States of America on the first day of November last, [November 1, 1860] and not inconsistent with the Constitution of the Confederate States, be and the same are hereby continued in force until altered or repealed by the Congress.[3]

Meantime, a committee was selected to revise all statutes and bring them in conformity with the new Constitution. The Confederacy salvaged and absorbed into itself as much as possible of the law and administration of the Federal Government.[4] The Provisional Government passed another resolution on February 15, 1861, appointing a commission of three persons who were to be sent to the United States Government for the purpose of negotiating friendly relations between the two governments. The hope that peace might be maintained was predominant. Indeed, all the laws enacted during the first session of the Provisional Congress show how consistent were the purposes and actions of its members toward the desire to peacefully separate from those with whom they could not live in tranquillity.

Although Davis had no direct part in the preparation of the Confederate Constitution, he nevertheless placed his stamp of approval on its inauguration. He believed that it was a model of wise, temperate, and liberal statesmanship.

> The whole document negatives the idea, which so many have been active in endeavoring to put in the enduring form of history, the Convention at Montgomery was nothing but a set of conspirators, whose object was the overthrow of the principles of the Constitution of the United States and the creation of a great 'slave oligarchy,' instead of the free institutions thereby secured and guaranteed. The work of the Montgomery Convention, with that of the Convention for a Provisional Government, will ever remain not only as a monument of the wisdom, forecast, and statesmanship of the men who constituted it, but an everlasting refutation of the charges which have been brought

against them. These Constitutions, provisional and permanent, together, show clearly that the only leading object of their framers was to sustain, uphold, and perpetuate the fundamental principles of the Constitution of the United States.[5]

Innovations in the Confederate Constitution Concerning Slavery, State Sovereignty and Right of Secession

There could be no doubt what the permanent constitution of the Confederacy should be. The advocates of secession had not rejected the Constitution of the United States as it had been originally conceived, but only the corrupt interpretations which had been put upon it. The delegates at Montgomery made a constitution, therefore, which they meant to be in all essential things a counterpart of the constitution of the Union which they had abandoned——except that in their own document what they held to be the implicit meanings of that constitution were made explicit, and its errors and weaknesses of detail were corrected to some extent. Davis spoke of the Confederate Constitution in his first Inaugural Address:

> As a consequence of our new condition and relations, and with a view to meet anticipated wants, it will be necessary to provide...a Constitution differing only from that of our fathers in so far as it is explanatory of their well-known intent, freed from sectional conflicts, which have interfered with the pursuit of the general welfare, it is not unreasonable to expect that States from which we have recently parted may seek to unite their fortunes to ours under the Government which we have instituted....We have changed the constituent parts, but not the system of government. The Constitution formed by our fathers is that of these Confederate States. In their exposition of it, and in the judicial construction it has received, we have a light which reveals its true meaning.[6]

The structure of the Confederate Constitution paralleled that of the Federal Constitution mainly because the former was modelled after the latter. However, there was one minor exception. Those statutes which were included in the "Bill of Rights" in the Federal Constitution were transferred to the body proper of the Constitution of the Confederacy. This was an attempt to add greater unity to the entire document. The rights of the individual and the State seemed to be "tacked on" the document of the Federal Government.

The concern with the Confederate Constitution shall be limited to the area of slavery, states' rights, and right of secession. If anything, these three items were the sacred principles which the South in general upheld. Such principles should at least be mentioned in the document which was to stand as the basis for the existence of the nation. If the values and ideals of the people could not be preserved and protected in the Constitution, then it could not be preserved and protected anywhere else.

Like the framers of the Constitution of 1787, who omitted from their document some principles which they took for granted, the framers of the Constitution of 1861 left unstated their most distinctive views. However, they did attempt to clarify and make more explicit their cherished rights. It might be mentioned that the features of the Confederate Constitution that differed significantly from the United States Constitution were those designed to sustain the conservative, agrarian, slave-

supported society and economy of the States.

The preamble to both constitutions is the same in substance and very nearly identical in language. The words "We, the people of the United States," in one, are replaced by "We, the people of the Confederate States," in the other.[7] However, in the latter, the additional phrase "each State acting in its sovereign and independent character, in order to form a permanent federal government"[8] is added in order that the role of the States in the free partnership might not again be questioned. Davis claimed that such an explanation at the time of the formation of the Constitution of the United States would have been superfluous.[9] This additional clause was also an attempt to forestall in the Confederacy such a debate as had raged in the Union over the question of whether the Constitution was the creature of the people or of the States. Though the preamble declared that the States were acting in their sovereign and independent character, the new Confederation was considered "permanent." This brings a contradiction to my mind in so far as Davis was concerned. Davis contended that if there was no provision specifying that the partnership should continue for a certain amount of time, then the independent States would have the sovereign right to dissolve this partnership at their pleasure. This would mean that the partnership was not binding. It is seen in the Confederate Constitution that no article provided a certain time in which the new Confederacy had to be bound together by compact. If this is the case, then the Southern

States, as independent sovereignties, would not be bound to the new Confederacy if it did not meet their needs. It then seems that the addition of the word "permanent" to the preamble of the Confederate Constitution actually hindered State sovereignty rather than helped it. The word "permanent" implies that the States would have been bound to the Confederacy perpetually and would not have been able to leave the Confederacy if they should have independently chosen to have done so. By establishing a "permanent" government, the sovereignty of the individual States suffered.

The strongest provision in defense of States rights was found in Article VI of the Confederate Constitution.[10]

> The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people <u>of the several States</u>.
>
> The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people <u>thereof</u>.[11]

These two provisions corresponded with Articles IX and X of the "Bill of Rights" of the United States Constitution, but they included two minor additions in wording which were to protect the sovereignty of the States. In the first provision, the words "of the several States" were added. This was obviously an attempt to overcome the error of saying that the people as an aggregate were to retain the rights not specifically enumerated in the Constitution. The new insertion clarified the fact that it was the people of the individual States who were to retain these sovereign rights. It must be remembered that in the ratification

of the Constitution of the United States in 1787, there was much dispute as to how the phraseology "We, the people" was to be interpreted. It was the intention of the writers of the Constitution that this phrase should not mean the people as an aggregate——which was the interpretation of the advocates of consolidation——but was to be interpreted as the people of the individual sovereignties.[12] The people of the individual sovereignties were to ratify the Constitution and as independent sovereignties, they were to retain the powers not explicitly enumerated in the Constitution. The addition of the adverb "thereof" in the second provision was again an attempt to clarify the connotation of the word "people." In this instance, the powers were to be delegated to the States or to the people of each independent, sovereign State, and not to the people as an aggregate.

The greater grant of power to the States over the central government was strengthened in Article I, Section 2 of the Confederate Constitution:

> The House of Representatives...shall have the sole power of impeachment; except that any judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof.[13]

This certainly limited to some degree the powers invested in the Congress of the Confederate States. It reemphasized the fact that all sovereign powers originated in the States and that this power was delegated to the general government. It was the sovereign right of the State to retain for itself certain powers

and to delegate other powers necessary for good government. Other emphasis was placed on State sovereignty in Article III, Section 2 of the Confederate Constitution: "...no State shall be sued by a citizen or subject of any foreign state."[14] Although the provision deals with the question of suing, it must be mentioned that there is accentuation on the "sovereignty" of the individual State. In other words, since every State is sovereign, it cannot be said that a certain State is "more sovereign" than another State. This would be a contradiction in terms. Therefore, the sovereignty of each State was asserted——each State equal to the other.

Article V, Section I of the Confederate Constitution speaks of the process of amendment to the Constitution:

> Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention——voting by States——and the same be ratified by the legislatures of two-thirds of the several States, or by the conventions in two-thirds thereof——as the one or the other mode of ratification may be proposed by the general convention——they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.[15]

This provision evidently enabled the majority of the Confederate States (or two-thirds) to amend the Constitution at their pleasure, thus imposing their will upon the minority.[16] If anything, this provision was detrimental to the sovereignty of the States. If two-thirds of the Confederate States were to vote

for an amendment to the Constitution, what about the other one-third of the States? This seems to be an infringement on their sovereignty. It appears that the method of amendment in the United States Constitution would have been more equitable than as it was provided by the Confederate Constitution.[17] At least an affirmative vote was required from three-fourths of the legislatures of the States in order that an amendment could be passed. This would naturally make it more difficult for an amendment to be accepted. In the case of the Confederacy, an affirmative vote from only two-thirds of the States was needed. It seems more probable that a certain majority could always have their legislation passed at the expense of the minority.

The emphasis upon slavery in the Confederate Constitution prompted the English magazine Punch to brand the new government "Slave-ownia." However, Davis claimed that the provisions of the Confederate Constitution furnished an effectual answer to the assertion, so often made, that the Confederacy was founded on the cornerstone of slavery. Property in slaves, already existing, was recognized and guaranteed in Article I, Section 9 of the Confederate Constitution: "No...law denying or impa[i]ring the right of property in negro slaves shall be passed."[18] Similar protection for private property had been provided by Article V of the Amendments to the United States Constitution, but the name "slave" had not been specifically mentioned as comprising property. Slavery, as property, was also recognized and protected in the common territories as exem-

plified in Article IV, Sections 2 and 3:

> Section 2. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; and shall have the right to transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.[19]
>
> Section 3: ...The Confederate States may acquire new territory; and Congress shall have the power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them at such times and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the territorial government, and the inhabitants of the several Confederate States and Territories shall have the right to take to such territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.[20]

Section 2 reaffirmed the Southern position concerning the Dred Scott decision of 1857. The slave was obviously the property of his owner and the Constitution nowhere gave Congress the right to deprive a citizen of the United States of that kind of property. The South naturally reaffirmed their belief concerning the slave as private property. Section 3 upheld the Southern position that slavery should be permitted to extend into the Territories. It was apparently an attempt to safeguard against the type of controversy that arose after 1848 concerning the extension of slavery into the territories. At that time, the controversy arose as to whether Congress had the right to interfere at all with slavery in the territories since slaves were private property which came under the authority of the separate States. It is seen in this innovation to the Confederate Con-

stitution that the Congress of the Confederacy was to some degree "forced" to recognize and protect slavery within the territories. Of course, it is fairly reasonable to speculate that the Confederate Government could not have had any objections to this provision because of the simple fact that this controversial issue had done much to incite the Southern States to secede from the Union in the first place. If the Southern States had not been in general agreement over this question, then there would have been no reason for them to have formed their new government.

The slave trade was more distinctly and effectually prohibited by the Confederate Constitution than by the Federal Constitution. This will be evident upon the comparisons of the two Constitutions in relation to the slave trade. The Constitution of the United States has the following in Article I, Section 9:

> The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.[21]

The Confederate Constitution, on the other hand, included the following provisions:

> The importation of negroes of the African race, from any foreign country other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.
>
> Congress shall also have power to prohibit the introduction of slaves from an State not a member of, or Territory not belonging to, this Confederacy.[22]

In the case of the United States, the only prohibition is that the Congress could not interfere with the slave trade for a certain amount of time (until 1808), and it was further legitimized by the authority given to impose a duty upon it. It is true that the term of years had long since expired, but there was still no prohibition of the slave trade by the Constitution of the United States. After 1808, it was up to the discretion of the United States Congress either to encourage, tolerate, or prohibit it. However, in the Confederate Constitution, the African slave trade was "hereby forbidden," positively and unconditionally from the very beginning. Neither the Confederate Government nor that of any of the States could permit it, and the Confederate Congress was expressly "required" to enforce the prohibition. The only discretion in the matter entrusted to the Congress was, whether or not to permit the introduction of slaves from any of the United States or their territories.

A clause in Article IV, Section 2 of the Confederate Constitution reaffirmed the Southern support of the Fugitive Slave Law. The underlined portions refer to those words which differed from those found in a parallel clause of the United States Constitution. The clause stated that

> No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor: but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.[23]

Although the slave was not considered a citizen of the Confederate Government because of his inequality to the white man,[24] he nevertheless was accountable when it came to the apportionment of representatives among the several States of the Confederacy. Article I, Section 2 of the Constitution stated:

> Representatives and direct taxes shall be apportioned among the several States, which may be included within this Confederacy, according to their respective numbers, which shall be determined, by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all slaves.[25]

There appears to be a dichotomy as to the status of the slave. It has been posited that the slave could not possibly achieve citizen status in the Confederacy, yet three-fifths were eligible to some degree "as citizens" to be represented in the government. The number "three-fifths" obviously refers to three-fifths of the slaves in each individual State and not to three-fifths of the slave population as an aggregate. The percentage of three-fifths seems to reassert the Southern position that the slave was not, and could not be equal to the white man.

The Confederate instrument of government was strangely silent concerning the right of secession and it did not deny the right of coercion. On the contrary, all its implications were against the former and in favor of the latter for the government declared the Constitution, laws, and treaties of the Confederacy to be the supreme law of the land, binding on the judges of every State.[26] This omission represented more than simply the presumption of the right of secession. Three pro-

posals for the right of secession were quashed in the Montgomery Convention. It is possible that a majority of the delegates sensed the eternal paradox of a government founded on revolution. If the right of secession had been openly acknowledged, then the seceding States could have seceded from the Confederacy, causing its own collapse. The delegates at the Montgomery Convention obviously did not desire the dismembering of the government before it was actually realized. Although Davis said that the Confederate Constitution did not admit of a coerced association of States, the spirit of Southern nationalism ran too strong in the Montgomery Convention to permit an explicit affirmation of one of the principles upon which the Confederacy was founded.

Conclusion

The friction between the North and South ultimately arose from a conflict of values and allegiances. Most Southerners, as it has been shown, were indeed loyal Americans dedicated to the governmental system handed down by the founding fathers. For Jefferson Davis, his allegiance was not given exclusively to the Federal Government, but also to the Southern cause in general and to his home State of Mississippi in particular. Both of these allegiances——to the State and to the Southern cause——were inextricably tied up in devotion to a way of life based largely on the institution of slavery. Davis and most of the Southern people originally believed that it was possible to

maintain both the allegiance to the general government and to the State without contradiction or conflict.

It has been seen that as the years progressed, the values and interests of each section became more and more divergent and it was soon realized that neither section could live in harmony with the other. Throughout the 1850's the policies of the Federal Government began to mirror the interests of the North at the expense of the South. The United States Constitution was interpreted largely for the well-being of the North. In the Southern mind, such infringements were a corruption of the Constitution and the intentions of the founding fathers. Such action on the part of the North gradually drove a cleavage between the Southerner's double allegiance. Davis and other Southerners eventually decided that their highest allegiance belonged to the State. When it finally came down to such a choice, the Southerners were in fact preferring slavery without the Union than the Union without slavery.

This decision is not to annihilate the fact that many men of the South loved the Union and did not wish its dissolution. Although it has been claimed that Jefferson Davis was a strong secessionist, it hopefully has been shown that he always loved the Union and desired secession only as the ultimate choice. As late as January 4, 1861, Davis spoke out against immediate secession because of the economic and political consequences which would result from such a break. He urged the South to be strong, stand together and use every advantage

within the Union. He had always hoped to work out a livable compromise between the Southern way of life and the North's interpretation of the Constitution. Davis had deplored being called a "disunionist."

The Southern love of the Union was reinforced by the promulgation of the Confederate Constitution. It has been seen that the Confederate Constitution was largely modelled after that of the United States Constitution. The basic objective of the writers of the Constitution of 1861 was to clarify the provisions which were explicit in the United States Constitution. The delegates to the Montgomery Convention did not desire to drastically alter their document because they realized the basic value of the document promulgated in 1787. The extent to which the areas of controversy were clarified in the Constitution of the Confederate States has been enumerated. We have seen that their new Constitution was entirely silent on the right of secession, but the cherished rights of state sovereignty and the protection of slavery were explicitly reinforced and clarified.

In the last analysis, it can be seen that the Confederacy was born of an authentic Southern urge for independence. She lived briefly and in bitter tribulation, and was destroyed by an authentic Northern urge to retain the Union.[27]

CHAPTER V: NOTES

[1]The Provisional Constitution of the Confederate States, like the Permanent Constitution, was modelled after the Constitution of the United States.

[2]The Cabinet consisted of Mr. Toombs of Georgia as Secretary of State, Mr. Memminger of South Carolina as Secretary of the Treasury, Mr. Walker of Alabama as Secretary of War, Mr. Mallory of Florida as Secretary of the Navy, Mr. Benjamin of Louisiana as Attorney General. The State of Mississippi was represented by Jefferson Davis in the Presidency.

[3]Statutes at Large, Provisional Government, Confederate State of America, p. 27, quoted in Jefferson Davis, The Rise and Fall of the Confederate Government (2 vols.; New York: D. Appelton and Company, 1881), I, 243.

[4]Charles P. Roland, The Confederacy (Chicago: University of Chicago Press, 1960), p. 28.

[5]Jefferson Davis, A Short History of the Confederate States of America (New York: Belford Company, Publishers, 1890), pp. 66, 67.

[6]Davis' Inaugural Address, quoted in Davis, Rise and Fall, I, 234, 236.

[7]Complete texts of both Constitutions appear in parallel columns in the Appendix, quoted in Woodrow Wilson, A History of the American People (5 vols.; New York: Harper & Brothers Publishers, 1908), IV, 313-343.

[8]Preamble of the Confederate Constitution, cf. Appendix, p. 95.

[9]Davis, Rise and Fall, I, 259.

[10]See Appendix, p. 95.

[11]See Article VI of the Confederate Constitution, quoted in Wilson, A History, p. 340.

[12]Davis, Rise and Fall, I, 121.

[13]See Appendix, p. 97.

[14]See Appendix, p. 117.

[15]See Appendix, p. 120.

[16]Nathaniel W. Stephenson, The Day of the Confederacy: A Chronicle of the Embattled South, Vol. XXX of The Chronicles of America Series, ed. by Allen Johnson (56 vols.; New Haven: Yale University Press, 1920), p. 10.

[17]Article V of the United States Constitution, found in the Appendix, p. 120.

[18]See Appendix, p. 106.

[19]See Appendix, p. 118.

[20]See Appendix, p. 119.

[21]See Appendix, p. 105.

[22]Article I, Section 9 of the Confederate Constitution, see Appendix, p. 105.

[23]See Appendix, pp. 118,119.

[24]The Confederacy was the first government in the history of the world, which was based upon the great physical, philosophical, and moral truth that the negro was not equal to the white man and that slavery was his natural and normal condition. John G. Nicolay, The Outbreak of Rebellion (12 vols.; New York: Jack Brussel, Publisher, 1965), p. 43.

[25]See Appendix, p. 96.

[26]Article VI of the Confederate Constitution, see Appendix, p. 121.

[27]Charles P. Roland, The Confederacy (Chicago: The University of Chicago Press, 1960), p. 195.

APPENDIX

PARALLEL CONSTITUTIONS

CONSTITUTION OF THE UNITED STATES OF AMERICA

We, the people of the United States, in order to form a more perfect union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the

CONSTITUTION OF THE CONFEDERATE STATES OF AMERICA

WE, the people of the *Confederate* States, *each State acting in its sovereign and independent character, in order to form a permanent federal government,* establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity—*invoking the favor and guidance of Almighty God* —do ordain and establish this Constitution for the *Confederate* States of America.

SS

ARTICLE I.

SECTION 1. All legislative powers herein *delegated* shall be vested in a Congress of the *Confederate* States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall *be citizens of the*

KEY:

S = clauses which affected Slavery

SS= clauses which affected State Sovereignty

(There was no reference to Right of Secession)

APPENDIX

Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a term of years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of Ten years, in such Manner as they shall by Law direct. The Number of the Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three,

Confederate States, and have the qualifications requisite for electors of the most numerous branch of the State Legislature; *but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.*

No person shall be a Representative who shall not have attained the age of twenty-five years, and *be a citizen of the Confederate* States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States, which may be included within this *Confederacy*, according to their respective numbers, which shall be determined, by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all *slaves*. The actual enumeration shall be made within three years after the first meeting of the Congress of the *Confederate* States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every *fifty* thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *South Carolina* shall be entitled to choose *six; the State of Georgia ten; the*

Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other officers; and shall have the sole Power of impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third class at the Expiration of

State of Alabama nine; the State of Florida two; the State of Mississippi seven; the State of Louisiana six; and the State of Texas six.

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment; *except that any judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof.*

SECTION 3. The Senate of the *Confederate* States shall be composed of two Senators from each State, chosen for six years by the Legislature thereof, *at the regular session next immediately preceding the commencement of the term of service;* and each Senator shall have one vote.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the

the sixth Year, so that one-third may be chosen every second year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further

sixth year; so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature which shall then fill such vacancies.

No person shall be a Senator who shall not have attained the age of thirty years, and *be a citizen of the Confederate* States; and who shall not, when elected, be an inhabitant of *the* State for which he shall be chosen.

The Vice President of the *Confederate* States shall be President of the Senate, but shall have no vote unless they be equally divided.

The Senate shall choose their other officers; and also a President *pro tempore* in the absence of the Vice President, or when he shall exercise the office of President of the *Confederate* States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the *Confederate* States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further

ther than to removal from Office, and Disqualification to hold and enjoy any Office of Honour, Trust or Profit under the United States: but the party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof: but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a majority of each shall constitute a Quorum to do Business; but a smaller number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two-thirds, expel a Member.

than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the *Confederate* States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

SECTION 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, *subject to the provisions of this Constitution;* but the Congress may, at any time, by law, make or alter such regulations, except as to the *times* and places of choosing Senators.

The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION 5. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds of the whole number expel a member.

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Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one-fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same, and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the *Confederate* States. They shall, in all cases, except treason, felony, and breach of peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the *Confederate* States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the *Confederate* States shall be a member of

House during his Continuance in Office.

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve, he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a Law. But in all such Cases the Votes of Both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned

either House during his continuance in office. *But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department.*

SECTION 7. All bills for raising *the* revenue shall originate in the House of Representatives; but the Senate may propose or concur with the amendments, as on other bills.

Every bill which shall have passed *both Houses*, shall, before it becomes a law, be presented to the President of the *Confederate* States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days

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by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote, to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States;

(Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law. *The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.*

Every order, resolution or vote, to which the concurrence of *both Houses* may be necessary, (except on a question of adjournment,) shall be presented to the President of the *Confederate* States; and, before the same shall take effect, shall be approved by him; or, being disapproved, shall be re-passed by two-thirds of *both Houses*, according to the rules and limitations prescribed in case of a bill.

SECTION 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises, *for revenue necessary* to pay the debts, provide for the common defence, *and carry on the government*

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but all Duties, Imposts and Excises shall be uniform throughout the United States;	*of the Confederate* States; *but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States:*
To borrow Money on the credit of the United States;	To borrow money on the credit of the *Confederate* States:
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;	To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; *but neither this, nor any other clause contained in the constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation, in all which cases, such duties shall be laid on the navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof:*
To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;	To establish uniform *laws* of naturalization, and uniform laws on the subject of bankruptcies, throughout the *Confederate* States; *but no law of Congress shall discharge any debt contracted before the passage of the same:*
To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;	To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures:
To provide for the punishment of counterfeiting the Securities	To provide for the punishment of counterfeiting the securities

and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and discoveries;

To constitute Tribunals inferior to the Supreme Court;

To define and punish Piracies and Felonies commited on the high seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel invasion;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United

and current coin of the *Confederate* States:

To establish post-offices and post *routes; but the expenses of the Post-office Department, after the first day of March in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenue:*

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the Supreme Court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and on water:

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the *Confederate* States, suppress insurrections, and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the *Confederate* States;

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States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of

reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of *one or more* States and the acceptance of Congress, become the seat of the government of the *Confederate* States: and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings: and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the *Confederate* State, or in any department or officer thereof.

SECTION 9. The importation of *negroes of the African race, from any foreign country other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.*

Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy.

The privilege of the writ of

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Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

No bill of attainder, *ex post facto* law, *or law denying or impa[i]ring the right of property in negro slaves shall be passed.*

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State, *except by a vote of two-thirds of both Houses.*

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Congress shall appropriate no money from the treasury, except by a vote of two-thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for by some one of the heads of departments, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice

APPENDIX.

No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

of which shall have been judicially declared by a tribunal for the investigation of claims against the government, which it is hereby made the duty of Congress to establish.

All bills appropriating money shall specify in federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compensation to any public contractor, officer, agent or servant, after such contract shall have been made or such service rendered.

No title of nobility shall be granted by the *Confederate* States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

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The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense, to be twice put in jeopardy of life or limb; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

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	In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact *so* tried by a jury shall be otherwise re-examined in any court of the *Confederacy*, than according to the rules of common law.
	Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.
	Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.
SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation: grant Letters of Marque and Reprisal; coin money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.	SECTION 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.
No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.	No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the *Confederate* States; and all such laws shall be subject to the revision and control of Congress.
No State shall, without the	No State shall, without the

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Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

consent of Congress, lay any duty *on* tonnage, *except on sea-going vessels, for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations; and any surplus revenue thus derived, shall, after making such improvement, be paid into the common treasury. Nor shall any* State keep troops or ships-of-war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. *But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof*

ARTICLE II.

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the *Confederate* States of America. *He and the Vice President shall hold their offices* for the term of *six* years; *but the President shall not be re-eligible. The President and the Vice President shall* be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative or person holding an office of trust

of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the president of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a Quorum for this Purpose shall consist of a Member or Members from two thirds of the States,

or profit under the *Confederate* States, shall be appointed an elector.

The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and all persons voted for as Vice President, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the *Confederate* States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such a majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States —the representation from each State having one vote; a quorum

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and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President, but if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural-born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution,

for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death, or other constitutional disability of the President.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the *Confederate* States.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the *Confederate* States.

No person except a natural born citizen of the *Confederate* States, or a citizen thereof at the time of the adoption of this

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shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:

"I do solemnly swear (or "Affirm) that I will faithfully

Constitution, *or a citizen thereof born in the United States prior to the 20th of December, 1860,* shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the *limits of the Confederate* States, *as they may exist at the time of his election.*

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the *Confederate* States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the

"execute the Office of President "of the United States, and will "to the best of my Ability, pre- "serve, protect and defend the "Constitution of the United "States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

office of President of the *Confederate* States, and will, to the best of my ability, preserve, protect, and defend the Constitution *thereof.*"

SECTION 2. The President shall be commander-in-chief of the army and navy of the *Confederate* States, and of the militia of the several States, when called into the actual service of the *Confederate* States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the *Confederate* States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties; provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the *Confederate* States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

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

The President shall have the Power to fill all Vacancies that may happen during the Recess of the Senate, by granting Commission which shall expire at the End of their next Session.

The President shall have power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; *but no person rejected by the Senate shall be reappointed to the same office during their ensuing recess.*

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission

SECTION 3. *The President* shall, from time to time, give to the Congress information of the state of the *Confederacy*, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall com-

all the officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION 1. The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior, and shall, at stated times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

SECTION 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States, between Citizens of the

mission all the officers of the *Confederate* States.

SECTION 4. The President, Vice President, and all civil officers of the *Confederate* States, shall be removed from office on impeachment, for and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the *Confederate* States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases arising under this Constitution, the laws of the *Confederate* States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the *Confederate* States shall be a party; to controversies between two or more States; between a State and citizens of another State, *where the State is plaintiff;* between citizens claiming lands under grants of different States;

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same State claiming Lands under Grants of different States and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work corruption of Blood, or Forfeiture except during the Life of the Person attained.

and between a State or the citizens thereof, and foreign states, citizens or subjects. *But no State shall be sued by a citizen or subject of any foreign state.* SS

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. Treason against the *Confederate* States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

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ARTICLE IV.	ARTICLE IV.	
SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.	SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.	
SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.	SECTION 2. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; *and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.*	S
A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.	A person charged in any State with treason, felony, or other crime *against the laws of such State*, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.	
No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be done.	*No slave or other* person held to service or labor *in any State or Territory of the Confederate States*, under the laws thereof, escaping *or lawfully carried* into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor: but shall be delivered up on claim of the party *to whom such slave belongs, or* to whom	S

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SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

such service or labor may be due.

SECTION 3. *Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives and two-thirds of the Senate, the Senate voting by States;* but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations *concerning* the *property of the Confederate* States, *including the lands thereof.*

The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them at such times and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the territorial government, and the inhabitants of the several Confederate States and Territories shall have the right to take to such territory any slaves lawfully held by them in any

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SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

of the States or Territories of the Confederate States.

The *Confederate* States shall guarantee to every State *that now is, or hereafter may become, a member of this Confederacy,* a republican form of government; and shall protect each of them against invasion; and on application of the legislature (or of the executive, when the legislature *is not in session*), against domestic violence.

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ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article, and that no State, without its Consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE V.

SECTION 1. *Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention—voting by States—and the same be ratified by the legislatures of two-thirds of the several States, or by conventions in two-thirds thereof*—as the one or the other mode of ratification may be proposed by the *general convention—they shall thenceforward form a part of this Constitution. But* no State shall, without its consent, be deprived of its equal *representation* in the Senate.

SS*

*** Appears to be an infringement of State Sovereignty**

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ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath, or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VI.

The Government established by this Constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified; and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the *Confederate* States under this Constitution as under the *Provisional Government.*

This Constitution, and the laws of the *Confederate* States made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the *Confederate* States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the *Confederate* States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the *Confederate* States.

SS*

*** Appears to be an infringement of State Sovereignty**

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	The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people *of the several States.* The powers not delegated to the *Confederate* States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people *thereof.*
ARTICLE VII. The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.	ARTICLE VII. The ratification of the conventions of *five* States shall be sufficient for the establishment of this Constitution between the States so ratifying the same. *When five States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Constitution shall prescribe the time for holding the election of President and Vice President; and for the meeting of the Electoral College; and for counting the votes, and inaugurating the President. They shall, also, prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the Provisional Constitution shall continue to exercise the legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.*

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DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names,

GEO WASHINGTON—
Presidt and deputy from Virginia

ADOPTED unanimously by the Congress of the Confederate States of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, sitting in Convention at the capitol in the city of Montgomery, Alabama, on the Eleventh day of March, in the year Eighteen Hundred and Sixty-One.

HOWELL COBB,
President of the Congress.

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