MESSAGES FOR CONTEMPORARY GOVERNANCE FROM THE ADMINISTRATIVE HISTORY OF THE CONFEDERATE STATES OF AMERICA

by

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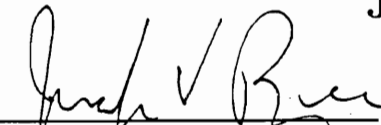

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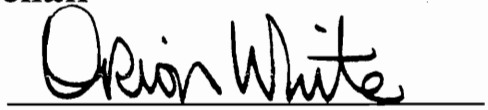

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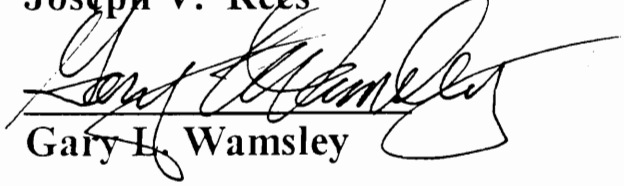

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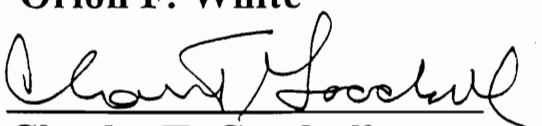

Charles T. Goodsell

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(ABSTRACT)

The dissertation examines administrative institutions and practices established to support the civil government of the Confederate States of America (1861-1865). Public administration at the national level in the Confederacy was characterized by administrative dualism (deference to state administrative norms and policy imperatives), restrained national level policy prerogatives, a normative orientation which emphasized responsiveness to public interest, and an overriding goal of achieving legitimacy in the eyes of the public.

Confederate administrative invention and experimentation developed into a responsive mechanism for governance; many of the Confederate innovations served as precursors to new administrative practices in the

government of the United States. Thus, the study of modern public administrative history begins not at the civil service reforms of 1883, or the Progressive era, but more properly, can be seen as including the norms of government administration debated during the founding period of the United States and which appeared subsequently in the Confederacy.

With my deepest gratitude and appreciation to

those without whom this dissertation would,

literally,

never have happened.

To:

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Joe Morgan, who gave beyond what anyone should be asked to give and waited, watched, and was patient (mostly)…

"Now, it's done!"

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CHAPTER ONE

AN INTRODUCTION

> Why bother to take an excursion, however brief, into history? Because...history 'has very little to do with the past at all and everything to do with the present' and, we would add, 'with the future.'[1]

In 1997, eminent Public Administration historian and scholar Paul P. Van Riper added his voice to a growing chorus of theorists in the field who are challenging the conventional history of the development of American Public Administration as an academic discipline and as a self-aware professional practice. In his commentary, "Some Anomalies in the Deep History of U.S. Public Administration,"[2] Van Riper asserts that classical Public Administration theory is replete with a number of "disciplinary peculiarities" and "dissonances." Agreeing with scholars such as Caldwell, Gulick, and Beach *et al.*,[3] Van Riper notes that Public Administration has developed as a singularly ahistorical discipline and concludes with Wamsley *et al.* that despite the admonitions of many influential scholars "public administration is incredibly lacking in historical perspective."[4] Marshall, Stillman and Cox *et al.*[5] support Van Riper's contention that Public Administration theory has misappropriated a Progressive Era founding (arbitrarily traced in most texts to Woodrow Wilson, Frederick Taylor and

Max Weber) which disconnects it, theoretically, from its origins in the formative eras of United States history. Describing these anomalies as "ignorance, error and oddity in our discourse about Public Administration in the United States", Van Riper catalogs a series of misapperceptions and misunderstandings he considers of serious consequence to the discipline. Van Riper posits that a particularly insidious form of ignorance derives from gaps in our public administrative historical knowledge and that these gaps portend major consequences for the future of the field. One common manifestation of the knowledge gaps Van Riper describes is the perennial identity crisis the field has been said to experience throughout much of its existence. One particular historical "gap" or "disciplinary peculiarity" Van Riper identifies is the Civil War Era, and, by extension, the Confederate States of America. This knowledge gap is the focus of this dissertation.

Since its emergence as a self-conscious field of study and practice, public administration scholarship has paid little attention to administrative history prior to the Progressive Era. In tracing the discipline's origins to the political, cultural, and social upheavals that produced the Populist and subsequent Progressive movements, Public Administration could claim its credibility as part of the

reform ethos of that era. McSwite observes that given the enormous changes occurring at the end of the 19th Century, Americans, whose central value has always been stability, welcomed the new reform proposals of Progressivism for good government through collaborative, scientifically informed administration.[6] Then, as the history of the field has traditionally been explained, from the turn of the twentieth century, armed with a reform mentality and the values of rationality and efficiency, Public Administration moved with American society into the Great Depression where its reform traditions merged with scientific management and evolved into "administrative management." This administrative management conceptualization would serve as the impetus for the expansion of the federal government which accompanied the New Deal.[7] Following World War II, administrative management would evolve in response to the rise of scientific behavioralism. Under the theoretical auspices of Herbert Simon the influence of empiricism became dominant and empirical evidence and scientific technique defined all knowledge in the field. This transition contributed to the creation of an intellectual cul-de-sac from which public administration theory has had enormous difficulty escaping.[8] Similarly, during the mid-to-late 1960's Public Administration experienced another intellectual and

theoretical transformation which reflected the societal unrest and antiestablishment reactionism of the period. Out of this transition, the "New Public Administration" or the "Minnowbrook Perspective" emerged. Marshall, White, and McSwite, among others, posit that contemporarily, the discipline's theoretical orientations are responding again, this time to postmodernist thought. By rejecting the legitimating force of the grand narratives which have previously constituted "truth" in the discipline and insisting instead on suspended judgment and relying on novel and innovative ways of "re-presenting" taken-for-granted aspects of our consciousness, postmodern public administration offers different approaches for understanding the field of public administration, its intellectual history and the issues that face the discipline.[9]

This simplified historical sketch emphasizes that the various adaptations outlined above, as manifested in Public Administration theory and practice, clearly illustrate a response pattern in the field. Thus, major societal, cultural, political and economic upheavals or traumas have generally triggered responses or changes in practice and scholarship. Given this connection between significant societal alterations and adaptive behavior in the public administrative system, it is, as Van Riper would

put it, at least an "oddity" or "disciplinary peculiarity" that Public Administration scholarship would have paid so little attention to societal events as profound as the emergence of the Confederate States of America and the subsequent Civil War.

It would it seem reasonable to expect that, given a cultural trauma of the magnitude of civil war, public administration scholars might anticipate significant adaptations in the administrative system around that event and actively search them out for analysis. Surprisingly however, American public administration scholarship has produced virtually no research of this type for either the United States or the Confederate States government. In fact, most Public Administration literature skips this period in American history entirely or if it acknowledges it at all, dismisses the civil war period simply as an episodic disruption.

This omission is, in part, attributable to the discipline's stubborn claim of 20th century origin. It may also result from scholarly avoidance of a period that is, admittedly, a difficult and sensitive period in American history. In any case, the result is that the emergence of the Confederate States of America and its consequent public administration have never been explored in Public

Administration's scholarly literature. This dissertation takes as its task an exploration of this contentious, complicated, and emotional historical period in an effort to present an overview of the theoretical insights that Public Administration scholars might derive from an examination of the emergence of the Confederate States of America and its experiment in governance.

OUTLINE OF THE DISSERTATION

The administrative history of the Confederate States of America provides a venue from which to identify a number of salient issues of abiding interest to public administration scholarship. Over the course of this project's development, three themes emerged which have served to illuminate and challenge the research, and to give structure to its analysis. First, and as noted earlier, the total disregard of the development of the Confederate Constitution and its public administrative apparatus by contemporary public administration has precluded the development of insights deriving from this completely unique experience in American history. As an unprecedented experiment in American constitutional innovation, the study of the Confederate constitutional experiment provides an opportunity to study

some of our most important "what if" scenarios. Key administrative innovations, until now misattributed in Public Administration scholarship to Progressive Era and early 20th Century development, will be shown to have origins as Confederate governance innovations. That this significant formative episode in American administrative history has been neglected by public administration scholarship is, indeed, an unfortunate circumstance. This dissertation argues that the Confederate Constitution was, at the very least, important for the public administrative practice which emerged from those changes. This dissertation is intended to serve as one contribution, one step, toward filling this particular gap in the field's literature.

A second theme the research produced concerns the idea that a study of Confederate Public Administration also provides an opportunity to glimpse, if only for a troubled and war-torn moment, a public administration system reflective of many of the priorities the Anti-Federalists might have maintained had negotiations attending the writing and ratification of the American Constitution of 1789 ended differently.

One constitutional principle which fundamentally differentiates the C.S.A Constitution from the U.S. Constitution is the locus of sovereignty. Originating in

their differing perspectives regarding the homogeneity of the community, one essential difference between the Federalists and Anti-Federalists of 1789 was that the Federalists considered the states politically unstable and as potentially destructive of good government. In contrast, the Anti-Federalists held that state governments would best represent the individual or local-community wills of the various states. They believed, in fact, that these local entities of governments were the bulwarks of republicanism. This tension has been described as a debate on behalf of government by dialogue--conducted within a community of meaning (the Anti-Federalist position) versus government by distant centralized authority—or, put another way, the objective control of administration (the position advanced by the Federalists).[10]

The Confederate founders shared with their Anti-Federalist predecessors a perspective which emphasized trust in social dialogue and collaboration as a means of human interaction[11] and in which participation in government affairs was premised upon consent of the governed. In this view, the consensus which facilitated the consent resulted directly from the social dialog and collaboration. Accordingly, the Southern leaders who produced the Confederate Constitution in 1861 were convinced that their

document was a restoration of the original federal order gone wrong as a consequence of misconstruction and intentional disregard for the federalism established in the U.S. Constitution.

The 1787 Constitutional Convention failed to conclusively resolve many significant issues of serious consequence in the context of a compound republic. This was due, in large measure, to the very practical problem of securing ratification of the new Constitution. In particular, the preamble of the 1789 U.S. Constitution, established the locus of sovereignty in "the people," thereby establishing a national community of individuals. As Patrick Henry would argue, the preamble thus declared the anti-federal character of the constitution. He demanded to know why the Federalist framers had written "We the People, instead of We, the States…" since states were the basic characteristic of, soul of, and, locus of sovereignty in a confederation. Otherwise, he argued, "If the states be not the agents of this compact, it must be one great Consolidated National Government of the people of all the states."[12]

At least initially, this conflict did not present an insurmountable problem, for the ambiguity of the U.S. Constitution facilitated accommodation of both viewpoints.

Since the Anti-Federalist and Federalist assumptions about sovereignty were mutually exclusive, however, it was inevitable that the union would be tested as, over time, the national and state governments' public policy objectives clashed.

Finally, the third theme permits us to observe the development of the governance structures and mechanisms of the C.S.A., suggesting that they could potentially serve as working exemplars of many of the principles advanced in the "Blacksburg Manifesto" or "Refounding Public Administration" perspectives. This "school"[13] or perspective in public administration scholarship describes an "agency perspective," and posits the public administrative agency as a hub of community dialogue which produces legitimate and workable public policy initiatives and implementation strategies grounded in the public interest of the affected community. According to the authors, a critical element in the successful creation of this dialogue is "agential leadership," a form of administrative leadership primarily oriented toward creating and guiding this policy dialogue. "The presence of this value framework and its embodiment in the agential leader forms a context for policy dialogue that--it is promised--will render that dialogue **nonideological**"[14] (emphasis in original). Therefore, the

authors maintain, the dialogue can transcend the expressions of specific interests which might arise. Rather, it can produce a neutral synthesis of interests which reflects a genuine common interest. This leadership, bound by a set of generally agreed upon values and operating within the context of a firmly established and mutually supported value framework corresponds closely with the aspirations Confederate founders expressed for public administration in the Confederacy and resonates with the theoretical foundations of the Anti-Federalist perspective.

As George Rable explains, the Confederacy attempted a revolution against partisan politics and they deliberately endeavored to eliminate, as far as was possible, any traces of political party activity, partisanship, patronage, demagoguery and political corruption. Predictably, their political behavior often lagged behind their idealistic aspirations. In deliberately attempting to purge their politics of the influences of partisanship, Southerners intended to replace the old political system and to create a reformed political culture. This new political culture was to rest on an organic sense of community and national solidarity which would be nourished by the public's faith in the Confederate government leadership.[15]

In the Confederacy, elements of political culture

(rational, emotional and symbolic) were developed in political speeches, editorials, sermons, textbooks (developed after the Confederacy was established, specifically to reinforce "Confederate values"), private documents and in the correspondence between the public and its officials and even between the officials themselves. Rable observes that this "rich body of evidence reveals common assumptions about the legitimacy of the political process in general and about the role of government in particular."[16] Rejecting a model of politics based on competition and compromise, Southern leaders aspired to construct a commonwealth resting on social harmony, political consensus and, unquestionable legitimacy. Leaders would use power to serve the interests of the entire community, and parties and patronage would have no place in this purified political culture. A fuller explication of exactly how these initiatives translated into action in the Confederacy will be detailed in subsequent chapters of this dissertation. For the moment, it is important to note how closely these Confederate ideals resonate with Gary Wamsley's view of political culture and public philosophy for a "Refounded" Public Administration.

> Its prescriptions amount to a prioritization of political culture with reference to the operation of the political system and government. A

> public philosophy is based on perspectives shared by elites and informed segments of the public, and accepted by the rest of the public as to how our political and governmental institutions **should**, and for the most part do, operate to perform the functions of the political system (Emphasis in original).[17]

Wamsley maintains that governance systems must remain consonant with the dominant values found in their Constitutions and related founding papers. Like the United States, the Confederate States attempted to maintain that standard, claiming a restoration of the original ideals of the Declaration. Moreover, the Confederacy appropriated perspectives which resonate with many 18th century arguments, including the Federalist Papers, Anti-federalist perspectives, and the writing of Thomas Jefferson as the raison d'etre for its own establishment.

These themes will be developed more fully throughout the dissertation. In addition, a more complete survey and analysis of the public administration which developed out of the Confederate Constitution, and an assessment of the political and administrative culture which evolved from these elements will also be presented in subsequent chapters.

The second chapter of this work reviews the

literature which contributed to the development of this research and provides an overview of the primary source material research process. Chapter Two explains the criteria used in evaluating original documents to be included in the research base and begins the development of the historical, contextual and developmental genesis of the Southern Confederacy. After presenting a review of the commonalities between Confederate and Anti-Federalist thought, the chapter provides a broad overview of the constitutional adaptations incorporated into the Confederate Constitution and begins an exploration of the ramifications of those adaptations on public administration in the Confederacy.

Chapter Three explores the Confederate Constitution in detail. The chapter considers the constitutional theory which led to the innovations, revisions and fundamental alterations the Confederate founders made to the Constitution of the United States in devising their own document. The chapter presents the constitutional innovations, concluding with a discussion of the Confederate Constitution as a manifestation of both the interpretivist and new republican constitutional theory perspectives.

Chapter Four explores Confederate Public administration and examines the structures, agencies,

institutions, operations and practices that evolved as Confederate public administration. Supported and enriched by significant primary source material, the chapter patterns itself after one of the discipline's most influential models of administrative history. Leonard D. White's volumes, The Federalists, The Jeffersonians, The Jacksonians, and the Republican Era,[18] provide a four-point analytical focus which serves as the analytical structure for the chapter. White's categorization includes: the relationship between the executive and the legislative branches in controlling administration; the operation of the departments; the personnel system; and the major administrative problems in each area.

Chapter Five examines other significant administrative relationships important to the development of Confederate governance. The complex relationships between administrative agencies, Cabinet Officers, and other influential members of the Confederate government are considered as are the impacts of intergovernmental relationships. The chapter concludes with a discussion of the implications of the Confederacy's failure to develop a Supreme Court.

Chapter Six concludes the dissertation by exploring

the implications and conclusions for contemporary governance that can be drawn from Confederate public administration. The chapter explores contemporary federalism and intergovernmental relations as manifestations of administration and considers how the Confederate experience might illuminate contemporary understandings of these critical issues. Finally, the chapter concludes with a suggestion that the study of Confederate administration may be important to the neutralization of much of the contemporary anti-state meta-narrative as it could be instrumental in the development of "counter stories" which can benefit governments and public administration.

As this introductory chapter suggests, this dissertation is intended to provide a heretofore unexplored perspective on the development of American Public Administration. The research process generated compelling information that provides deep and revealing insights into the discipline's administrative history. Yet, as mentioned above, this particular era is a disturbing, painful period in our collective history which even today continues to evoke deep emotions and visceral reactions. Recognizing and appreciating that any discussion of the Confederacy and its governance generates powerful emotions and opinions, it is important that the implicit preconceptions underlying this

work be brought to the foreground at this point. In undertaking this research, the overarching goal was to provide an uncharacteristic, non-traditional, unorthodox, and objective insight into a profound episode in our history, and to assess its impact on the field of public administration.

CHAPTER ONE: NOTES

1.Gary L. Wamsley and James F. Wolf, Refounding Democratic Public Administration: Modern Paradoxes, Postmodern Challenges (Newbury Park, CA: Sage Publications, 1996), p. 12.

2.Paul P. Van Riper, "Some Anomalies in the Deep History of U.S. Public Administration," Public Administration Review, Volume 57 Number 3, (May/June, 1997), pp. 218-222.

3.Linton K. Caldwell, "The Administrative Republic: The Contrasting Legacies of Hamilton and Jefferson," Public Administration Quarterly, Volume 13, Number 4 (Winter, 1990), pp. 470-493.

Luther Gulick, "Time and Public Administration," Public Administration Review, Volume 47, Number 1 (January/February, 1987), pp. 115-119.

John C. Beach, Elaine D. Carter, Martha J. Dede, Charles T. Goodsell, Rose-May Guignard, William M. Harraway, Monisha Kumar, Betty N. Morgan, Virginia K. Sweet, "State Administration And The Founding Fathers During the Critical Period," Administration & Society, Volume 28 Number 4, (February, 1997), pp. 511-530.

4.Wamsley and Wolf, Refounding Democratic Public Administration, p. 12.

5.Gary Marshall, "Public Administration In A Time Of Fractured Meaning: Beyond The Legacy of Herbert Simon" (unpublished Ph.D. dissertation, Virginia Tech, 1993).

Richard J. Stillman, II, Public Administration: Concepts and Cases (6th ed.: Boston, MA: Houghton Mifflin Company, 1996), pp. 23-25.

Raymond Cox, Susan Buck and Betty Morgan, Public Administration in Theory and Practice (Englewood Cliffs, NJ: Prentice-Hall, 1994).

6.O.C. McSwite, Postmodernism, Public Administration and the Public Interest, in Refounding Democratic Public Administration, p. 202.

7.Wamsley and Wolf, Refounding Democratic Public Administration, p. 15.

8.Gary L. Wamsley, Robert N. Bacher, Charles T. Goodsell, Phillip S. Kronenberg, John A. Rohr, Camila M. Stivers, Orion F. White, James F. Wolf, Refounding Public Administration (Newbury Park, CA: Sage Publications, Inc., 1990), p. 19.

9.Marshall, "Time Of Fractured Meaning," pp. 3-10.

10.Marshall, "Time Of Fractured Meaning," p. ii.

11.Wamsley and Wolf, Refounding Democratic Public Administration, p. 12.

12.Patrick Henry, quoted in Storing, What the Anti-Federalists Were For, p. 12.

13.Stillman, Public Administration, p. 23.

14.Wamsley and Wolf, Refounding Democratic Public Administration, p. 204.

15.Rable, Confederate Republic, p. 4.

16.Rable, Confederate Republic, p. 15.

17.Wamsley and Wolf, Refounding Democratic Public Administration, p.359.

17. Leonard D. White, The Federalists: A Study in Administrative History (New York, NY: The Macmillan Company, 1948); The Jeffersonians: A Study in Administrative History 1801-1829 (New York, NY: The Free Press, 1951); The Jacksonians: A Study in Administrative History 1829-1861 (New York, NY: The Free Press, 1954); The Republican Era: A Study in Administrative History 1869-1901 (New York, NY: The Macmillan Company, 1958).

CHAPTER TWO

SEARCHING FOR CONFEDERATE ADMINISTRATION: EXPLORING THE LITERATURE, CONTEMPLATING KNOWLEDGE GAPS, AND CONSIDERING ANTI-FEDERALIST INFLUENCES

> No more vital truth was ever uttered than that freedom and free institutions cannot long be maintained by any people who do not understand the nature of their own government.[1] Woodrow Wilson
>
> The South then resumed, most naturally, the political methods of 1788.[2] Woodrow Wilson

In the preface to The Republican Era: 1869-1901, political scientist Leonard D. White makes the following peculiar, but predictable, observation: "One is impressed indeed with the continuity of administrative institutions, surviving the transformation of economic structure, political convulsions, and the impact of war." White continues, noting that despite the severity and gravity of these types of chaotic episodes in American administrative systems during the Civil War, the development of the Confederacy and the resultant war "left little impression on civil institutions; the return to normalcy was rapid and substantially complete."[3]

White's observation that the resiliency and adaptive capacity of administrative institutions is not only remarkable, but is at least partially responsible for societal survival during periods of crisis is an important one which this project considers very seriously later in the

work. However, White's subsequent observation, that the Civil War "left little impression" on American civil institutions points to the overriding theme to be considered in this research endeavor.

Howard McCurdy's Public Administration: A Bibliographic Guide to the Literature[4], does not indicate that public administration scholars have undertaken substantial work on Confederate administration. Subsequent research, however, eventually revealed three pieces of relevant literature. Charles W. Ramsdell's 1921 article, "The Control of Manufacturing by the Confederate Government" was helpful in supporting subsequent research into Confederate administrative endeavors in war materiel and supply production.[5] Louise B. Hill's, "State Socialism in the Confederate States of America," similarly supported research into the social welfare function of public employment in government-run enterprises, and the responsive nature of Confederate public administration as it assisted the needy, widowed, orphaned, wounded, and displaced with employment in Confederate manufacturing facilities.[6] Finally, the most valuable piece of literature discovered was one specifically written by public administration scholars for the discipline. An article by Paul P. Van Riper and Harry N. Scheiber, "The Confederate Civil Service," was published originally in 1959. Van Riper and Scheiber, while lamenting the paucity of previous research on the topic, did a

remarkable job of pulling disparate information together in a very important and useful article. While their focus was primarily on the personnel aspects of administrative operations, the article provided valuable insights, which greatly facilitated this study.

Confederate Administration: The Historian's Perspective

There are a number of extremely sensitive and tragically difficult issues surrounding the development of the Confederate States of America. It is very likely that as a result of our collective sensitivity to the troublesome nature of these issues, we have, as a group of scholars, turned away from any conscientious study of Confederate administration. As the venerable Civil War historian Merton Coulter has observed, "no study of the Confederate government in principle and operation has ever been made."[7] While this reaction may be understandable, it is also unfortunate since this period in history represents an episode of unprecedented administrative experimentation and creativity in American history.

The Civil War era also represents a period of experimentation in constitutional development, which deserves scholarly attention. This traumatic period in our nation's history marked a significant crossroads in American political development. The consequences of the actions and reactions emanating from this period remain, to the present, topics of intense debate. A diversity of contemporary

issues from the nature of American federalism[8], civil liberties and rights, economic strategies, and representative bureaucracy, to the regulation and scope of government power can be insightfully traced to this historical moment.

Given the seriousness and contemporary relevance of the issues under consideration, it is surprising that so little scholarly attention has been accorded the development of administrative structures and institutions of the C.S.A. during this extraordinary period. Civil War historian William M. Robinson, Jr., aptly described the state of research into Confederate Administration in Justice in Grey: A History of the Judicial System of the Confederate States of America. Robinson wrote that while military affairs, military administration and engagement have been thoroughly treated across a variety of disciplines, constitutional, executive, and congressional matters have received only incidental attention. Robinson's work on the Confederate Department of Justice, the first Department of Justice ever established in an Anglo-Saxon country,[9] is an in-depth study which provides substantive assistance in understanding the structure and operation of the Confederate legal system during the life of the confederacy.

R.G.H. Kean's Inside the Confederate Government, the diary of Kean's service within the Confederate Department of War, J.L.M. Curry's Civil History of the Government of the

Confederate States of America, and The Postal Service of the Confederate States of America, by August Dietz are departmentally specific works, but they do not provide substantive coverage of the larger administrative relationships within the context of government administration.[10] While each work is informative, fascinating reading, neither attempts an integrated analysis of the interactions of particular agencies with the executive branch, with Congress, or with the public they were instituted to serve. These works share, with more comprehensive works such as Clement Eaton's History of the Southern Confederacy, A Government of Our Own by William C. Davis, and Merton Coulter's influential, The Confederate States of America 1861-1865, an interest in more encompassing societal issues, and a preoccupation with military issues. Eaton's work along with Davis's and Coulter's, however, provide substantial and integral material. These comprehensive histories, when joined with The Militant South, by John Hope Franklin, The Ordeal of the Union Volumes I and II, by Alan Nevins, John A. Garraty's The American Nation, and Eugene Berwanger's The Civil War Era build a detailed picture of the nation, the South, secession, the Confederacy, and the context in which Confederate public administration existed.[11]

A second category of useful sources providing administrative department operational detail and insights on

policy deliberation and procedural issues were the numerous biographies of Confederate cabinet officers; the Confederate President, and the President's significant advisers. Biographies of Jefferson Davis and his brother Joseph E. Davis, John Henninger Reagan, Confederate Postmaster General, Judah P. Benjamin, who served in three cabinet posts and was Davis's loyal confidant and personal advisor throughout the life of the Confederacy, and Stephen Mallory, Secretary of the Confederate Navy provided essential details and surprising insights.[12] Not only were these works valuable in piecing together minute details of daily administration, they were also instructive in their descriptions of Davis's cabinet relations, and Confederate policy formulation and development. They were essential in investigating the Confederacy's integration of policy development, implementation strategies and public opinion. These biographical sources provided integral information on the Confederate President, Jefferson Davis as an individual, Davis as administrator, leader, and interpreter of important events. Moreover, the biographies provided specific details about the Secretaries in the Confederate Cabinet, their relations with one another, their department's activity in the general government, and much about the character and the ethical predisposition of the Confederate administration. The biography of John Henninger Reagan would lead to one of the most exciting discoveries in the

research process; the realization that the Confederate Post Master General went on, after the Civil War, to serve as a driving force in the establishment of the Interstate Commerce Commission (ICC) in the United States government. The findings regarding Reagan and the ICC are covered extensively in later sections of this work.

Two additional historical sources supported the study of both Confederate cabinet relations and the relationship between the dual administrative systems of the Confederacy, the central government with individual state governments. Rembert W. Patrick's fascinating work, Jefferson Davis and His Cabinet and The Role of the State Legislatures in the Confederacy, by May Spencer Ringold, contributed valuable details and rich descriptions of the working relationships of individual federal Agency heads with other entities of government.[13] Although neither work is particularly sophisticated scholarship, both contributed compelling, personal, insider accounts of influential Confederate officials. One of Patrick's accounts, for example, concerns Confederate Attorney General Thomas Watts (April 1862-September 1863). Because it is so indicative of the sorts of insights Patrick provides, and because it is so instructive of Confederate administrators and their administrations, it bears inclusion here.

> When he [Watts] went to Richmond to enter the Cabinet...he had to open an office that was of his own...When he did so, he gave it as a law unto his clerks, usherers, etc., that the penalty of

> incivility to even a beggar, in his department would be a kicking downstairs. Urbanity being one of the cannons of his nature, he made it a statute to regulate his department. In hospitals at Richmond he was found at morning's early dawn and at evening's holy hour at the bed-side of the dying soldier receiving his nuncupative bequest, writing his will, administering to his every earthly want, and pouring into his sad soul the consultation [sic] of religion....[14]

Accounts of operations of Confederate politics, administration, and daily life were provided by newspaper accounts, personal diaries, reports and memoirs written during the life of the Southern nation. National newspaper archives are readily available, as are published transcripted materials from more obscure Southern papers, which appeared briefly after secession and then disappeared as the War ended. Additionally, magazine accounts from national publications such as Harper's Weekly are important sources of contextual information. Volumes of the writings of particular journalists in influential papers were important in substantiating the editorial activities of the era. Frederick Daniel's compilation of John M. Daniel's editorials in The Richmond Examiner During the War[15] is one such example. Charles Girard's A Visit to the Confederate States of America in 1863: Memoir Addressed to His Majesty Napoleon III, while clearly motivated to influence France's consideration of diplomatic status for the Confederacy, described the Confederacy's public administrative structure.

Unfortunately, Girard's account lacked detail. One of the more compelling contemporary accounts of the activities of the Confederate administration and its effect on the public was published in Richmond During the War; Four Years of Personal Observation by a Richmond Lady.[16] The personal diary of Richmond native Sallie Putnam, the volume recounts contemporary life in Richmond society during the Confederacy, the impact of the government's transfer to Richmond, and how Richmond's citizenry was affected by the ominous presence of the Confederate Capital.

Another substantive category of literature, which made significant contributions to the development of the research for this project, is of course, information provided by the participants themselves. Jefferson Davis's two volume work, The Rise and Fall of the Confederate Government, has been characterized by some as an apologia; by others as rationalization; and by a few, as unreadable. It is, in fact, the musings of a very complex individual attempting to explain, in intricate detail and as only he could, one of the most important occurrences in American history.[17] Other works written by influential Confederate officials who were instructive to this project include the Memoirs, of John Henninger Reagan and Vice President Alexander Hamilton Stephens's two volume A Constitutional View Of The Late War Between the States.[18]

Archival Research

The surviving records and documentation produced by and for the Confederate States of America are widely dispersed throughout the United States. While many records and valuable papers were destroyed when Richmond was invaded in 1865, many other records were packed and transported south with government officials as they fled the capital. Unfortunately, Union troops subsequently captured and destroyed many of the valuable records the Confederate government had tried so hard to protect as it retreated southward. Substantial collections survived destruction, however, and those records have been gathered into several public depositories. From these remarkable collections an overview of Confederate administration can be pieced together from primary document sources. Research for this project has engaged the collections now housed in the Library of Congress (Division of Manuscripts) and the National Archives. In addition, the documents collections of Perkins Library, Duke University and the Southern Historical Collection of the University of North Carolina at Chapel Hill have provided invaluable materials and manuscripts. One of the particularly useful resources in discovering and preparing the archival research material for this project was Henry Putney Beer's Guide To The Archives Of The Government Of The Confederate States of America.[19] Beer's guide is an indispensable road map to the locations,

availability, and accessibility of the records collections of the Confederacy from those held in Washington, D.C. to individual pieces of correspondence held in private collections across the country.

Documentation, both in the form of Government Documents, Manuscripts, Records, Official Correspondence, and C.S.A. publications, as well as in the personal correspondence, diaries, journals, and personal records of administrative officials provided fertile ground for exploration. It is a profound and very compelling experience to hold the work of Jefferson Davis, John Henninger Reagan, or Robert E. Lee, for example, in one's hands. Interestingly, however, it seems at least as compelling, and perhaps more poignant, to explore the surviving records or the unknown, local, Confederate government officials who worked in obscurity at various offices throughout the South.

Research on primary documents is a fascinating, time-consuming experience--slightly frustrating in that there is always infinitely more relevant material available than can ever be incorporated into one research product. Such is certainly the case with the primary document search for the public administration of the C.S.A. The cannon of selection for the inclusion of any primary source material in this project was very simple: If the source material illustrated in some direct way the public administrative theory of the

Confederacy, as that theory could be inferred from the Confederate Constitution, the primary source material was, at least, eligible for inclusion. On the face of it, this seems a perfectly reasonable standard. The implementation was much more difficult.

Government Documents

The Confederate Government was committed, in principle, to the publication of all its documents in the attempt to provide its citizens as much information as possible regarding its activities. Unfortunately, since the government never established its own printing office during its existence, shortages of labor, supplies, and finances to have printing done in the private economy severely hampered their efforts. While they managed to accomplish an enormous amount of documentation under the circumstances, much that has been published on the Confederacy was actually done later by the United States Government.

All of the Confederate statutes were published contemporaneously, except for the very last session of the Congress, held literally as the Confederacy was collapsing. The Confederate Constitutions, both Provisional and Permanent were published and widely distributed as were The Statutes at Large of the Provisional Government of the Confederate States of America. The Public Laws [and Private

Laws] of the Confederate States of America, organized by Congressional sessions, along with numerous committee reports (primarily related to military concerns) were also printed contemporaneously. The debates of the Confederate Congress were never published, in fact there was no official provision for records of the debates, however, the debates were widely reported in newspapers. These reports are now transcripted and they appear in the Southern Historical Society Papers. The U.S. government published the Journal of the Congress of the Confederate States of America; along with numerous volumes of other military documents and records.

The sheer mass of printing that the Confederate system was able to generate is quite extraordinary and becomes apparent as research proceeds through the surviving records. From the Official Guide of the Confederate Government, which provided the locations of all public buildings, addresses of the Confederate, Virginia state, and Richmond city government offices--and the home addresses and locations of the personal residences of all Confederate officials, to simple report forms, instructions circulars, public information broadsides, public notices, departmental stationery, ledgers, receipts, vouchers, currency, bonds and notes, the volume is almost incomprehensible. As the war dragged on, the quality and availability of paper supplies and printing facilities deteriorated, as did the

government's capacity to produce necessary records, documents, forms, etc., and it is quite apparent from examination of the surviving documents that printing capacity was stretched far past its limits. However, the surviving records do document a credible effort at establishing a professional, accountable, public administrative system under almost impossible circumstances.

Manuscripts

As important as the printed material remains to our understanding of what was accomplished by the Confederate administrative system, an equally substantial body of material exists in the collections of diaries, journals, correspondence files nd other documents which also survive. These original documents can be categorized into personal and official documents; however, for this project, the lines tended to blur, as personal documents were researched for their relevance to details of public administration.

From hand written lists of employment applicants in the Confederate State Department to Treasury Department reports on the progress of War Tax Collection, from petitions for relief from Tax-In-Kind committees to petitions by local communities to have soldiers returned to families who could not support themselves, the contextual essence of day to day administrative operations becomes clear. In Jefferson Davis's correspondence to local state officials and in

Alexander Hamilton Stephens own hand written calculations of the railroad mileage available for troop supply, the quality and character of these hand written materials bring the environment of the Confederate administration, and its officials to life. These examples represent only a smattering of the kind and types of information available, but hopefully, this sample will be intriguing enough to encourage readers to engage in further research development.

A personal preference for study was the surviving records of those who served the Confederate government at local offices and within communities dispersed throughout the South. Whether these administrators were conscription officers, postal service officials, various kinds of tax administrators and collectors, customs officials, etc., the records of their service are minute cameos of what Confederate administration was about far away from the capital at Richmond. Their professionalism, dedication to cause and constituency, and the dignity and ethical commitment they brought to their work--and to the Confederate government, was an unexpected and enlightening finding.

From the special collections libraries at Duke University and the University of North Carolina, Chapel Hill, it was possible to assemble records from a cross section of officials with varying aptitudes, qualities and types of service. Their records contained evidence of many

successes and many failures. Overall, however, it was an impressive picture of highly competent and committed administration operating under the most difficult circumstances. Space considerations do not permit the detailed accounts of the duties of various administrative officials discovered during the research for this project. but, it is important to note here that these records of administrative endeavor do exist, that they are available to us as significant sources or research material, and that they can teach us something about committed, professional public administration.[20] Confederate administrative officials were disciplined, took great pride in their work, maintained sensitivity to their communities, and were committed to the success of the Confederacy. Theirs was a normative and professional perspective from which both contemporary American public administrators and public administration scholars might well learn.

Confederate Constitutionalism

Yet another functional subdivision in the literature concerns the Confederacy's particular brand of constitutionalism. This literature is useful because it clarifies the philosophical underpinnings of that constitutionalism and so may enhance our understanding of it. Of particular assistance were the very comprehensive historical works, The Confederate Nation: 1861-1865 by Emory

Thomas and The Confederate Constitutions, by Charles Robert Lee, Jr. While both works include considerations of wider social, economic, political and military circumstances, they also focus very specifically on the constitutional development of the Confederacy. These works were central to this project and when combined with the works of constitutional scholar Marshall De Rosa, provided exceptional grounding for the sections of this work that explore Confederate constitutional adaptations. De Rosa's "An Analysis of the C.S.A. Constitution in Contradistinction to the U.S. Constitution as Explicated by Publius," and his subsequent title, The Confederate Constitution of 1861: An Inquiry into American Constitutionalism, were the primary support sources for most of the discussion on Confederate constitutionalism.[21]

Historians and scholars have often explained the emergence of the Confederate States of America and its constitutional experiment as the elaborate rationalization of a legal system established to support one group of men enslaving another. In this view, the Southern endeavor in constitutional theorizing and nation building was an elaborate construction, perpetuated only to maintain a particularistic and anachronistic vision of society. One of the substantive objects of this present work, however, is to examine the manifestation of the Confederacy and its governance experiment as an almost predictable occurrence in

American constitutional development, given its origins, and to explore what else might be learned from an explication of the Confederate Constitutional vision. If the Confederate States of America and its Constitution were not merely an endeavor to protect a landed aristocracy's property in slavery and maintain a patriarchal social order, what other lessons might be learned from the emergence of the Confederacy and what were the constitutional ambiguities the Confederate founders attempted to mitigate?

Historian Merton Coulter has observed that the Constitution of the Confederate States of America remains one of the most interesting documents of fundamental law in America, not so much for its underlying principles, but for its clarifications and additions to the predecessor U.S. document.[22] This dissertation argues that the Confederate Constitution is at least as important as an object of study for the public administrative practice which emerged from those constitutional adaptations. While the details of the historical and legal developments which fixed the United States on its nearly inevitable path to disunion are fascinating study in and of themselves, space considerations preclude a full exposition of them here. The series of leadership failures, political manipulations, and lost opportunities which contributed to the ultimate emergence of the Confederacy are a well-known and oft-told tale. The task at hand is, rather, to focus on the adaptations the

Confederate founders incorporated into their Constitution, to explore their thinking for the underlying perspectives which guided their work, and to consider the effects these constitutional changes had on their public administrative system. This consideration must necessarily begin some seventy years prior to the establishment of the C.S.A. and will be the focus of the following sections.

THE LEGACY OF ANTI-FEDERALISM

Scholars generally agree that by 1787 it had become apparent to most American leaders that the exigencies of governing an indebted, recalcitrant confederation of states had proved too much for the Articles of Confederation. In May of 1787 delegates were dispatched to Philadelphia to begin revising the document. While few in attendance questioned the necessity of revisions and alterations, the manner and scope of the changes deeply divided the delegates and ultimately all Americans. While a complete overview of the development of the Federalist/Anti-Federalist perspectives is beyond the scope of this work, a brief exposition of the Anti-Federalist position is necessary to a more complete understanding of its later influence on Confederate thought.

History has well recorded the disparate opinions and substantive debates which arose around the writing and ratification of the 1787 U.S. Constitution. While, as John

D. Lewis has noted, the composite Anti-Federalist case varied a great deal in cogency, relevance, rhetoric, moderation and emphasis from writer to writer, common arguments reappeared with regularity and often in identical language. Therefore, a general pattern of Anti-Federalist argument, roughly similar in elements to the theoretical perspectives constitutional advocates presented in The Federalist can be sketched out.[23]

It is essential to note that in the substance of the Anti-Federalist objection to many specific elements of the new Constitution, and in the Federalist defense of the document, were strewn the earliest precursors to the conflicts to follow. While they would wait seventy years, the tensions and ambiguities incorporated into the U.S. Constitution of 1787, primarily to assure its ratification, eventually demanded resolution.

The Anti-Federalist argument opposing the 1787 Constitution can be described as an amalgam of several essential issues and themes. Of primary importance at the time, and certainly later in the nineteenth century, was the contentious issue of the locus of sovereignty under the new constitution. Guided by an orthodox and unitary view of sovereignty, Anti-Federalists reasoned that it would be impossible to have two governments exercising sovereign power within the same territory over the same population. Undoubtedly, they maintained, the larger, stronger

government would usurp the powers of the smaller. "In short, the very existence of a central government with legislative, executive and judicial powers threatened the states, and hence American republicanism."[24] This threat to republicanism, together with the pervasive perception that there was a "Philadelphia plot to destroy the sovereign independence and equality of the states and to establish an oppressive centralized monarchy over freedom loving Americans,"[25] became one of the Anti-Federalists central concerns.

To its objectors, the new constitution was vitiated by its first seven words. The consolidation of the people of the United States into one polity, in contradistinction to the people of the **several states was**, in the opinion of Anti-Federalist Elbridge Gerry, nothing short of despotism.[26] The Anti-Federalists held that the new Constitution would destroy republicanism and individual liberty. In so doing, the consolidated government proposed, would also destroy the sovereignty and equality in the states. Samuel Adams explained his objections, saying:

> I confess as I enter the Building I stumble at the Threshold. I meet with a National Government, instead of a Federal Union of Sovereign States. If the several states in the Union are to become one entire Nation, under one Legislature, the powers of which shall extend to every Subject of Legislation, and its laws be supreme & controul the whole, the Idea of Sovereignty in these States must be lost. Indeed I think, upon such a supposition...they would be

> Imperia in Imperio justly deemed a Solecism in Politicks, & highly dangerous, and destructive of the Peace Union and Safety of the Nation.[27]

In addition, Anti-Federalists perceived centralizing purposes in other tenets of the new Constitution: they opposed national legislative powers as similarly threatening to republican liberty, they resisted Congressional power to raise revenue by levying and collecting its own taxes, and they were skeptical about Congressional power to appropriate money, to declare war, raise armies, and to call forth the Militia to execute the laws of the Union, to regulate interstate and foreign commerce, and to make laws necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States. To the Anti-Federalists, each of these powers portended consolidation of national legislative power to the detriment of the states. The supremacy clause, declaring the Constitution and laws passed, and all treaties made under authority of the United States, superior to state constitutions and laws, in their view, presented a threat of serious and unpredictable dimensions. Most Anti-Federalists agreed that a national judiciary "would eventually absorb and swallow up the state judiciaries, by drawing all business from them to the courts of the general government."[28]

Further, Anti-Federalists objected to the powers

assigned to the executive. They considered the four-year term with unlimited re-election excessive, and were suspicious of corruption and executive influence in the form of patronage distribution and electoral manipulation which could undermine the independence of the legislature. George Mason worried that:

> The President of the United States has no constitutional council (a thing unknown in any safe and regular government) he will therefore be unsupported by proper information and advice; and will generally be directed by minions and favorites---or he will become a tool of the Senate--or a council of state will grow out of the principal officers of the great departments--the worst and most dangerous of all ingredients for such a council, in a free country; for they may be induced to join in any dangerous or oppressive measures, to shelter themselves, and prevent an inquiry into their own misconduct in office.[29]

A particular source of apprehension among some Anti-Federalists was the relationship between the executive and the Senate. With six-year terms and the authority to ratify treaties and approve administrative appointments, the Senate was seen as inevitably inclined toward corruption and a conspiracy of power with the executive.[30] George Mason was especially critical of the executive established in the new Constitution and argued for limited, non-reeligible presidential terms of six or seven years, and for a more complete separation of legislative and executive powers.[31] Others objected to the combination of legislative, judicial

and executive powers awarded in the Senate;[32] most were wary of the liberty granted by the system to establish and maintain what they characterized as a standing army.[33]

Still other Anti-Federalists vehemently argued for the inclusion of a comprehensive bill of rights as a protection from the new national system of courts and judicial procedure. Anti-Federalists patently rejected Federalist arguments that a bill of rights, while necessary to protect a people against monarchic and aristocratic governments, was not necessary to protect the people of a republic against themselves. Patrick Henry declared that with the transformation of the confederacy into a "consolidated government, the rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretentions to human rights and privileges, are rendered insecure, if not lost."[34] George Mason concurred:

> There is no declaration of rights; and the laws of the general government being paramount to the laws of the constitutions of the several states, are no security. Nor are the people secured even in the enjoyment of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several states.[35]

While all these various elements appeared in an array of forms and in numerous iterations throughout Anti-Federalist arguments, objections were rarely monolithic or intellectually consistent. However, one issue stands out as

the most persistent concern registered by the Anti-Federalists. Their most consistent, and ultimately least defensible charge was that the geographically extensive government projected in the Constitution would result in the disintegration of republican principles. The Anti-Federalists argued that only in small republics could equal representation be achieved and that republican government required close and extensive contact between electors and their representatives.[36] George Mason's famous comments, delivered in the Virginia ratifying convention, best captured their belief that

> to make representation real and actual, the number of representatives ought to be adequate; they ought to mix with the people, think as they think, feel as they feel--ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition.[37]

A consolidated government, such as the one the new Constitution proposed, would, they believed, ultimately become despotic since the great diversity of interests among the states would make compromise among competing interests impossible. Laws created in the interest of dominant groups against the will and to the disadvantage of states were inevitable, they believed. " The difference in morals and habits produced by differences in climate, social institutions, and economic systems would make it impossible 'for one code of laws to suit Georgia and Massachusetts.'"[38]

Elbridge Gerry insisted that his principal objection to the plan was that there was no adequate provision for representation,[39] George Mason agreed, noting that in the "House of Representatives there is not the substance but the shadow only of representation; which can never inspire confidence in the people." He concluded that "The laws will, therefore, be generally made by men little concerned in, and unacquainted with their effects and consequences."[40]

The framers had provided for only 65 members in the House of Representatives, (the number of representatives not to exceed one representative for every 30,000 people). It was inconceivable to the Anti-Federalists that this arrangement could adequately represent the people or create the public support and confidence the new government required for success. They warned that this new government, distant from the people because of its vast size, would maintain itself by standing armies and military coercion rather than by winning the affection and consent of its citizens.[41] Federal Farmer, for one, maintained that a general government, far removed from the people, would be forgotten or neglected, and its laws would be disregarded unless a multitude of officers and military force be continually kept in view, and employed to enforce the execution of the laws and to make the government feared and respected.[42] Since Congress had been given the power to call out the militia of an individual state to execute

national laws, many Anti-Federalists took it for granted that the occasion might arise when it would become necessary to execute federal law by use of the army or by federal deployment of state militias. This was, of course, a fundamental violation of the Anti-Federalist notion of law based on popular consent.

This notion of a detached, centralized national government militarily enforcing laws contrary to the opinion and insistence of individual state laws so distressed Anti-Federalist theorists that they actually considered circumstances under which a state might withdraw from the union. That there was an implied right to secession was, in their opinion, never in doubt.[43] As they noted, in actuality, the states had seceded from the former union under The Articles to form the new union under the Constitution. The delay by North Carolina and Rhode Island in joining the union under the new Constitution was cited as an appropriate exercise of their individual sovereignty. The state of Vermont, not one of the original 13 states, had seceded from New York in 1777.[44] Later Confederate theorists would note that there was no claim of any right to control those states' actions. Their accession to the new Union was desired, of course, but their freedom of choice in the matter was never questioned.[45]

At various times during the Constitutional Convention and during the ratification process, Anti-Federalists

worried about the issue of the use of federal force against individual states and the subsequent remedy of a state's withdrawal from the union. Their musings on the issue did not escape notice by Jefferson Davis who later incorporated their inquiry into his own work. As Davis noted, George Mason wondered, "Will not the citizens of the invaded state assist one another, until they rise as one man and shake off the Union altogether?"[46] James Madison and Oliver Ellsworth had also attempted to dismiss such worries. Madison observed that

> a union of the States containing such an ingredient seemed to provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous contacts.[47]

Ellsworth advised that

> This Constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies....If we should attempt to execute such laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty, in the same calamity.[48]

To the Anti-Federalists, and as Southerners would later see the issue, the right of the people to resume powers delegated by them to the central government, was not left without positive and ample assertion, even during a period

in history when the rights were never denied. In ratifying the new Constitution, three states, Virginia, New York and Rhode Island incorporated language in their ratification declarations which made this opinion specific. Virginia expressly declared 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."[49] New York and Rhode Island were also explicit in declaring that the "powers of government may be reassumed by the people whenever it shall become necessary to their happiness."[50]

Later, Jefferson Davis would argue that these declarations are more than expressions thrown incidentally into the ratification declarations and that, in fact, they were much more. Davis would contend that as parts of the acts and ordinances by which these States ratified the Constitution and joined the Union, they cannot be detached from those declarations. As such, the insertion of these declarations by three states, officially and formally recognized the right of secession by the resumption of their grants of authority. Davis's later argument would center on the idea that by accepting ratification with these declarations incorporated, the other States formally accepted these principles.

Southern constitutional theorists traced the intellectual origins of their perspectives to the very genesis of independence in America. Never contemplated as a rejection or dismissal or constitutional governance, the Confederate founders actually sought to re-establish or "ground" their constitutional governance in the principles which guided the Declaration of Independence and the Articles of Confederation.

On February 8, 1861, delegates from six southern states gathered in convention in Montgomery, Alabama, and signed a Provisional Constitution establishing the Confederate States of America (C.S.A.). It is crucial to note that the Confederacy's founding was neither the simple project of "fire-eating" political opportunists aspiring to personal aggrandizement in a new government, nor was it solely the product of radicals intent on preserving an anachronistic system of labor. The complexity, evolutionary character, and multi-dimensional nature of events which culminated in the emergence of the Confederacy defy such simplistic characterization. Ultimately, the Confederacy may best be understood as a manifestation of a constitutional crisis with origins traceable to the very founding of the American polity.

Confederate statesmen interpreted Anti-Federalist postulates regarding the homogeneous state, inadequacy of representation and administration of extensive republics,

constitutional checks and balances, and, most importantly, the locus and indivisibility of sovereignty to support a latent vision of American constitutionalism. In addition, as historian Allan Nevins notes, in the era between the ratification of the U.S. Constitution and the secession of the southern states, other issues such as the question of the supremacy of the national judiciary; the authority of Congress to legislative supremacy in the states and territories; the manipulation and deterioration of the American party system; and the broader movement for the moral and social unification of the nation animated the events which led, ultimately, to the efforts of Confederate framers to seek resolution for the issues in their revised constitution. These fundamental issues or themes essentially distinguish the C.S.A. Constitution from the U.S. Constitution of the 19th Century. Scholars including Woodrow Wilson and Marshall De Rosa conclude, therefore, that while the U.S. Constitution had fulfilled the designs of its Federalist framers, the C.S.A. Constitution was, in essence, a traditional Whig-Anti-Federalist document.[51] The Confederate Constitution was a reactionary treatise fundamentally premised upon the ideal of the consent of its citizenry and primarily designed to secure the states from the perceived threat of an uncontrollable and perhaps authoritarian central government.[52]

Although many traditional scholars have described the

Confederate Constitution as merely an altered version of the United States Constitution, such generalities fail to acknowledge the significant and substantive adaptations Southern founders incorporated into their Constitution. In drafting a Constitution for the new Southern Nation, the Montgomery delegates attempted to accomplish much more than the simple grafting of specifically proslavery provisions onto the old United States Constitution.[53] The Confederate founders deliberately sought to purge their politics of what they considered to be degrading and dangerous influences of political partisanship and they restricted the prerogatives of the Confederate central government with prohibitions against trade protectionism and federally funded internal improvements.

With the benefit of historical experience to guide them, the Confederate framers also emphasized institutional innovation and devised a type of federalism in which national institutions were constitutionally and institutionally precluded from usurping the prerogatives of popular sovereignty. The five constitutional innovations intended to make the public policy decision making process more open, representative and reflective of the public's interest were: executive branch representation in the Confederate Congress; an executive line item veto; fiscal procedural modifications which anticipated executive budgeting; a non-reeligible six year presidential term; and,

lastly, the omission of a "general welfare" clause from the Confederate Constitution.[54] Clearly, these constitutional changes would have profound influence upon public administration as it developed in the Confederacy. The effects of these changes, alterations, and modifications in the Confederate Constitution for Confederate public administration are the particular interest of this dissertation. The exploration of Confederate public administration provides a previously unrecognized perspective from which to develop insights about the relationship between politics and administration in a constitutional polity deriving from a normative orientation distinctively influenced by tenets of Anti-Federalism. The exploration of Confederate administration's development, the significance of the insights derived from the exploration, and their relevance to contemporary public administrative issues and scholarship will be elaborated upon in the sections which follow.

CHAPTER TWO: NOTES

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25.Luther Martin, "Genuine Information to the Legislature of Maryland," in The Debates In The Several State Conventions On The Adoption Of The Federal Constitution As Recommended By The General Convention At Philadelphia, 2nd Edition, Vol. I: ed. by Jonathan Elliott (Philadelphia, PA: J.B. Lippincott Co., 1836), pp. 345-357.

26.Elbridge Gerry, "Letter to the Legislature of Massachusetts." In, Elliot, Debates, Vol. I, pp. 492-494.

27.Letter to Richard Henry Lee (December 3, 1787), in H.A. Cushing, ed., The Writings of Samuel Adams, Collected and Edited by Henry Alonzo Cushing, Vol. IV, (New York, NY: Octagon Books, 1968), p. 324.

28.Martin, "Genuine Information," in Elliot, Debates, Vol. I., p. 70.

29.Celia M. Kenyon, ed., The Antifederalists (New York, NY: The Bobbs-Merrill Company, 1966), pp. 191-194. Mason is arguably the most interesting of the Anti-Federalist authors. Author of the

Virginia Declaration of Rights in 1776, he was one of the first arrivals at the Philadelphia convention and was an active participant throughout its sessions. He gave little indication, until the very end, that he was profoundly opposed to the decisions made by the Convention. He was, however, one of the three delegates who refused to sign the document when it was completed. The letter from which this quotation was extracted was written to George Washington on October 7, 1787, very shortly after the close of the Convention.

[30] George Mason in Kenyon, The Antifederalists, pp. 192-194.

[31] George Mason, "The Objections of the Hon. George Mason, to the Proposed Federal Constitution Addressed to the Citizens of Virginia" The Papers of George Mason 1725-1792 Volume I-III, ed. by Robert A. Rutland (Chapel HIll, NC: University of North Carolina Press, 1970) Vol.3, p. 894.

[32] Herbert J. Storing, What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution, ed. by Murray Dry (Chicago, IL: University of Chicago Press, 1981), pp. 48-49 and p. 60.

[33] Storing, What the Anti-Federalists Were For, p. 20.

34.Patrick Henry, Speech in the Ratifying Convention of Virginia (5 June, 1788), in Elliot, Debates, Vol. III, p. 44.

35.George Mason, "Objections" The Papers of George Mason, p. 991.

36.Kelly, et al., The American Constitution, pp. 104-105.

37.George Mason, "Objections" cited by Kenyon, The Anti-Federalists, p. 102.

38.Lewis, Antifederalist versus Federalist, p. 14.

39.Elbridge Gerry, "A Letter to the Massachusetts State Legislature," New York,, October 18, 1787. Cited in Allen and Lloyd, Essential Antifederalist,, p. 20.

40.George Mason, "Objections" cited by Kenyon, The Antifederalists, p. 102.

41.Kelly, et al., The American Constitution, p. 105.

42.Allen and Lloyd, Essential Antifederalist, p. 181.

43.In fact, to 18th Century Americans, secession, as a remedy was

not a foreign idea. Pick up in old chptr 3 p. 115 and keeplooking for the quote that goes with this text.

44.E.B. O'Callaghan, Documentary History of the State of New York (Albany, NY: Weed Parson, 1850), pp. 996-1002.

45.Davis, Rise and Fall, p. 112.

46.Davis, Rise and Fall, p. 177.

47.Davis, Rise and Fall, p. 177.

48.Davis, Rise and Fall, p. 178.

49.Davis, Rise and Fall, p. 173.

50.Davis, Rise and Fall, p. 173.

51.Marshall De Rosa, The Confederate Constitution of 1861: An Inquiry into American Constitutionalism (Columbia, MO: University of Missouri Press, 1991), pp. 13-23 and p. 132; Charles Robert Lee, Jr., The Confederate Constitutions (Chapel Hill, NC: University of North Carolina Press, 1963), pp. 141-150; Wamsley, et al., Refounding Public Administration, pp. 12-18; Woodrow Wilson, Division and Reunion (New York, NY: Longmans, Green and Co., 1921), p. 240.

52.De Rosa, Constitution of 1861, p. 79.

53.George Rable, The Confederate Republic (Chapel Hill, NC: University of North Carolina Press, 1994), p. 3.

54.De Rosa, Constitution of 1861, p. 79.

CHAPTER THREE

THE CONFEDERATE CONSTITUTION: THEORY, RESTORATION, AND INNOVATION

> "The new constitution is the Constitution of the United States with various modifications and some very important and desirable improvements. We are free to say that the invaluable reforms enumerated should be adopted by the United States, with or without a reunion of the seceded states, and as soon as possible." New York Herald - March 19, 1861.

THE CONSTITUTIONAL CONVENTION AT MONTGOMERY

By February 4, 1861, seven Southern states had seceded from the Union and dispatched delegates to Montgomery, Alabama. As they assembled in Convention to create organic law for a new nation, they faced an uncertain future with civil war looming on the horizon. Secession had been a negative and destructive process, the culmination of years of radical tactics, agitation and propaganda. Although it was considered inevitable by most Southerners by late 1860, the separation had, nonetheless, been a wrenching and deeply regrettable occurrence for many. As delegates from the seceded states began arriving in Montgomery, they were keenly aware that the time for rending a nation was past.

These leaders faced the challenge of accomplishing something positive: establishing the Confederate States of America. While the assembly at Montgomery represented a great victory for radical Southern "fire-eaters," those who had advocated secession for more than a generation, they immediately found themselves called upon to compromise their extremism and calm their ardor. The delegates who gathered at Montgomery were summarily more moderate and decidedly more preservationist than the super-Southerners who had led the states out of the Union. "The fire-eating radicals who had devoted much of their lives to Southern nationalism, found themselves suddenly elevated to roles as irrelevant elder statesmen...In the end few if any of them made any significant contribution to the Confederacy."[1]

This paradoxical sequence of radicalism followed by moderation is understandable in the context of the delegates' background and their recent experience. Even the most radical delegates recognized that secession had not been the unanimous choice of the Southern people. More often, secession was the tenuous choice of an emotional moment. These leaders clearly understood the gravity of their situation and realized that if the Confederacy were to survive, it would need the good will of its own people, and hopefully, the support of the upper South, Europe, and even some Northerners.[2] They believed they were participants in

a revolution to preserve and protect the Southern status quo from encroachment, and at Montgomery, they worked to frame a government which would do so.

Debate began in Convention on February 5, 1861, amidst "a perfect mania for unanimity."[3] These constitutional framers would be working within the context of the South's total rejection of the extant model of politics. The vicious partisanship and incompetent party structure that had been so devastating in the preceding thirty years was to be eliminated. Southerners were constructing a new political reality in which their political future would be purged of what they believed to be the insidious effects of partisanship's competition and compromise. In this new political vision, selfish men would no longer make politics a profession. The glorious past, with its wise statesmanship and commitment to the public interest, could be restored.

Southerners aspired to construct a commonwealth resting on social harmony, political consensus, and, above all else, unquestionable legitimacy.[4] Public life would become an arena for public service rather than public thievery; public leaders would wield power to serve the interests of the entire community. Parties and patronage would have no place in this purified political culture. Radicalism would be avoided and the South would become a harmonious political culture restored without the divisive influence of

partisanship. The South had, in its estimation, been damaged, disadvantaged, poorly represented, and, finally, forced from the Union by the failures of partisan politics. What they now wanted to accomplish, as Confederate political scholar George Rable described it, was a revolution against politics.[5]

Their lofty aspirations would mean little, however, if Southern unity were not maintained. The Southern leaders warned that Northern politicians, would first divide, then conquer, then impose their tyranny on the Southern states and on their people, should the South fail to remain unified and harmonious. Thus, invocations of harmony, calls for cooperation between old political enemies, and the penchant for unanimity which pervaded the Constitutional debates and ratification process were neither pro forma nor empty. "They formed the warp and woof of an emerging nation woven together by powerful strands of traditional republican beliefs about power and liberty."[6]

More than a decade of disillusioning encounters with national parties and their leaders had led many Southerners to embrace secession. But by the time the Southern states actually left the union, demagogues had lost their hypnotic effect and the South now aspired to assume its rightful place among the nations of the world by providing a model of political rectitude. They would become a beacon to those

seeking an escape from politics as usual. Acquiescence, accepting the verdict of the people, or bowing to the need for unity, became, therefore, the watchwords for the Convention delegates, the drafting committee members and their constituents.[7]

The first challenge facing the delegates as they convened in Montgomery was to determine exactly what the convention was empowered to do. A series of resolutions, amendments, substitutions and a gentlemen's agreement ultimately generated the delegates' ambitious answer: to draft a provisional Constitution, elect a provisional president and vice-president, and, finally, draft a permanent Constitution while sitting as the provisional Congress.[8] (Copies of the Confederate Provisional Constitution and the Confederate Permanent Constitution compared with the United States Constitution are included as Appendices I and II).

Having reached agreement upon their mission, the delegates next voted to conduct much of their business in secret. They believed secret sessions would eliminate public posturing by delegates, encourage free debate, and still allow members of the convention to present a united front. The final action of the convention on its second day of business was the appointment of the First Committee of Twelve (two delegates from each state in attendance;

Texas would not be represented in Convention until the Permanent Constitution was nearly completed) to draft the Provisional Constitution. With these preliminary issues resolved, the delegates could turn to the substantive business of drafting a provisional constitution.[9]

The members of the First Committee of Twelve were an able, distinguished, mature and experienced group. Eleven members were college graduates, the twelfth had attended college. Ten were trained lawyers, two were planters, and eight combined law careers with plantation life. As it was with the body of the convention, the committee was composed of political moderates. Seven were Democrats, five were Whigs. All members had previous state legislative experience, seven had served in the United States Congress and four had served as judges.[10]

The First Committee of Twelve presented its draft of the Provisional Constitution to the Convention on February 7, 1861, having completed its work in just two days. That it was possible for the draft to be completed so quickly is in part a reflection of the deep consensus already existing among the delegates on the needs and requirements of the new Confederate government, and the extent to which they agreed on the general framework of changes they considered necessary. It reflects as well the penchant for unanimity and harmony which pervaded the proceedings. It was also

helpful that the Provisional Constitution was being drafted only as a temporary expedient. At most, the Provisional Constitution was to continue for only one year from the inauguration of the President, or until a permanent Constitution would be put into effect, whichever came first. Additionally, there was a tacit understanding between committee members and delegates that resolution of some of the most difficult issues (presidential term limits, tariffs, the importation of African slaves, and state debts, for example) would be postponed until the debate on the Permanent Constitution. The most important factor contributing to the rapidity with which the drafters accomplished their task, however, was that the First Committee of Twelve used the United States Constitution as its guiding document.

Overwhelmingly, Southern opinion was that the least possible departure from the past should be made in forming their new government. They believed it was imperative nothing should be done to suggest that a violent revolution was under way. Fear of violence and anarchy could undermine enthusiasm in the seceded Southern states and might prevent support from growing in the upper South, border states and abroad. From across the South came the insistence that only the most necessary changes be made in the existing document.

Southerners, it is important to emphasize, were not

dissatisfied with the U.S. Constitution; rather, they deeply respected it and had always been extremely proud of the prominence Southern statesmen held at its creation in Philadelphia. Their concerns stemmed from what they believed was a proliferation of misinterpretations and misconstructions of the venerable document. J.L. M. Curry of Alabama wrote that "the states withdrew not from the Constitution, but from the wicked and injurious perversion of the Compact.[11] The individual state secession conventions had, in fact, been quite specific in their commitments to preserving the Constitution. Of the seven states represented in Montgomery, Florida was the only state whose secession ordinance did not require delegates to make only the minimum necessary changes to the U.S. document. Alexander Hamilton Stephens refused to join the Georgia delegation until the State Convention recommended retaining the U.S. Constitution in so far as possible. Thus, the Montgomery delegates intended to retain the old instrument of government, making only such changes as history and experience convinced them were urgent and necessary. Secondarily, the delegates believed that a new constitution, based on the Federal Constitution and retaining as much existing law as possible, but extended with new guarantees and protections, would act as a powerful incentive for the uncommitted slave states to join the Confederacy.

Finally, the committee was advantaged in its work by the pre-convention preparation of its Chair, Christopher Memminger of South Carolina. Aware of the critical nature of their circumstances, Memminger had arrived in Montgomery with a draft of a Provisional Constitution, based on the predecessor U.S. document, already prepared.[12] The imperatives for harmony and agreement among the delegates, the overwhelming popular concern for retaining as much of the U.S. Constitution intact as possible, the preparation provided by the Committee chair, and the broad general consensus about the extent and nature of the changes and corrections the delegates deemed necessary, allowed the Committee to proceed very quickly, and the Convention to present its essential united front.

Debates on the draft of the Provisional Constitution took place on the afternoon and evening of February 8, 1861. The short time required by the delegates for debate is an indication of the relatively few objections raised by the Committee's draft. Debate continued through the evening, finally concluding at approximately midnight when the delegates adopted the Provisional Constitution unanimously. Although the confederacy would be governed by the Provisional Constitution only during its first year, its importance to the Confederate governance experience cannot be overestimated. The Provisional Constitution solidified

and gave form to Confederate thinking, providing an important guide for the committee which would draft the Permanent Constitution. As a temporary document, it offered guidance and pointed the way for other corrections and additions. Moreover, the first constitution contained key provisions which would be carried over into the Permanent Constitution. A review of the significant departures from the U.S. Constitution the Confederate founders incorporated in the Provisional Constitution follows in the next section.

Constitution For The Provisional Government Of The Confederate States Of America [13]

Confederate Constitutional expert Charles Robert Lee, Jr., notes that "The Preamble is especially significant for an appreciation of the Provisional Constitution and, indeed, for an understanding of the constitutional philosophy of the Montgomery membership." Although the legal status of constitutional preambles is ambiguous, Lee notes that the Provisional Constitution stands as the Southern leadership's general answer to the enigmatic questions concerning the state of the Union left wanting from the writing of the 1787 Constitution. The Confederate Provisional Constitution's Preamble states their specific answer to the long-standing debate as to whether the United States is a confederation of sovereign states or a sovereign union of people. Since the

Montgomery delegates viewed the United States as a union of sovereign and independent states joined together by a compact or treaty, the Constitution of the United States, they made this state sovereignty concept explicit in the Preamble and made it the theme of the Provisional Constitution. The Preamble states:

> We, the Deputies of the Sovereign and Independent States of South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, invoking the favor of almighty God, do hereby in behalf of these States, ordain and establish the Constitution for the Provisional Government of the same: to continue one year from the inauguration of the President, or until a permanent Constitution or confederation between the said States shall be put in operation, whichsoever shall first occur.[14]

The delegates were in substantial agreement regarding their position on state sovereignty; consequently very little debate was necessary to generate approval of the Preamble's language. With the state sovereignty position clarified to the delegates' satisfaction, the short debate which took place on the preamble turned quickly to other concerns. Specifically, delegates advocated some mention of the Deity in the Preamble. They believed that the Philadelphia Founders had been wrong to exclude such a statement from the U.S. Constitution, and the Southern

public had long felt that some statement expressing the people's dependence on God was needed. Without debate, the invocation was included.

In Article I, Section 5, of the Provisional Constitution, the drafters fundamentally altered the relationship between the executive and the legislative branches and extended to the Confederate President a power that his U.S. counterpart would not receive until 1997.[15] The delegates provided the Confederate President with a line-item veto. The Provision reads; "The President may veto any appropriation or appropriations, and approve any other appropriation or appropriations, in the same bill."[16] Many of the delegates who had served in Washington had previous experience with appropriations issues. They had too often seen Presidents sign appropriations bills to continue the operation of government, while at the same time being forced to sanction unacceptable measures attached to the same bill. In the minds of the Montgomery delegates, the item veto would promote greater harmony between the executive and legislative branches of government, and, it was crucial to the protection of another innovation the delegates were adding--budget estimates, required of the President, by the new Constitution.

In a major departure from established practice in the United States government, the drafters acted to control what

they saw as the fiscal irresponsibility of majorities in Congress. To promote fiscal responsibility and executive responsibility to the public, the authors required that "Congress shall appropriate no money from the Treasury unless it be asked and estimated for by the President or some one of the heads of the department, except for the purpose of paying its own expenses and contingencies."[17]

Traditionally, the budget for any particular period of time had simply been the accumulation of the funding requests of the various agencies of government, submitted first to the Treasury department and then to the Congress for decision. This was, in fact, still the practice in the United States Government at the time the South seceded. The Confederates, in initiating a structure which anticipated the idea of executive budgeting, were attempting to place the principal responsibility for efficient and economical government in the hands of the executive. (An in-depth discussion of this innovation and its ramifications will be presented in the section on the permanent constitution later in this chapter.)

Controlling the power of Congress and ensuring political accountability were predominant concerns as the drafters continued their reform efforts. The Confederate Congress was empowered, just as it had been by the U.S. Constitution, to lay and collect taxes, duties, imposts and

excises for revenue necessary to pay debts and carry on the government of the Confederacy. The Confederate Congress was not allowed, however, to lay taxes or excises for the purpose of promoting one branch of industry over another; and the Constitution required that all duties, imposts, and excises would be uniform throughout the States of the Confederacy.[18]

In response to most of the state secession conventions, which had declared themselves opposed to the revival of the foreign slave trade, the Confederate Constitution contained a specific provision preventing such importation. In only one state, South Carolina, was there any support for revival of the foreign slave trade, and South Carolina's was the only objection to the inclusion of the provision prohibiting it. The new section stated: "The importation of African negroes [sic] from any foreign country other than the slave holding States of the United States, is hereby forbidden; and Congress is required to pass such laws as shall effectively prevent the same."[19]

In Article II of the Provisional Constitution, regarding the Executive, a most important contribution was the provision of a mechanism to determine the inability of the President to function in his office. How to determine the inability of the President and who should make this determination were questions which remained unanswered by

the United States Constitution until 1967 when the twenty-fifth amendment was ratified. The Montgomery delegates were aware of this problem in 1861 and they provided a solution to the dilemma in the Provisional Constitution. Article II, Section Four stated:

> 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 (which inability shall be determined by a vote of two thirds of the Congress), 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.[20]

In Article III, the Provisional Constitution provided that the judicial power of the government would be vested in a Supreme Court and in other inferior courts. On this issue, however, the permanent Confederate Constitution ultimately differed from its U.S. counterpart. After a series of debates, the Montgomery delegates opted to streamline the previously existing system of district and circuit courts in favor of one district court for each state. The Provisional Constitution thus provided that each state would constitute one Judicial District, in which there would be a court called a District Court.[21] As that system

proved unwieldy very quickly, the only amendment to the Provisional Confederate Constitution quickly became an amendment to increase to two the number of District Courts in each state. In the Permanent Constitution, the Article III language was that each state was to constitute a district in which there would be a court called a District Court. An Article III provision of the Provisional Constitution which was not carried forward in the Permanent Constitution required that the Supreme Court be constituted of all the state District Judges.

Finally, one of the most important actions the Confederate Founders took was the inclusion of a provision, demanded by Alexander H. Stephens, which would allow Congressmen simultaneously to hold other offices in the Confederate Government. He explained he simply wanted to ensure that the President "not be forbidden to go to the House of Congress in the selection of his cabinet. I think it would be better still to require him to do it--but that is not so important..."[22] Thus, it became possible for President Davis to later select three members of his Cabinet, Christopher Memminger, Robert Toombs and John H. Reagan from the Congress, and have them continue to hold their seats in the legislative branch. The implications of this very interesting situation will be explored in more detail during the discussion of the drafting of the

Permanent Constitution.

After unanimous adoption of the Provisional Constitution on the evening of February 8, 1861, the delegates moved immediately to the election of a Provisional President and Vice President. Jefferson Davis of Mississippi was elected President and Alexander Hamilton Stephens of Georgia, Vice President. The convention also elected Davis and Stephens unanimously, preserving the appearance of unity and harmony while effectively snubbing the old radical secessionists in favor of these "safe," moderate Southerners.[23]

At this point, the Montgomery Convention had adopted a Provisional Constitution, elected a Provisional President and Vice President, and had begun the work of establishing a government. The delegates recognized, however, that their hardest work still lay ahead. In the nineteen days between the adoption of the Provisional Constitution and the completion of the draft of the Permanent Constitution, the Provisional government moved forward with its work of establishing an operating government.

The first action of the Provisional Congress was to pass legislation to continue in force all laws of the United States not inconsistent with the Provisional Constitution. Next, the Congress enacted a measure intended to assuage the fears of border and upper mid-west states whose commerce

depended on Mississippi River navigation. As early as February 25, 1861, President Davis signed an act establishing free navigation of the Mississippi River. Those two actions, together with Davis's immediate appointment of a team of three commissioners to serve as diplomats representing the Confederacy in Washington, D. C., were specifically intended to signal that Davis and the Congress wanted to assure other states of the Confederacy's peaceful intentions. The mission of the diplomatic team, as Davis described it, was to negotiate with Washington "to the end that by negotiation all questions between the two Governments might be adjusted as to avoid war."[24] The Confederate leadership recognized that it was in their best interest to try to establish, as quickly as possible, its reasonability, responsibility and legitimacy in the eyes of those outside the Confederacy. On February 26, 1861, the appointments of two foreign diplomats were confirmed and the commissioners dispatched to London and Paris. These diplomats were to represent the Confederacy in Europe and to seek diplomatic recognition from Great Britain and France.[25]

A third significant development during this interim period was the organization of the Confederate Cabinet. Beginning on the afternoon of his inauguration, President Davis acted immediately to fill the six Cabinet posts in the new Confederate government. Within a matter of days, all

six nominations to the Davis cabinet were confirmed by the Congress. The new secretaries included: Christopher G. Memminger (South Carolina), Secretary of Treasury; Robert Toombs (Georgia), Secretary of State; Leroy Pope Walker (Alabama), Secretary of War; Stephen Russell Mallory (Florida), Secretary of the Navy; Judah Philip Benjamin (Louisiana), Attorney General; John Henninger Reagan (Texas), Postmaster General. Three of the six men who formed the original Confederate Cabinet, Toombs, Memminger and Reagan were, at the same time, members of the Provisional Congress. As mentioned earlier, this eventuality, provided for by the Provisional Constitution, would have important implications for the development of certain key provisions in the Permanent Constitution. Those implications will be considered in the next section.

For the moment, however, it is important to remember that even as Congress and the President were giving form, direction and substance to the Provisional Government, the Second Committee of Twelve (appointed the day after the adoption of the Provisional Constitution), was already hard at work on the draft of the Permanent Confederate Constitution. The Second Committee of Twelve, like the first drafting group, was an erudite and experienced team. Nine of the committee members were college graduates, two others had attended college. Nine were trained lawyers; three were

planters, and eight combined law and plantation pursuits. Every member was a veteran state government legislator, five had served in the United States Congress and four had been judges. As it was with its predecessor, they were politically moderate. Six of the members were Democrats, six were Whigs and two members were outspoken secession opponents.

Like its predecessor, the Second Committee also used a number of significant documents to guide its work: the United States Constitution, the Declaration of Independence and the individual state Secession Ordinances. In addition, the Second Committee also had an extra, highly instructive and significant document, the Provisional Constitution, to guide their considerations. Because it was to be the Permanent Constitution, however, the drafting took longer, the debate between members was more heated and scrutiny of the work product was much more intense. Only by adopting a rigid and exhausting schedule were the committee delegates able to complete their work in a timely manner. By February 28, 1861, the Second Committee had completed its task and the new draft was ready for presentation to the Convention for debate.

The Constitution of the Confederate States of America[26]

In his inaugural address, Jefferson Davis said of the Confederate Provisional Constitution:

> We have changed the constituent parts, but not the system of our 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.[27]

Davis's words capture perfectly the understanding of the Second Committee of Twelve as it approached its work in drafting the Permanent Constitution. The Southern leaders who produced the Permanent Confederate Constitution of 1861 aspired to restore what they believed to be a pre-existing model of federalism. Maintaining their commitment "to fundamental American political principles, they were convinced that their Confederate document was a restoration of a pre-existing order that had gone awry as a consequence of misconstruction and disregard of the U.S. Constitution."[28] After nineteen days of hectic, exhausting work, the Second Committee of Twelve presented their draft of the permanent Constitution for the Confederate States of America to the Congress.[29] Once the draft had been presented, the delegates voted to consider the new document article by article. Their procedure seems an appropriate

model to emulate in considering their work.

The Preamble

As had been the case with the Provisional Constitution, the Preamble to the Permanent Constitution immediately sparked heated debate, and, once again, the principal source of contention was the Preamble's first line. Specifically, the Confederate Framers were determined to prevent their central government's constitutional mandate from ever being construed as taking precedence over the sovereign and independent status of the States in the Confederacy. Such was to be maintained by their commitment to a strict states rights philosophy, and the drafters took great care to assure the preamble clearly reflected that philosophy. As one delegate observed, "The Preamble of the Confederate Constitution holds unmistakable the sovereignty of the States and declares the constitution to be a compact between them."[30] The Preamble, as finally adopted by the delegates, states:

> 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 tranquillity, 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.[31]

C.S.A. Vice President, Stephens explained that the words "each State acting in its Sovereign and Independent Character" were included in the Preamble to "put at rest forever the argument of the Centralists drawn from the old Constitution, that it had been made by the people of all the states collectively, or in mass [sic], and not by the States in their several sovereign character."[32] Thus, the first paragraph of the Permanent Constitution affirmed the state sovereignty concept of its framers. It is also significant that the phrase "to form a more perfect Union" from the U.S. Constitution was dropped. The Confederate drafters replaced the phrase with "to form a permanent federal government," which did not, to their minds, connote the consolidation associated with "a more perfect Union."

The Confederate compact theory of government aimed at a constitutional arrangement in which the "parties" to the compact would be the state governments, with the Confederate government serving as their common agent. Each state then, would reserve the prerogative to make the final determinations as to whether or not the terms of the contract had been breached. This constitutional arrangement reflects the Calhounian position that the "people of the several States, in their sovereign capacity agreed to unite themselves together, in the closest possible connection that

could be formed, without merging their respective sovereignties into one common sovereignty."

With their state sovereignty perspective clearly established, the delegates moved ahead to complete the Preamble. Drawing from the Provisional Constitution, they acknowledged the dependence of the Southern Nation upon the Deity. The C.S.A Constitution explicitly evokes the "favor and guidance of Almighty God" in its preamble, "thereby making the Supreme Being a guarantor of the Constitution."[33]

Article I: The Legislative Branch

In considering Article I of the Permanent Constitution, the delegates were constantly mindful that in the years preceding 1860, the South had not been dissatisfied with the United States Constitution, per se. Rather, the South had become distressed by the Constitutional interpretations of the Congress and of the Supreme Court. In legislative actions such as the establishment of a national bank, protective tariffs and federal aid to internal improvements (seen as primarily beneficial to Northern industrial and transportation interests), the South detected a steady centralization of government power which they believed was detrimental to the interests of the states. Having lost numerical majority in the House of Representatives in 1820 and in the Senate in 1850, the South felt justified in

taking action to protect its interests. Confederate leaders explained that "The permanent Constitution was framed on the States Rights theory to take from a majority in Congress unlimited control....[34]

Primarily, the Confederate delegates endeavored to reconfigure the power relationships between federal and state governments. In Article I, Section 2, clause 5, the C.S.A. Constitution, like the U.S. Constitution, gave to the House of Representatives the sole power of impeachment. However, as an important embodiment of state's rights theory, the Confederate Constitution amended this power, providing the states with a powerful mechanism to secure state integrity against Confederate officials. It authorizes the respective state legislatures to impeach Confederate officials operating within their borders. Specifically, the Article provides 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."[35] While the amendment did not extend the authority of trying the official (the Senate of the Confederacy retained that power), it did allow the state a mechanism by which to secure their territorial integrity against perceived encroachment by confederate officials. Because there were no limitations placed upon this impeachment prerogative, a

State could practically, and constitutionally, nullify the policies of the Confederate Government by barring Confederate officials from the state, effectively precluding the execution of unpopular laws. In short, Confederate officials could enforce Confederate laws only at the pleasure of the States.[36]

One particular set of laws which had been of special interest and a source of ongoing conflict over the years pertained to national fiscal policy and taxation, protective tariffs and internal improvements. One of the South's most strident complaints over the thirty years prior to secession was that revenue raised in the South had been disproportionately expended in the North to establish an economic infrastructure that in turn attracted immigrants en masse. These immigrants, then, were largely hostile to Southern social, economic and industrial arrangements. Southerners argued that national public policies formulated through the legislative system, as it was then constituted, were prejudicial to the minority section of the country even though, ostensibly, due process had been observed. In particular, Southerners insisted that national fiscal policy was dividing the nation into a two-tiered structure of tax consumers (the Northern states) and taxpayers (the Southern states). These issues became especially inflammatory as they brought the powers of Congress and the sovereignty of

the several states into direct conflict.

Led by South Carolina, the tariff issue came close to causing the disruption of the Union in 1832-33. In fact, in 1866, J. T. Headley, a contemporary historian who wrote what was considered at the time to be the definitive Northern account of the Civil War, maintained that the South had wanted to leave the union in order to secure free trade. He argued that free trade was the primary factor threatening the union in 1831 and the most important contributing factor in the 1861 crisis.[37]

Southerners, in fact, did advocate free trade principles, and, in particular, maintained that taxes and import duties should be imposed for revenue purposes only to pay debts, provide for defense and to carry on the activities of government. The Southern position concerning inequitable fiscal action by the U.S. Government focused on protectionist tariffs and the internal improvement policies of the U.S. government. Having maintained for years that U.S. government policies promoted northern and northwestern interests at the expense of the South, the Confederate drafters made the free trade sentiment explicit in their document.

In Article I, Section 8, the Confederate Constitution once again made sweeping changes designed to limit the powers of the central government in relation to the states

and to alter the C.S.A. Congress as an institution. In part, the article states that

> the Congress shall have power to lay and collect taxes, imposts and excises, for revenue necessary to pay debts, provide for the common defense, and carry on the Government of the Confederate States; but no bounties shall be granted from the Treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts and excises shall be uniform throughout the Confederate States.[38]

The Confederate framers would not be satisfied simply to put an end to protective tariffs, however. To secure the Confederacy against sectional legislation and to curb the growth of centralized administration, the Constitution severely limited centrally funded internal improvements. Article I, section 8 clause 3 specifies that

> the Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with Indian tribes: but neither this, nor any other clause contained in the Constitution, shall ever be construed to delegate power to the Congress to appropriate money for any internal improvement intended to facilitate commerce: except for the purpose for furnishing lights, beacons, and buoys, and other aid to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof.[39]

Delegates in Montgomery were determined to have the commerce power of Congress more clearly defined and substantially limited, and the C.S.A. constitution specifically recognized internal improvements as a state prerogative. Alexander H. Stephens observed: "The true principle is to subject the commerce of every locality to whatever burdens may be necessary to facilitate it. If Charleston harbor needs improvement, let the commerce of Charleston bear the burden."[40]

Article I, section 10, clause 3, requires that "no State shall, without the 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." Furthermore, the Confederates provided that "any revenue thus derived, shall, after making such improvements be paid into the common treasury...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."[41] These prohibitions against trade protectionism and ambitious internal improvement agendas, coupled with the constitutional recognition of the state's responsibilities for their own interstate economic infrastructures, ran counter to the prevailing interpretation of the U.S. Constitution. They were not, however, the Confederate's final word on federal usurpation of state prerogatives.

Intended to completely alter the relationship between the C.S.A. Congress and the states, the Confederate founders omitted the clause, "to promote the general welfare," from the Confederate Constitution. The South's frustration with the general welfare provision centered upon what they considered to be the Northern practice of rationalizing nationalistic policies favorable to their parochial interests under the guise of the general welfare provisions. Confederates argued that policy decisions such as Federal aid for internal improvements, particularly the development of canals, bridges, and roads, was an aid to Northern commerce giving preferential treatment to business while diverting tax dollars from the Southern agrarian economy. Confederates argued that in policies such as the establishment of the National Banks, protective tariffs, and aid to internal improvements generally, Northern commerce had enjoyed disparate advantages for the previous forty years. In their minds, the exclusion of the general welfare clause reduced the likelihood that the Confederate Congress would become involved in supporting questionable public policies premised upon the pursuit of some vague definition of the general welfare. This omission in the Confederate Constitution made the promotion of the general welfare, like internal improvements, a priority of the several states.

The concern for protection against arbitrary majority

policy making had convinced Confederate leaders that under the United States Constitution, the right of voting was too universal. In the Southern view, anti-Southern political parties had extended the franchise to immigrants who, lacking an understanding of the American political process, became tools for political party aggrandizement for Northern political machines. This in turn subverted the political process and disadvantaged the South. In an effort to protect the Southern way of life from foreign influence, Article I, section 2 of the C.S.A. Constitution required that "the electors in each State shall be citizens of the Confederate States,...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."[42] The Confederate government, exercising this prerogative could deny Confederate citizenship to slaves who had been manumitted in a particular state, and to exclude immigrants from Northern States and abroad.[43]

Continuing the effort to reform legislative processes, Article I, section 9, clause 20 of the Confederate Constitution stipulated that "every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title."[44] This provision disallowed the practice of attaching riders to bills, and required instead that all proposals be

individually approved or rejected by the legislative and executive branches. Instead of one resolution consisting of a collection of proposals, all legislative riders, germane and non-germane, were required to stand on their own merits and be voted up or down independently. Subjecting legislative proposals to this increased scrutiny was intended to help foster broader-based support for all initiatives and to prohibit legislative proposals from continuing through the legislative process on the merits of other pieces of legislation to which they might be attached.

A second provision in Article I, Section 9 was included to remedy an old legislative evil: Congressional fiscal responsibility. To ensure that the Congress would be held accountable to, and within the limits of, the appropriations process, the delegates added a provision which required

> All bills appropriating money shall specify, in Federal currency, the exact amount of each appropriation, and the purposes for which it was 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.[45]

Article I, section 9 of the Confederate Constitution has been described as the place "where the list of what the Congress shall not do is to be found."[46] It is also a

place at which one of the Confederate framer's most important departures from the U.S. Constitution emerges. By 1860, there were twelve amendments to U.S. Constitution, the first ten from the original Bill of Rights and an additional two, Amendment XI added in 1798 and Amendment XII added in 1804. The Confederate Constitution incorporates the counterparts of the U.S. Constitution's first eight amendments directly into the body of the document in Article I, section 9. (The substance of the remaining four amendments are incorporated into the other six articles of the Confederate Constitution.) "The fact that the C.S.A. framers intended that their bill of rights be applied to the Confederate government is evidenced by their placement of most of the reserved rights in Article I..."[47] The declaration of rights in the Confederate Constitution was understood to be strictly applicable to the Confederate government, leaving state constitutions as the guarantors for those fundamental rights retained by the people within their respective states. In the Confederate federalism design, states would have dominion in those areas of constitutional rights not specifically enumerated in the Constitution. Thus, the C.S.A. Constitution restricted the Confederate government, not the states, unless explicitly stated otherwise.[48]

Fully fifty percent of the changes the Montgomery

delegates made in the draft of the Permanent Constitution were made in the first article. Because the convention attached so much importance to the tenets of the first article, debate was slow and contentious. In fact, six of the ten days devoted to debating the Permanent Constitution were spent on Article I alone. The provisions they advocated were adjustments to the old Constitution, designed to realign its system of checks and balances and to make the government as responsive and efficient as possible. Having completed the initial steps required to reestablish the balance between the legislative branch and the states, the delegates turned their attention to the relationship between the executive and the legislature.

The Confederate framers aspired to rationalize the policy process, making it more responsive by facilitating the discussion of issues between the legislative and executive branches. Their plan was to intensify communication between the legislative and executive by increasing the number of participants discussing public policy issues in the legislative forum. This exchange would, necessarily, expose lawmakers to a wider range of policy options. Such enhanced communication was to be facilitated by actually allowing executive officers seats in the Confederate Congress, thus giving them the opportunity to participate in Congressional debate.[49] Article I,

section 6, clause 2, of the C. S. A. Constitution therefore states that "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."[50]

Alabama delegate Robert H. Smith, in support of the provision, observed that

> The want of facility of communication between the Executive and Legislature, has, it is believed, been a serious impediment to the easy and harmonious working of the Government. Experience has shown that our Fathers, by refusing the executive the right to be heard through his constitutional advisers on the floor of the Legislature, had interposed barriers to that free intercourse between the two departments which was essential to the wise and healthy action of each.[51]

Many of the Confederate delegates were great admirers of the British Cabinet Government system, from which they drew this provision. Like Smith, Confederate Secretary of State Robert Toombs and Vice President Alexander H. Stephens (still holding their Congressional seats under the Provisional Constitution's dual office-holding provision) were advocates of the plan.[52] The delegates believed that this provision would enhance better understanding and cooperation between the two branches, give the legislature a closer check upon the executive, keep the Congress better

informed as to administrative policy, and place more direct responsibility and accountability upon the department heads.

Closely related to the "Cabinet in Congress" reform initiatives were two provisions, both incorporated from the Provisional Constitution, and intended to enhance the fiscal responsibility and accountability of the executive branch. Article I, section 9, clause 9 placed the appropriations initiative in the hands of the Confederate executive which marked a significant shift in the balance of power with regard to the fiscal policy of the central government. Advanced by Vice President Stephens, the executive budget provision states: "Congress shall appropriate no money from the treasury unless it be asked for by the President or some one of the heads of department, except for the purpose of paying its own expenses and contingencies."[53]

Stephens model was, again, the British Constitution. He wrote that "The object of this was to make, as far as possible, each administration responsible for the public expenditures."[54] Having witnessed what they considered to be the fiscal irresponsibility of the majority in the U.S. Congress, the delegates had wanted to devise a more economical and efficient government, protected from the "pork-barrel legislation" and "log-rolling" maneuvers of the past. The Southern drafters intended to place the principal fiscal responsibility in the hands of the executive.

Although this section of Article I did create an animated debate when it was presented to the Convention ("some members feared a belligerent president might bring ruin to the government by refusing to ask for appropriations")[55], it was eventually adjusted to the satisfaction of the Convention and adopted on March 6, 1861. As adopted, the provision reads: "Congress shall appropriate no money from the treasury except by a vote of two thirds of both Houses, taken by yeas and nays, except it be asked for or estimated for by some one of the heads of departments, and submitted to Congress by the President..."[56] Thus, Article I, Section 9 of the Confederate Constitution placed administrative officers directly into the new Constitution, giving them specific responsibility to serve as balancing influences on Presidential spending.

The delegates were quite aware that the President would need assistance in effecting the profound changes in power relationships and process dynamics they were recommending between the executive and legislative branches. To allow the President to protect the budget estimates they required of the executive, the delegates adopted the Presidential line-item veto provision from the Provisional Constitution. During the debates, the language of Article 1, Section 7 was streamlined to read, "The President may approve any appropriation and disapprove any other appropriation in the

same bill." On this specific issue, experience caused the Confederate framers to agree with Publius that certain checks must be placed on the fiscal policies of the legislature by the executive.

The constitutional reforms the Confederates developed to alter the relationship between the branches were a consequence of what they perceived to be legislative abuses of the appropriations process over the preceding seventy years. Contending that the U.S. Congress had become unscrupulous as a result of its power of the purse, they resolved to save the Confederate Congress from a similar fate. The Confederate delegates believed that their presidential model, with the executive budget prerogative (and responsibility), the line-item veto and the two thirds requisite to override, could neutralize some of the influence regional numerical majorities might exercise over their minority counterparts.

With executive branch representation on the floor of the Congress, communication and accountability between the branches would be enhanced and the range of policy options expanded. Taken together, it appeared that the changes the Confederate delegates made gave their President significantly more constitutional powers than those provided to his U.S. counterpart. The delegates had only begun their reforms, however, and as they considered Article II, they

continued to restructure the very nature of the relationship between Presidency and Congress.

Article II: The Confederate Executive

Although the Confederate delegates very much admired the British Cabinet system, with its combined law-making and law-executing functions and they aspired to replicate an aspect of it in the Confederate Congress by providing for the presence of executive department heads on the legislative floor, presumptions that the reforms were intended to transfer the British model of government were only accurate in a certain limited sense. Important mechanisms built into the Confederate arrangement differentiated the British and Confederate systems. The Confederate model secured the independence of the executive department heads from the Congress (once confirmed by the Senate), whereas in the House of Commons cabinet ministers are not independent. However, the Confederate Constitution drafters delicately balanced the executive branch's independence and control over the cabinet and the attendant bureaucracy. Article II, Section 2, clause 3 of the C.S.A. Constitution provides that

> the principal officer in each of the executive departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the executive

> departments may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and, when so removed, the removal shall be reported to the Senate, together with the reasons therefore.[57]

The C.S.A. chief executive was thus provided the explicit constitutional authority to remove, at will, cabinet members and diplomats seen as detrimental to the president's policy agenda. Lower level officials, however, could only be removed on grounds of "dishonesty, incapacity, inefficiency, misconduct or neglect of duty," and even then, the removal was subject to the report provision.[58] But because this enhanced executive branch independence at the upper echelons of the administration came at Congress's expense, the Confederate model of checks and balances was more similar to a presidential system than to a cabinet system of government."[59]

A second significant adjustment in Article II revisited latent concerns expressed by the Anti-federalists some seventy years earlier. Having established a powerful executive authority in the Confederate President, the Montgomery delegates, worried about a subsequent accumulation of political power, and therefore the potential for corruption by, the chief executive. With those concerns

in mind, even as they enhanced the President's administrative authority, the Confederate drafters mitigated his political power by fixing the length of the presidential term at six years and restricting the President to a single term. Article II, section 1, clause 1, provides that "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."[60]

In extending the term of office beyond the established four years, the Confederate delegates intended to insulate their president from congressional and outside political pressures. They believed this would make the president more independent, and permit him to administer the government for a substantial period of time without concern for reelection, and to free him of the necessity to respond to momentary political pressures. Ostensibly, restricting the president to a single six-year term would remove the temptations of power and ambition while liberating incumbents from the unseemliness of partisan political activities. As the Confederate delegates saw it, presidential elections with their incessant canvassing, partisan warfare and inflammatory rhetoric had degenerated into a national disgrace. They believed that the rise of political parties (with their attendant demagoguery) had debased public life

and contributed to a wide-spread disillusionment with the political system.

Confederate leaders maintained that their President should stand above petty partisan politics. Moreover, they aimed at establishing a custodial executive who would be free to obstruct congressional excesses, who would not pit the general government against the state governments (because the acquisition of central government political power was seen as inevitably detrimental to state interests), and who would use the executive branch to secure the common interests of the states as they collectively defined themselves.

The energy and power of the general government would be kept in check by the periodic disruption of its stability and continuity. Stability of the administrative system would be ensured by the President's extended term but the Confederate framers diminished the power of the Confederate executive by mandating a changing of the guard every six years. Hence, every six years the Confederacy could anticipate a new President and change at the upper echelons of the executive branch of government, as the incoming president would be expected to appoint new Cabinet officers, while leaving the lower level administrative professional staff in tact. This would, they believed, offset the advantages of incumbency not only of the President but also

of the national bureaucracy whose interests would be closely linked to an ever-expanding national government.[61]

Article III: The Judiciary

Article III of the Permanent Confederate Constitution deviated from its U.S. Constitutional counterpart in only three specific instances. First, at the suggestion of Vice President Stephens, the committee struck from its draft a provision allowing federal jurisdiction to extend to controversies between a state and citizens of another state, unless the state were a plaintiff. Under the U.S. model, judicial power extended to cases between a state and citizens of another state. One of the most important functions of the federal courts under the U.S. Constitution prior to the adoption of the Eleventh Amendment was to protect citizens bringing suit outside their own states from local prejudices and pressures. Apparently, the Montgomery delegates excluded this provision as an expression of states rights. A state's sovereign immunity was bolstered to the extent that a state could not be brought before a federal tribunal without its consent. Its consent would be implicit if it initiated a suit in which, constitutionally, a defendant could appeal to the federal courts.

The second, closely related, alteration in Article III provided that "no state shall be sued by a citizen or

subject of any foreign state."[62] Essentially, the U.S. Constitution provides the states with a similar immunity in the Eleventh Amendment; but within the context of federalism, the Confederate constitution went beyond the Eleventh Amendment by prohibiting suits by foreigners against the states. It is worth noting that foreigners now included citizens of the United States of America and that the C.S.A. framers were, unquestionably, attempting to place a barrier between the Confederate states and the expected flurry of lawsuits headed their way as a consequence of the economic disruption secession engendered between North and South.[63]

The third significant omission from Article III was the phrase "in law and equity," from section 2. The judicial power of the Confederate government did not, therefore, extend to all cases in law and equity, rather it extended simply to "all cases arising under this Constitution."[64] With this omission, constitutional recognition of the distinction between law and equity in the federal courts was withdrawn. Hence, it would be left to the Confederate Congress to regulate enforcement of legal rights, as well as to search for suitable remedies.[65]

This omission of the fundamental difference between law and equity suits was a manifestation of the convention's state's rights philosophy, but it also reflected the legal

background of the Confederate framers. At one time or another, most had been in the legal profession. They believed that in taking this action, they were responding to an emerging trend in law and equity forms of procedure. For example, the state of New York had implemented such reforms in the 1840s, and the U.S. Supreme Court would do so early in the twentieth century. The revision reflected the Anti-Federalist conviction that extending the Supreme Court's jurisdiction to state cases of equity contributed significantly to the expansion of national government power at the expense of the states. For instance, the Anti-Federalist author "Brutus" argued that

> every adjudication of the supreme court, on any question that may arise upon the nature and extent of the general government, will affect the limits of state jurisdiction. In proportion as the former enlarge the exercise of their powers, will that of the latter be restricted. That the judicial power of the United States, will lean strongly in favour of the general government, and will give such an explanation to the constitution, as will favour an extension of its jurisdiction, is very evident from a variety of considerations.[66]

The Confederate framers were quite willing to curtail the discretionary powers of Confederate judges and justices operating under the premise of equity. Although presumably

it would have been Constitutionally possible to extend the jurisdiction of Confederate courts to equity cases, as well as statutorily excluding them, the important point remains that equity jurisdiction was not constitutionally mandated, but rather was subject to congressional legislation. In the Confederate view, Congressional exclusion of equity jurisdiction would be to the advantage of the state courts, because their equity cases were not then susceptible to direct appeal to the Confederate courts.[67]

With the exception of the differences mentioned above, the judicial provisions of the United States and Confederate States Constitutions were exactly the same. Both provided for the establishment of a Supreme Court, although the C.S.A. did not establish its Supreme Court during its short lifetime. Because the Confederate Supreme Court was never organized, the states' Supreme Courts became, in fact, supreme within the respective states and the Confederacy at large.

Significantly, the judges of the various state high courts were held accountable by the electoral process, repudiating any existing notions that judges should hold office only during good behavior and that there should be national judicial review superior to the state courts. This eventuality was consistent with the Confederate version of limited national government and state sovereignty. It

ensured that there would be no "national supremacy" dictum imposed upon unwilling states, since there was no Confederate Supreme Court from which such a dictum could be issued.[68]

A more complete discussion of the debates surrounding the several attempts to establish the Confederate Supreme Court, and an assessment of the ramifications of the Confederate Congress's failure to do so, will follow in Chapter Six. For the moment, it is sufficient to note that the need for the establishment of an operational system of Confederate courts was minimized because the state courts were less than obstructive toward Confederate policies. State courts largely supported Confederate positions, but in their deference, consistently maintained the supremacy of their courts over the Confederate courts. "Unlike in the judicial national supremacy of Marshall, the state judges consistently reserved the right of the states to interpose on behalf of their citizens."[69]

Article IV: Slavery Resolutions

The Provisional Constitution had prohibited the importation of slaves from foreign countries and the introduction of slaves from any state not a member of the Confederacy. Those provisions were carried forward from the Provisional Constitution as a part of the Permanent

Constitution in Article I. Never entering into moral argument about its slave provisions, the Confederate framers were forced, however, to reckon with public opinion both in the southern border states yet to join the Confederacy and with European countries from whom the Confederacy would necessarily seek diplomatic recognition. In the border states and in Europe particularly, opinions on the slavery issue differed widely. The Confederate framers recognized the practical necessity of not alienating those whose support and cooperation would be so important to their efforts. Article IV of the Permanent Constitution enlarged and clarified the delegates' positions on four additional issues directly pertaining to slavery: the protection of the right of transit with slave property, the acquisition of new territory, fugitive slaves, and the admission of new states.

The members sought to draft a fugitive slave provision which would be as extensive and specific as possible. The fugitive slave provision adopted by the Convention adapts the language of the U.S. Constitution, deviating only in certain very specific phraseology and emphasis. The Confederate Article requires that a "...slave or other person held to service or labor in any State or Territory of the Confederate States...will be delivered up on claim of the party to whom such slave belongs..."[70]

The preceding forty years of controversy regarding

slavery in the territories prompted the Montgomery delegates to act decisively in rectifying the U.S. Constitution's failure to provide for the acquisition of new territory. Because of this omission, Thomas Jefferson wanted a constitutional amendment prior to the purchase of Louisiana, and from the 1820's to 1861, when the Southern states seceded, the acquisition of new territory was the source of constant conflict. More specifically, the conflict concerning whether or not slavery was to be permitted, excluded or decided on the basis of popular sovereignty (and at what point in the settlement process it could be decided) drove the nation to the brink of disruption several times over the forty years prior to Confederate secession. The memory of these horrific struggles were vivid in the minds of the Montgomery delegates, and they acted to provide the Confederacy a constitutional authority to acquire territory not provided to the U.S. in its Constitution. The provision stated

> 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 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.[71]

With the adoption of this one provision the Convention specifically answered the controversial questions of territorial acquisition and the status of slaves and slavery in the territories which had ravaged relations between North and South for more than a generation. At the same time, the Confederate founders provided the institution of slavery its ultimate constitutional protection.

To conclude their work on Article IV, the delegates, after the most divisive debate of the Convention, compromised on the issue of the admission of "Other states" into the Confederacy. With one delegate faction opposing the admission of non-slaveholding states (fearing a repeat of the slave-state versus free-state controversy which had been on-going for forty years), and one faction advocating no particular slavery restrictions or requirements for states which might wish to enter the Confederacy in the future, compromise was difficult, slow, and contentious. Ultimately, the compromise adopted stated "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."[72] The terminology "Other States" was used instead of "New States" as the convention anticipated that the states of the Upper South might eventually wish to join the Confederacy. Debate concluded when the delegates were satisfied that free states would be permitted to join the Confederacy provided that the admission of such non-slave holding states would be subjected to extra-majority voting for approval.[73]

De Rosa has observed that to reconcile their commitment to a government based upon the consent of the governed, while simultaneously upholding the institution of slavery, the Confederate framers were required to articulate a classical republicanism rather than a republicanism premised upon the contract theorist's notion of natural rights. Drawing on both the ideas of the Anti-Federalists and the Calhounian theory of rights, they integrated the liberties of the individual with the welfare of the community, making the former contingent upon the latter. In some Southern minds, this reconciled the sanctioning of slavery, which, in their interpretation, was not only in the interest of the community at large but also in the interest of the slave. Even more specifically, under the Confederate Constitution, it was the responsibility of citizens within their states, to determine which rights were compatible with the interests of the particular state community.[74]

Article V: Amendments to the Constitution

Article V of the Permanent Confederate Constitution differed from the United States document in two important respects. Both changes were intended to reinforce the Confederacy's commitment to state sovereignty. Noting that only one amendment had been successfully added to the U.S. Constitution in the nineteenth century, the delegates at the Montgomery convention were convinced that the "restrictions thrown around amendments to the organic law by the Constitution of the United States proved to be a practical negation of the power to alter the instrument."[75] The Confederate amendment process was, therefore, designed to protect the rights of minority interests and gave to the minority an effective voice in the expression of its sovereign will.

The first significant change in Article V focused upon the Constitutional amendment process. Under the U.S. Constitution, application by two-thirds of the state legislatures was required to call a national convention. "Whereas an extra-majority was necessary for such action under the Federal Constitution, a minority of states could do so under the Confederate Constitution.[76] Under the Confederate Constitution, a state could, with much greater ease, call a constitutional convention. Notably, all that

was required under the Confederate Constitution was simply the agreement of three states. Article V provides that

> 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 said States shall concur in suggesting at the time when the said demand is made.[77]

Under this provision, the Congress was excluded from making amendment proposals. The Confederate framers decided that the proposal of amendments should be the exclusive function of a national convention. "Delegates to such a convention, elected specifically for the purpose of amending the basic document of government, would, they felt more accurately reflect the sovereign will of the people."[78] The Confederate leadership anticipated some expansion of the Confederacy to include, at least, the border states of the Upper South, and some western states. The minimum three state requirement to call the convention, together with the exclusion of Congress from the amendment proposal process, is further evidence of their deference to states rights.

The second Confederate departure from the United States Constitution in Article V was the significant change in the Constitutional amendment ratification procedure. Under the United States constitution, ratification is complete after three-fourths of the state legislatures or state conventions

concur. The Confederate amendment provision required only that two-thirds of either assembly ratify. The specific language of the Article required that

> 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 one or the other mode of ratification may be proposed by the general Convention--they shall thenceforward form a part of this Constitution.[79]

Substitution of the three-fourths vote with a two-thirds vote required to ratify proposed amendments, in conjunction with the changes in amendment proposal provisions, greatly increased the flexibility available in the amendment process. This streamlined amendment process was a constitutional mechanism provided to the states to check encroaching nationalism. The two-thirds minimum was, in fact, a supplement to the status of the states, within the Confederate federal framework, in the event of a constitutional clash between the states and the Confederate government.[80]

Article VI: Reserved Powers

The Permanent Confederate government succeeded the Provisional government and continued in force all the laws passed by the Provisional Government. The primary objective

of the C.S.A. framers was to guard against unlimited submission to the general government and their states' rights philosophy was the constitutional means by which to realize that objective. At the same time, the delegates expected that states' rights would not prove to be an insurmountable obstacle to the formation of an effective, albeit constrained, general government.

In deference to the necessity of establishing an effective general government, Article VI of the Confederate Constitution included, as did its U.S. counterpart, a supremacy clause which held that the Constitution and the laws made in pursuance thereof would be the supreme law of the land. However, deciding which laws are and are not pursuant to the Constitution would be the fundamental question at issue between a state (or states) and the U.S. Government. With the states' rights principle so prominently incorporated into their Constitution, the Confederate delegates left no doubt as to who would determine what was or was not pursuant to their Constitution. The last two sections of Article VI hold that

> 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.[81] (emphasis added)

The important point from the Southern perspective was that the people, in their respective states, retained the prerogative of determining what was or was not pursuant to the Constitution. They felt that the Confederate Constitution's change in terminology from the "the people" (as in the U.S. document) to "of the several states" and to "the people thereof" clarified that the Confederate general government did not establish a national community of individuals disassociated from, and constitutionally superior to, the states. In this view, the national community existed only insofar as the delegated powers were concerned, "powers that were delegated by the states and for the states, rather than by and for a national community of individuals."[82]

In short, Article VI of the Confederate Constitution deferred to the States in defining and in defending the civil liberties and rights of their respective citizens. The Confederate declaration of rights throughout its Constitution was applicable to the Confederate Federal Government, rather than to the Confederate and state governments. State sovereignty would delimit the rights and liberties of their inhabitants individually, an important

Confederate commitment that the States were the depositories of judicious government.[83]

Article VII: Ratification of the Permanent Constitution

The final article of the Permanent Constitution established that its ratification required agreement by any five of the then seceded states. The Article also specified the establishment of a time to hold an election of a Permanent President and Vice President, for the meeting of the electoral college, for the election of a Permanent Congress and for the time for its assemblage. The Article retained legislative power in the Provisional Congress until the organization of the first elective Congress.

The Second Committee of Twelve had reported a draft after nineteen hectic days, and, after ten days of heated debate Howell Cobb, President of the Constitutional Convention asked his colleagues on the afternoon of March 11, 1861: " Shall the Constitution be passed and adopted?"[84] The yeas and nays were recorded and the President announced that the Permanent Constitution of the Confederacy was unanimously adopted. Thereafter, the Constitutional convention resolved itself back into session as the Provisional Congress. The Montgomery Convention, as a constituent assembly, passed into history. Their work would have to then be ratified by the states, to be judged by the

constituents for whom it was designed. Howell Cobb pronouncing the new Constitution "the ablest instrument ever prepared for the government of a free people,"[85] adjourned the Congress. The Permanent Constitution was then sent to the states for ratification.

Conclusion

The Southern experience under the U. S Constitution, had convinced Confederate constitutionalists that during the policy making process, the common good was rarely (if ever) the primary policy objective of public officials. Typically, as they saw it, what emerged from the competition for power between public officials pursuing preferential treatment for the factions to which they were accountable, was a compromised by-product, speciously touted as the common good. The intention of the Confederate framers was, therefore, to intensify internal institutional checks at the national level, thus guarding the public's policy interests through the systemic checks. This enhanced constraint was to be accomplished by constitutional innovations which were intended to fundamentally alter the institutional relationships of the branches within the federal government. These institutional innovations included executive branch representation in the Confederate Congress; an executive line-item veto in support of modifications to the budgeting

structure, which essentially constituted an executive budget process; a six-year non-reeligible Presidential term supplemented with the President's removal power, together with the elimination of a "general welfare" clause from the Constitution. In turn, these changes led to important and specific changes in the policy prerogatives and operations of the public administrative departments.

As Confederate Constitutional scholar Richard Lee, Jr., has noted, the "heart of the Confederate Constitution was so constructed as to be more responsive to the will of the sovereign people."[86] The aim of the Confederate framers was to facilitate the discussion of issues by intensifying communication between the legislative and executive branches. The increased number of participants intensified institutional communication, which meant discussing public policy issues in a legislative forum which would expose lawmakers to a wider range of policy options. In the Confederate Constitutional vision, this reconfigured institutional dialogue was to be accomplished by rationalizing the decision making processes in these important ways: a) by constricting the public policy prerogatives of the Confederate government; b) by empowering the President with unprecedented fiscal and public policy controls while protecting the executive from electoral and partisan political pressures; c) by including the

administrative agencies of government as partners in the larger policy dialogue by positioning them within the legislative structure; and d) by creating the innovative feedback loop from the public to the public administrators, back through their executive agencies, to the agency officers, to Congress. Congress was no longer to be considered the primary or even most accessible branch for responding to public initiatives. This administrative preeminence is evidence that the Confederate framers not only acknowledged the importance of effective administration, but also recognized the appropriate and important role of administration, institutionally, as they repositioned their institutional dialogic arrangements. Their considerations of the role and responsibility of public administrators and administrative institutions, their innovations and adaptations to the Confederate administrative apparatus, and the implications of those innovations for Confederate public administrative practice will be the consideration of the next chapter.

Like the Founding Fathers of the American republic, the Confederate framers had the priceless opportunity of being present at the creation of a new nation. The birth of the Southern nation began with the creation of organic law, grounded in a constitutional theory developed from the Southern experience of governance under the United States

Constitution. The timing for such a vast, uncertain enterprise could hardly have been worse: civil war loomed, Southern citizens were divided over disunion, the status of the border states hung in the balance, and international opinion regarding the Confederate experiment was mixed at best. Historians have observed that while the United States constitution had some seventy years to develop and mature before its ultimate test, the Confederate Constitution was not afforded any such maturation time. Clearly, much of the Confederate Constitutional vision could never be realized under the looming specter of war; however, the Confederate framers had established a distinctly Southern republic which looked for guidance to the eighteenth century. Their constitutional revisions were both progressive and reactionary. They were designed to reform politics, restore a pre-existing mythic past and relocate the national dialogue within structures and institutions which had long denied, they believed, their proper role in republican governance. Southerners were turning their backs on the politics of their own era and looking forward to a new political system based on purified republicanism, public policy initiatives derived from notions of the public good generated from community discourse and virtuous public service.

The halcyon days of the early Confederacy would be

short lived, however. War precluded much the Confederate leadership hoped to accomplish, yet their Constitutional vision was laid out with such clarity that it is still possible to explore what they attempted to provide in an uncommon republican governance structure within which the administrative institutions of government assumed an unprecedented centrality and legitimacy. That exploration will be the focus of the next chapter.

CHAPTER THREE: NOTES

1.Emory M. Thomas, The Confederate Nation: 1861-1865, (New York, NY: Harper & Row, 1979)., p.44 More radical elements who refused to temper their extremism became very disillusioned with the Confederacy early on. Some even advocated a second session.

2.De Rosa notes that this was not a far-fetched idea. New York City, in fact considered joining the Confederacy based on its position on free-trade issues.

3.Thomas, Confederate Nation, p. 44

4.Rable, Confederate Republic, p. 29.

5.Rable, Confederate Republic.

6.Rable, Confederate Republic, p. 30.

7.Rable, Confederate Republic, pp. 29-31

8.Thomas, Confederate Nation, p. 56-57.

9.Records of the public Constitutional debates (both for the Provisional and Permanent Constitutions) are available in The Journal of the Congress of the Confederate States of America. Records and notes on the secret sessions are widely available in personal correspondence and in the personal records of the delegates. Unlike their U.S predecessors in Philadelphia, the Confederate delegates were not particularly circumspect about safeguarding the secrecy of the Constitutional debates. They were very concerned that history record their contributions and they spared no effort to ensure that the public was aware of their comment and contribution during the debates. As Emory Thomas has noted, "as individuals they sought to serve conspicuously," (In Confederate Nation, p. 47) so they made volumes of notes and materials available to the press and, later, to publishers. Finally, the very astute T.R.R. Cobb, assumed the role of "faithful scribe" fulfilled by Madison at the Philadelphia Convention. His notes from the drafting committee were published by the Southern Historical Association.

10.The members were Memminger and Barnwell of South Carolina, Barry and Harris of Mississippi, Anderson and Owens of Florida, Walker and Smith or Alabama, Stephens and Nisbet of Georgia, Perkins and Kenner of Louisiana.

11.J.L.M. Curry, Civil History of the Government of the Confederate

States of America with Some Personal Reminiscences (Richmond, VA: B. F. Johnson Publishing Company, 1901), p. 50.

12.The original of this draft was probably destroyed during the Civil War. Memmingers's chief clerk and biographer was unable to find any trace of the document among Memminger's effects. However, Memminger had published a widely circulated pamphlet entitled "Plan of a Provisional Government for the Southern Confederacy" prior to the Convention. Many parts of Memminger's plan and certain provisions of the draft of the Provisional Constitution are very similar.

13.The original Constitution For The Provisional Government Of The Confederate States of America is in the Confederate Museum at Richmond, Virginia.

14.Journal Of The Congress Of The Confederate States of America, 1861-1865, 7 volumes, (Washington: U.S. Government Printing Office, 1904-1905),I,899.

[15] The Line Item Veto (Act), 110 Stat., 1200, 2 USC & 691 was enacted in April, 1996, became effective January 1, 1997. Constitutionality of the Act was immediately appealed to the U.S. District Court for the District of Columbia which declared the Act unconstitutional. The judgement of the U.S. District Court in Clinton v. City of New York (97-1374) 985 F. Supp., 168 was affirmed by the Supreme Court on appeal on June 25, 1998. The decision of the court rested on the narrow ground that practices authorized by the Line-Item Veto Act are not authorized by the Constitution and that such changes must come by Constitutional amendment as set forth in Article V, not by legislation.

16.Confederate Journal, I, p. 34.

17.Confederate Journal, I, p. 27.

18.Confederate Journal, I, pp. 26-27.

19.Confederate Journal, I, p. 35.

20.Confederate Journal, I, p. 904.

21.Confederate Journal, I, p. 904.

22.Alexander H. Stephens to Linton Stephens, February 17, 1861 cited in Lee, Confederate Constitutions, p. 71.

23.Emory Thomas, Confederate Nation, p. 60

24.Jefferson Davis, Rise and Fall, I, p. 246.

[25] Although Confederate diplomats were received by the Governments of Great Britain and France, neither recognized the Confederacy, diplomatically, during its existence.

26.The original vellum manuscript of the Permanent Constitution is in the University of Georgia Library, Athens, Georgia.

27.Montgomery Weekly Advertiser, February 20, 1861, p. 66 cited in Lee, Confederate Constitutions, p. 80.

28.Marshall L. De Rosa, "An Analysis of the Confederate States of America Constitution in Contradistinction To The United States Constitution as Explicated By Publius" (unpublished Ph.D. dissertation, University of Houston, 1987), p. 149.

29.The manuscript draft of the Permanent constitution was retained by T.R.R. Cobb and the Cobb family after the Civil War. It was presented to the University of Georgia Library in 1908 where it remains in the Special Collections Division.

30.A. L. Hull, "The Making of the Confederate Constitution," Southern Historical Society Papers, Volume 28, 1900, p. 291

31.Confederate Journal, I, 909.

32.Alexander Hamilton Stephens, A Constitutional View of the Late War Between the States, II, p. 335.

33.De Rosa, Constitution of 1861, p. 54

34.Curry, Civil History, p. 69

35.Confederate Journal, I, 910. The implication in this provision that all states would have bicameral legislatures is simply that. There is no explicit requirement in the Constitutional text requiring bicameral legislative forms in the states.

36.De Rosa, Analysis, p. 46.

37.J.T. Headley, The Great Rebellion; A History of the Civil War in the United States (Hartford, CT: Hurlbert, Williams, et al., 1863)

38.Confederate Journal, I, p. 913.

39.Confederate Journal, I, p. 913.

40.Henry Cleveland, Alexander H. Stephens, In Public and Private (Philadelphia, PA: National Publishing Company, 1866), p. 719.

41.Confederate Journal, I, pp. 916-917. Because the Confederate low import duty policies were expected to produce revenue shortfalls, Article I, Section 9 was qualified to allow the imposition of certain taxes or duties if approved by a two-thirds vote of both Houses of Congress.

42.Confederate Journal, I, p. 823.

43.De Rosa, "Analysis," p. 103.

44.Confederate Journal, I, p. 916.

45.Confederate Journal, I, p. 872.

46.De Rosa, Constitution of 1861, p. 64.

47.De Rosa, Constitution of 1861, p. 64

48.The Confederate Constitution did prohibit Congress from passing bills of attainder, ex post facto laws, legislation impairing the obligation of contracts, and titles of nobility in Article I, Section 10. Additionally, the Supremacy Clause of Article VI protected only those states rights which did not conflict with Confederate laws pursuant to the Constitution.

49.De Rosa, Constitution of 1861, p. 80.

50.Confederate Journal, I, p. 27.

51.Hon. Robert H. Smith, An Address to the Citizens of Alabama on the Constitution and Laws of the Confederate States of America, Mobile, Ala., 1861, p. 9 cited in Lee, Confederate Constitutions, p. 117.

52.Because of the addition of this provision in Permanent Constitution, the dual office holding provision from the Provisional Constitution was eliminated.

53.Confederate Journal, I, p. 27.

54.Stephens, A Constitutional View, II, 336.

55.Lee, Confederate Constitutions, p.99.

56.Confederate Journal, I, p. 872.

57.Confederate Journal, I, p. 919.

[58] De Rosa, Constitution of 1861, pp. 81.

59.De Rosa, Constitution of 1861, pp. 81-82.

60.Confederate Journal, I, p. 918.

61.De Rosa, Constitution of 1861, pp. 87-89.

62.Confederate Journal, I, p. 919.

63.De Rosa, Constitution of 1861, pp. 103-104.

64.Confederate Journal, I, p. 920.

65.Lee, Confederate Constitutions, p. 107.

66.John P. Kaminski and Richard Leffler, eds., The Federalists and Antifederalists: The Debate Over The Ratification of the Constitution (Madison, WI: Madison House, 1989), p. 124.

67.De Rosa, Constitution of 1861, p. 101-103.

[68] Although both the U.S. and C.S.A. Constitutions contained "supremacy" clauses, De Rosa argues that for the C.S.A., the supremacy of national law assumed consent of the states. In other words, The question of who was to decide on what laws were made or not made—the federal or state governments, was contingent on the locus of sovereignty. If willing states agreed on particular laws prior to enactment, there was no problem with national supremacy. The challenge would come when states did not agree. In the Confederate purview, no state agreement meant no legislation. (Or, conversely, any state had the prerogative to leave the union, when it felt it was necessary, because of laws perceived to be detrimental to its citizens). De Rosa, Constitution of 1861, pp. 22-23.

69.De Rosa, Constitution of 1861, p. 114.

70.Confederate Journal, I, p. 921.

71.Confederate Journal, I, p. 922.

72.Confederate Journal, I, p. 922.

73.Lee, Confederate Constitutions, pp. 111-116.

74.De Rosa, Constitution of 1861, p. 69.

75.Robert H. Smith, "An Address", p. 14 cited in Lee, Confederate Constitutions, p. 117.

76.Lee, Confederate Constitutions, p. 119.

77.Confederate Journal, I, p. 922.

78.Lee, Confederate Constitutions, p. 117.

79.Confederate Journal, I, p. 922.

80.De Rosa, Constitution of 1861, p. 43.

81.Confederate Journal, I, pp. 922-923.

82.De Rosa, Constitution of 1861, p. 40.

83.De Rosa, Analysis, pp. 109-110.

84.Confederate Journal, I, p. 153.

85.Confederate Journal, I, p. 153.

86.Lee, Confederate Constitutions, p. 119.

CHAPTER FOUR

PUBLIC ADMINISTRATION FOR THE CONFEDERATE STATES OF AMERICA

> My guiding thought, in reviewing separately all the public services of the Confederate Government, has been to give the reader a general sketch of the organization to this Government, and to show him that it is no longer a trial government, which is seated now at Richmond, but really a normal government, the expression of popular will. (Dr. Charles Girard, in a Memoir to Napoleon, III, November, 1863)[1]

> The best way to create a postal service from nothing was to steal one. (John Henninger Reagan, C.S.A. Post Master General)[2]

This chapter explores the individual constitutional innovations the Confederate framers devised to facilitate their federal government's administrative effectiveness and then presents an overview of the administrative system in the Confederate States of America. This profile of administrative agencies elaborates the management and policy activities of various officials and institutions, and, examines in considerable detail, the activities of the varied administrative entities of the Confederate government. After the organizational structures, essential

activities and administrative details have been presented in this chapter, Chapter Five of this work will, once again follow Leonard D. White's lead and delineate the most significant functional relationships between the various administrative institutions, while exploring the nature, character and significance of those relationships.

At its zenith, the public administrative apparatus of the Confederate States of America (C.S.A.) employed some 71,000 individuals. Extending well past the Confederacy's central government location at Richmond, Virginia, extensive federal civilian public administrative operations were carried out in thirteen Confederate States and in several foreign countries. While many administrative operations and activities were organized as equivalents to traditional executive department functions in the United States model, Confederate administrative operations developed a number of important adaptations designed to facilitate the Constitutional revisions the nation's founders had envisioned for its governance system. The Constitution of the Confederate States of America represented the manifestation of an evolution in American constitutional theory. With its origins in the founding debates surrounding the establishment of the 1789 U.S. Constitution, this theoretical evolution culminated in the Confederate

Constitution of 1861. Since previous chapters have detailed the dynamics which precipitated the development of the revisionist constitutional theory upon which the Confederate founders based their Constitutions, this chapter focuses upon that Public Administration theory which is clearly discernable in their constitutional endeavor. Specifically, the chapter presents an overview of the organization of Confederate public administrative institutions, their operations and practices, and the mechanisms for coordination and control of these institutions, which were produced from the Confederate theoretical orientation to administrative governance.

During the state secession, constitutional drafting, and ratification processes, Confederate framers articulated a consistent and specific understanding of the place, purpose and importance of public administration within their particular federal government model. They consequently embodied this understanding of the importance of administrative activities in their Constitutions. These administrative innovations reflect the Confederate commitment to an efficient, effective national governance--constitutionally and operationally constrained from usurping the prerogatives of state sovereignty. These procedural and substantive innovations were designed to foster more

rational decision-making processes, to constrain the public policy prerogatives of the Confederate federal government, to protect the administrative structure and processes from the detrimental effects of partisanship and patronage, and to re-establish the quality and locus of national policy discourse within the various institutions of government. These modifications combined to afford Confederate public administrative officials and institutions a prominence unanticipated in American constitutional theory and unexpected by observers uninitiated to the complexities of Confederate constitutional theory.

Confederate Constitutional scholar William Robinson has explained that the Preamble to the Confederate Constitution described the Confederate federal government as a "permanent federal government," formed by the people of each State acting in their separate and sovereign capacities. This expression, Robinson maintains, was intended to reject two equally extreme theories, which had proved troublesome during the Constitutional drafting process. The first was the prevailing nationalistic conception of the federal government as a superstate, which had been developed and proffered in the north for more than seventy years. The second was the notion, which persisted in some quarters of the South, that the central government was merely the common

agent of the several state governments. As Robinson puts it, central to any understanding of Confederate administrative theory is the recognition that its founders intended "to establish a general government every whit as strong within its delegated sphere as the state governments were in theirs."[3]

The constitutional innovations the Confederates incorporated, were intended to alter fundamentally the administrative operations of the Confederate federal government, as compared to its U.S. counterpart. Specifically, the alterations to be explored here are: executive branch representation in the Confederate Congress; an executive line-item veto; alterations in the appropriations process which anticipated an executive budgeting procedure; a non-reeligible six-year Presidential term (with limited Presidential removal power for the protection of public servants other than cabinet and diplomatic appointees); state legislative power to impeach federal officials acting solely within the limits of particular states; restrictions on federal programs of internal improvements and the abrogation of the general welfare clause; and provisions requiring executive departments to support their own operations out of self-generated revenues.

ADMINISTRATIVE INNOVATION

The administrative innovations incorporated into the Confederate Constitution by its framers aimed to attenuate several categories of concern. The multiple objectives of the Confederate constitutional drafters included: 1) facilitating an effective, efficient general government in which the locus of national policy discourse was institutionally reoriented to a nexus between the executive and legislative branches; 2) establishing a responsible and responsive administrative apparatus with the President serving as an executive manager for the administrative bureaucracy, and within which nonideological discourse (freed from the deleterious effects of patronage and partisanship) could generate an enlightened understanding of the public interest; 3) maintaining an administrative structure in which the separation of institutional powers, state's rights, and popular sovereignty protections could be balanced; and, 4) the establishment of an administrative system perceived as legitimate based on its constitutional recognition and by its political and operational separation from the manipulations of partisan politics. It was an ambitious agenda for an administrative system, and its realization would require significant constitutional

adaptation. Despite the difficulties inherent in a Constitutional revision of this scale, the Confederate framers were committed to providing the requisite constitutional innovations to operationalize their administrative design.

Executive Branch Representation

In a representative democracy, a rational decision making process is one in which the deliberations include all relevant aspects of public policy issues. Selection of the best course or courses of action for meeting policy objectives is accomplished through a deliberative process, which reveals optimum strategies and alternatives. When Confederate leaders provided for their Congress to "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,"[4] they intended to facilitate the discussion of policy issues by intensifying communication between the legislative and executive branches. Intensified institutional communication would result from an increased number of participants discussing public policy issues in an enlarged forum. Confederate framers believed that this enhanced communication process would expose lawmakers to wider ranges of policy options and incorporate mulitplicities of public

opinions and perspectives. This fundamental change in the quality and locus of discourse, with debate moved from strictly a legislative committee/executive branch initiative position to a more central, public institutional setting, was also intended to imbue the legislative process with executive influence.

Robert H. Smith, Congressman from Alabama observed:

> The want of facility of communication between the Executive and the Legislature, has, it is believed, been a serious impediment to the easy and harmonious working of the Government. Experience has shown that our Fathers, by refusing the executive the right to be heard through his constitutional advisers on the floor of the Legislature, had interposed barriers to that free intercourse between the two departments which was essential to the wise and healthy action of each.

Robert Toombs of Georgia, and Vice President Stephens, believed, along with Smith, that this provision would enhance cooperation between these two branches of government, would give the legislature a closer check upon the executive, would keep Congress better informed as to administrative policy, and place more direct responsibility upon administrative department heads. During the January, 1863 debate, Senator Benjamin H. Hill of Georgia, remembering how well this system had functioned in the Provisional Government, lamented that he "had seen

information obtained in fifteen minutes (during the Provisional Congress) which could not be obtained in this Congress (referring to the Permanent Confederate Congress) in a month"[5] (emphases added).

Despite the support of influential members such as Toombs, Smith and Stephens, and to the disappointment of Senator Hill, however, the enabling legislation to put this provision into effect in the Permanent Confederate Government was never passed. In January 1863 and again in February of 1865, bills were introduced to accomplish this important facet of the constitutional design. By the time of their introduction, however, relations between the Confederate Congress, President Davis and Davis's Cabinet had deteriorated dramatically. Congressional disapproval of Davis's cabinet appointments, Executive Branch policy actions in conducting the war, and other differences had created so much dissention and distrust between the Executive and Congress, that passage of the legislation became impossible.

Although the enabling legislation to put this important provision into effect was never passed, the imperative represented by the provision remains clear. The Confederates intended to provide a locus for policy discussion in which executive and legislative priorities could be reformulated

in an arena designated to allowing the public interest emerge.

Presidential Tenure and Limited Removal Power

Confederate leaders recognized that the intensified communication they were prescribing between the legislative and executive branches could only be accomplished if there were fundamental changes in the nature of the Presidency. Their design required an executive protected from the pressures and machinations of the partisan political process, enabled (and expected) to represent the larger public interest irrespective of temporary or factional public opinion. The Confederate Constitution, therefore, provided for a six-year presidential term and required that the president be ineligible for re-election.

The Confederate framers meant to establish a custodial executive who could obstruct congressional policy excesses, protect the state governments from central government encroachment, and use the executive branch to secure the common public interest through a non-partisan dialogue with the legislature. To perform these tasks effectively, they believed, the President would have to be protected from the pressures of partisan political activities. Thus, their vision of an intensified and expanded dialogue with the

legislative branch required the President to be detached from the pressures of re-election campaigning and patronage position pandering. Moreover, their experience with thirty years of Jacksonian democracy convinced the delegates that the patronage demands placed on an incumbent president seeking re-election were detrimental to the purified discourse they aspired to create. Therefore, to protect the executive branch's independence and control over the cabinet and the attendant bureaucracy, while protecting the administrative system from the instability of wholesale patronage appointments, the Confederate constitution placed limits upon the President's removal power.

The Confederate chief executive was authorized to remove from office those cabinet level officials and senior diplomats deemed detrimental to the president's policy agenda. However, Article II, section 2, clause 3, of the C.S.A. Constitution specifies that while these principle

> " officers may be removed at the pleasure of the President, other civil officers of the executive department may be removed at any time by the President...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 therefore."[6]

The presidential removal power facilitated the

independence of the executive branch by providing the President with control over the Confederate bureaucracy. But, as Van Riper notes, the designers of the Confederate Constitution wanted to undertake some sort of civil service reform as a reaction to the effects of Jacksonian spoils. Their proposal was to control patronage activity via the duality of limiting the President's removal power, and legislative oversight of the removal process. This theory of removal power was the only widely understood model for civil service reform prior to the appearance of appointment-based reforms after the Civil War.[7]

The combination of the presence of Executive Department heads on the floor of Congress and the president's insulation from partisanship was to have created a synergy between the executive and legislative branches. A context in which administration officials, participating in the deliberative process and representing the administration's policy positions, together with the President's augmented facility to respond to issues of wider public interest (by controlling upper cabinet officials while remaining detached from the burdens of political patronage demands in the administrative ranks), was seen as the ultimate pre-condition for a more deliberative, inclusive, and public-spirited, policy dialogue.

The Confederate aspiration of a more rational and enlightened policy discourse was to have been accomplished by insulating the President from the pernicious effects of partisanship, while he remained in control of the upper echelons of the executive administration. The cluster of provisions which limited the presidential term, established personnel reforms, and expanded executive department participation in the legislative process resulted in a Confederate President who was less politically powerful, but who was substantially more **administratively** powerful than his U.S. counterpart.

The Executive Line-Item Veto and Fiscal Policy Procedural Reform

When attention turned to issues of fiscal policy, Confederate framers determined that existing executive checks on the legislature under the U.S. Constitution had proved woefully inadequate. Therefore, Confederate constitutional adaptations were designed to alter the relationship between the legislature and the executive and to favor the latter. Prevailing Confederate opinion was that the South had been victimized by perceived legislative abuses of the appropriations process under the U.S. Constitution. Confederate leaders argued that the U.S. Congress had become unscrupulous as a result of its fiscal

authority, and they moved to save the Confederate Congress from a similar fate. Under the Confederate Constitution, the executive line-item veto was to have expanded the rationality of the fiscal policy process beyond the simple veto because, at the discretion of the President, specific portions of legislation could be returned to the Congress for further deliberation. Even the possibility of the line-item veto, it was assumed, would modify legislative behavior regarding pork barrel or sectional expenditures.[8] As legislators would be required to consult with the executive branch in advance, dialogue between the two branches would, again, be enhanced.

With their President insulated from the dangers of partisan manipulation, the Confederate framers also shifted appropriations initiatives from the legislature to the executive. Article I, section 9, clause 9 stipulates that "Congress shall appropriate no money from the treasury except by a vote of two-thirds of both Houses...unless it be asked and estimated for by some one of the heads of departments, and submitted to the Congress by the President."[9] The provision was based upon the Confederate notion that the

> chief executive as the head of the country and his cabinet should understand the pecuniary needs of the Confederacy, and should be answerable

> for an economical administration of public affairs, and at the same time should be enabled and required to call for whatever sums may be necessary to accomplish the purposes of Government.[10]

The Confederate framers never intended to completely curtail legislative participation in formulating fiscal policy; the process, after all, remained under their approval. Constitutionally, however, the Confederate President, not the Congress, headed the branch of government now primarily responsible for the fiscal policy of the C.S.A. No longer, as was the case in the U.S. government, would budget estimates be determined by the simple accumulation of funding requests forwarded from individual department heads to the Treasury department, then on to Congress for disposition. The C.S.A. innovation required presidential intervention. All departmental funding requests were to be reviewed by the President and subsequently submitted to the Congress. While this procedure did not evolve into executive budgeting as it is contemporarily understood, over the life of the Confederacy, it did provide the President with a coordinated system for examining funding requests in a coherent manner, projected for specific increments of time.

State Sovereignty Protections and Administrative Legitimacy

Believing that no administrative system, however well-considered, nor any institutional separation of powers scheme, however well-conceived, would be sufficient to protect state policy prerogatives from usurpation by the central government, Confederate framers included in their institutional innovations provisions to safeguard the individual states from unwarranted and unwanted interference. Designed to fundamentally affect the Confederate Congress as an institution, the C.S.A. constitution omitted the constitutional mandate to "promote the general welfare." Arguing that the promotion of the general welfare should be a function reserved to the individual states, the framers excluded the general welfare clause from the Confederate Constitution. They believed that this exclusion reduced the possibility that the Confederate Congress would adopt public policies based upon the national government's pursuit of some vague interpretation of the general welfare. Thus, Southern statesmen believed, the central government's proclivity to intrude upon state's sovereignty was diminished. This legislative modification has obviously important implications for administrative practice, especially when this alteration is viewed in combination with subsequent

Confederate prohibitions on centrally funded internal improvements.

To secure the Confederacy against sectional legislation and, more specifically, a burgeoning central administration, the C.S.A. constitution placed significant limitations on centrally funded internal improvements, linking those limitations with the abrogation of the general welfare provision. The result was to have been a strictly delimited federal administration, guided and directed by its own synergistic legislative/executive policy process design. It was to be managed by a politically autonomous executive responsible for fiscal policy decisions, and therefore, particularly sensitive to management issues within the bureaucracy.

To ensure that these priorities would obtain throughout the decentralized federal administrative system, Article I, section 2, clause 5, of the C.S.A. Constitution authorizes the state legislatures to impeach Confederate federal officials operating within their respective borders. The Article states that 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"[11] (emphasis added).

While the Confederate Senate retained the authority to try any such cases, discretionary power to impeach Confederate officials devolved to the states.

Designed to make federal officials more responsible and accountable to the states in which they were implementing federal policy mandates, the provision empowered state governments. A state could constitutionally impact the policies of the Confederate government by impeaching and removing from office those officials who attempted to implement policies deemed out of step with the policy objectives of a state. Thus, the execution of unpopular federal policies was, for all practical purposes, precluded. The impact of this particular measure on the several thousand judges, custom's officials, lighthouse keepers, post office officials, conscription officers, tax assessors and collectors, and various other Confederate federal officials operating within individual states was profound. Under this provision, federal officials could not act with impunity within a state opposed to a particular policy because that official would now be subject to state-initiated impeachment proceedings. Confederate officials were thus required to interpret and enforce Confederate laws

according to the particular priorities and preferences within the communities of the individual states.[12]

Policy implementation was often a process of negotiation, collaboration and incorporation of the public opinion of local officials and citizens. Contentious policy issues were often renegotiated at the local level, after substantial infusion of local information, opinion, and conditioning, and referred back to Confederate state or federal officials for reconsideration. This bottom-up policy formulation and negotiation process contributed to the legitimacy of administration as individual citizens gained a sense of their own efficacy in influencing the administrative policy system.

Fiscally Self-sustaining Executive Agencies

The constitutional innovations prescribed for executive agencies such as the Confederate Post office, and for the Patent Office, (located within the Confederate Department of Justice), illustrate another distinct category of remedies employed to support state sovereignty. The Confederate emphasis on individual state discretion in determining economic relations with other states coupled with the imperative for individual state constitutional latitude to interpret the meaning of Confederate laws and policies within their respective boundaries, required Confederate

founders to devise administrative entities which comported with those perspectives.

The constitutionally mandated management of the Confederate Postal Service embodied the modus operandi of the Confederate vision of the relationship between states and the central government on economic and "general welfare" policies. Article I, section 8, clause 7 of the Confederate Constitution mandates that, while Congress would retain the power to establish post offices and postal routes, "the expenses of the Post-Office Department…shall be paid out of its own revenues."[13] Whereas the U.S. Constitution promotes the advancement of a national economy, as the product of national public policy, the Confederate document reserves to the states the management of their respective economies within the framework of laissez-faire, free trade policies.

The Southern position was a significant departure from Publius's contention, in speaking of the national postal service, that "nothing which tends to facilitate the intercourse between the States can be deemed unworthy of public care.[14] The Federalists believed that the national postal service would facilitate commerce and communication between the states. It therefore required the nation's financial support. In contrast, most Southerners, like Representative William Boyce of South Carolina, believed,

that the

> Department should be self-sustaining ...for why should one man be taxed to carry the letters of another? There is no justice in it. Let those who send letters pay for them. It is very convenient, doubtless, for the merchants, literary men, and professional men, to let the hard-working masses pay for their letters; but it is not right....Indeed, when I consider the immense patronage of this Department, as a State's rights man opposed to too strong a Federal Government, I see great advantage in getting rid of this patronage and thus simplifying the government.[15]

In fact, the Southern leadership believed that moving the mails for less than the cost of providing the service was, in effect, a subsidy to business interests in the North, which typically made the most use of the mails. Senator Toombs of Georgia echoed the prevailing Southern opinion when insisting that the appropriate policy approach was to "make those who use the Post Office pay for their own business, and you have no need to levy a single shilling...for the next year....We must alter our system, bring down this Department to the ways of the Country to be tested by what those who use it are willing to pay for it.[16]

An in depth assessment of Confederate Post Office policies which evolved as a result of these public responsiveness imperatives will follow in later sections of this chapter. For now, it is important to note that in its

short and troubled history, the Confederate Post Office would be forced to grapple with administrative management challenges of monumental proportions. A profile of Confederate Postmaster General John H. Reagan, his management strategies and the skills he employed as he attempted to fulfill the mandate assigned to the Post Office Department and, the ultimate results of his efforts is included later in this chapter. The important observation at this point is that the Confederate Post Office had been required to develop a management and service restructuring plan, capable of serving the public responsibly, while operating within the context of an ever-expanding war and while complying with state priorities sufficiently to avoid having local postal authorities impeached! The nature of the policy controversies confronting the Department was also daunting. Effective policies regarding the disposition of "incendiary" mails, the nationalization of the Telegraph Service, a workable policy for soldiers' mail, and negotiations with southern railroads for transportation rate concessions had to be considered. The remarkable achievements Reagan and the Post Office Department accomplished, under the circumstances, will be considered in detail later in the chapter.

The Confederate Department of Justice, was added to the

executive administration as a direct result of the commonly held Southern perspective that the Attorney General's office was better qualified to supervise a number of issues, including the granting of Patents, than were other executive branch departments. In the U.S. Government, the newly created Interior Department (1849) had been assigned various responsibilities transferred from the Departments of State, War, Navy and the Treasury. For Southerners, the idea of a "home department" was repugnant. Even the name of the new agency smacked of central government paternalism, the ever-increasing incursion of the federal government in domestic affairs, and violations of state's rights. Thus, most of the responsibilities assigned to the Interior Department in the U.S Government were assigned to the Confederate Justice Department.

In addition to organizing the Courts of Justice, the Justice Department was to supervise the accounts of all federal marshals, clerks and officials of all courts. The Justice Department was also charged with the processing of all claims against the Confederate States government, with supervising territorial affairs and with establishing a Board of Sequestration Commissioners. The Bureau of Public Printing was assigned to the Confederate Justice Department, as was the Patent Office. Like the Confederate Post Office,

the Patent Office was required to be financially self-supporting. Southern adherence to the principles of free market economics demanded that those who wished to profit from patent acquisition and protection fund the legal and scientific research and registration costs incurred in processing patent applications.

A thorough exploration of the Confederate Justice Department, along with the other executive departments will be presented later in the chapter. At this juncture, however, it is important to turn to a consideration of the administrative practices, which evolved from the Confederate Constitutional adaptations and to the development of the Confederacy's administrative system. Howard McCurdy has observed that, in considering administrative history in the United States, two major themes stand out: the continuity of administrative institutions in spite of political and economic convulsions, and the contest between doctrines of administration.[17] In the formation and development of the Confederate administrative system, both themes are readily apparent and provide an excellent framework for the analysis to be undertaken here.

Unquestionably, despite their explicit acknowledgement of state's rights in the new Constitution, the delegates at Montgomery intended to create a potentially powerful and

sovereign nation. Even as they restricted its authority in many politically significant ways, the Confederate framers forged a strong central administration, applying the lessons of statecraft learned through difficult historical experience. Yet, like any new political entity, the Confederacy faced a legitimacy crisis. Confederate leaders were determined to address this crisis by short-circuiting traditional political and administrative practices. Its proponents declared that the Confederate government was well on its way to restoring a simpler and purer republicanism. Political hacks, lobbyists and opportunistic office seekers, they believed, would be driven from public life and public service ideals would be derived from an organic sense of community and national solidarity, nourished by the public's faith in the Confederate leadership.[18]

Even as the Confederate framers attempted to frame this new governance relationship, however, the recognition of the necessity of an administrative dualism was implicit in all their work. Despite the prominence (and sanctity) state governmental entities and administration would hold in the Confederacy, a fully functioning, effective and capable national central administration was always assumed as requisite to the operation of the new federal government. Moreover, the Confederate leadership was more than

adequately acquainted with the exigencies of administration. Confederate President Jefferson Davis had served as U.S. Senator, and as an able administrator as Franklin Pierce's Secretary of War. As was noted earlier, the Confederate Congress, and particularly, the Constitutional drafting committee, was composed of members with significant legislative, judicial and administrative experience. Every Davis Cabinet Secretarial appointee had years of U.S. Congressional experience, many having served on the oversight committees of the departmental counterparts they would administer in the new government.

There can be no doubt that the Confederate founding fathers anticipated the need for responsible, capable, public officials and agencies of public administration to carry out the functions of the new government. The Confederate leadership was fortunate to have had extensive administrative experience, which helped guide them in the development of a new administrative system. That experience, combined with their accepted theories on republicanism and constitutionalism, generated the administrative theory from which they proceeded.

Using McCurdy's two-foci analytical framework as a guide, the next section turns to an assessment of the contest between doctrines of administration, which provided

Confederate public administration its unique character. The exploration of the continuity of administrative institutions in the context of political and economic convulsion will follow in the section on Administrative Agencies.

COMPETING ADMINISTRATIVE DOCTRINES AND EMERGENT CONFEDERATE ADMINISTRATION

Administrative historian Leonard D. White has described an administrative philosophy as a set of determinations about three fundamental elements: first, the most effective way of organizing an administrative system; second, the most suitable means of conducting it; and third, the best means of coordinating and controlling its operations.[19] Certainly, by the time the Confederate States of America emerged, there had been ample opportunity for political leaders, statesmen, administrators and the public to acquire first-hand experience with many manifestations of the elements considered in White's administrative framework. A brief review of U.S. administrative development will help explain the types of experience to which Americans had been exposed prior to the formation of the Confederacy.

With the adoption of the 1789 U.S. Constitution, a Federalist Administrative perspective gained ascendancy. "Federalist Administrative Doctrine," as White describes it "informed the administrative operations of the U.S. national

government for its first forty years." Inspired by Hamilton, federalist administrative doctrine evolved from its proponents' commitment to "bind the citizens to their polity by effective government and good administration."[20] The Federalists offered the ideas of energy in the executive branch, sustained by the unity of its parts in subordination to the Chief Executive, ample funds to provide for the financial support of the federal government, stability, and adequate administrative powers. The Federalist administrative conception rested upon a fully organized federal administrative system, independent of the states, and operating in conformity with their loose constitutional construction theory. Federalists were quite willing to give the administrative system ample authority to carry out its work.

Although they were friends of administrative discretion, Federalist theorists sought to concentrate that discretion in the hands of the President and the heads of departments. They anticipated that their public servants would be drawn from the well bred and affluent classes and, in fact, this tended to be the case. As a result, Federalist administrative practice permitted a permanent tenure structure to develop among civil servants. In the Federalist conception, public administration was to be

intelligent, capable, and of the highest ethical standards since the Federalists anticipated great works for the administrative system to accomplish in building the national economy.[21] They would therefore, recruit and retain the most influential and responsible members of society to manage their administration.

Although the so-called Jeffersonian Revolution of 1800 might have signaled a reorientation to administrative perspectives more consistent with Anti-Federalist thought, political realities forced Jefferson to abandon his administrative ideology early in his presidency. The Jeffersonians accepted the idea of the unity of executive power, but believed that the doctrine of energy in the executive was the doctrine of tyranny. Despite their grudging acceptance of a unified executive, they had no intention of allowing executive discretion to escape a narrow and certain responsibility to Congress. Jeffersonians distrusted executive discretion, even at the highest levels, and sought to limit administrative authority. Since they were committed to strict constructionism and were generating no large programs for the general government to implement, this limited administrative authority was initially easy to maintain.

Early priorities for the Jefferson administration were

reduced federal expenditures, liquidation of the federal debt, and resistance to federal intervention in internal improvement projects. However, events of the era demanded an energetic administration and an empowered President. Historic intrusions like the Louisiana Purchase and the Embargo Act of 1807 "quickly brought Jefferson to the practical conclusion, at variance with his theory, that he, as President would have to take the lead in the...application of executive power on a truly Hamiltonian scale."[22] Thus, in practice, the Federalist view of administration defined the operation of the American federal government until the Jacksonian ascendancy in the 1830's.

Had the Jeffersonian restoration of independent dual administration and strict constructionism been successful, the theoretical heritage of American public administration might have been less ambiguous. However, with the appearance of the New Republicans in the early decades of the nineteenth century, administrative practice refocused on the urgency of internal improvements to be built directly by the Federal government. This New Republican Party favored energy and unity in the executive branch, did not hesitate to exert executive influence on Congress, and was unconcerned about the exercise of administrative discretion.

Following the election of 1820, the Federalist Party

vanished; by the 1828 election the Republican Party was divided into factions. This reorganization precipitated the development, after some years of controversy, of the Whig and Democratic parties. Neither of these emergent parties pursued any constitutional reforms affecting administration, however, as both agreed that independent dual administrative systems were advantageous. At deeper levels, however, formal administrative structural stability was increasingly challenged. Substantial differences in the two emergent parties' positions on basic questions affecting the nature of the administrative system threatened the existing balance.

The new Democrats tended to be strict constructionists, but with an enlarged Federalist perspective on executive power. Asserting that the President was a direct representative of the people, Democrats drew from Federalist doctrine in maintaining the unity of the executive branch and in justifying the executive's decisive use of its powers. Whigs, to the contrary, reacted to Jackson's exercise of presidential powers during the Nullification Crisis. Whigs refuted the Democrats' direct presidential representation theory and proposed a restriction of the presidential veto. The Whigs sought to separate the Treasury from the President and denied the President could

control the discretion of a department head in the performance of a statutory duty. They rejected the idea that the President's authority included the power to remove an officer appointed with the consent of the Senate without its concurrence. The Whigs "apparently even sought to destroy the unity of the executive by subordinating the President to a majority vote of the Cabinet."[23] Thus, the Whigs exceeded even the strictest old Republican theory, which had never asserted that the heads of departments were other than subordinate assistants to the President.

Finally, while there were party differences in theory, there were no differences in practice, with respect to rotation in office and the limitation of tenure. Initially, Whigs argued violently against any departure from traditional practices. However, as it became politically expedient, they later joined company with the Democrats and ultimately both parties came to require partisan loyalty from civil service personnel. While the Whigs strongly supported high standards of official conduct and they railed at the lowering of standards and loss of respect for public officials, which was occurring under Democratic administrations, the same destructive influences were at work in practice, in both parties.

By 1860, popular democracy had been introduced into the

established administrative system, profoundly altering the character and spirit of the existing system, for better and for worse. The democratization of governmental administration was the great legacy of the Jacksonians. Leonard White observes that the tone and character of the era were set by the rule of rotation and that this rule brought deterioration in its wake. The American public service had been captured by the party system and the politically neutral quality of the service, which had been generally sustained from the Federalist era to the late 1820s, was largely destroyed.

> The appetite of the office-seeking class was augmented and became more obnoxious. The efficiency of the public service was diminished and its prestige damaged. By the time of James Buchanan there could be little doubt that the losses were great.[24]

The roughly thirty years between the administration of Andrew Jackson and secession of the Southern states were rife with constitutional debate, party conflict, and sectional strife, and these tensions combined to overshadow the routine operations of government. It is from this confusion of inherited administrative doctrines, set within the prevailing context of resounding party and sectional battles, that Southern constitutional theory and its resultant administrative doctrine emerged in 1860. Southern

revulsion against the spoils system, coupled with their widely held commitment to restore the priorities (as they saw them) of eighteenth century constitutionalism, produced an administrative system which clearly resonates with many of the priorities of its 18th Century intellectual influences. As importantly, Confederate leaders carefully incorporated into their emerging constitutional theory, the practical wisdom they had drawn from their common experience of governing under the U.S. system. Although the Anti-Federalists would have argued with particular individual elements of the Confederate design, they would, most likely, have acknowledged the Confederate endeavor as a credible effort to restore much of what had been lost from their original constitutional conception.

Considering Recurrent Themes

An examination of the Confederate governance experiment provides a venue from which to observe a series of similarities, some striking, between certain Anti-Federalist perspectives, and themes which ran through Confederate thought. Notwithstanding the fact that Anti-Federalist literature is immense and replete with tensions, inconsistencies, and disagreements, enough of Anti-Federalist thought was "a good deal clearer and more

coherent, and also more relevant to an understanding of the American founding and the American polity, than has usually been supposed."[25] In this section, three broad similarities between Anti-Federalist and Confederate thought are considered: First, are there similarities between Anti-Federalists and Confederates as each group considered the most effective way of organizing an administrative system? Second, what was common to both perspectives as they wrestled with finding a most suitable way of conducting an administrative system? Finally, what were the similarities between the two perspectives as to the best means of coordinating and controlling an administrative system's operations?

Anti-Federalist Organizational Strategy

Federal Farmer presented the following observation on administrative organization:

> The great object of a free people must be so to form their government and laws, and so to administer them as to create a confidence in and respect for the laws.... I am fully convinced that we must organize the national government on different principles, and make the parts of it more efficient, and secure in it more effectually the different interests of the community, or else leave in the state government some powers proposed to be lodged in it, at least till such an organization found to be practicable.[26]

Reflecting the Anti-Federalist perspective that an efficient and effective general government would need to exist in cooperation with state governments, Federal Farmer acknowledges the Anti-Federalist commitment to administrative dualism. "That the state governments will form a part of, and a balance in the system," he says, is the security for state sovereignty and the guarantee that the community's interests and opinions will be incorporated in the public interest discourse. The general government will have "few national objects to attend to, and the state governments many local ones."[27] While the Anti-Federalists accepted and advocated a separation of powers and functions between legislative, judicial and executive branches, along with a system of checks and balances between them to maintain the separation and to avoid concentrations of power among national institutions, their basic concern was not simply the maintenance of equilibrium within the general government. Their more fundamental concern, always, was to ensure the maintenance of the federal equilibrium. That equilibrium would consist, on the one hand of a general government capable of dealing with general interests and, on the other, local governments capable of existing alone if necessary.[28]

Despite the broad general reluctance on the part of

many Anti-Federalists to accept the idea of a national government at all, ultimately, their doubt turned to grudging agreement that some form of Union was wanted, that that Union would require an efficient government, and that the Articles of Confederation had not provided such a structure.[29] Their acceptance was premised, however, upon the firm conviction that the general (national) government--operating with both an internal separation of institutional powers and an internal checks and balances system, required an external balance which could only be provided by state government administrations. In this conception, state government administrations, empowered with the constitutional resources to check arbitrary policies of the general government, would create a triangulated balance system with state governments participating as full partners in the process.

Given the complexities of their perspective, what did the Anti-Federalists consider the most effective organizational model? Federal Farmer maintained that he would be satisfied with seeing "a prudent administration." He notes that in fact, he is so convinced of the truth of Pope's maxim, that "That which is best administered is best," that he is not inclined to debate about the specific details of form.[30]

George Mason, however, was not so conciliatory. Mason railed against particular elements of the new constitution. He saw a dangerous blending of the executive and legislative powers in the new structure, and an alarming dependence and connection between the Senate and the chief executive. His concerns were not limited to the balance between branches, however. Mason charged that the new constitution not only blurred the lines between the Executive and the Legislative, but also violated the balance between states and the federal system. "...Hence also sprang that unnecessary officer the Vice-President, who, for want of other employment is made president of the Senate…." This office further blended the powers of the executive and the legislative branches, and, Mason warned, "…besides always giving to some one of the states an unnecessary and unjust preeminence over the others."[31]

Mason also worried about the evolution of the Cabinet under the new Constitution. Since the President was not provided with a constitutional council in the new document, Mason was certain problems would develop. Convinced that a council of state would emerge from the principal offices of the executive departments, Mason predicted collusion between this council and the Senate in the improper appointment of public officials, avoidance of investigation into misconduct

in office, improper treaty making, and the illicit granting of pardons for treason.

Richard Henry Lee agreed with Mason's assessment, and similarly maintained that the legislative and executive powers should be separated. He also observed that in the new Constitution the President and the Senate jointly appointed high-ranking officers, civil and military, and that the Senate was to try all impeachments, either of their own members, or of the officers they appointed. Lee agreed with Mason that a "Privy Council should be appointed to advise and assist in the arduous business assigned to the executive power..." in order to prevent the dangerous blending of legislative and executive powers. To secure responsibility, the Privy Council, not the Senate, would "be joined with the President in the appointment of all officers civil and military."[32]

Centinel assumed a separation between the executive and the judicial branches, surmising that the "chief improvement in government in modern times, had been the compleat separation of the great distinctions of power; placing the legislative in different hands from those which held the executive; and again severing the judicial part from the ordinary administrative.[33] Brutus agreed with Centinel on this point. While maintaining the principle of strict

accountability to the people, Brutus went on to observe that "to have a government well administered in all its parts, it is requisite the different departments of it should be separated and lodged as much as may be in different hands."[34]

Herbert Storing notes that the assumption behind this separation is that all governments perform certain kinds of functions, and these functions are best performed in distinctive ways and by distinctive kinds of bodies. The legislative function requires large numbers and public gatherings with procedures to foster deliberation. The executive function, on the other hand, would require secrecy, energy and dispatch.[35]

Having established at least general agreement on an effective way to organize the administration, Anti-Federalist theorists turned to discussions of the most suitable way to conduct the system. Again, opinion was not unanimous, but important themes emerged. Storing notes that in general, the Anti-Federalists were very suspicious of the privileged in society, and the proposed Constitution appeared to offer many public jobs for an aristocracy.[36] There were, it appeared, few places in the new government for the yeoman middle class, and no checks upon those civil servants that had any incentive to govern in the interests

of the middle class. Anti-Federalists assumed that an emergent class of wealthy office holders would routinely appoint their wealthy friends to public offices.

As Centinel explained, Anti-Federalists wanted a middle class government wherein "...the people are sovereign and their sense or opinion is the criterion of every public measure." His solution was to vest all the legislative power in one body of men, separating the executive and judicial branches. By electing the representatives for short periods and protecting the executive branch by "necessarily excluding by rotation from permanency, and guarding from precipitancy and surprise by delays imposed upon its proceedings, you will create the most perfect responsibility" in the executive branch.[37]

A second concern for the Anti-Federalists centered upon the President specifically. While many prominent Anti-Federalists exhibited what Storing described as "a rather pedestrian hostility toward a strong executive,"[38] many others thought that a unitary executive was necessary for the sake of both efficiency and responsibility. To resist the aristocratic tendencies of the legislature, many Anti-Federalists advocated a strong executive, with extended non-reeligible terms. George Mason proposed a seven-year, non-reeligible Presidential term. He said this extended

presidential term was the "best expedient both for preventing the effect of a false complaisance on the side of the Legislature towards unfit characters; and a temptation on the side of the executive to intrigue with the Legislature for re-appointments."[39]

A [Maryland] Farmer likewise saw the necessity of a strong and energetic executive. His conception of the "properly constituted and independent executive, a vindex injuriarum--an avenger of public wrongs; who with the assistance of a third estate, may enforce the rigor of equal law on those who are otherwise above the fear of punishment,"[40] helped generate a much more favorable view of a strong executive than might otherwise have been the case.

Despite the ultimate acceptance of an empowered, unified executive by some, Anti-Federalists such as Gunning Bedford of Delaware resisted. Bedford, concurring with Elbridge Gerry and Roger Sherman, most consistently opposed an executive veto. Stating his case, Bedford charged that "the Representatives of the people were the best judges of what was in their interests, and ought to be under no external control within the Legislature itself."[41]

For the Anti-Federalists, the best mechanisms for coordination and control of the administrative system resided in their commitment to strict constructionism,

limited central government initiatives, and state general welfare policy prerogatives. Centinel warned that the "general welfare" provision in the new constitution could be misconstrued to negatively affect every purpose for which the state legislatures were then responsible, and that nationalistic general welfare provisions might well be imposed on citizens of the states unless the clause was eliminated. To preclude this imposition of arbitrary national policies, the Anti-Federalists, as Storing notes, generally agreed that balance was the best approach.[42] Their position, which acknowledged the legislative branch's direct representation of distinct communities required, however, a tripartite balance of popular control through electoral and legislative processes. The central government, with its "checks and balances" division of functions between the legislative, executive, and judicial branches was to operate *in conjunction with* the states. Thus, the states were to be the check against arbitrary national policy making.

This complex balance of powers was to serve as an obstacle to potential abuses of public trust by administrative officials. It was for this reason that the Constitution prohibited officials from holding dual positions in separate branches. A legislator, for instance,

was not allowed to simultaneously hold a position in the executive branch because of the potential for special interest group influence on the administrative functions.

As an ultimate safeguard of individual state interests against administrative officials or arbitrary national policies, Agrippa recommended that any officer of the United States offending against an individual state shall be held accountable to such state for their official actions. Agrippa's recommendation resonates as the direct precursor for a similar provision in the Confederate Constitution.

Although there are certainly elements of Confederate administrative theory with which the Anti-Federalists would have strenuously disagreed, there are interesting points of similarity in the two perspectives. The Anti-federalists would have unquestionably opposed the Confederate plan to provide their President with a line-item veto. That opposition would have been based on the fundamental Anti-Federalist objection to the executive having any powerful negative on the decisions of the legislature. Anti-Federalists also would have opposed the Confederate provision for the President's involvement in the appropriations request process based on two of their most deeply held convictions. First, Anti-Federalists found the power of Congress to raise revenue by levying and collecting

its own taxes ominous, surely to interfere with state laws until the systems of state laws would be destroyed[43]--a fundamental violation of their commitment to state sovereignty and the state's external checks on the central government. Second, having the President linked to the appropriations process violated the institutional separation of powers the Anti-Federalists held sacrosanct as the internal check and balance system required to prevent encroachment of one branch upon the other. For the same reasons, and despite the fact that they would have surely endorsed the notion of an inclusive, collaborative dialogue between agency heads and Congress, the Anti-Federalists would absolutely have rejected the Confederate "Cabinet in Congress" provision to grant seats on the floor of Congress to executive department heads.

Although they clearly would have had specific initial reservations about particular elements of the Confederate administrative plan, it also is clear that much of what the Confederates ultimately devised in terms of innovations in public administration would have squared with much of the Anti-Federalist approach to administration. As George Mason and A [Maryland] Farmer advocated, the Confederates extended their presidential term to six years and made the Chief Executive ineligible for re-election. Restricting the

President to a single term would, ostensibly, remove the temptations of power and ambition allowing the President the independence to freely seek the larger public interest, unencumbered by partisan, sectional, or special interest demands and obligations.

While the limited removal power of the Confederate President was a manifestation of nineteenth century circumstances the Anti-Federalists could not have anticipated, almost certainly, they would have endorsed Congressional oversight of the executive's removal authority over lower level executive branch administrators. The Anti-Federalists believed provision of a legislative check on the powerful appointment mechanism of the executive branch would have been a safeguard against the proliferation of an aristocratic administration.

As mentioned above, Agrippa had advocated a mechanism such as the Confederate provision for the impeachment of Confederate federal officials by state legislatures as a protection for the states against infringement by abusive federal policies. Thus he, as one influential Anti-federalist, would have found that particular Confederate provision absolutely appropriate. Similarly, Anti-Federalists would likely have considered the self-sufficiency mandates for the Patent Office and Post Office

Department to be important and appropriate responses to the limited federal government policy perspective they endorsed.

Most importantly, the Anti-Federalists would have been pleased by the strict constructionist perspective from which the Confederates proceeded. They would have overwhelmingly endorsed the Confederacy's abrogation of the general welfare provision and the limitations placed on federal intervention in internal improvement programs. Most importantly, they would have been gratified by the Confederate endeavor to restore the states to full partnership in the balance of governance. The C.S.A. Constitution was based on the retention of sovereignty by the states, an arrangement intended to provide the states with the constitutional resources to check the arbitrary policies of the Confederate federal government, *as such policies were defined by the states.* As De Rosa notes, this is the same constitutional arrangement devised, endorsed, and advocated by the Anti-Federalists during the founding debates.[44]

While there are key differences and points of substantive disagreement between Anti-Federalist and Confederate thought, there also are clear and interesting agreements between them. Many of the major differences can be attributed to the fact that the Confederate Constitution is a nineteenth century reactionary endeavor in response to

seventy years of experience under the U.S. document. However, at least the impression that the Confederate Constitution may have been influenced by the Anti-Federalist thought is easy to draw.

Speculating as to how the development of administrative practice might have been different had the Anti-Federalists prevailed in the eighteenth century or if the Confederacy had developed more fully in the nineteenth century is a challenging and intriguing, albeit rather tenuous, endeavor. Traditional histories have largely written around the contributions of both the Anti-Federalist and Confederate constitutional theorists. However, the similarities between the two constitutional arguments is fascinating and deserves mention here. Having explored these differences, as well as some commonalties, it is useful to turn now to an examination of the public administration of the Confederacy for its own merits.

Administrative Practice in the C.S.A.

Public Administration in the C.S.A. was legitimized by its grounding in an administrative ideal derived from the Confederacy's reconceptualized constitutional theory. The institutions, practices, and processes of Confederate public administration assumed prominence and centrality as

manifestations of the Confederate vision of Constitutional governance. Southern theorists aspired to develop a process-based, consensual model of public administration and policy by which determinations about the public interest would be generated through participatory discourse and dialogue. This public interest perspective was to be fostered in a nonpartisan environment in which an administratively powerful Chief Executive was, ostensibly, insulated from partisan political pressures and interests. As executive manager of the federal bureaucracy, the President was given responsibility for the fiscal management of the executive branch and was provided the administrative tools to accomplish his fiscal responsibilities. With national policy prerogatives sharply curtailed and with much programmatic emphasis shifted to the states, administration at the national level was to be limited. However, the Southern public was to be assured of responsive administration in those functional areas where national administration prevailed.

Ultimately, a prime objective, in the minds of the framers, was to establish the legitimacy of the Confederate government. Their new political culture was to rest upon an organic sense of community and national solidarity which would need to be nourished by public faith in Confederate

leadership. It would be up to the new Confederate President, Jefferson Davis, and his executive branch leadership to wield their power to serve the interest of the entire community.[45] Their task was to have been facilitated by a constitution, which enabled public administrative institutions by providing them specific constitutional grounding.

Historian Merton Coulter has observed that Confederate governance was better than its contemporary critics made it out to be and that it was considerably better than historians and theorists would lead us to believe. Confederate public administration showed an exceptional boldness of imagination as it faced unprecedented problems. However, historical preoccupation with military events has altered perceptions and contributed to the deprecation of the accomplishments of Confederate public administrators operating under incredibly difficult circumstances. This is understandable, Coulter maintains, as war was upon the land, and directly or indirectly everything was predicated upon that fact.[46]

Due to the pressures of war, the gap between administrative theory and administrative practice would be wide in the Confederacy. Early in their development, Confederate administrators found it necessary and expedient

to adopt emergency war measures. Hence, traditional fears of centralized authority were subjugated to the requirements of wartime expedience. Everything it is possible to know or understand about Confederate public administration begins and ends with the reality that war; and the exigencies of war, precluded everything the Confederate Constitutional framers would have offered their nation.

Had their vision had any time to develop, unencumbered by the desperate burden of total conflict, we might have had an opportunity to better understand the administrative system they hoped to achieve. However, under the circumstances, old familiar partisanships, political habits, personalities, and the self-promotional behaviors that so bedeviled southern politics in years prior to secession, would soon rise again in response to battlefield success and failure. Largely lost in subsequent academic literature, and likely to the participants at the time, were the accomplishments the Confederate Constitutional framers were able to manage in civil administration. Jefferson Davis and his administration were excoriated by segments of the press, vilified by certain elements in the Confederate Congress, and maligned by much of the general public. What we know, however, is that much of this negative reactionism was related to success and failure on the battlefield, not to

the general civil administration. The reality was that the war predisposed everything the Confederacy might have accomplished.

Despite the desperation of the times, however, it is important to recognize that the essential Confederate vision for public administration remained intact throughout the nation's existence and many dedicated public servants labored conscientiously to nurture it. From the diaries, journals, records, correspondence, and archives of these administrators, it is possible to piece together a comprehensive understanding of the Confederate administrative endeavor and to discern the essential elements of the operational system of Confederate administration. The following sections will attempt, using Leonard White's analytical framework as a guide, to illuminate their efforts to operationalize their administrative theory into practice.

Theories Into Practice: Administrative Organization, Operation, Coordination and Control

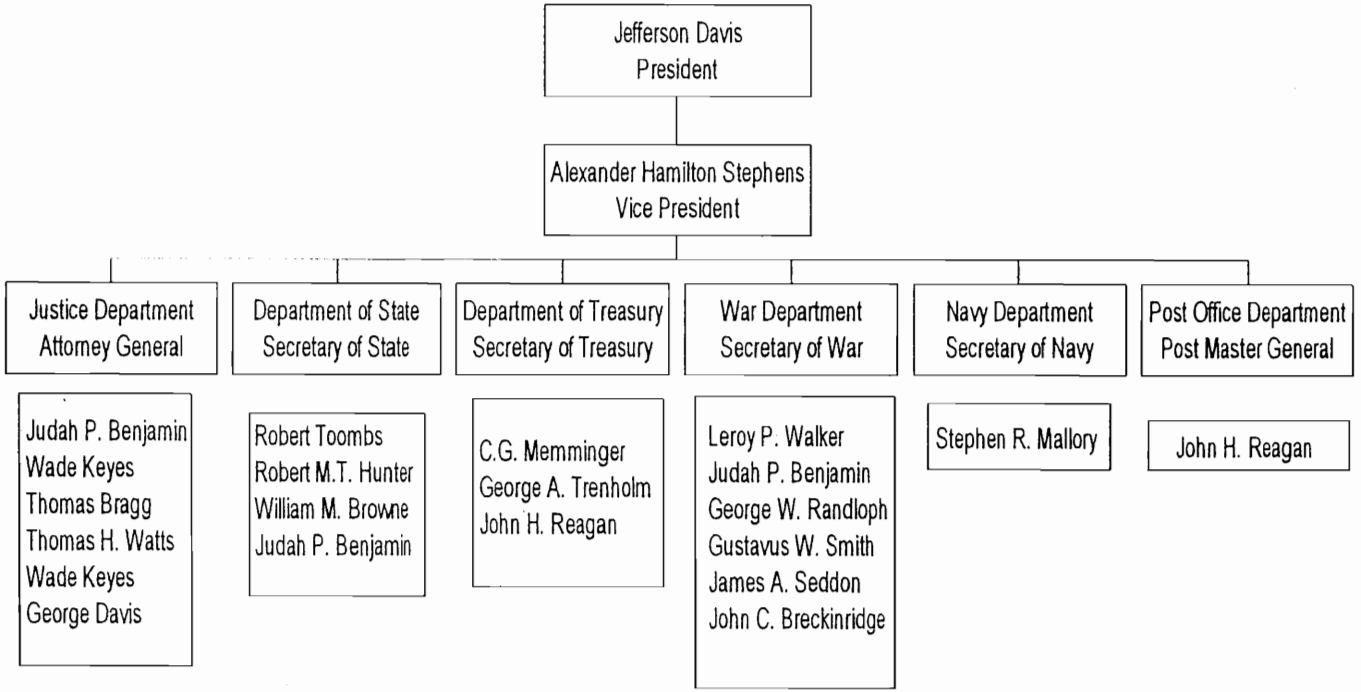
Organization. --The six executive departments of the Confederate government were patterned after the familiar arrangement of the U.S. Federal government. The traditional departments, State, Treasury, War, Post Office, and Navy

were joined, in the C.S.A. government, by the new Department of Justice. Confederate Vice-President, Alexander H. Stephens, who chaired the committee to organize the executive departments, returned the "Act to organize and establish an Executive Department known as the Department of Justice." The additional five Acts required to establish the Confederacy's Executive Departments were likewise presented in the Provisional Congress, on February 21, 1861. They were enacted into law in the order of their presentation; first the Department of State, then Treasury, War, Navy, Post Office, and lastly, Justice, approved unanimously by the Congress.

The basic organizational structure of the central government of the Confederacy is best described as a simple hierarchical form with a narrow span of presidential control. [See Figure I] It was an arrangement very typical of most mid nineteenth-century American administrative organizations, both public and private.[47] In the minds of the Confederate leadership, the maintenance of administrative continuity, stability and accountability would signal the legitimacy and credibility of the new Confederate government to its public and to the outside

Confederate States of America
Executive Branch [A]

Offices Third Floor, Treasury Department Building
Bank Street, Richmond, Virginia [B]



[A] Henry P. Beers A Guide To The Archives Of The Government Of The Confederate States of America.

[B] An Official Guide Of The Confederate Government (addresses).

Figure I

world. It was, therefore, imperative that a functioning administrative apparatus be established as quickly and as efficiently as possible. In that effort, the Confederate Treasury Department, Department of the Navy, Post Office Department and Department of War recruited massive numbers of Southern professionals from the ranks of the U.S. Federal government.

The Confederate Post office took over a large portion of the comparable U.S. organization, intact, in the South. All U.S Federal employees who were recruited to positions in the Confederate government were advised to bring everything they possibly could in terms of relevant documents, records, charts, maps and instructional materials to be put to use immediately within Confederate administrative operations. Importantly, in addition to the procedural documentation they brought, these seasoned, experienced, employees brought to the fledgling Confederate government, their wealth of professional knowledge. This transfer of an existing professional experience base contributed a sense of order and stability in the nation's first chaotic days. Within a very few weeks, these experienced professionals had begun to establish a presence and public acceptability for the new administration and were serving as the embodiments of the reformed administrative culture the Confederacy aspired to

create. Their contribution to the continuity of Southern society, through their administrative activities, cannot be overestimated.

Administrative Operations. --Like George Washington, Jefferson Davis was aware that every action of the first president of a new nation was precedent setting. He understood that his initial actions would imprint themselves on Confederate administrative practices, to be carried on, presumably, for future generations. As the president of a new nation, Davis was determined to help establish a transformed political culture, free from the partisan demagoguery which had so debased public life in the old Union. Davis understood the widely-held Southern conviction that the Confederate president--like that paragon of eighteenth century republican virtue, George Washington--should stand above petty partisan politics.[48] The Confederate Constitution enabled its president to conduct his administration protected from the political pressure and in accordance with the larger public interest. Extending the presidential term and making the Confederate president ineligible for re-election was to allow the president to concentrate on the policies to promote the public good, unencumbered by the distraction of reelection strategies.

By protecting the president's authority in the removal of upper level cabinet officials and diplomats--while requiring Senate consultation on lower level officials, partisan patronage struggles could be avoided. As was the case with the U.S. counterpart, the Confederate Congress could, by law, vest the appointment of such inferior officers as thought proper in the President alone, in the courts of law, or in the heads of departments.

Davis personally subscribed to Confederate administrative theory. As a former U.S. Secretary of War, he had experienced what he characterized as the rigidity and inflexibility of the extant U.S. federal personnel system. He had fulminated his frustration with patronage appointments and personnel systems overloaded with superannuated personnel repeatedly during his tenure as Secretary of War. Davis demonstrated his commitment to this particular administrative ethic in the appointment of his first cabinet secretaries. The new President observed that

> The unanimity existing among our people made this a much easier and more agreeable task than where the rivalries in the party of an executive have to be consulted and accommodated, often at the expense of the highest capacity and fitness. Unencumbered by any other consideration than the public welfare, having no friends to reward or enemies to punish, it resulted that not one of those who formed my first Cabinet had borne to me the relation of close

> personal friendship, or had political claims upon me; indeed, with two of them I had no previous acquaintance.[49]

In fact, Davis had had very little experience with or exposure to most of his first cabinet appointees. It was extremely important to Davis that, in the absence of political parties, each of the six states belonging to the Confederacy at that time be represented in the initial Cabinet. Davis's criteria made sense in a nation dedicated to states' rights. It remained an object of great pride throughout his life that his initial cabinet was selected in a completely non-partisan, objective way. As Van Riper and Scheiber note, however, this Confederate proclivity to regard patronage as a nuisance rather than a possible source of strength may have worked to the South's disadvantage as the war progressed. Lincoln and the North seemed better able to control and utilize civil personnel in gaining the political and administrative support required to sustain their military effort.[50] Convinced that he had risen above petty squabbling over appointments, Davis simply did not use patronage effectively to build support for his administration. Often indifferent to local politics, Davis routinely ignored the wishes, needs, and requests of senators and congressmen. Unwilling (or unable) to placate enemies or satisfy friends, Davis's approach to patronage

worked against the formation of political parties; however, it also alienated many powerful politicians at the same time. Davis's cabinet appointment decision making process would recur as an issue throughout the war, becoming a source of particularly vehement criticism as the war intensified.

To his credit, Davis deferred to his cabinet secretaries in their individual efforts to institute public service reforms and merit practices at the individual agency level. According to Sallie Putnam, a diarist who chronicled life in Richmond during the war, examinations for applicants for clerkship positions within the Department of War were "sufficiently formidable to deter many from seeking employment."[51] Often, new hires were required to attend special training sessions developed particularly for individual agencies. Competency testing and requirements that applicants provide elaborate sets of references were established in many agencies. While these initial attempts placed at least part of the Confederate administrative service on something of a merit-based system, this is not to suggest that these initiatives eliminated patronage appointments completely. Rather, it should be seen as an early effort to comply with the Confederate aspiration of eliminating the patronage system from their public service.

Van Riper and Scheiber have observed that efforts to implement such reforms in the U.S. Civil Service had been going on for years. As early as the 1850's, then-U.S. Senator from Virginia R.M.T. Hunter, led an initiative in the U.S. Congress to establish an examination system for federal agency departmental clerks. Leonard White writes that the Congress unexpectedly agreed to Hunter's proposal, almost, it would seem, "in a fit of absent mindedness."[52]

As a Confederate Senator from Virginia, Hunter maintained his advocacy of personnel reforms. Although he would leave Congress upon his appointment as Secretary of State by the end of 1861, his influence on Confederate personal practices was important. In 1862 the Confederate Congress considered legislation which would have required examinations of all appointees to determine their qualifications for office. The same legislation would have also initiated hiring preferences for disabled veterans in the Confederate employment system.[53] Van Riper and Sheiber insist that with the Confederate administration in its infancy, experimentation with personnel reforms which affected hiring processes could be undertaken in circumstances which offered a rare opportunity. They note that "the one real test of the effectiveness of these ...proposals" existed at the beginning of the Confederacy.[54]

A second category of administrative operational reforms addressed in the Confederate constitution were the provisions intended to assuage state sovereignty and free market economic proponents. The Southern public demanded reforms in the administrative operations of certain federal departments and the Confederate Constitution provided the requisite mechanisms to carry those reforms forward. Two integral constitutional requirements facilitated this: first, that the Confederate Post Office and Patent Office be financially self-sustaining; and, second, that federal government officials could face impeachment by the legislatures of the states in which they operated. These measures, in particular, ensured that day-to-day policy development, implementation, and departmental operations were brought into compliance with public priorities. In the Confederate understanding, this was responsive administration. Public policies and priorities would be worked out through a dialogic process, which included the implementers together with those affected by the policies. To put their ideas into contemporary vernacular, it was to be collaborative, "bottom-up" policy development and implementation.

The administrative innovations in the new Constitution won considerable public praise. Several Southern newspaper

editors declared the old spoils system dead while others applauded reforms in the presidency.[55] Journalists explained to the public that the administrative operations of their Confederate government were to become less expensive, less corrupt, and less partisan. With these reforms would come a restoration of republican simplicity and state sovereignty. The public's interest, they believed, would be restored to administrative processes.

Coordination and Control of Administration.-- Having rejected a model of politics based on competition and politically expedient compromises, the Confederate leadership endeavored to reconstruct their notion of the commonwealth. The primary emphases of the new Confederate commonwealth were to be social harmony, political consensus and the unquestionable legitimacy of their government. In their vision, public life would become an arena for public service rather than public corruption, and virtuous leaders would wield power to serve the interests of the entire community. Accomplishing this vision would require implementation, however. The Confederate leadership recognized that their commonwealth would have to be administered by a well-organized, disciplined, coordinated executive branch protected from political maneuvering,

inadequate accountability, and unresponsiveness which characterized public administration in the old Union.

Unfortunately, one of the lynch pin provisions for implementing their design, the "Cabinet in Congress" provision authored by Alexander Hamilton Stephens, was, of course, never enacted. The ostensible father of modern Public Administration, Woodrow Wilson, was particularly impressed with the Confederate "Cabinet in Congress" provision. He noted that the Confederate Congress was given the right to bring itself into closer cooperative relations with the Executive but failed to do so. Wilson was critical of their reluctance, observing that the Confederate

> Congress was inclined from time to time to utter some very stinging criticisms upon the executive conduct of affairs. It could have uttered them with much more dignity and effect in the presence of the officers concerned, who were in direct contact with the difficulties of administration. It might then, perhaps, have hoped in some sort to assist in the guidance of administration. As it was, it could only criticize, and then yield without being satisfied.[56]

However, the Confederacy's founding fathers did establish a powerful chief executive with greatly increased executive authority, compared to his U.S. counterpart. To curtail needless expenditures, to control corruption and

Congressional appetites for pork-barrel projects, the Confederate President received expanded budgetary authority. A two-thirds vote of both houses would be required for the passage of any appropriation not requested by the executive. The president also received a line-item veto, which further shifted budget decisions from the legislative to the executive. These two provisions made the executive the primary guardian of the treasury with the Congress retaining a balancing power. Alexander H. Stephens, who offered the provision, explained that the "object of this was to make, as far as possible, each administration responsible for the public expenditures."[57] The inclusion of these appropriations provisions shifted the principal fiscal responsibility from Congress to the President and guaranteed executive accountability in fiscal decision making.

Even with its substantial powers, the new Confederate government would be exercising those powers only in limited areas. The Confederate Constitution established an administrative dualism that equalized the partnership between the federal and state administrative structures. Coordinating and controlling the expansion of federal government interferences in the economy and in the policy purviews of the states was of singular importance to the Confederate leadership. In their efforts to restore a more

pristine ideal of state authority, and in their worries about corruption and the tendency of politicians and administrators to wield power in potentially tyrannical ways, they demonstrated the influence of eighteenth-century republicanism. In so doing, as Rable notes, they emphasized the dangers of unchecked rulers and the need for public rectitude.[58]

To accomplish these coordination, control and monitoring functions within a system of administrative dualism, the Confederate Constitution granted astonishing power to the states. The provision that allowed individual state Legislatures to initiate impeachment proceedings against a federal officer exercising his official functions solely within the confines of that particular state virtually guaranteed collaboration and cooperation between states and federal officials. At its core, the Confederate Constitution's most important priority was that governance be more responsive to the will of the sovereign people. For the Confederates, that sovereign people expressed its will through the states. A federal official, charged with implementing an unpopular or unacceptable federal policy at the state level would be confronted with deciding between the national and state interests, or face potential impeachment. Placed in that precarious position, it was

assumed that federal officials would be much more attentive to local conditions and opinions and would, therefore, ensure those local priorities, sensitivities and demands were incorporated into a "bottom-up" policy dialogue process. That up-take of local information and priorities was to be incorporated into the policy debate at the agency management level in Richmond. As it appeared in the Confederate Constitution, it was a significant embodiment of the theory of state rights, and an exemplar of the symbiosis the Confederate leadership intended for state and federal administration. As no Confederate federal officers were impeached during the life of the Confederacy (although Governor Brown of Georgia did have federal conscription officers arrested periodically), there is at least some indication that the provision was effective.

Woodrow Wilson observed that there was much among the changes in the Confederate Constitution that "was thoroughly worth trying."[59] Wilson also observed, however, that it was impossible to test anything fairly, in those days, amidst the furious storms of civil war. As the Southern nation struggled against overwhelming disasters, complaints soon arose that the civil service was operating on no higher plane than it had been under the old government.

As the civil distress worsened, journalists

editorialized about the already difficult situation. The Charleston Mercury, ever critical of the Davis administration, reported that "incompetency weighed heavily on the efficiency of the public service, while nepotism and partisanship reigned triumphant."[60] Both Woodrow Wilson and historian Merton Coulter later disagreed, however. Wilson noted that the executive personnel of the Confederate government were for the most part, excellent; but that excellence in those critical days was always measured by energetic and effective prosecution of the war.[61] Military accomplishments were glorified whereas accomplishment in civil administration remained unrecognized and little appreciated. Coulter concurred, writing that while the quality of Confederate administrative officials tended to be very high, "carping critics never ceased to make shining targets of them, and thereby, tended to cause people in general to lose faith in the integrity of their public servants."[62] Civil administrators were often condemned in the press for not abandoning their "bomb-proof jobs" in Richmond and joining the armies at the battlefronts.

Further complicating the public's perception of the effectiveness of their public service was the reality that many of the routine tasks of the Confederate government were actually undertaken as contract services. Most Confederate

government printing services (including postage stamps, government documents, and Confederate notes), were contracted out to service providers in the private sector. Certain mail delivery services and some local post office personnel were contracted in an effort to comply with Confederate policies developed to avoid the centralization of services in the federal government. Partially in deference to private economy advocates and partially in the attempt to eliminate as many central government services as possible, every effort was expended to utilize private service purveyors. However, as the war intensified, labor shortages became increasingly critical and Southern contract service providers were less and less able to provide for the supply needs of the Confederate military, civil administration and general public. A significant number of public complaints regarding ineffective public service can be directly attributed to breakdowns in this contract service provision system. The combination of labor shortages, complaints about service provision, intensification of the war effort, and the Confederate policies, which attempted to respond to the crises, left the government with fewer and fewer options. Due to the desperate nature of the labor shortages beginning as early as 1862, women were recruited and began joining the

Confederate government labor force.

The cumulative effects of these seismic cultural events and their subsequent impacts on Confederate public administration will be discussed more fully later in this chapter. However, before doing so, it is important to briefly consider some relevant characteristics and circumstances that broadly defined administration within the Confederate executive branch. Hence, the following section will provide an overview of circumstances pertaining to the general administrative environment of the Davis administration.

The Jefferson Davis Administration

Confederate President Jefferson Davis was by all accounts a keenly intelligent individual, who studied topics under his investigation thoroughly and mastered most subjects quickly and with authority. As one of the few credible national level candidates available for the Confederate Presidency, he had a reputation as an able administrator as U.S. Secretary of War. As a result of both his experience and frustration with the federal personnel structure, which protected superannuated personnel in the War Department, he became a vocal advocate for civil service reform. Moreover, Davis was never a Southern Nationalist,

and most Southerners doubted he ever would be. No fire-eater, perhaps his most important quality was, his determination to negotiate the struggle between the two sections toward a workable conclusion for both sides.

Southerners respected Davis for his integrity, honesty, and impeccable sense of honor and commitment to the task he had undertaken. Although inclined to Herculean work effort, his diligence often drove him to exhaustion. Often ill and in frail health, he has also been described as obstinate and stubborn. Capable of intimidating anger when aroused, he was described by close friends as proud, willful and priggish. Davis would not explain himself when questioned or misunderstood, perceiving the question not as simple confusion or uncertainty, but believing it to be perverse and malignant in purpose. He would not communicate if he did not have to and made no effort to make it easier for others to understand him, his motives, or his plans. "Compromise," it was said, "did not dwell comfortably within him."[63]

Similarly, Alexander Hamilton Stephens, had been a significant presence on the national, and the Southern political stages for years before becoming Confederate Vice-President. Despite his diminutive size and physical frailty, he was revered by many in the South. Often

described as having a giant intellect, Stephens would be returned to a ten-year U.S. House term after the Civil War, and ultimately would be elected Governor of the State of Georgia. An adamant conservative, Stephens was one of the last Southern statesmen to endorse secession and he remained, always, a Reconstructionist. He could never reconcile his deep conviction that the Confederacy was a horrendous mistake.[64] Inordinately ambitious, dogmatic, rigid, and desirous of public adulation, Stephens chafed in the relative obscurity of the Vice-President's position. Shortly after taking office, Stephens developed an extreme dislike for President Davis--not a personal dislike Stephens maintained, but a fundamental disagreement with Davis' policy directions. His hostility and distrust of Davis and his administration's initiatives would lead Stephens, ultimately, to abandon Richmond, leaving vacant his vice-presidential office and his seat as President of the Senate. Stephens became an outspoken critic of the administration and lent his efforts to the Davis opposition movement, which developed later in the war.

As was mentioned earlier, the President's cabinet was not comprised of a group of close personal advisors, but rather, of a group of nearly total strangers, nominated initially as much for geo-political distribution as

administrative ability. Secretariats among the six cabinet departments turned over twenty one times during the four-year life of the Confederacy. Only two of Davis' initial cabinet appointees, Stephen Mallory, Secretary of the Navy, and John Henninger Reagan, Postmaster General, served in their original posts throughout the life of the Confederacy. Judah Benjamin of Louisiana held three cabinet positions within the Davis administration, serving first as Attorney General, followed by appointments as Secretary of War and Secretary of State.

At the later stages of its life, as the war dragged on and conditions in the Confederacy deteriorated, Davis administration cabinet meetings were described as tedious, endless affairs during which Davis expounded upon minute details of administration. In the beginning, however, Davis had attempted to set a tone of openness, candor and frankness among his secretaries. He had encouraged them to express their opinions and assured them of his support in whatever appointments they made in their respective agencies. Unfortunately, as the conflict intensified, the realities of wartime administration mitigated against such a cooperative management style. Public dissatisfaction with the lack of military success particularly precluded any Secretary of War holding onto public, or the President's,

support and confidence for very long. Although the secretaries of the other departments were afforded wide latitude in the organization and management of their departments throughout their existence, Davis micro-managed the affairs of the War Department from its inception, and personally controlled the foreign policy initiatives of the State Department.[65]

Apart from public dissatisfaction and presidential incursions, management interventions and usurpations of policy prerogatives contributed to extremely high frustration levels among the cabinet members, and resulted in the high turnover rates. Post Master General John Henninger Reagan often quarreled openly with other cabinet officials as the demands of civil administration clashed with the priorities of the military. Moreover, like many in Congress and in higher ranking civil service positions, many cabinet members longed for the glory and distinction of military, not civilian service. Numbers of secretarial appointees resigned their positions in the civil administration, drawn to the "honor" and "prestige" of the battlefield.

The extremely high turnover rates among the cabinet membership resulted in substantial policy instability. This circumstance, unfortunately, left much of the administration

and policy coordination up to the President. While Davis had great confidence in his own abilities, he had little faith in others. Self-righteous, needlessly abrasive, and impatient, Davis was at the same time stubborn and indecisive. Unable to compromise, negotiate, or learn from his mistakes Davis lacked the capacity to grow in his office and these traits made the development and implementation of effective public policies extremely difficult.[66]

ADMINISTRATIVE DEPARTMENTS OF THE CONFEDERATE GOVERNMENT

Department of Justice

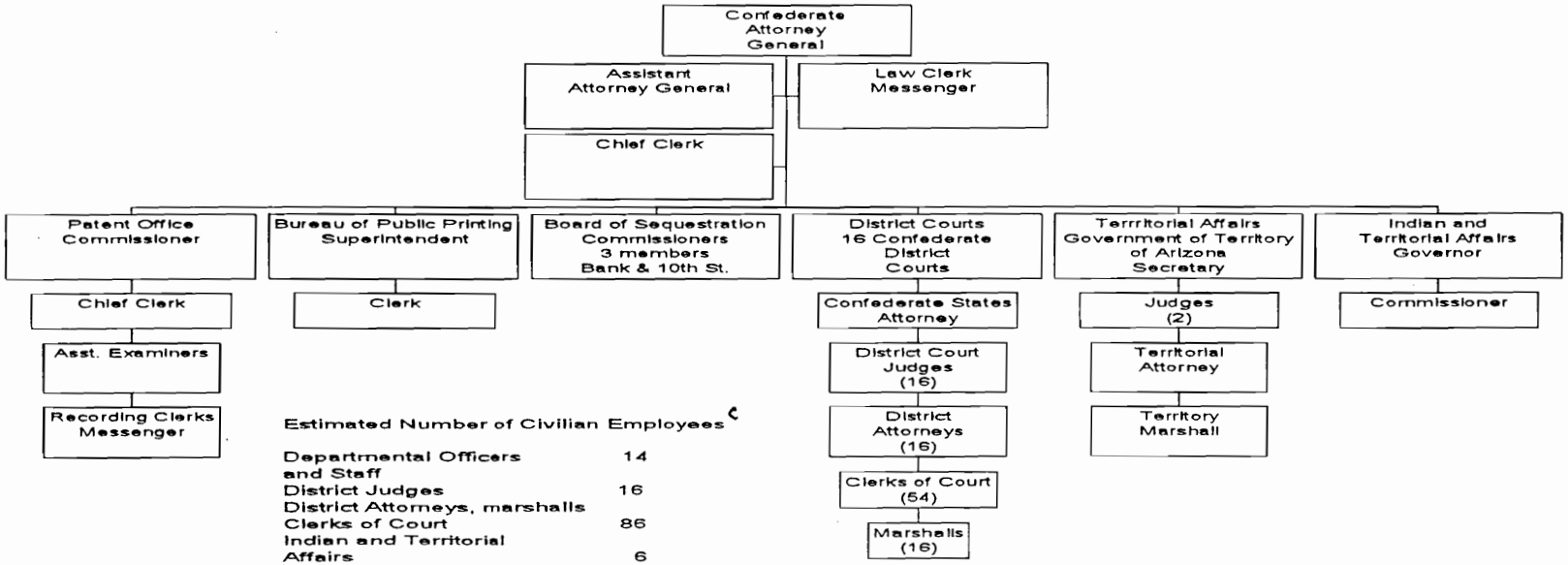
The Confederate Department of Justice was the first American Department of Justice--and in fact the first such subdivision of government in an Anglo-Saxon country. Even in England there had been no unified agency of law enforcement; in 1861 no Department of Justice existed in the United States. The position of Attorney General had been provided for in the U.S. 1789 Judiciary Act, but as late as 1861 the Attorney General supervised only a small office composed of one assistant and three clerks. The Attorney General's specific duties were to argue all suits in the Supreme Court where the U.S. was a party and to give counsel upon matters of law to the president and his fellow cabinet

members. In the South, the appropriateness of a Department of Justice had been generally accepted for years. Because there were administrative functions in the government which the attorney general was better qualified to supervise than any of the other cabinet members, several southern Presidents had recommended to Congress that the Office of the Attorney General be extended executive department status.[67]

In addition to the traditional duties assigned to the U.S. Attorney General, the Confederate Department of Justice was assigned all the duties that heretofore had been performed by the Interior Department in the U.S government. In addition to its responsibility for legal advice and counsel to the executive and the legislature, and the management of the sixteen district courts which formed the backbone of the Confederate judicial system, the Confederate Justice Department was assigned responsibility for supervision of the Patent Office, the Bureau of Public Printing, and the Board of Sequestration Commissioners which heard all cases arising under the act to sequester the property of alien enemies. [See Figure II]

Confederate States of America
Department of Justice[A]

2nd Floor War Department Building, Corner Main and 9th Streets, Richmond, VA [B]



Estimated Number of Civilian Employees[C]

Departmental Officers and Staff	14
District Judges	16
District Attorneys, marshalls	
Clerks of Court	86
Indian and Territorial Affairs	6
Sequestration Commision	3
Total	125

A Henry Putney Beers, Guide To The Archives of the Government of the Confederate States of America, pp. 400-403.
B Official Guide of the Confederate Government, pp.13-14.
C Paul P. Van Riper and Harry N. Scheiber, "The Confederate Civil Service," The Journal of Southern History, November, 1959, pp. 459-461.

Figure II

Had they strictly followed the U.S. model, appearances by the Attorney General before the Supreme Court and the Court of Claims would have constituted the highlights in the annals of the office, but in the C.S.A., where these courts were not established, the Attorney General was not afforded the opportunity to display his "causidical [sic] talents."[68]

Therefore, most of the interest in the work of the Attorneys General centers on the body of opinions the five individual incumbents developed while holding that office. The 219 opinions written by the Confederate Attorneys General are complied in one large volume entitled simply Opinions:Department of Justice.[69] From tariff issues to whether moving expenses for federal employees could be paid by the federal government, an amazing cross-section of legal issues were discussed in the opinions of the Attorneys General. The scope and province of the Attorney General's opinions were deliberated along with the powers available to commercial agents. The constitutionality of conscription and other defense acts similarly necessitated opinions by the Attorneys General. The various Attorneys General construed contracts and employee's classifications and compensation for all departments except the State Department. Opinions on customs, specific taxes, the income and in-kind tax,

issuance of bonds and currency, the liability of State securities to federal taxation and general questions related to the fiscal policy of the government were routinely provided to the Treasury Department.

Despite the ever-worsening economic situation in the South and the changing needs of the government, the Confederate Attorneys General consistently upheld the inviolability of contracts--whether that advice worked to the benefit or detriment of the Confederate government. The opinions provide a broad view of government and Southern life during the troubled existence of the Confederacy. The last opinion, drafted by Attorney General George Davis advised President Jefferson Davis that "the chief duty left to you to perform is to provide as far as possible for the speedy delivery of the people from the horrors of war and anarchy...assent to the terms proposed, disbanding the armies of the Confederacy, resigning your office as Chief Magistrate...." Finally, among his last official actions, Attorney General Davis further recommended that the people of the States assemble in Convention and ratify the terms of the surrender.

The Confederate Attorney General was assigned all of the duties of his counterpart in the U.S. Federal government. The Confederate Justice Department also

supervised the finances of the Southern courts and their staffs. Since the Confederate Supreme Court was never created legislatively, the sixteen district courts constituted the Confederate judicial system. In each district, a judge, district attorney, marshal and one or more clerks of court were appointed, and these courts maintained their own staffs, usually including deputy marshals, criers, commissioners and a few auxiliary officers.

"An Act to establish a Patent Office, and to provide for the granting and issue of patents for new and useful discoveries, inventions, improvements and designs," was approved on May 21, 1861,[70] and the first commissioner of patents was appointed the same day. The act provided for the commissioner to appoint the requisite number of examiners and clerks and, with the Attorney General's approval, a chief clerk vested with the powers of deputy commissioner. A gallery for the public display of models and specimens and the annual publication of a list of patents issued and expired was required. The terms of patents could not exceed fourteen years; all patents registered in the United States would be recognized provided they were recorded in the Confederate Patent Office prior to February 21, 1862. The act also declared that any patented

item invented by a slave was the property of his master.

The operating expenses of the Patent Office, which included the annual salary of the chief clerk ($1800), one examiner ($2000) an assistant examiner ($1500) one clerk ($1000) and one messenger ($360) were to be met from the fees generated by the office. Statutory fees varied from ten cents for recording a document of one hundred words to thirty dollars for the reissue of a patent. The fee schedule included, in part:

Filing a caveat,	$10
Filling an application for a patent, except for a design	$20
For a design, for term of three	
and a half years,	$10
seven years,	$15
fourteen years,	$20
Issuance of a patent	$20
Recording a United States patent	$20

This schedule proved to be adequate to the task of making the Patent Office financially self-sustaining and remained unchanged throughout its existence. The Confederate Patent Office issued a total of 266 patents in its four years, generating accounting surpluses in 1861 and 1864. Deficits in 1862 and 1863 amounted to only $204.85 and $99.65, respectively.[71]

The Bureau of Public Printing was established to supervise, direct, and control the printing done by private contractors, hired by various governmental entities, to comply with legal requirements for disseminating public information. No government printing plant was considered, at least at the beginning of the war, so public printers were to be engaged to publish and bind the acts and Journals of Congress, at rates set by law.

Individual executive department heads were authorized to make separate contracts for the printing requirements of their agencies, but the rates were not to exceed those established for congressional work. After the contracts for printing services were signed by the several departments, their connection to the printing process, including quality control or other forms of accountability, ended. Public printing was received and approved only by the superintendent of public printing and his approval was required on all accounts.

The Justice Department second half (July 1-December 31, 1863) 1863 estimated operating expense budget submitted to President Davis by Attorney General Thomas Watts was $225,563.38.[72] This figure did not, of course, include estimated expenses for the Confederate Patent Office since the constitutional requirement of self-sufficiency had been

successfully met. A peak employment total of 126 persons were employed in the Justice Department in 1863.[73]

As was the case in other administrative departments, the majority of administrative management problems identified in Confederate Justice Department operations were, simply, the trials of operating a sophisticated administrative agency under the conditions of war. In the Bureau of Public Printing, work was apportioned among the few available private Southern printers, but shortages of paper supplies, ink and production capacity limited the volume of work the private contractors could produce. Long delays, lost orders and inferior quality printing was not unusual. The effects of inflation and the pressure of increased demand drove printing expenses for the department up 100% between 1861 and 1863. A proposal to establish a government printing office with sufficient capacity to produce the necessary work was still under consideration when the Confederacy fell in 1865.

In the Confederate Patent Office, operations were also difficult due to the stresses of the war. The patent office struggled initially to recruit and hire the necessary polytechnical assistants for the office and the technical reference library had to be established from nothing. Rufus R. Rhoads, Commissioner of Patents

> ransacked Richmond and sent inquiries all over the country for books and magazines dealing with the arts and sciences; at length he was obliged to begin his work with only a few cyclopedias and some treatises on the subject of patents.

Eventually, the library was established and the technical staff assembled; however, the range of inventions and the volume of Confederate patents issued over four years was small. Confederate Patent No. 1 was issued for a breach-loading gun, and munitions and implements of war constituted the majority of inventions submitted for patent protection during the operation of the office. The proportion of patents granted to application was only approximately six to one. The 266 patents granted by the Confederate patent office from 1861 to 1865 compared to approximately 13,000 granted by the U.S. Patent office during the same period.

The Confederate Constitution replaced the confusion and costly dual system of district and circuit courts present in the United States with a simple district court structure (initially, one district per state, later expanded), with an independent supreme court to be reconstituted with an independent bench. Although a bill to establish the Court was before every session of the Confederate Congress, the end came with the Supreme Court still inchoate. The larger

reasons surrounding this failure to establish the court will be explored in Chapter V, for the present, however, it is an especially relevant to consider the Court's absence as an administrative issue for the Justice Department.

As no Supreme Court was established in the Confederacy, the various Attorneys General were deprived of the opportunity to demonstrate their legal abilities before the high court. The highest tribunal available to the Attorney General was the three member Board of Sequestration Commissioners. However, since there was no Supreme Court to lend stability to the legal system, the attorneys general were asked to write opinions on a range of issues. Because a total of five individuals held the position of Attorney General in just four years, each incumbent took full advantage of his opportunity ad interim to impress his doctrines upon Confederate law. Thus, the Opinions Book records wide diversities in viewpoint and political philosophy. Because of these variances, the opinion of the Attorney General was often challenged by cabinet officers who appealed directly to the President when their policy initiatives were at odds with the Attorney General's opinion. There were numerous instances of this activity during the Confederacy's history that required President Davis's intervention.

Without an established Supreme Court, the Attorney General was the only authority whose interpretation of the law was entitled to nation-wide consideration. Yet, the various Attorneys General were largely reluctant to invade the province of any Supreme Court that might be established in the future. Despite the strong temptation to assume the role of the Supreme Court in criminal and conscription cases referred to them by President Davis, and, in instances where legal objections and errors in the proceedings of lower trial courts were discovered, the Attorneys General invariably recommended that the remedies should be left to the Supreme Court "when it should be organized."[74]

Department of State

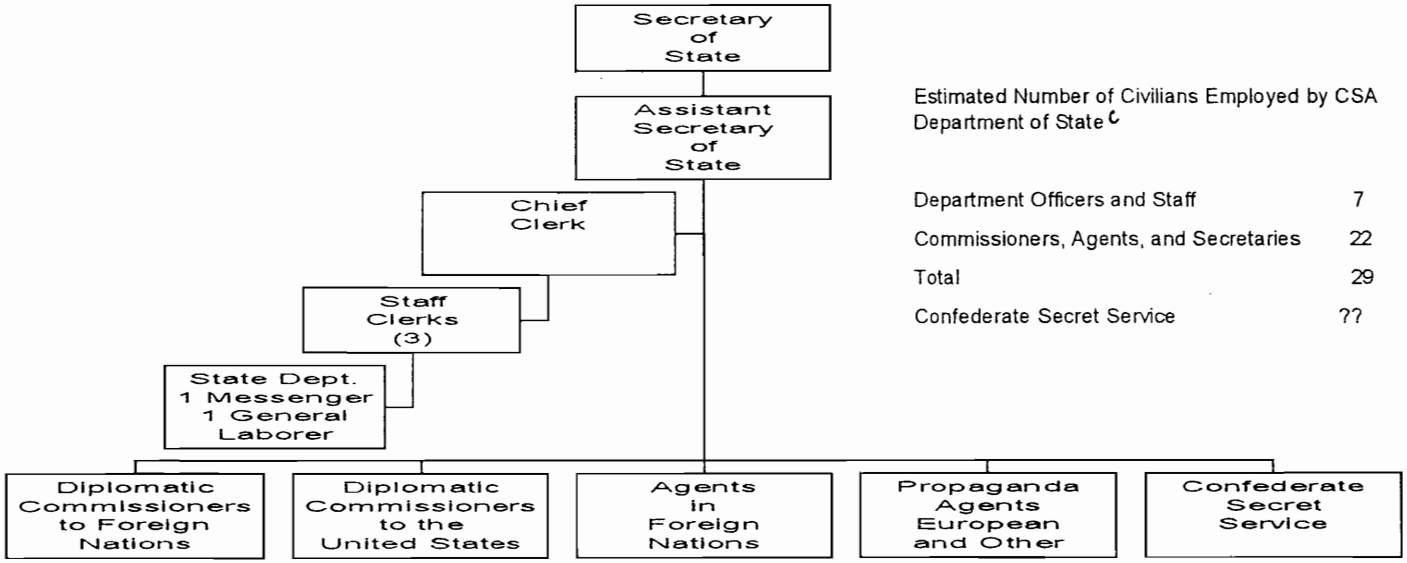
The smallest department of the Confederate government, the Department of State, was responsible for the development of the critical foreign relations policy and activity on which the Confederacy depended for support of its war effort. In addition, the act establishing the Department of State, specifically provided for a Secretary of State who was to correspond with and direct Confederate representatives abroad, and to negotiate with foreign nations. Thus, the Confederate quest for recognition among the other nations of the world was to be the responsibility

of the Confederate Department of State's Diplomatic Service.

The Confederate government sent representatives abroad to negotiate for recognition by the governments of Europe, to promote commercial relations, to obtain loans and extensions of credit, and as propaganda agents to support the efforts of the diplomats.[75] Approximately thirty civilian employees constituted the State Department regular staff; however, there were an inestimable number of men and women employed by the State Department as secret agents throughout the war. [See Figure III]

Robert Toombs of Georgia was appointed by Jefferson Davis as the Confederacy's first Secretary of State. Their relationship was a bit unusual among the Davis Cabinet appointees in that Davis and Toombs had, in fact, had a long and acrimonious history prior to the establishment of the Confederacy. Relations between the two were so inflammatory that several years previously they had challenged each other to a duel. Hardly destined to be intimate confidants, they maintained a polite distance, their differing views on foreign policy guaranteeing friction between the two strong temperaments. Yet, the Confederacy definitely looked beyond its own borders for recognition and support, and in the main foreign relations were to have been Toombs's responsibility.

Confederate States of America
Department of State [A]
2nd Floor, Treasury Department Building
Bank Street, Richmond, Virginia [B]



Estimated Number of Civilians Employed by CSA Department of State [C]

Department Officers and Staff	7
Commissioners, Agents, and Secretaries	22
Total	29
Confederate Secret Service	??

[A] Henry Putney Beers, "Guide To The Archives," pp.72-91.
[B] Official Guide, p.2.
[C] Van Riper and Sheiber, "Confederate Civil Service," pp.453-454.

Figure III

Unfortunately for the State Department, and ultimately for the Confederacy, once Toombs had organized the Department and completed the initial staffing, President Davis summarily took over the development of Confederate foreign policy. Toombs vehemently disagreed with Davis's policy decisions. Moreover, Davis commandeered and controlled diplomatic appointments, making nominations Toombs considered, and which ultimately proved to be, disastrous.

With the Department organized, positions filled, diplomats dispatched, and with Davis driving policy development, little was left for the irascible Toombs to accomplish. Toombs waited impatiently for diplomatic correspondence to come back in from the ambassadorial missions, his frustration mounting quickly. Toombs became increasingly dissatisfied with the State Department post and his criticism of Davis's policy initiatives became similarly more vicious. Toombs agreed with Vice President Stephens and Judah Benjamin, Attorney General, that the Confederacy should buy every spare bale of cotton available and ship it to Europe for money and future credit. Davis was, however, more of a believer in King Cotton diplomacy. The President was convinced that stockpiling the staple at home was the

surest method for exacerbating a supply crisis abroad, thus ensuring that European nations would assist in blockade-breaking activities should they become necessary.

Davis prevailed on the cotton policy, then severely restricted the prerogative of the Secretary of State and his diplomats to negotiate with foreign nations for diplomatic recognition. It was said of Toombs that he would have adopted almost any posture to acquire those recognitions, leading some to conclude "he was for an alliance with Satan himself if it would advance the cause." Toombs would have provided his diplomats with broad discretionary authority to agree to almost anything in return for recognition. Instead, when they left on their diplomatic missions, Confederate diplomats had only the power that President Davis allowed. Naturally, they could initiate no policy on their own, but neither were they allowed any discretion in negotiations. "They could ask for recognition, but that was all."[76]

The Confederate Secret Service utilized the services of both men and women, and developed into an effective operation, engaged in a broad range of services to the Confederacy. Women served as important information couriers throughout the war. Other female secret service agents conveyed information through photographs they took. Special squads of from twenty-five to fifty men were authorized to

operate both behind enemy lines and on the rivers for military reconnaissance and espionage. For their services, these agents were rewarded with as much as 50 per cent of the value of the enemy property destroyed as a result of their efforts.

Similarly, the Confederate Secret Service recruited and deployed a substantial force of undercover agents in the North. These operatives were specifically charged with reporting on significant activities undertaken by military, abolitionist or other public groups. To ensure that important messages and orders sent by couriers, telegraph, and mail could not be understood by the enemy, should the information fall into enemy hands, various secret codes were used. Amazingly, a few examples of these secret codes still survive. In one quite interesting original document, [See Figure IVA and IVB] addressed to an unidentified individual, the Confederate Secret Service Commissioner, C.J.N. Raynor attempts to recruit the individual for this behind the lines reconnaissance.[77] The letter explains the conditions of service, required communications, and outlines the types of reconnaissance in which the agent would be expected to engage. On the reverse side of the letter is the actual cipher, or code, with which the agent is to communicate with the Secret Service Commissioner.

Your honor is trusted to keep this profoundly secret.

Sir Your letter came to hand on [illegible] Inst. by Lieut. Baudin. I have duly considered the communications it contains, and have had numerous conferences with Lieut. Baudin, which have been entirely satisfactory and I now communicate fully. I have been here but a short time, the object of which is to ascertain the movements of the Abolitionists, the tone of public feeling and to unmask some who have professed the utmost devotion to Southern institutions but who, we have reason to believe, have secretly, intrigued as to the power that now prevails to devastate the South. In the present crisis true friends can render most efficient services which a grateful and generous South will gladly repay. As Special Commr I have engaged in several, numerous cases, a few which seems to prove efficient. I appoint confidential agents of different routes who are entirely unknown to all persons except myself, my confidential Secretary Lieut Baudin and the heads of the Government of the Confederate States and these agents receive large quantities on the closest service that you can for honor and common feeling I rely for help you decline by letter addressed to me at Phila within four days will consider you as accepting the agency which I hereby tender to you. If you accept the trust you will have certain imperative rules, a violation of which in any respect will forfeit your position and any back pay that may be due you at the time of such violation.

1st You must communicate to no one the fact that you are such confidential agent.

2nd You must promptly report all movements of the Abolitionists relative to troops ammunition &c.

3rd You must notify us promptly of all suspected traitors among the professed friends of the South.

4th You must use your influence to correct public sentiment and draw good men to our side and will from time to time furnish the names of true gentlemen of standing, feeling and honor and activity whom it might be desirable to employ in an official capacity.

5th You will during the stay of Lieut L. R. Baudin in New York, which will be 2 or 3 weeks, write to him at least twice a week and after his departure you will direct your letter reports to such agent in New York as may be selected but you will not in any case sign your name to such letters but instead thereof you will affix your agency number which is 71.

6th When you wish to communicate with me enclose your letter in an envelope to Lieut Baudin's care until my return to Montgomery in two or three months but if you address me write in the cypher given on the back of this sheet.

7th Keep us posted as to the movements of our enemies the traitors among our professed friends and the men upon whom we can confidentially rely in case of emergency.

If you should be advanced to a 1st grade agency you will have to send to Montgomery duplicates of all reports and also aid in the negotiation of State and other bonds. It is understood that efficient agents will have a preference for public appointments in the C S of A.

Yours

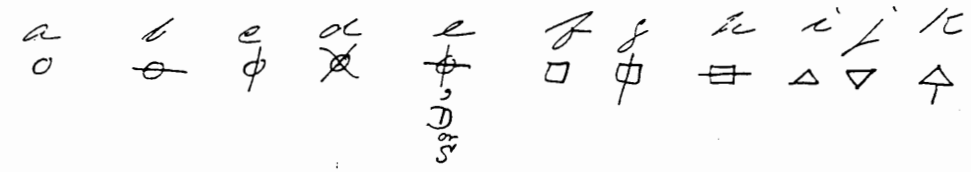
E J N Cannon

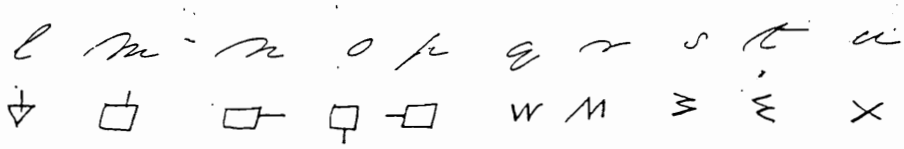
S. Com'r C. S. A.

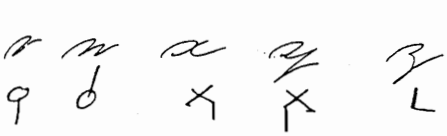
for L. R. Baudin Lieut

Figure IV-A

P.S. The letters south and Mar may be intercepted use this cypher







Can many recruits be obtained in my.

Could you visit a commission in the army of the C.S.A.

Have you confidence that Marshall Reynolds is working solely for the south or would you suspect him of duplicity—

What do you suppose— Mayor Wood or the Hon. D. S. Dickinson can accomplish in influencing public opinion and obtaining recruits.?

Figure IV-B

D. J. McCarthy
extra copy 61

The last, and most talented, Secretary of State was Jefferson Davis's ally and confidant Judah P. Benjamin. Clearly the most capable occupant of the Secretary of State's office, Benjamin was a talented politician and graceful diplomat who maintained excellent personal relationships with well-placed members of many foreign governments. Well respected in Europe and in Richmond, he would probably have been Davis's best choice to establish the Department of State and to put forward an effective Confederate foreign policy. Unfortunately, by the time he assumed the Secretary's post in 1862, much foreign relations damage had already occurred.

President Davis's proclivity to rely solely on cotton diplomacy as a tool to encourage, or coerce, foreign support was a disastrous approach, and ultimately a complete failure. Davis's narrow perspective, when combined with his proclivity for appointing inept individuals to diplomatic posts, proved disastrous. The Confederacy never received the diplomatic recognition it so desperately sought and needed. No foreign nations extended diplomatic recognition during its existence. Even the ingenious Secretary Benjamin was at a loss to improve upon the deteriorating situation at the Department of State. His second half 1863 operating budget

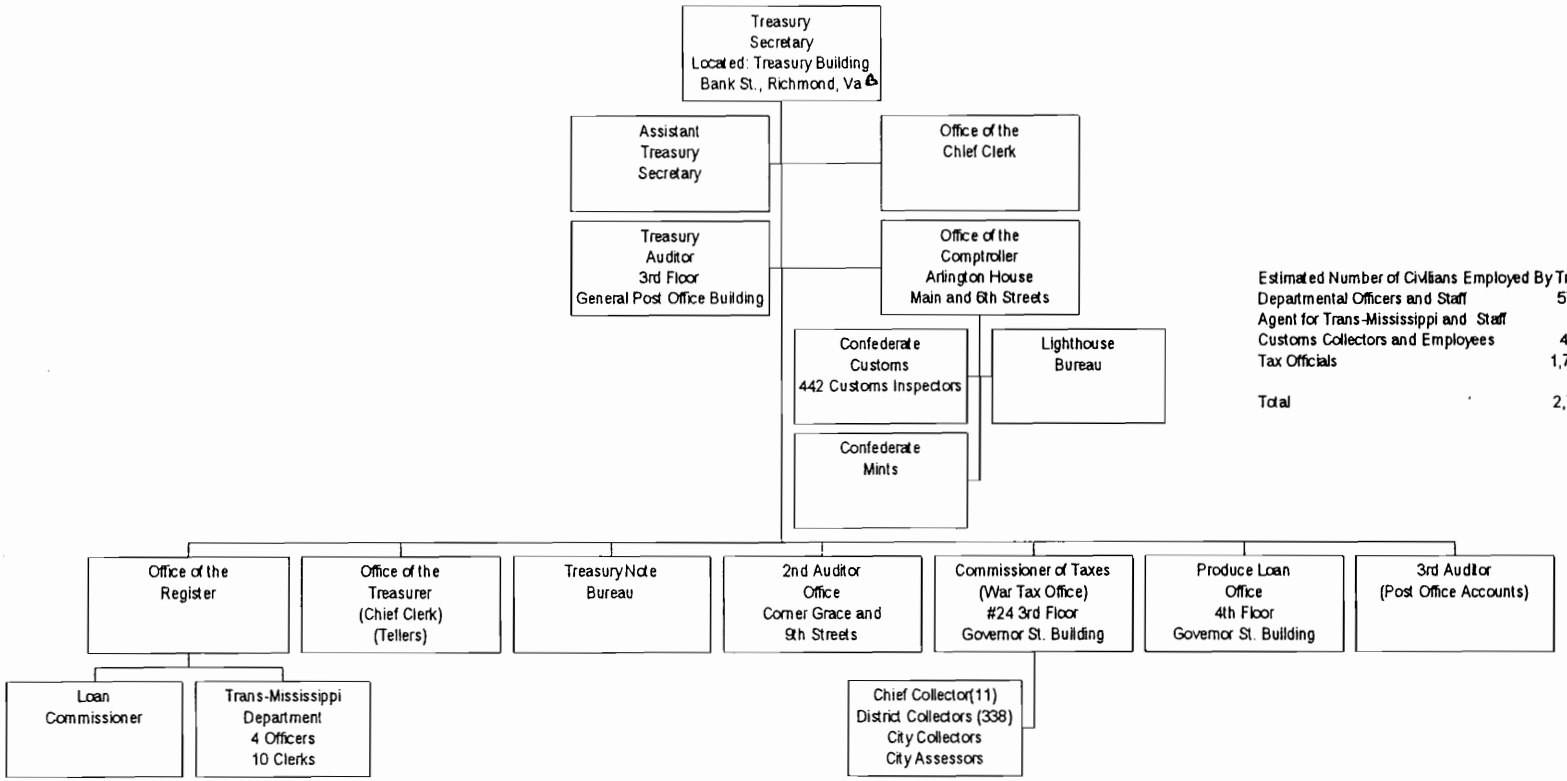
estimate, submitted to the President is an almost cryptic document, requesting just over $57,000 for the six-month period ending December 31, 1863. The expenses were categorized simply as salaries, and incidental expenses required for Foreign Intercourse.[78]

Treasury Department

The Confederate Treasury Department was one of the larger, more elaborate, and sophisticated departments in the Confederate government. The Act establishing the Treasury Department provided that the Secretary of the Treasury was to have general superintendence of the collection of revenue, the management of the Government's finances, and other duties vested in him by law. He was to appoint an Assistant Secretary who was to examine all letters, contracts, and warrants prepared for the signature of the Secretary and perform all other duties which might devolve upon him.[79] [See Figure V]

The Confederate Treasury Department is an extraordinary subject for intense study because, as historian Merton Coulter observed, the Confederate Congress passed some of the most innovative and novel legislation, subsequently to be implemented by the Treasury department, ever attempted in

Confederate States of America[A]
Treasury Department



Estimated Number of Civilians Employed By Treasury[C]

Departmental Officers and Staff	576
Agent for Trans-Mississippi and Staff	15
Customs Collectors and Employees	400
Tax Officials	1,789
Total	2,780

A Henry Putney Beers, Guide To The Archives, pp.92-121.
B Official Guide Of The Confederate Government (addresses), pp.2-4.
C Van Riper and Scheiber, "Confederate Civil Service," pp. 454-455.

Figure V

American policy history.[80] The Confederate Treasury Department management also enjoyed tremendous respect among the Southern general public. Contemporary newspaper reports observed approvingly that at the Treasury Department, "long after sundown the gas lamps in their offices cast light out onto the streets."[81]

The first Treasury Secretary, Christopher Memminger of South Carolina set an example for the department with his punctuality and scrupulous attention to office decorum. He carefully monitored employees to make certain that each worked full, productive days. Memminger kept office furniture to a minimum, enforced strict office hours,[82] stressed that personnel show courtesy to all visitors who came in on business, declared all financial records confidential, and strictly enforced a code against employees corresponding with newspapers or leaking department business outside the building. "No extravagance will be permitted," Memminger informed his staff. As those responsible for handling public funds, he believed, Treasury Department employees must show frugality to retain the public trust.[83]

However, Memminger's parsimonious management style, combined with his abrupt manner, antagonized many of his staffers as the department grew. The new Treasury Secretary had heavily recruited numbers of former U.S. Treasury

Department employees into the Confederate Treasury Department and they were among the loudest complainers. Accustomed to taking their time, talking with friends, and observing irregular hours in the Union Treasury, they considered Memminger's formalized rule structure oppressive and unduly restrictive.

Despite his somewhat rigid rule structure, the Treasury Secretary allowed his bureau heads wide latitude in policy implementation and especially in personnel practices. Memminger required only that applicants apply in writing, not in person, thus avoiding workday interruptions. He required that his department heads give priority to job applicants with endorsements from prominent businessmen. That, he believed, was sound management.[84]

A careful examination of the Confederate Treasury Department is an important endeavor in that it very clearly illustrates the structural, organizational, and administrative responsiveness which characterized much of Confederate public administration. Initially, Secretary Memminger, like most of his Cabinet colleagues, recruited heavily from the U.S. Treasury Department staff ranks, welcoming Southern employees to join the Confederate department and encouraging them to bring all documents, records, forms and instruments they could manage, with them.

The Confederate Treasury Department emulated the U.S. organizational model initially; the structure, order, and routinized procedures offering an important stability and predictability to its operations. However, events in the Confederacy changed rapidly and often during its brief existence, and policymakers scrambled to keep up with the demands of establishing a new nation while attempting to conduct total war. It is important to note that, having initially employed the U.S. Federal Treasury model to stabilize and organize the operations of the department, the Confederate Treasury Department extended its administrative organization, adapting itself in creative and innovative ways to the unusual policy imperatives the department was charged with implementing. The following sections examine this particularly instrumental element of the Confederate Treasury administration.

As Figure V illustrates, the C.S.A. Treasury department was established in the classical agency model. The Offices of the Secretary, Treasurer, Comptroller, Register, First Auditor, Lighthouse Bureau, Customs and the Confederate Mints all had predecessors in the U.S. Treasury Department.

Secretary of the Treasury

The Confederate Treasury Secretary had responsibility

for the general superintendence of the collection of revenue, the management of the government's finances and other duties vested in him by law. The Treasurer's office was to receive and keep the monies of the Confederacy, to disburse them upon warrants drawn by the Secretary, to receipt all monies paid out, and to submit to the Comptroller complete accounts of these transactions. In addition, the Treasurer's office transmitted Treasury notes, bonds, and specie to the Assistant Treasurers and depositaries and received funds from them.

The Comptroller

In the Confederate Treasury Department, the Comptroller performed the duties which were divided among the First and Second Comptroller, Solicitor of the Treasury and the Commissioner of Customs in the U.S. Treasury Department. The Confederate Comptroller revised and settled accounts, attended to correspondence, examined the collections of customs including those relating to lighthouses and war tax collectors. The office examined and decided questions of law, received and preserved contracts executed by Government departments and examined and recorded the claims of deceased soldiers. The department was also responsible for the issue, interest calculation, redemption, and disposal of

Treasury certificates, warranties, and bonds.

Register

The Office of the Register of the Confederate Treasury Department was responsible for the actual management of monies, bonds, and loans in the Confederate economy. The Register's office employees prepared and signed interest certificates on Government loans, prepared stock, cotton, and call certificates, received accounts from receivers of alien-enemy sequestration properties and collections from customs officials. This office worked closely with Confederate banks, exchanging bonds and stocks for Treasury notes (paper currency) in the attempt to reduce the amount of currency in circulation.

Second Auditor

The Office of the Second Auditor was authorized subsequent to the original department and was established to audit the accounts of the War Department. Claims filed for back pay on behalf of deceased soldiers were examined by the Second Auditor's office, as were the claims of officers and soldiers for horses killed in battle. Private claims for animals, wagons, or supplies impressed by the Army were also handled by this office. By late 1863, more than 42,000 such

claims had been submitted to the Second Auditor's office.

The Lighthouse Bureau

The Confederate Lighthouse Bureau was established within the Treasury Department to administer a system which had been established under the U.S. government and which operated under the U.S. Lighthouse Board prior to the South's secession. The Confederate Lighthouse Bureau was to have been in charge of all lighthouses, light vessels and buoys, other aids to navigation and all matters concerning their administration, construction or repair, illumination, and inspection. However, after April, 1861, seizure of the lighthouses and lightships by Northern forces along the Southern coastline began in earnest. For the Confederacy to have maintained the lighthouses and light vessels would have facilitated the blockading of vessels by the U.S. Navy; therefore, most lights were extinguished and the equipment and supplies were removed from the exposed positions to interior storage where they were secure from enemy raiders.

Southern seacoasts were divided into five lighthouse districts where former lighthouse keepers became caretakers for this "mothballed" equipment, also under the supervision of the Lighthouse Bureau.

Office of the First and Third Auditors

The Office of the First Auditor and, subsequently, the Office of the Third Auditor, were operationally linked in that both were established to receive and examine public accounts and to audit the accounts of the other executive agencies. Initially, the First Auditor's Office could manage the volume of work required of it. However, as the administrative responsibilities of the departments increased, the First Auditor became increasingly unable to effectively dispatch the volume of vouchers, certifications, and audits required. In particular, regulations governing Confederate Post Office Accounts made the workload especially challenging for the Auditors. Confederate Post Office accounts, unlike accounts for other agencies of the government, were required to be finally adjusted by the First Auditor. The First Auditor was then to inform the Postmaster General about delinquencies and certified accounts of money paid pursuant to appropriations by local individual postmasters. The First Auditor handled legal proceedings for collecting sums due the Post Office Department. Monies due from postmasters for U.S. Postage were deposited in a separate fund intended to pay for postal services rendered by the United States while the U.S. controlled the postal system. All claims for such services

were to be filed initially with the First Auditor. By November of 1864, the volume of business produced by the Post Office Department's accounting regulations required the establishment of a Third Auditor's office to take over Post Office Department responsibilities. At peak employment in 1864, Third Auditor's Office had grown to seven divisions plus warrant and draft clerks, route agents, and special mail clerks, dedicated specifically to Post Office Department transactions.

The Treasury Note Bureau

The Confederate Treasury Note Bureau issued Treasury notes or paper currency. Notes of different denominations were clipped from giant sheets, then hand dated and numbered after their production by any one of the various printing companies situated throughout the Confederacy. The dated, numbered notes were then stored by the Note Bureau until they were signed (also by hand) by the Treasurer's and Register's clerks and then, finally, handed over to the Treasurer for distribution. It was believed that these hand written signatures would protect against forgeries and help confirm the authenticity of the notes.

As inflation spiked the cost of living in Richmond and the capital became increasingly threatened militarily, the

Treasury Note Bureau was moved to Columbia, South Carolina, in 1864. Women constituted the largest segment of the work force in this department, both in Richmond and Columbia. A letter from Secretary Memminger to a Reverend Dr. B.M. Palmer in April, 1864, requested the use of some unoccupied buildings of a theological seminary to house the 100 women who transferred from Richmond to Columbia.[85]

Office of the Commissioner of Taxes and the Produce Loan Office

The final two Confederate Treasury Department offices to be considered here, the Produce Loan Office and the Office of the Commissioner of Taxes, are particular examples of the Treasury Department's adaptive flexibility and responsiveness when Congress directed policy initiatives to them for implementation. They are important administrative operations in the Confederate government, reflecting the Confederate commitment to incorporating the broader public interest and sensitivity to public opinion into policymaking and implementation processes. The two offices represent some of the better examples of Confederate management performed under very complicated and difficult

circumstances.

The Produce Loan Act of 1861 was a provision that allowed Southerners to purchase Confederate bonds in the absence of hard currency. Hard currency or specie was in desperately short supply throughout the life of the Confederacy. Thus, the Produce Loan Act authorized the Secretary of the Treasury to issue $50 million in 8% bonds which could be paid for by purchasers in specie, military supplies, or proceeds from the sale of agricultural products.

Individual purchasers "subscribed" numbers of bales of cotton, bushels of rice, or pounds of sugar, for example, as pledges for the purchase of the bonds. Senator Benjamin Hill of Georgia claimed credit for the ingenious idea for short-circuiting the use of money in the purchase of bonds while still allowing the government to acquire the necessary supplies of war for the government. Hill declared that his plan was "unique in the history of the world, and that if the people sustained the plan, they could forget about further taxes."[86] To direct the actual collections of the produce and to solicit additional subscriptions, the Secretary of the Treasury appointed general agents in each of the states. Additional subagents were appointed by the state general agents.

The large quantities of cotton acquired under the Produce Loan Act were stored in buildings on private plantations, in municipal warehouses, and at railheads across the South. Other special agents were appointed to conduct similar acquisitions of tobacco although their efforts resulted in the accumulation of much smaller supplies. Unfortunately, Senator Hill's prediction that the Confederate public could forget about additional taxes if they supported the Produce Loan Bond program, also proved to be less than accurate. Collection of the subscribed (pledged) agricultural products often was difficult and although some of the accumulated cotton stockpiles were eventually shipped to Europe to pay the Confederacy's foreign debt and to purchase Army supplies, much was captured by U.S. forces or burned by Confederate authorities to keep the supplies from falling into enemy hands.

Overall, the Produce Loan initiative was considered a policy failure in terms of supplying the needs of the military; however, the establishment of the administrative mechanism to collect such materiel together with the experience of the personnel involved, would serve the Confederate government well over the next few years. As it was, in fact, unconstitutional for the Confederate Congress to enact a direct tax because of census requirements

incorporated (inadvertently, Jefferson Davis would eventually argue) into the document at its drafting, the Confederate Congress was forced to be constantly creative about revenue generation. Policies to fund the new nation and to provide necessary military supplies to conduct the war had to be inventive. By 1863 inflation was rising sharply as the Confederate government accelerated the printing of more and more currency to finance the war. Consumer prices skyrocketed as the value of the currency plummeted. Shortly, the Confederate public was, quite literally, pleading with their elected representatives to initiate a direct tax to stabilize their economic plight, despite the Constitutional prohibitions on such action.

In 1863 the Confederate Congress responded with two separate tax initiatives intended as a response to the nation's desperate economic situation. In April, the ingenious "Comprehensive Tax," which sidestepped direct taxes on land and slaves, but which hit virtually everything else, was initiated. This tax required ad valorem taxes on farm and forest products, cash held on July 1 of 1863, an exhaustive series of occupational and license taxes on all businesses from bankers to bowling alleys, and retail liquor distributors to hotels. The second tax initiative, the "Tax-In-Kind" mechanism touched agriculturalists in

particular. It was a unique tax of one tenth of farm produce to be collected in the agricultural product itself. The commodities to be provided to the government were carefully specified as: wheat, corn, oats, rye, buckwheat or rice, sweet and Irish potatoes, hay and fodder for animals, sugar, molasses, cotton, wool, tobacco, peas and three-fiftieths (3/50) of all pork produced, delivered in the form of cured bacon.

Exemptions were provided to farmers, allowing them to reserve specific amounts of each of the farm products for their family's own use. At collection time, farmers were to deliver their taxable products in sacks and containers furnished by the Confederate government, to depots located not more than eight miles away from their homes. Assessors were then required to estimate the amount of farm products in the bins or containers the farmers delivered and estimate the ungathered amounts of farm products remaining in the fields. In the case of disagreements between the assessor and the taxpayer, each would select a disinterested citizen from the community to help arbitrate the assessment.

Responsibilities for the administration of the Tax-In-Kind was assigned to both the Secretary of War and the Secretary of the Treasury. The War Department was to provide quartermaster service in the accumulation and

distribution of products to army supply points. Officials of the Confederate Treasury Department were to appraise the property surrendered under the Tax-In-Kind, and later, when the act was amended to allow payment of the tax in specie, to collect and deposit any monies paid.

The War Tax Office, created in 1861 to collect the ad valorem tax on property, was renamed the Office of Commissioner of Taxes in 1863. When the 1863 Tax-In-Kind measure was implemented, the assessors, already distributed in an estimated 640 collection districts across the South, assumed responsibilities under the new tax law. Some 1,440 appraisers and an undetermined number of laborers and employees operated in these collection districts. Once again, Treasury department staff and management adapted quickly and responsibly to the contingencies of the policy initiatives of the moment.

The Tax-In-Kind idea had long been suggested as the best method for provisioning the Confederate army without printing additional currency for that purpose. However, the tax was difficult to administer under the very difficult circumstances arising from the war. Once again, the onus of successful implementation fell to Treasury department personnel and management, who were required to respond quickly and creatively in establishing the administrative

mechanisms for administration of the new policy. An already traumatized, overburdened, embattled public would tolerate no less.

The In-Kind-Tax was unpopular and generally did not live up to the expectation that it could, on its own, provision the Confederate military. Typically, public complaints were not about the administration of the program, but rather, public complaints often centered on distribution issues, as inadequate transportation facilities left supplies spoiling in collection stations. Similarly, supply stations and their inventories often were destroyed to prevent their capture by enemy forces. These occurrences were neither the responsibility of nor under Treasury control. To a general population already faced with war and starvation, however, such events were unacceptable.

It appears from surviving documents that officials charged with collection of the agricultural products, and sympathetic to public opinion, went out of their way to be professional and fair in the exercise of their duties. Record keeping was meticulous, correspondence between local officials and Richmond was prompt and timely, and disputes were handled courteously. [See Figures VI and VII]

Van Riper and Scheiber estimate that, at its peak early in 1863, the Confederate Treasury Department employed

TAX IN KIND.

Form No. 32. Estimate No. 38

ESTIMATE AND ASSESSMENT OF BACON, agreed upon by the Assessor and the Tax Payer, and the value of the portion thereof to which the Government is entitled, in accordance with the provisions of the Act of Congress, "to lay taxes for the common defence and carry on the Government of the Confederate States," and of the Act to amend the same, approved 17th February, 1864.—This estimate to be made after, and as of, March 1st of each year.

NAME OF PRODUCER.	QUANTITY OF PORK	ONE TENTH	Quantity of Bacon Due. 60 lbs. for each 100 lbs. of Pork	VALUE	
Daniel James	5983	598	359 lbs	897	50
			Total Value. $		

I Daniel James of the County of Warren and State of Ga do swear that the above is a true statement and estimate of all the Pork produced by hogs slaughtered by me, within the year ending the 1st March, 1865 to the best of my knowledge and belief.

D. James TAX PAYER.

Sworn to and subscribed before me, on the 25 *day of* March 1865 *and I further certify that the above estimate and assessment has been agreed upon by said* ______ *and myself, as a correct and true statement of the amount of Pork produced by him, and of the amount and value of the Bacon to which the Government is entitled.*

Wm P. Webb ASSESSOR.

RECEIVED at Depot No. 2 3 Congressional District, State of Georgia

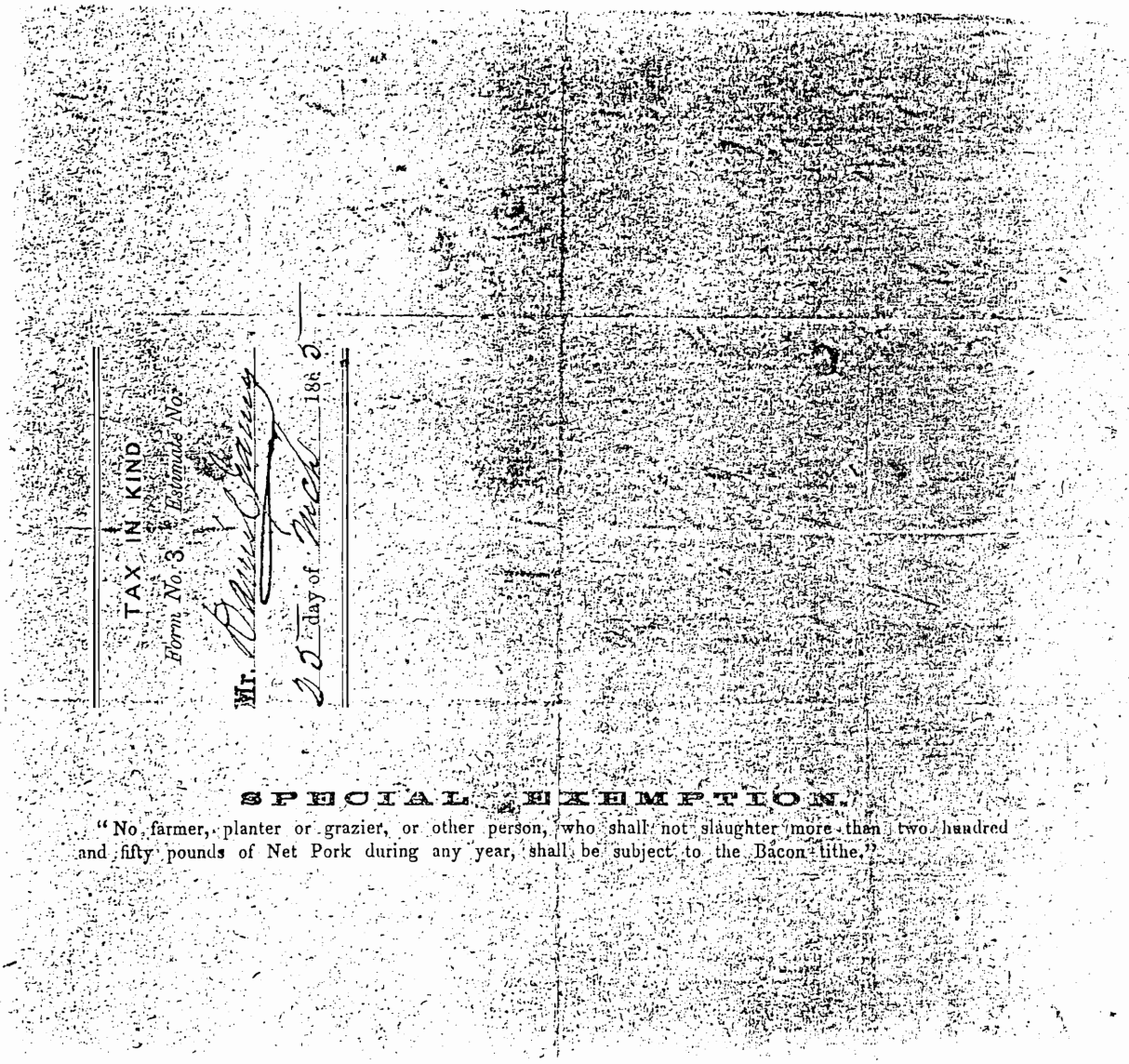
359 Pounds of Bacon in ______ of the above estimate.

B. B. Hinton AGENT.

25 day of March 1865 pr. Lowe

Figure VI-A

Figure VI-B



SPECIAL EXEMPTION.

"No farmer, planter or grazier, or other person, who shall not slaughter more than two hundred and fifty pounds of Net Pork during any year, shall be subject to the Bacon tithe."

Figure VII-A

Nov. 17, 1863

No. 4.

Form of the estimate and assessment of agricultural products agreed upon by the assessor and the tax payer, and the value of the portion thereof to which the government is entitled, which are taxed in kind, in accordance with the provisions of section 11 of "an act to lay taxes for the common defence and carry on the government of the Confederate States," said estimate and assessment to be made as soon as the crops are made ready for market.

	QUANTITY OF GROSS CROP.	QUALITY.	TITHE, OR ONE-TENTH.	VALUE OF ONE-TENTH.
Wheat,	30 Bu	Common	3	15.00
Corn, 100 bu Reserved	100			
Oats,	15		1½	3,75
Rye,				
Buckwheat,	10		1	4,00
Rice,				
Sweet Potatoes,				
Irish Potatoes,				
Cured Hay, Unbaled	90.00		9 00	27,00
Cured Fodder,				
Sugar,				
Molasses made of Cane,				
Cotton,				
Wool, Washed	75		7½	22,50
Tobacco,				$72 25
Peas,				
Beans,				
Ground Peas,				

I, Hiram Neel, of the County of Bland and State of Virginia, do swear that the above is a true statement and estimate of all the agricultural products produced by me during the year 1863, which are taxable by the provisions of the 11th section of the above stated act, including what may have been sold or consumed by me, and of the value of that portion of said crops to which the government is entitled.

Hiram Neel

Sworn to and subscribed before me, the 17th day of Nov 1863; and I further certify that the above estimate and assessment has been agreed upon by said Neel and myself as a correct and true statement of the amount of his crops and the value of the portion to which the government is entitled.

Thos Shannon Assessor.

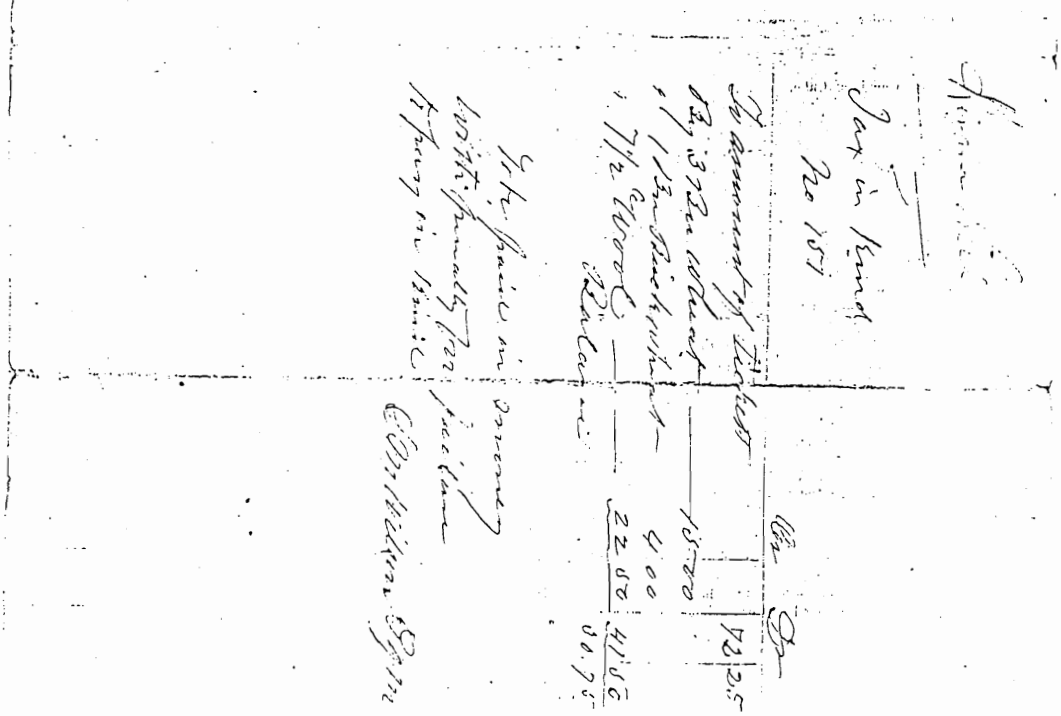
NOTE.—Each farmer and planter has the privilege of reserving fifty bushels of sweet potatoes, fifty bushels of Irish potatoes, one hundred bushels of corn, or fifty bushels of wheat, produced in year 1863, and twenty bushels of peas or beans, but not more than twenty bushels of both, for his own use. In making the estimate and assessment, therefore, these quantities of the articles mentioned will be excluded therefrom.

Figure VII-B

DAY OF 186

Received from Mrs Shannon Assessor of the 64 Collection District in the State of Virginia, the within estimate of Tax in Kind, to be collected by me, and to be accounted for in the settlement of my accounts with the Auditor.

Post Quartermaster



approximately 2,800 people. In 1864, the Congress additionally authorized an Agent of the Treasury for the Trans-Mississippi with four officers and ten clerks in that office. In addition, the Confederacy's mints were also under the Treasury department's supervision.[87] In Secretary Memminger's second-half 1863 appropriations estimate (for the six months ending December 31, 1863), regular operating expenses for the Treasury Department amounted to approximately $386,000. However, when the estimate of appropriations under the control of the Treasury Department are included, the figures are much more significant. For the single six-month period from July 1 to December 31, 1863, interest payments on the public debt exceeded $22 million dollars.[88]

In fact, several operational problems plagued the Confederate Treasury Department throughout its existence. The disastrous state of the economy notwithstanding, mundane supply and labor shortages vexed it constantly. Suffering from paper shortages, unavailability of skilled printers and engravers which compromised the supply of notes, bonds, currency, forms, record-keeping and routine office supplies, and the disruptive effects of war on department operations and personnel, the Department remained a paragon of administrative virtue and professionalism to its end. It is

particularly important to study the Confederate Treasury Department in some detail because it exemplified so much of what the Confederates intended to accomplish with the administrative reform agenda they incorporated into their Constitution.

In adopting the substantive structure and procedural patterning from the old U.S. Treasury model, Memminger and his staff attempted to immediately stabilize, routinize, and provide reassurance to an economy spinning wildly out of control. At the same time, as the preceding sections illustrate, the Confederate Treasury administration was an adaptable, responsive system. It was flexible enough to respond ably to rapid policy changes and incorporated, in the case of the In-Kind Tax assessment process, members of the local community as active participants in the assessment process. This community involvement, in the tax assessment process was an intentional effort to incorporate local sensibilities and opinion into the policy implementation process.

Secretary Memminger actively "managed" the C.S.A. Treasury Department to a greater extent than did many other Confederate cabinet officials, and he was actively engaged in fiscal policy development.[89] Congress largely ignored his counsel, however, and, against his advice proceeded to

authorize the issue of large amounts of currency. As Confederate currency began collapsing in 1864, public outcry was visceral and Memminger was forced to resign as Secretary. He defended his management of the Confederate Treasury, however, by reminding the public that he had been forced to administer plans which he neither originated or approved. Historian Merton Coulter agreed. Coulter observed that one of the most fundamental causes of the ultimate failure of the Confederacy can be traced to its unwise financial policies, but that the same cannot be said for the administrative management of its financial operations. Secretary Memminger established and operated a fine model of Confederate public administration, one that professionally and legitimately represented the values and political culture in which it operated.

War and Navy Departments

Drawing attention to administration in the Navy and War Departments may appear to be analytically out-of-step in a study primarily focused on civilian administration; however, to the extent that the policies of these departments affected both civilian employees and the civilian population generally, they warrant some examination.

The Confederate Navy Department

The Confederate Navy Department, [See Figure VIII] was unusual among Confederate administrative departments in that it was one of two Confederate executive agencies to have operated under the same Secretary throughout its existence. Navy Secretary Stephen R. Mallory was President Davis's original appointee and he remained at his post throughout the war. Mallory's 1863 congressional report listed a clerk, a register, two draftsmen, and a messenger as the civilian employees on the Navy's departmental staff. The chiefs of the five established Navy Bureaus, Orders and Details, Ordnance and Hydrography, Provisions and Clothing, Medicine and Surgery, and the Marine Corps, all, however, were naval officers.[90]

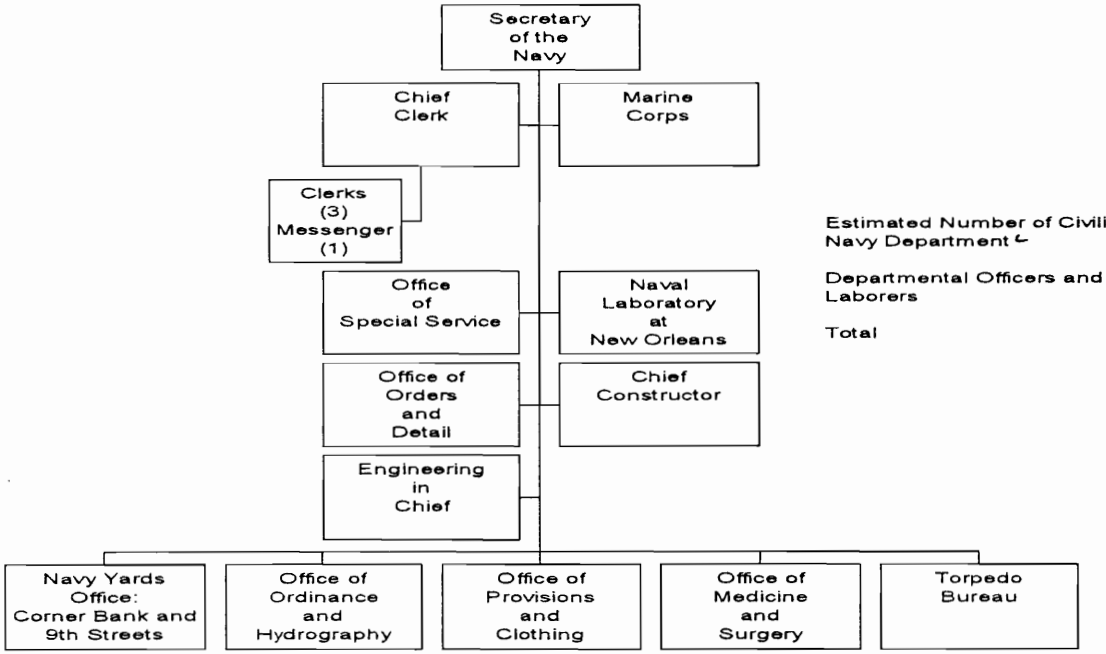
From the beginning, the Navy Department constructed naval vessels at more than a dozen shipyards throughout the South. However, most repaired or reactivated vessels were damaged during the war. The Confederate Navy Department also engaged in the casting of naval cannon at facilities in Richmond, operated a powder mill, and established a naval laboratory in New Orleans. Five hundred thousand dollars was estimated for the pay of civilian mechanics and laborers for the final six months of 1863.[91] Accepting Van Riper's calculation that naval skilled laborers were paid $800

Confederate States of America

Navy Department[A]

War Department Building 2nd floor

Bank Street Richmond, Virginia.[B]



Estimated Number of Civilians Employed by C.S.A Navy Department[C]

Departmental Officers and Staff	16
Laborers	1,000
Total	1,016

A Beers, Guide To The Archives, pp.336-387.
B Official Guide, pp.12-13.
C Van Riper and Scheiber, "Confederate Civil Service," pp.453-454.

Figure VIII

annually,[92] it is possible to estimate that at this particular point in the war, the Navy Department employed a minimum of 1250 civilians in this category.

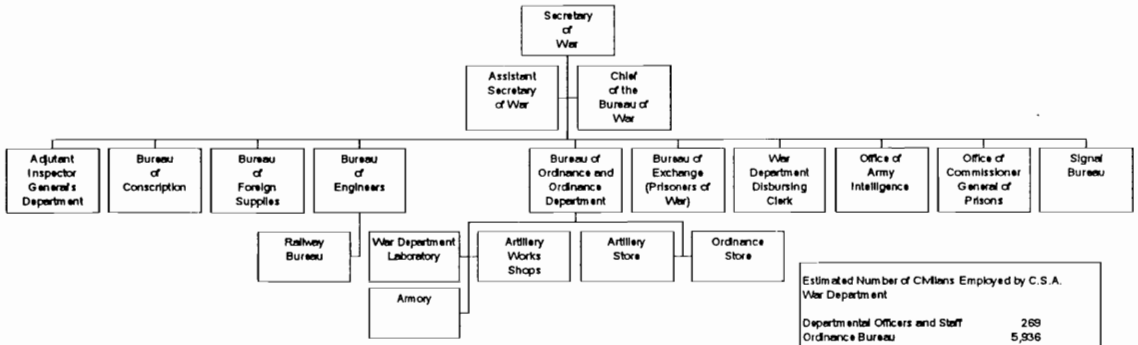
The estimated number of civilian employees in the Navy and War Departments has important implications for Confederate administrative practices, and provides an unexpected insight into Confederate public policy priorities. Filling the ranks of the Southern armed services required rigorous conscription policies. As a result, as the war dragged on labor shortages plagued the South. A second critical issue, supplying the military service after it was established, presented an assortment of issues and was a paralyzing drain on the Confederate economy.

Confederate War Department

The activities of the Confederate War Department dominated both the civil and military efforts of the South. As the organizational chart in Figure I illustrates, nearly 71,000 individuals were employed in the civil administration of the Confederacy (at its peak), with more than 57,000 of those persons employed by the War Department. [See Figure IX] Although supply of the military was considered a strictly military affair, at the outset of the war, no

Confederate States of America
War Department [A]

Address: War Department Building,
Left-hand side of passage leading from 9th St., Richmond, Virginia [B]



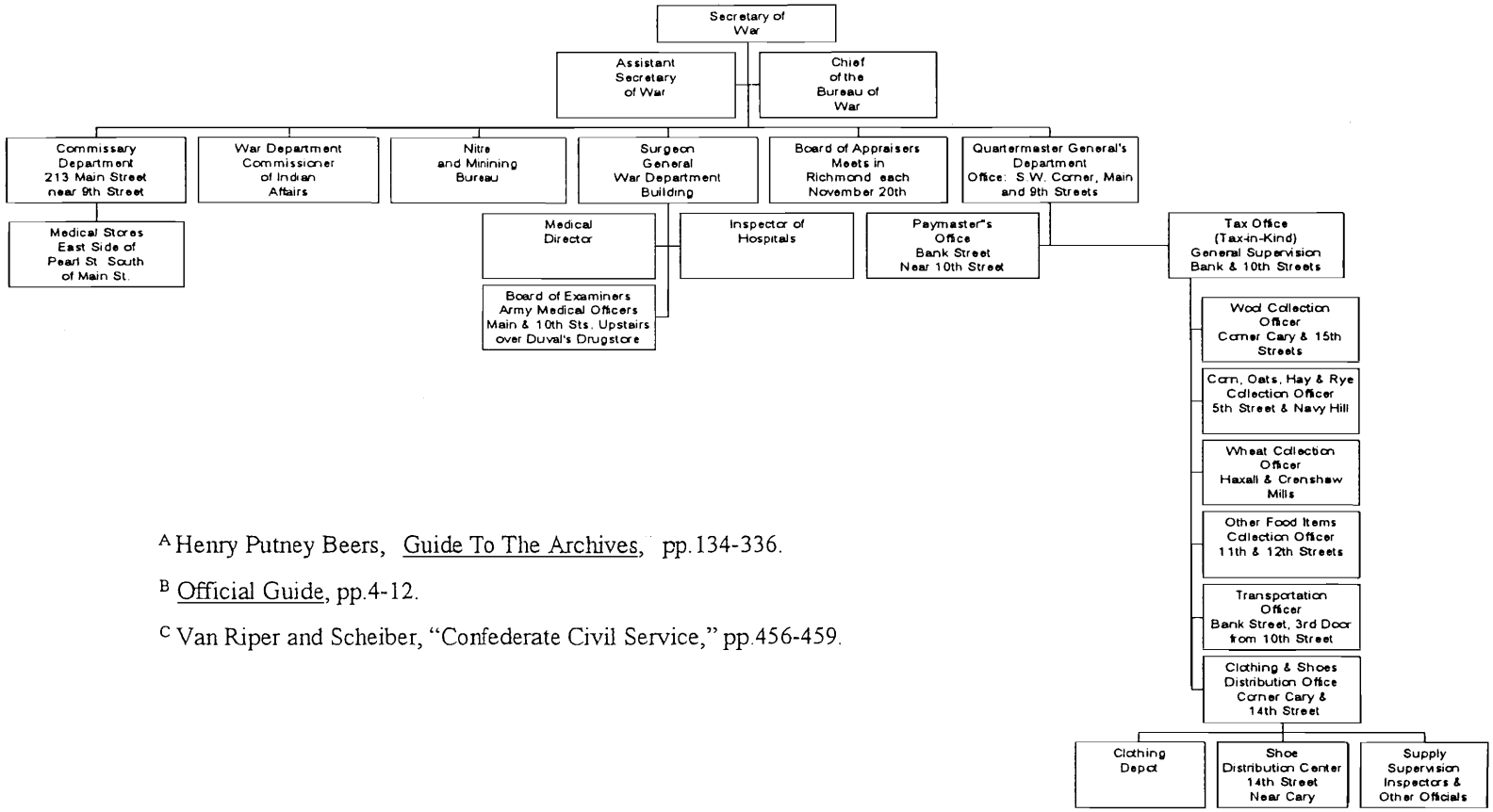
Estimated Number of Civilians Employed by C.S.A. War Department

Departmental Officers and Staff	269
Ordnance Bureau	5,936
Nitre and Mining Bureau	13,228
Quartermaster Department	10,750
Commissary Department	1,783
Medical Corps	8,250
Bureau of Engineers	11,500
Tax Collection	2,965
Conscription Bureau	2,443
Total	57,124

Figure IX (A)

Continued on next page

Confederate States of America
War Department
(Continued)



[A] Henry Putney Beers, Guide To The Archives, pp.134-336.

[B] Official Guide, pp.4-12.

[C] Van Riper and Scheiber, "Confederate Civil Service," pp.456-459.

Figure IX (B)

separate civil machinery existed for the purpose of provisioning a vast military. Some limited manufacturing developed in the South during the course of the war, in an effort to supply the constantly expanding military, however, adequate quantities of manufactured supplies could not, under the circumstances, be developed in the private economy.

Actions taken by the Confederate Congress including the Tax-In-Kind, along with military impressment of food, equipment, livestock, and even labor helped generate some desperately needed provisions, but, even these efforts left the military chronically undersupplied. Since the prevailing understanding was that the provisioning of the military should remain a strictly military function, as the war continued, the Confederate War Department increasingly turned to the establishment and operation of government munitions, arms, and mining operations. As production capacity in the private economy continued to weaken during the war, the War Department turned increasingly to the development of a structure of government owned and operated manufacturing enterprises. These operations were civilian-staffed clothing and shoe manufacturing factories. The magnitude of these operations, their public policy implications, and their impacts upon administrative

management practices in the Confederate government are worthy of further consideration.

Direction of these diverse production activities, as well as of the armies in the field, was the responsibility of the War Department's Richmond staff. The Richmond staff was composed of twelve major officials, four of them civilian, supported by 265 assorted clerks and messengers. The Secretary of War, Assistant Secretary, Chief of the Bureau of War and War Department Commissioner of Indian Affairs were civilians. Commissioned officers filled the posts of Adjutant Inspector General, Quartermaster General, Commissary General of Subsistence, Surgeon General, and those of Chiefs of the Ordnance, Niter and Mining, and Conscription Bureaus.[93]

Despite encouragement from the Confederate government, southern private industry simply could not develop sufficient production capacity, quickly enough, to be of any real assistance to the War Department in its efforts to procure supplies. The Ordnance Bureau, for instance, charged with the production and supply of arms and munitions, was forced by lack of pre-existing production facilities to start from the ground-up in its efforts to produce sufficient armament for Confederate military requirements. By 1863, the result of the Bureau's attempts

to remedy critical shortages, was that the Confederate Ordnance Bureau was operating seventeen arsenals, armories, foundries, depots and gunpowder mills. These establishments alone employed nearly 5100 persons, of whom two thirds were "nonconscripts, disabled soldiers, boys, females, and slaves."[94] Similarly, the Niter and Mining Bureau was established to "intensify the production of niter as well as coal, copper, lead, iron and other minerals."[95] By February of 1865, the Bureau employed 13,228 men (7881 Black and 5347 White).

The Quartermaster Department controlled production and supply of uniforms, shoes, blankets, wagons, saddles and harnesses. A February 1865 report indicates that 3,451 Black males and 2,299 white males were employed in its operations; however, as Coulter has explained, this figure does not take into account some 5,000 women who were employed either in factories or in doing piece-work at home. By the end of 1862, two thousand women were so engaged in Richmond alone, and thousands more were similarly employed in branch factories extending from Virginia to Mississippi. By 1863, three thousand women were engaged in sewing soldiers' uniforms in Atlanta. The Quartermaster Department ran a shoe factory in Richmond that produced 800 pairs of shoes a day in 1864, but the largest facility of this type

was located in Columbus, Georgia. In Columbus, 5,000 pairs of shoes per week were being made by November of 1863.[96]

Additional civilians employed by the Medical Corps included hospital personnel and laborers, and estimates are that by 1865 the corps employed 150 civilian doctors, 1,000 nurses and cooks, 500 stewards, 1,300 wardmasters, 1,800 matrons, 1,500 laundresses, and 2,000 Black laborers. A report of the Commissary department indicates 1,783 male employees in its operation, while the Bureau of Engineers, the agency responsible for railway work and the building of fortifications, employed the largest number of slaves and freemen as laborers. The estimated total civilian employment for the Bureau of Engineers was 11,500.

The 1863 Tax-In-Kind was assessed, by Treasury department personnel; however the collection of supplies generated by the tax was the responsibility of the War Department. The Secretary of War reported in 1864 the employment of 1,440 agents, eighty-five clerks and 1,440 laborers engaged in the collection of the Tax-In-Kind supplies. Altogether, War Department civil employment exceeded 57,000 persons and as Van Riper and Sheiber observe, it was a big business, even judged in modern management terms.[97]

A more important observation, however, may be that the

Confederacy engaged in these government enterprises, which the North did not develop, employing thousands of Blacks, children and women in what several authors describe as "socialistic enterprises." Without these enterprises, Southern civilian employment would have reached only approximately 50,000 people[98]. That these government production facilities would have developed in a nation that so prioritized laissez-faire economics and resisted government intervention in private markets is, to say least, ironic. However, in a nation struggling for its very existence and totally dependent upon undeveloped and inadequate resources, anomalies of this type are almost predictable. More specifically, their existence clearly contributed to the survival of many civilians suddenly disabled, widowed, orphaned, and displaced due to the war. As there were no social program safety nets for the protection of such individuals, employment in these government factories provided their only option for financial support.

The dominance of the Confederate War and Navy Departments over the general governance of the Confederacy may be best illustrated by a quick assessment of the 1863 final six-months budget estimates for the two departments, compared to the rest of the government. Of the total

$396,537,742 estimated as necessary to support government operations for the last half of 1863, $373,619,925 was required for the War and Navy departments alone. The War Department estimate was $364,813,518 with Navy estimating only $8,348,407 for the same six months. Simply put, with the $373 million War and Navy Department estimates subtracted from the total budget estimate, the remainder of the government was expected to operate for six months on approximately $23 million. An understanding of the enormity of these operations, of their impacts on the social network and political economy of the fledgling nation and of the incredible diversion of scarce resources demanded by their operations help us put the war effort's effects in some perspective. Confederate administrators recognized that under such extraordinary circumstances even certain fundamental aspects of the underlying political and economic philosophy which undergirded the Confederate endeavor had to be suspended, temporarily, in their desperate attempt to maintain the nation and its military. Their administrative practices stand in dramatic contrast, however, to the philosophy, management style and administrative practices of the final Confederate Cabinet department to be explored here, the Confederate Post Office Department.

The Confederate Post Office Department

On March 6, 1861, Jefferson Davis asked John Henninger Reagan of Texas to accept the position of Post Master General of the C.S.A. Like Henry T. Ellett and Colonel Wirt Adams of Mississippi had done before him, Reagan declined the post. Like the others, Reagan clearly understood the monumental task that lay before the Confederate Post Master General. Reagan later explained that with the postal system constitutionally mandated to operate from its own revenues, a newly created unorganized system would take considerable time to reestablish in the South. Reagan recognized that through inexperience, lack of facilities, and the imminent disruptions of war, service delays and public dissatisfaction would arise and that the public would be, very critical of both the service and of the Post Master General. Reagan said, "I would gladly perform my duty to the Confederacy," but, "I...[do] not desire to become a martyr." [99] Reagan would only accept the post after President Davis appealed to him on three occasions. This appointment would be not only a fortunate event for the Confederacy, it portended one of the most important occurrences in American public administrative history.

Reagan generally is regarded as the ablest administrator appointed to the Davis cabinet. Unlike the

President, he was a talented executive who understood the art of delegation and who brought to his work the natural ability to make the demands of administration look easy.[100] Reagan thoroughly understood the policy priorities of the Confederate government. Perhaps more critically, he completely understood the administrative mechanics of the operating department he had just taken over. He was, however, a realist and, by his own account, was quite despondent after accepting Davis's appointment. Recognizing what lay ahead, he reportedly asked himself over and over how he could have been so foolish as to agree to Davis's proposal.

As he returned to his hotel in Montgomery on the evening he had accepted his appointment, Reagan recalled being riddled with doubts and despair about his decision. A sudden twist of good fortune, however, interrupted his self-reflection. An old friend of Reagan's, H.P. Brewster,[101] crossed Reagan's path on a sidewalk in Montgomery. Reagan reported that in an instant, he knew how he would manage the start-up of his new agency. As the epigraph to this chapter indicated, he decided, with Brewster's help, to steal an already working system!

That same evening, after hurried briefings and instructions, Reagan dispatched Brewster to Washington as

his personal emissary. Brewster's mission was to raid the United States Post Office of its Southern personnel, offering the various department heads similar or advanced positions under the new government. If they accepted, they were instructed to bring with them reports, maps, personnel books, and copies of every available form and document from their departments. Reagan stressed the need for their speedy decision and, to facilitate their departure, authorized Brewster to receive the materials and books. Brewster was to have them bound in Washington to be shipped later to Montgomery.

Reagan's plan worked splendidly. Within two weeks, much of the United States Post Office, in fact, moved south. Besides the legion of clerks and laborers, there came experienced men such as Henry St. George Offutt, chief clerk in the office of the sixth auditor; Reagan's faithful friend Joseph F. Lewis, head of the bond division; and J.L. Harrell, reputedly one of the best financiers in the South; and the exceptionally capable administrator, W. D. Miller of Texas.[102]

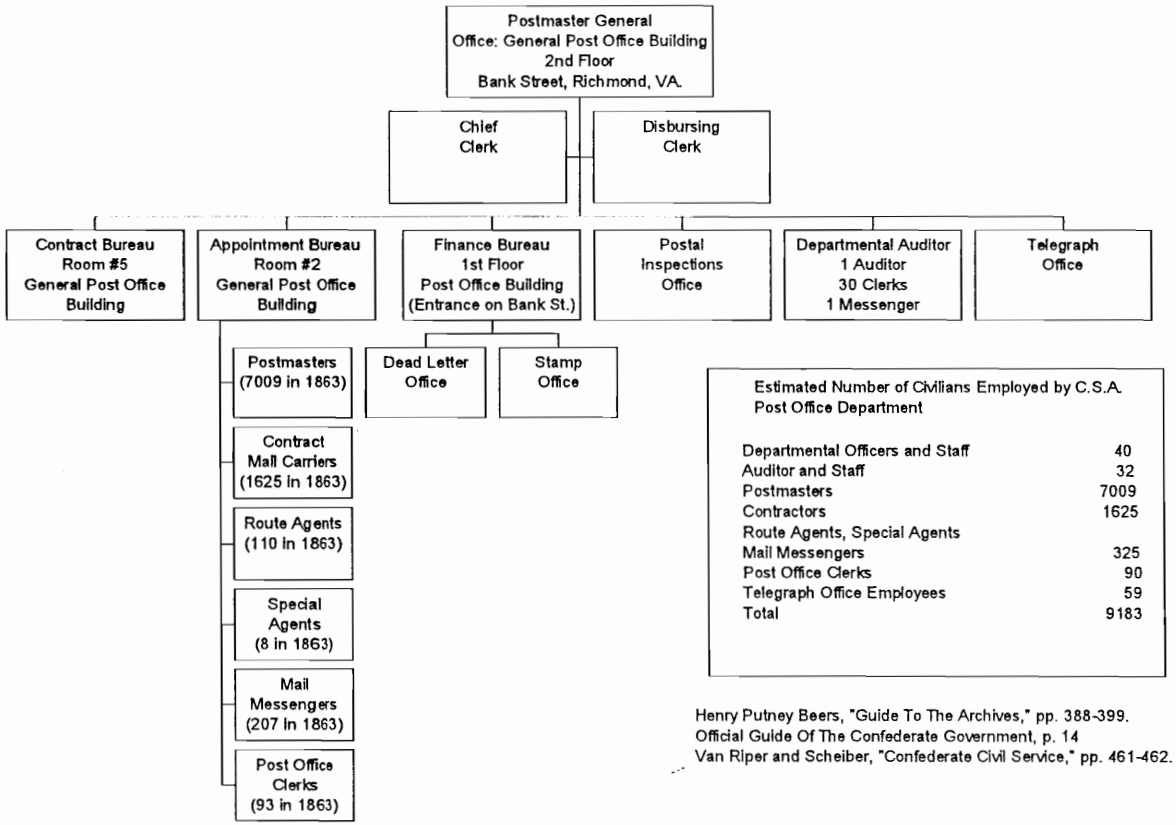
Records, maps, documents and forms began arriving from Washington and clerks began preparing contracts, estimating potential revenues, updating postmaster and contractor lists, and revising the complicated network of mail routes.

Reagan advertised for bids on postal supplies: mailbags, twine, sealing wax, paper supplies, and negotiated with private firms for engraving facilities for stamps and stamped envelopes. To qualify prospective employment applicants and to assess their special abilities, as well as to enhance his own knowledge, Reagan established an evening school of instruction. School sessions were held evenings from eight until ten p.m.[103] Reagan also instituted a position classification structure and organized the "duties of the several bureaus of the Department with a view to the harmony and efficiency of its operation." [104]

Quickly, the administrative structure of the Confederate Post Office Department was taking shape, appropriating the basic form of its U.S. counterpart. [See Figure X] Reagan's plan of administrative organization provided for a Contract Bureau, an Appointment Office, an Inspection Office, and a Finance Bureau. The four bureau chiefs were to supervise a staff of four chief clerks, some thirty additional clerks, one messenger and a topographer. Under the Finance Bureau was situated the Stamp and Dead Letter Divisions. In addition, there was to be a departmental auditor with thirty clerks and one messenger.

The Post Office Department was the last U.S. Federal agency to be taken over by the Confederacy. Not until June

Confederate States of America
Post Office Department[A]
Offices, General Post Office Building 2nd Floor
Bank Street, Richmond, Virginia[B]



Estimated Number of Civilians Employed by C.S.A. Post Office Department

Departmental Officers and Staff	40
Auditor and Staff	32
Postmasters	7009
Contractors	1625
Route Agents, Special Agents	
Mail Messengers	325
Post Office Clerks	90
Telegraph Office Employees	59
Total	9183

Henry Putney Beers, "Guide To The Archives," pp. 388-399.
Official Guide Of The Confederate Government, p. 14
Van Riper and Scheiber, "Confederate Civil Service," pp. 461-462.

Figure X

1, 1861, more than a month and a half after Fort Sumter, did the United States cease carrying the mails in the South. On May 31, 1861, the postmasters, postal clerks, carriers and other postal officials in the Confederate States worked their last day for the United States government. The next day, those same personnel--with the same contracts, became the Confederate postal service. The principal operational differences, once the personnel had been recommissioned, were that they would now receive their salaries from the Confederate government and that they should no longer accept letters bearing United States stamps. Any unused stamps or stamped envelopes were forwarded to Washington, but all money on hand was retained to meet any last expenses not paid by the U.S. Government.[105]

While it was a relatively straightforward process for Reagan to appropriate the existing U.S. postal establishment in the South, transforming the operation into a system which could comply with the Confederate Constitutional mandate which required the service to be financially self-sufficient by March 1, 1863, would not be as simple. C.S.A. Provisional Congress Statute 105 authorized the Postmaster General to issue a proclamation announcing the date on which he would take control of the postal service of the Confederate States. On May 13, 1861, Reagan notified all

Confederate postmasters, contractors, special agents, and route agents that he would assume charge on June 1, 1861, and directed them to continue performing their duties.[106] He requested that they forward their names to the Appointment Bureau so that they could be issued new commissions. Contractors, mail messengers, and special contractors were authorized to continue their services, but were required to send information regarding their current routes to the Contract Bureau. When the Confederate Post Office Department assumed control of the postal system in the Southern states, there were 8,411 post offices with 2207 postal routes under contract in the Southern States.

Under the U.S. government, the post office had never been financially self-sustaining. For the year 1860, in just the eleven states that then composed the Confederacy, the U.S. operation ran a deficit of some $2,000,000. Reagan's charge, to reform the Postal Service to self-sufficiency, would require one of the most innovative and sweeping management reorganizations in American administrative history. Fortunately for the Confederacy, their Post Master General was equal to the task.

The Confederate Congress helped the Postal Service reforms along immeasurably by abolishing franking privileges, by requiring postage on newspapers and

periodicals, and by raising postal rates.[107] However, Reagan recognized that rate changes alone could not accomplish the required reforms. A much more significant management reorganization and restructuring would be required. Reagan began by cutting operating expenses to the bare minimum, and with his small staff, began the staggering task of overhauling the mail-route system. The costliest routes would be discontinued, duplication of services eliminated, and long mail routes would be shortened to promote competition among route contractors.

Exigencies related to the war actually worked in Reagan's favor as expensive overland mail to California would be no longer necessary and the U.S. naval blockade eliminated operation of the very expensive ocean mail services. Reagan worked extensively with the Congress, encouraging the increase of postal revenue. Eventually, the postage rates for letters, newspapers and periodicals were doubled and mail service was enlarged to permit the mailing of books at postage rates which allowed the service to be profitable. Reagan incurred the wrath of the press in these actions, but the public broadly supported his efforts. His efforts were not targeted singularly at revenue generation measures, however. Post Office management operations were streamlined, reorganized and redeployed for maximum

effectiveness and accountability. At the individual bureau level, specific operations were scrutinized, evaluated, and assessed for productivity and effectiveness. No process, department, organization, or procedure escaped evaluation. Each individual bureau actively supported the realignment endeavor, however, and each contributed in specific and differing ways. Profiles of the operations of the individual departments and some brief details of their contributions to the management reorganization process are provided in the following sections.

The Appointment Bureau

The C.S.A. Post Office Appointment Bureau was concerned with the establishment and discontinuance of post offices, changes of post office names and sites, the appointment and removal of postmasters, supervision of route and special postal agents, the procurement and distribution of supplies, and the preparation and distribution of circulars, instructions, blank forms, etc. In addition, route and special agents under the Appointment Bureau's supervision served as traveling representatives of the Department. Route agents accompanied railroad mail cars and mail steamers on various water routes. In addition to observing the operation of the postal system to be sure that

regulations were followed, special agents installed postmasters, established mail service for confederate armies, examined and revised the "mailing books" of newspaper offices, investigated mail depredations, losses and delays in mail deliveries, and assisted railroads in scheduling.[108]

The Contract Bureau

As its name indicates, the Contract Bureau was responsible for the procurement, negotiation, preparation and discontinuation of contracted services for the Post Office Department. The Bureau negotiated mail route contracts, prepared contract books and circular letters, and contracted vendors for stamps and equipment. Legislation authorized the Postmaster General to annul mail contracts and discontinue or reduce service on unprofitable routes. A series of congressional actions also permitted the Postmaster General to make contracts without advertising for bids. To make the postal service self-supporting as required by the Constitution, some post routes taken over from the U.S. were discontinued and others shortened by the Contract Bureau. On June 1, 1861, some 2200 post routes were operating under contract in the Southern States. The end of 1862 saw that number reduced to approximately 1600.

Later, the Federal occupation of Kentucky, Missouri, Arkansas, Louisiana, Mississippi, Tennessee, western Virginia, eastern North Carolina and Florida would prevent the postal service from operating in those areas as well. By the end of 1863, there were fewer than 1,260 mail contractors operating in the eleven Confederate states.

Contract arrangements for foreign mail service were also difficult to establish due to the war. The Union naval blockade discouraged steamship lines from undertaking such service and diplomatic missions to Europe failed to generate contract agreements for mail service between Europe and the Confederacy. Generally, foreign mail service depended upon a make-shift structure of blockade running which carried mail between Confederate ports and Cuba, Bermuda, Nassau, Canada and Mexico where it was generally transferred to English and French vessels. Occasionally, diplomatic agents, naval officers, and other government officials considered trustworthy served as carriers of official mail to Europe.

The most important contracting process managed by the Contract Bureau, however, was the system of contracts that provided for railroad transportation of mails. In the U.S. system, much of the annual postal debt was attributable to railroad transportation costs. The 1860 U.S Post Office

Department fiscal year reports documented that costs for railroads serving just the Confederate states alone, cost more than two-thirds of all revenue received by the U.S. Postal Service. Reagan realized immediately that rail transportation expenses would have to be reduced or his organization could never approach solvency. Postal historians have observed that of all the many innovations Reagan initiated in streamlining post office economy, none was as important, nor as effective, as his actions with the railroads.

Reagan frequently referred to the railroads as "selfish, powerful monopolies needing 'wholesale and necessary reform' to improve their relationship"[109] with the public and the government. He did not hesitate to initiate such action once he had been appointed to his Confederate position. Reagan called a summit meeting of the executive representatives of the South's 109 railroads and railroad branches in April 1861. Reagan announced to those assembled, a program of cost reductions, service streamlining and management efficiency measures to help the postal service operate through the tenuous times that lay ahead.

Under Reagan's plan to lower the cost of service, railroads would be classified according to the quantities of

mail they carried and by the rates to be paid them. Appealing to the railroad executive's patriotism, Reagan asked that they accept Confederate bonds in payment of charges and that they act, as an industry, to reduce their charges by half! After a series of contentious meetings, replete with threats, bargaining, and negotiation, the representatives agreed to Reagan's program. By the end of 1862, fifty-five railroads, including all the major Southern railroad operations, had made new contracts agreeing to Reagan's new rating and fee structure.

As the war dragged on, the railroads would attempt to evade postal regulations and raise rates. Reagan held stubbornly to his position on each occasion, however, using all available means to ensure compliance. Government payments were withheld in several cases when railroads failed to comply with regulations or altered the rate structure Reagan had established. Some railroads were threatened with suspension of their government contracts. In other cases, the threat that their particular lines would be boycotted by the postal service, was enough to effectuate compliance. It did not take Reagan very long to accomplish his railroad reforms. By 1863, nearly all Southern railroad companies were fulfilling their contracts in compliance with Reagan's priorities.[110]

Through this endeavor with railroad transportation reform, Reagan gained significant insights and experience. His actions not only affected the management of his department and the Confederate government's relationship with the railroad industry, but also would ultimately have permanent effects on the United States federal government.

The Finance and Postal Inspections Bureaus

The Finance Bureau was the Confederate Post Office bureau most closely involved with the mechanics of making the Department fiscally self-sustaining. The Finance Bureau received reports of all monies received from postmasters, recorded the revenues deposited in the Treasury and its branches, and passed these return reports on to the Auditor. The Finance Bureau distributed postage stamps and stamped envelopes to local postmasters, issued warrants and drafts in payment to mail contractors and disposed of "dead letters" in various ways. The Finance Bureau collected money from local postmasters not turned over when the Confederate States took charge of the postal service on June 1, 1861, and kept the funds in separate accounts for the payment of claims for services rendered prior to the take-over date. Letters containing bills of exchange, drafts, and notes belonging to citizens of the United States were

delivered to officers of the Confederate district courts for disposal under the Sequestration Act by the Finance Bureau.

The Inspection Office of the Confederate Post Office was another vitally important link in Post Office operations. The Inspection Office supervised the performance of mail contractors and route agents, and to a more limited extent, Confederate postmasters. Inspection Officers received and examined registers of arrivals and departures of mails, were empowered to impose fines on contractors for negligence in fulfilling contract obligations, and made deductions in the contractors compensation for failures and irregularities in service performance. The Inspection Office personnel supervised the work of special agents in investigating mail theft, pilfering and other losses. Special agents were required to maintain journals recording the neglect of duty or violation of regulations by postmasters, mail contractors, and route agents for submission to the Inspection Office.

Office of Military Telegraphs

The Confederate Office of Military Telegraphs became a bureau of the Post Office Department as a result of a May, 1861, Act of the Provisional Congress which authorized the President to take control of telegraph lines and offices and

to employ operators as agents of the government. The President was also authorized to contract for the extension of existing telegraph lines at Government expense. Since telegraph lines were a primary means of communication, the authority given to the President was vested by him in the Postmaster General. Under an act of May 21, 1861, the Postmaster General was authorized to employ officers of the telegraph companies as agents to perform telegraphic communication services.

The Confederate government used as many existing telegraph lines as possible, but was forced to construct others. As lines in Kentucky and Tennessee were cut by military operations and lines farther south came under military control, new lines were constructed with government funds by private companies. In some cases other telegraph lines were constructed by the Army independently. Telegraph operators were exempt from military duty in 1862, but were in such high demand that operators who had already enlisted had to be detailed to telegraph offices in Richmond, Augusta, Wilmington, Atlanta and Lynchburg to help handle the heavy traffic at these facilities.[111] By the end of 1863, there were 59 civilian employees of the Telegraph Office with 461 miles of telegraph lines in operation.[112]

Implementing the Fiscal self-sufficiency Policy

The more than 8,000 Confederate Post Offices scattered across the Southern States served as the most direct points of intersection between Confederate citizens and their civilian government. Most Confederate citizens came into direct contact with their postal service and depended upon the service to provide them with the lion's share of their communications services. Clearly, the quality of that service would have a profound effect upon a people at war, since few activities other than the policies instituted for the raising and provisioning of armies touched them as directly. Despite widespread popular support for Postmaster General Reagan and his ambitious management restructuring plan, public complaints about postal service began surfacing within a few months after the Confederacy took over the service, and these complaints proliferated throughout the war.

Initially, post office operations were hampered by the unavailability of Confederate postage stamps. The Postmaster General had attempted to procure a supply of stamps from northern engravers prior to the onset of the war, but hostilities disrupted the process before the orders could be delivered. For more than five months in 1861, no stamps were available. Until stamps could be provided, letters

were mailed without them. The sender simply paid the postage when letters were mailed. Eventually, paper supplies and engravers were located and contracted in the South, but the production delay had made the service appear disorganized and unprofessional at the very beginning. A second tactical error may have been in the initial rapid increases in postal rates, as opposed to more staggered, incremental increases over time. Additional complaints arose when services were curtailed and many post offices were eliminated during Reagan's cost-cutting efforts. The most pervasive complaint, however, was the slowness and uncertainty of mail deliveries.

The Confederate press was vociferous in complaining about the postal service after Reagan's postage rate hikes in the early weeks of 1861. Any and all criticisms by Congressmen, angry citizens, and public officials were quickly picked up by journalists and incorporated into scathing editorials decrying the inefficiency of the service. Soldiers' mail was a particular source of contention with the military and the general public. With armies moving, it was extremely difficult to keep correspondents informed on mailing addresses for soldiers, and frequently mail was addressed to soldiers without complete addresses and with no indication of regiments or

locations. The result was that huge stacks of soldiers' mail collected in Richmond and other centers across the South. Because troop morale was affected by problems with mail, Reagan was extremely sensitive to the problem of mail delivery to them. Unfortunately, many of the delivery problems were intrinsic to the war and the Postmaster General's best efforts would have little effect.

Service on ordinary mails similarly became increasingly slow and unpredictable as the war intensified. One cause of the poor service was, of course, the self-sufficiency policy of the postal service. It was impossible for Reagan to provide services as extensive, reliable, and fast as they had been under the former U.S. system without operating the system at a financial loss. Instead, by 1863, Reagan's initiatives had resulted in a surplus of $675,000 in the Confederate postal system accounts, a surplus of which the Postmaster General was justifiably proud. However, the more significant service problems that troubled the system simply were not under the direct control of the Postmaster General or his agency. The outer reaches of the Confederacy had been invaded almost immediately upon the start of the war. As the Federal armies marched further into Confederate territory, they upset the entire system of mail routes. Where large areas of Confederate territory were permanently

captured, Reagan saved money since mail services to those areas were permanently suspended. Frequently, however, military raids simply passed through areas, burning bridges, destroying railroad tracks, and damaging roadways that then had to be reestablished before mails could go through. Federal soldiers delighted in demolishing the Confederate post offices in their paths and they destroyed or pilfered mail, stamps, records, and postal equipment at every opportunity. As the war intensified, the few remaining operational trains were obligated primarily to the hauling of military equipment, supplies and personnel. Mail schedules were, necessarily, largely at the mercy of military commanders. Finally, as manpower became increasingly scarce due to conscription, the Postmaster General was forced to hire such mail carriers and contractors as were available. On many routes throughout the South teenaged boys and functionally illiterate persons attempted to continue mail services. By the end of the war, even a shortage of available horses became a problem for the postal service. The problem became acute, as virtually every healthy stock animal in the Confederacy had been impressed for military purposes.

Postmaster General Reagan had begun the operation of his postal system on June 1, 1861 with 8,411 post offices;

within six months he had discontinued 111. The atrophy continued steadily as the territory of the Confederacy was occupied by Federal forces. By the time of Lee's surrender at Appomattox, the number of operational Confederate post offices had dwindled to almost zero.

John Henninger Reagan: Railroad Reform and the Interstate Commerce Act

From the standpoint of permanent contributions to the administrative system in the United States, the most important effect of Confederate post office department administration would not derive from the operational success or failure of individual post offices, or from the overall efficiency of the Confederate postal service. As impressive as these accomplishments might have been, determining whether or not an agency as massive as a national postal service could operate without financial support is not the most important permanent effect of the actions of the Confederate Postmaster General. Rather, one of the most important legacies to American public administration can be traced directly to the experience of Postmaster General Reagan in his efforts to negotiate his way to operational profitability by means of railroad regulation and reform.

Reagan recognized early in his tenure as Postmaster

General how much power and influence the rail transportation industry held over the whole of the national economy. His efforts to reform Southern rail operations left him convinced that massive reform of the entire industry would be necessary. After the Confederacy collapsed, the Civil War ended, and Reconstruction had run its course, Reagan began to work actively in Texas for state-level railroad reform. Reagan became active in the Granger Movement and steadily regained his former prominence in Texas politics. By 1875, voters in Reagan's district had overwhelmingly returned their distinguished statesman to the United States House of Representatives.

Over his next twelve years in the House, Reagan was a constant voice, a consistent challenger of railroad monopolies, and an incessant critic of the corrupt and devastating practices of the railroad industry. He fought doggedly, and he was determined. Early in the process he was the lone voice in Washington advocating regulatory reform. Every year for nine consecutive years, Reagan introduced legislation in the House of Representatives that would have regulated interstate commerce and prohibited unjust discrimination by common carriers.[113] Vilified in the press, excoriated by the railroad industry, and abandoned by other politicians, Reagan battled through years

of experimental state regulatory reform efforts and Supreme Court challenges to the constitutionality of regulation. In 1883, however, Senator Shelby Cullom joined Reagan's effort, introducing his first regulatory proposal in December 1883.[114] By the time Senator Cullom joined the regulatory effort, national debate and Supreme Court interpretations of state law were decidedly moving in the direction of regulatory reform at the national level. Reagan's patience, tenacity, strength of conviction, and leadership in the House of Representatives, combined with Cullom's initiatives in the Senate, led to the passage of compromise legislation enacting the Interstate Commerce Act, finally, in 1887. Described as the "first major institutional development in national government,"[115] the Act provided for the establishment of the Interstate Commerce Commission, March 31, 1887.[116]

Traditional public administration literature has largely "written around" Reagan's contribution to the establishment of the Interstate Commerce Commission.[117] Because of this omission, Public Administration theorists, students and practitioners have been able to avoid acknowledging that the institution understood as genesis agency of modern Public Administrative practice in the United States, can be directly linked to the vision and

commitment of the former Confederate Postmaster General. The very origins of the Commission are traceable, in fact, to the efforts of John Henninger Reagan and his experience in the service of the Southern governance experiment.

Conclusions

In an 1861 letter accepting the call of local citizens to run for the Confederate Congress, J. Horace Lacy of Virginia wrote that, as he saw it, the only way to

> preserve our Government from... corruption...[is] by limiting the power of patronage, by regarding honesty, capacity, and fidelity as the indispensable and only qualification for office, and inaugurating a rigid economy in our public administration, which would disburse millions for defense but not a cent for favor.[118]

Lacy's comments capture the essence of the Southern endeavor in public administration for the Confederate government. The public administration the Confederates intended for their new republic was to be drawn from theory embodied in their reformed constitution. Administrative legitimacy was to be derived from this constitutional grounding.

As John Rohr has observed, one problem with traditional theory in American public administration is that it has developed independently of, and at times in opposition to,

the primary symbol of legitimacy in American politics, the U.S. Constitution.[119] In the Confederate experiment in constitutional governance and administrative practice, the linkage between the Constitution and public administrative practice was intentionally direct and was as real and practicable as it was symbolic. If, as Rohr suggests, there is a need for a normative theory of Public Administration that is grounded in the Constitution, it is appropriate to examine the Confederate experience as an important exercise in public administration, so grounded.

The Confederate public administration clearly meets at least two of Rohr's criteria for the normative theory of public administration he endorses. First, Confederate public administrators were enabled to uphold their oaths to the Constitution by using their discretionary powers to maintain the constitutional balance of powers in support of individual rights. The obvious manifestation of this theory was the provision allowing state legislatures to impeach federal officials operating within their boundaries. The protection of individual rights, to be safeguarded by state sovereignty in the Confederate model, required federal officials to use their discretionary power to maintain a balance of powers in support of individual rights. Second, the Confederate administration well fits Rohr's conception

of the public administration as "balance wheel." Confederate administrators understood themselves as administrative statesmen. They clearly understood that administration runs all Constitutions. Some of them, particularly the Confederate Attorney General, exercised all three powers of government at various times, but they never mistook their subordinate position in the Constitutional order. Using their discretion, they favored the policies they thought were most likely to promote the public interest, while assessing the public interest against the broad background and understanding of their constitutional principles.[120]

In attempting to establish the caliber of public administration Lacy described, the Confederate leadership prioritized the establishment of an administrative apparatus imbued with the expertise, experience, credibility, legitimacy required to lend stability and continuity to Southern society in a period of profound chaos and confusion. In its form, derived from the constitutional innovations Confederate founders developed, and in its substance, as much of the U.S. federal staff in Washington transferred its expertise to the new government, Southern leaders acknowledged the centrality and legitimacy of an effective administration in their reformed republic. The

Confederate view on administration acknowledged administrative agencies as repositories, and their staffs as trustees of, specialized knowledge, historical experience and time-tested wisdom. Most importantly, to the Confederates these professionals embodied a consensus as to the public interest as the public interest was relevant to their particular societal function.[121]

At its genesis, the Public Administrative structure in the Confederacy contributed a sense of permanency, stability, and order to Southern society. Later, it would prove its responsiveness to the public interest by being creative and adaptive in responding to innovative policy initiatives with innovative implementation strategies. As the war intensified, and as economic and social conditions deteriorated, it transformed itself to provide certain socialistic enterprises to help moderate the desperate conditions of the economy, to support the dispossessed, and to facilitate the war effort.

While the first order of business for the new administrative system was to establish an enduring relationship with its own public which would engender confidence, respectability, predictability, and stability, Southern leaders were very aware that the establishment of this "order" would have important effects outside the

Confederacy. Ever mindful of the need to demonstrate its respectability to the outside world, as well as to its own public, the Davis administration carefully cultivated its image as a legitimate, self-aware, and responsive government. The general directions that the new administration took on these imperatives has been considered in some detail in the preceding sections. What remains to be considered is the nature, extent and importance of the various interagency, interbranch and external relations of the Confederate administration and how they may have helped or hindered administrative efforts. The exploration of these relationships will be the focus of the next chapter.

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101.H.P. Brewster was an attorney from South Carolina. Civil War diarist, Mary Chestnut, was Brewster's cousin. He had been a friend of Reagan's for many years.

102.Procter, Not Without Honor, pp. 130-131.

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106.The very next day, the U.S. Postmaster issued his own proclamation declaring that as of May 31, 1861, the U.S. Government would no longer operate the postal system within the seceded states. Thus, the postal system transferred from one government to the other without disruption.

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CHAPTER FIVE

ADMINISTRATIVE RELATIONSHIPS

"...it is...harder to **run** a Constitution than to frame one."[1] Woodrow Wilson

The Constitutional adaptations and modifications the Confederate framers incorporated into the U.S. Constitutional design, were, in the words of Confederate Vice President Alexander Stephens, intended to "improve the machinery of government." The nature and extent of the innovations provided for the Confederate administrative system have been chronicled in previous chapters of this work. Hence, I now turn to consideration of the intricacies of the working relationships between the various administrative entities of the Confederate government and other governance institutions with which the federal administration interacted.

Certain attributes and unique characteristics of the Confederate administrative system led, inevitably, to the development of a complex network of relationships which extended to numerous other governmental institutions and entities. Very often, these complex relationships proved to

be conflict-ridden and disruptive to administrative operations. Unfortunately for Confederate administrators, the circumstances surrounding the operation of the Confederate justice system often made many of the conflicts unresolvable.

Once again using Leonard White's administrative histories as model analytical frameworks, this chapter, first explores the working relationships, interconnections, and directions of responsibility and accountability between the administrative agencies and the executive, legislative, and judicial branches. Next, the troubled and conflictual relationship between the Confederate Executive and the Legislature in managing and controlling the administration is considered. That discussion is followed by an assessment of the interrelationships between and among individual administrative agencies.

This initial analysis serves as grounding for discussion of the administrative ramifications of the Confederate Congresses' ultimate refusal to establish a Supreme Court. This absence of a Supreme Court is of particular importance in understanding how both administrative operations and the office of the Confederate Attorney General developed. The dynamics of Confederate federalism and inter-governmental relationships were also

crucial elements of the unique character of Confederate public administration and must be included as part of any discussion of the system's operational characteristics. That discussion concludes the chapter.

Confederate Administrative Agencies and the President

As Leonard White observed, years of experience in the United States government had confirmed the administrative precedents established by George Washington regarding the relationship of Presidents to department heads, and to the daily business of administration. Well in advance of the appearance of the Confederacy, the unity of the executive branch was assumed; heads of departments were assistants to the President and took their directions from him. Over the years, the Cabinet had become a well-defined institution, but not a competitor for power. Any residual doubts about the President's preeminent position had been dispelled in 1833 when President Jackson removed Treasury Secretary William Duane from his post when Duane refused Jackson's direct order to withdraw U.S. Government funds from the Bank of the United States. From 1833 to 1861, no Cabinet Secretary challenged the supremacy of the Chief Executive in the U.S. government. In the United States government, issues of administrative authority, clearly, worked to the

advantage of the President.[2] However, these relationships, along with myriad other issues, would have to be renegotiated as the Confederate Executive Branch took form.

Under the Confederate Constitution, the President's preeminent administrative position was reinforced by many of the constitutional innovations discussed earlier. The Cabinet-in-Congress provision of the Confederate Constitution was to have allowed Cabinet Officers to participate in Congressional debate not only as advocates of their own departments, but also as representatives of the administration and its policies on the floor of Congress. Thus, Cabinet Secretaries would have served as delegates or emissaries of administration initiatives.

The Constitutional provision requiring that the President review and submit the budget estimates prepared by the various department Secretaries to Congress also profoundly changed the relationship between the administrative agencies and the President, as well as the relationship between the Executive and the Legislative branches. Responding to public demands for fiscal accountability, this reform measure was intended to make the Executive directly responsible for public expenditures. Confederate constitutional drafters demanded this adaptation to ameliorate years of frustration with the U.S. Congress.

Confederate framers believed that U.S. Congressional majorities were guilty of fiscal policy irresponsibility. The budget review provision served to institutionally reinforce the President's position of administrative superiority and fundamentally altered the relationship of the administrative agencies with the President. The Confederate President assumed the role of budget coordinator, while also serving as the administrative agency policy clearinghouse. All expenditure decisions would now be subject to Executive approval or modification. For the first time, in American experience, the Executive would be providing comprehensive, coordinated expenditure proposals to Congress. This placed the President in a position of authority and control which agency administrators had not previously experienced and which left the Congress to play only a balancing role in the appropriations process.[3]

The Confederate President, limited to one term of six years, was free of the necessity to curry political favors for re-election campaign purposes. Liberated from the demands of partisan politics and patronage, his focus was to be the greater public good. This allowed him to focus his intelligence and ability on the development of policy in the larger public interest, rather than concerning himself with pleasing special interests or pandering to momentary shifts

in public opinion. As the Confederate President retained his appointment powers, he was allowed to appoint cabinet members and diplomatic staff committed to him and to his policy initiatives. The career staff, however, was to be secure and stable since this President was not allowed to remove public servants except for cause, and then the removal had to be in consultation with the Senate.

Despite their initial design for an administratively empowered, de-politicized Confederate Executive, the reality rarely lived up to theory. As the discussion of the President's cabinet in Chapter Four of this work explained, relations between Jefferson Davis and his cabinet were fractious. Davis's approach to the appointment of the initial secretaries was, first, to select men of ability. Davis left personal friendships, favoritism and political indebtedness out of his appointment calculations. Second, he was intent upon having each of the original Confederate states represented by a Cabinet official in the first cabinet. Of course, as the Confederacy grew in number of states, such an appointment strategy could not be maintained, however, the President felt that at that very early stage in the Confederacy's development, such attention to states was imperative. Davis's initial strategy, to appoint Cabinet Secretaries based on professional merit and

geo-political criteria rather than public policy or personal commitments to the President, was an effective political tactic in a country preoccupied with states' sovereignty.[4] However, it was administratively and politically naive and ultimately failed to mollify the various influential political elements Davis had hoped to assuage in the appointment process. Relying heavily on advice from state Congressional delegations as well as the counsel of influential private citizens (whose endorsements he desperately needed), Davis intended to ensure public support for his administration and its policies.

In fact, Davis did select men of ability, and he succeeded in assembling a Cabinet composed of men of tested competence and managerial talent.[5] Davis's selection of advisers was generally greeted with public satisfaction and the Cabinet initially received praise in newspaper commentaries across the Confederacy. Unfortunately, the wave of early public support would be short-lived. Within the year Davis's appointees would find themselves enshrouded in controversy as the Congress, the press, and the public, frustrated with the disasters the Confederacy was enduring, sought scapegoats in the Confederate cabinet secretaries.

Jefferson Davis was an experienced administrator who knew the theory and practice of administration.[6] He was a

hard working Executive, willing to listen to rational ideas, slow to reach a fixed decision, but tragically insecure about his own position in the new government. In truth, Davis would have preferred to command the Southern army. He was predisposed to the military by his training at West Point, by his taste for glory acquired during his service in the Mexican war, and by his tenure as U.S. Secretary of War in the Pierce administration. The magnitude of the task of the Confederate Presidency depressed him, but Davis never considered refusing the call of his country. As commander in chief of the armed forces of the Confederacy, he believed he had a responsibility to command the armies. As President of the Confederacy, however, he saw his more important role as providing guidance to the whole of the administration.

Davis was not inclined to dictate plans and policies and he rarely acted solely on the compulsion of his own ideas. The formation of important plans and initiatives was generally preceded by lengthy conferences with the Cabinet secretaries, during which he listened attentively. Davis welcomed the advice of his Cabinet, especially when it was offered in good faith, by advisors whom he trusted. Official Cabinet meetings were held regularly throughout the life of the Confederacy. During cabinet meetings, issues, plans and decisions were discussed in detail and consensus

decision making was not unusual. Conversation, according to several accounts, was frank, candid, and often heated; however, Davis believed that the free interchange of opinion was the best way of arriving at correct conclusions.

The historical criticism that Davis reduced his Cabinet members to the positions of "mere clerks" in the Confederate administration is not supported by their own, or other administration insider's, accounts of their service. Cabinet secretaries were quite free to select and appoint their own staff. Agency decision making and the ordinary operations of Confederate executive agencies were organized and managed under the direction of the individual secretaries. With the notable exception of the War Department, in which Davis constantly intervened, rarely were there presidential incursions into day-to-day management issues. Once the direction of Confederate foreign policy had been established and the diplomats dispatched to their international posts, the President's interest in the Department of State waned substantially. While he remained desperate to secure diplomatic recognition of the Confederacy by other nations, his diplomatic ability was limited. With his "Cotton Diplomacy" notion proving a disastrous strategy, he tended to leave the administrative operations of the State Department in the hands of its

officials. Davis's relationship with the Treasury, Navy and Post Office Departments was, in fact, limited almost exclusively to the President's defense of his Secretaries' policies against Congressional and public criticism. The President did, however, make it abundantly clear that he would hold department heads accountable for the conduct and efficiency of their appointees.[7]

Generally, the Confederate President and his Cabinet worked together in relative harmony. When occasional differences did arise, these differences usually were the honest disagreements of intelligent men, deeply committed to the same cause, but with differing understandings of how to accomplish particular goals.

Disputes among cabinet secretaries occurred more frequently. The Confederate Cabinet was not a docile group. All were men of strong personalities and deeply held opinions. On several occasions, President Davis was required to intervene, serving as a referee between sparring department heads. The Post Master General fought with the Treasury Secretary, the Secretary of the Navy complained bitterly about the Secretary of War, the War Department raged against the Navy and the Post Office Departments. These acrimonious disputes are instructive in that they help explain the administrative complications which resulted from

the Attorney General's precarious position in the Confederate government. In addition, the examples clearly illustrate the ramifications of President Davis's managerial inadequacies in dealing with these problems.

Early in the operation of the Confederate Post Office, prior to securing adequate supplies of postage stamps, postage fees were paid in specie, by the sender, at local post offices. Mail was then delivered to the addressee, usually hand stamped, "postage paid." The deposits of the specie collected from this process were made in the Confederate Treasury department, to be credited, Post Office officials believed, to Post Office Department. In June of 1863, Post Master General Reagan requested $50,000 in current exchange for specie, to be placed on deposit in England for postal supplies. The Treasury Comptroller refused to comply with Reagan's request, stating that the Post Office had no specie to its credit. The Treasury Comptroller further advised Reagan that he should have, in fact, requested $145,000, since that would be the Confederate currency equivalent of $50,000 in specie. Believing that there was more than the $50,000 specie in question the frugal Reagan saw the Comptroller's decision as imposing a $95,000 loss to his department.

Under the pressure of the Confederate policy that

required the Postal Service to be fiscally self-sufficient, Reagan refused to accept the Comptroller's response. A battle of wills ensued as Reagan attempted to acquire the coin he believed rightly belonged to his department. His efforts eventually led to a heated controversy with Treasury Secretary Christopher Memminger. Memminger's position was that whatever small amount of gold remained in the Confederate Treasury belonged to the general government. Under the circumstances, with the nation's very survival dependent upon it, Memminger believed the specie would have to be used to meet the urgent requirements of the War Department. The conflict escalated. Memminger refused to let the specie leave the Treasury, Reagan would not relent, and, finally, the issue was referred to the President.

The controversy was discussed in a general Cabinet meeting and referred to the Attorney General for decision. Reagan's position was upheld by the Attorney General; however, the Treasury Secretary was not inclined to accept the Attorney General's opinion as the last word on the issue. After three more months of constant bickering between the two secretaries, followed by a formal complaint by Reagan against Memminger, President Davis was forced to intervene. He upheld the Attorney General's opinion, and ordered Memminger to release the specie as directed. As the

war continued, conflicts among executive branch departments became commonplace. In most instances, the Secretaries, with the Attorney General's occasional assistance, were able to work out their differences as professionals. However, there were those occasions when disputes would not be resolved so effectively.

Post Master General Reagan and Secretary of War James A. Seddon battled incessantly throughout the war. Because of military necessity, the Secretary of War and other Army officers were often forced to intervene in civil matters. Those interventions based on local emergency and sometimes battlefield strategy circumstances were usually accommodated by civilian populations and federal officials alike. Unfortunately, as the war expanded and conditions in the South deteriorated, it became more difficult for the military to avoid encroaching upon the workings of civil administrative departments.

For example, under the Confederate Conscription Exemption Act of April, 1862, postal employees were exempt from military service. After October, 1862, however, postal employees were conscripted along with all other men aged 18-45 years. The decline in the number of eligible, available, men to fill post routes positions was so dramatic that Reagan became convinced that unless an exemption was granted

for postal carriers, post office operations would have to be suspended.[8] The Post Master General demanded special legislation exempting post office personnel from conscription. Secretary of War Seddon quickly countered, charging that men enrolled in the army routinely obtained fraudulent postal route contracts in order to leave army service. General Robert E. Lee agreed with Secretary Seddon, complaining that the exemption of postal employees was a severe drain on his army. Reagan argued that mail service was extremely important to Confederate morale and that he believed a diminution of service would increase desertions from the army.

This controversy between the Secretary of War, General Lee, and Post Master General Reagan was never resolved. As the war dragged on, Reagan became increasingly tired of fighting to obtain the necessary personnel for his department. In frustration, he at one point offered to arm and train all postal carriers, suggesting that he could keep the personnel in place and develop them as a reserve force. He suggested the name "Reagan's Raiders" for his postal militia, but his suggestion was rejected. Soon, young teenagers, disabled veterans, and illiterate elderly Southerners were attempting, ineffectively, to deliver mail on Confederate postal routes. As the Confederacy began to

crumble in late 1864, Reagan had no alternative but to abandon the issue.

Of particular importance to the overall character of relationships among Confederate administrative departments was the critical influence of the Attorney General in dispute resolution and in the interpretation of administrative legal issues. The Confederate Attorney General's Opinions book is replete with examples of administrative interventions. The first opinion issued by a Confederate Attorney General was provided to the Treasury Department, determining whether certain types of produce were dutiable under the 1857 U.S. tariff provisions. From there, numerous issues pertinent to the Treasury, Post Office and War Departments occupied the Attorneys General throughout the Confederacy's existence.

The first issue for the Confederate Attorneys General, was always, a determination of the scope and province of the opinions themselves. In other words, under what circumstances could the Attorneys General offer an opinion? Three rules guided the Confederate Attorney General in this regard: first, the Attorney General could not give Official Opinions, directly or upon reference, or on questions which did not touch on the public interest; second, he could not give Official Opinions to persons other than the President

or the Heads of the Departments upon questions touching the interests of the government;[9] and third, the Attorney General could not give an Official Opinion to the Head of a Department unless it applied to a matter concerning that Department and upon a subject before it.[10]

Responding to an improper inquiry from the Treasury Department, Acting Attorney General Keyes observed that at an early period in the United States government, a rule had been adopted promulgating that the Attorney General would not be allowed to "carry the influence of his office beyond the circle which the law had drawn around him...." He added that as the Attorney General of the Confederate States he agreed, and held the rule to be correct and obligatory upon him as well.[11]

Attorney General Bragg suggested that it would be appropriate, in fact, for Congress to establish the effect of an Attorney General's opinion when it was given according to legal requirement. There was no such enactment in the U.S. Federal government, and Bragg believed that, inevitably, the effect of an Attorney General's opinion would be tested in the fractious environment of the Confederate administration. His concerns proved prescient when the Secretary of War, having asked for advice on a point involving the implementation of the Conscription Act,

received an opinion which ran contrary to the policies of the War Department. The Secretary of War appealed the decision to the President. The President, failing to discover any problem with the Attorney General's ruling replied to the Secretary:

> The opinion of the law officer of the Government, although it cannot bind the conscience of the head of a Department, nor therefore entirely relieve him from responsibility, may well be relied upon to solve a doubt, and in questionable cases to sanction official action. Comity between the different Departments indicates the propriety of accepting an opinion on a question of law that has been given by the Attorney General in response to the request of a member of the Cabinet.[12]

Davis's own service in the Pierce administration had conditioned him to believe that cabinet members must be responsible for their actions. President Pierce's Attorney General, Caleb Cushing, had conceded that heads of executive departments, in the course of the administration of their offices, were required to exercise judgement and discretion in construing the acts of Congress under which they were required to act. But, Cushing elaborated, their duties were not simply ministerial. When there were doubts about implementation guidelines or limits, it was the Secretary's right to call upon the Attorney General for counsel. The Supreme Court, Cushing maintained, would not entertain an

appeal from a Secretary's decision, nor revise his judgement in any case where the law authorized him to exercise discretion or judgement. It could not by mandamus act directly upon the Secretary, guiding his judgment or discretion in the matter committed to his care in the ordinary discharge of his official duties. Such interference, Cushing concluded, would involve a confusion of constitutional powers and produce little but mischief in the business of Government.[13]

President Davis and his Confederate Attorneys General largely subscribed to Cushing's interpretation. They believed that, although the president and every department head, must necessarily construe the acts of Congress by implementing them, the officers were not authorized to nullify them on the grounds of unconstitutionality. It was the duty of the Chief Executive to "take care that the laws be faithfully executed." The President would be bound to execute even an act of Congress that he had previously vetoed on constitutional grounds until that act was declared unconstitutional by the Judiciary. Whether executive officers could avoid the implementation of a law determined by the Attorney General to be unconstitutional had never been determined. However, it was agreed that it was correct and proper for the Attorney General to instruct district

attorneys, to direct appeals, and to argue his constitutional objections to an act of Congress before the Supreme Court.

Once the Attorney General's decision domain was established, one of his most critical functions became the clarification and delineation of the relations of executive department heads to the Treasury Department Auditor's and Comptroller's offices. The reporting relationships, auditing requirements, scheduling, deposit and expenditure documentation, and numerous other procedures which were to be required of individual departments by Treasury, were constant sources of conflict among administrative departments. Often, the extent, character, and scope of the relationships between the Treasury Department and other agencies had to be determined at the Confederate Justice Department.

The ongoing feuding which characterized relations between Cabinet Secretaries (particularly that between civilian administrative operations and military administrations), demanded the talents of a great umpire to keep the disputes from disrupting the orderly routines of administration. Unfortunately, for the Confederate government, Jefferson Davis was not the wise and stable arbiter the situation required. The Confederacy needed a

forceful director who was capable of visualizing broad perspectives and who would compel the administrative combatants to conform to the larger plan of administration, and to assume their proper place and role in the entire scheme of governance. To ensure the success of the overall effort, the influence of one Department Head would have to be reduced at certain times, increased at others. Such balancing would have required a leader of unlimited tact, sufficient courage, and strength of character to ignore the complaints of shortsighted critics. It was simply not in Davis's nature to perform in this manner. His inherent weakness as Commander-in-Chief was his inability to intervene forcefully, with considered judgement, in the Confederacy's military affairs. The same weaknesses extended into his efforts to influence the civil administration as well.

President Davis lacked finesse in the personal aspects of administration. He was abnormally sensitive and often viewed legitimate opposition as a personal affront. Davis too often failed to inform his opponents in Congress of the necessity and the reasons for his actions, and in defending his Secretaries and their policies, was often more caustic than the situation demanded. His combative style, sarcastic rejoinders and occasional bitterness soon began to have

ramifications for the Executive Branch. A resentful Congress began laying blame for all Confederate ills at the door of the administration.

Initially at least, the Confederate Congress had been relatively happy with the Cabinet Officers Davis selected. They had, in fact, been instrumental in many of the nominations. At that point in Confederate history, Cabinet Officers were approved by the unicameral Congress, under the Provisional government, and all were approved unanimously. Dissatisfaction arose as the war progressed, however, and congressional opposition to the Davis administration's policies and personnel grew quickly after the Secretaries had taken office. Turnover among Cabinet officials became rampant as bitter Congressional attacks were directed at individual secretaries. "Failure to attain the ideal was sufficient cause for many legislators to condemn a secretary as incompetent. Legislators did not trouble to discover fundamental causes of a failure."[14] Even when investigations proved that circumstances beyond an official's control were responsible for failures, the vindictive opponent rarely abated his condemnation. The most destructive criticism was directed at individual secretaries the Congress hoped to goad into resignation. Other vicious attacks against Cabinet secretaries were, in fact, attempts to undermine the

President through his appointees.

At least three turnovers in Executive Agency Secretariats were the direct result of congressional maneuvering: Secretary Memminger's departure from the Treasury Department, and both Benjamin's and Seddon's resignations from the Department of War. In all three cases, the changes occurred over the objections of the President who fully supported the three Secretaries.

Relations between the Confederate Congress, the President, and his administration were plagued with intrigue and conflict throughout the nation's existence. As time passed and social conditions worsened, and as there was little military success, the relationship became more, rather than less, contentious. In the following section, some of the intricacies which led to the problems between the Executive and Legislative branches are presented.

The Administration, The President, and the Congress

Throughout this work, the Confederate Congress has been described as a better legislative body than its historical critics have made it out to be. Adapting quickly to the challenge of establishing a new nation while coping with the exigencies of war, it showed creativity and boldness of imagination as it faced unprecedented problems and wrestled

with monumental tragedy. As historian Merton Coulter explained, the Confederate Congress passed a system of conscription with exemptions for industrial reasons (a much more logical and just system than the subsequent U.S. version), set up a tax-in-kind (an unheard of experiment in American history), and provided for the impressment of farm products for the army at fixed prices.

Under the very stressful circumstances of the time, it seems only reasonable that the Confederate Congress should want all the information it could possibly get relative to military operations. Legislative requests for more and more detailed information were quite frequent; however, the Confederate Congress never harassed the Executive or the Army's Commanders to the extent that the United States Congress did through its Committee on the Conduct of the War.[15]

As a representative body, however, the Confederate Congress was a great disappointment to the Southern people. It simply did not maintain the standards of statesmanship the public expected. Civil leaders never received the popular acclaim that accrued to military leaders, so the military drew much talent to the battlefield that should have found an outlet in public service. It soon became customary to give the soldier more kudos than the civilian,

and holding Congress and Congressmen in contempt became the fashion.

Unfortunately, Congressmen themselves often confirmed the public's doubts and so perpetuated negative opinions. Often, Congress members engaged in petty personal (as distinct from political) rivalries, viciously berating each other on the floor of Congress, in the press, and at public appearances. Visceral personal attacks were commonplace and geographical parochialism was rampant. As the Confederacy's tragic drama played out, Congressmen increasingly turned on the administration and its officials in a disingenuous search for scapegoats for the disasters Southern society was experiencing.

Relations between President Davis and the Congress tended to vary with the stresses of the times. However, despite bitter congressional critics, Davis dominated Congress throughout most of the war (although near its end, he almost completely lost that control). The President exercised thirty-nine vetoes, all but one upheld. Davis had a number of staunch supporters in Congress and an additional number of fairly predictable allies he could rely upon for support on specific policy issues. He had strong and powerful enemies, however, including his Vice-President. The disruptive influence of this group of detractors on the

relations of the Congress to the Executive, and its ultimate effect on the administration of the Confederacy cannot be underestimated.

The design of the Confederate Constitution was intended to fundamentally alter the relationship between the Congress and the Executive Branch. The President's line item veto and the Cabinet-in-Congress provisions are illustrative of changes Confederate leaders desired in the relationship between the Administration and Congress. Altering these relationships, they believed, would foster a more open, incorporative public discourse which would permit Congress to develop responsible policies reflective of the public interest. Constitutional prohibitions against legislation for internal improvements, protective tariffs, and blanket appropriations of special taxes were intended to strictly delimit Congressional policy prerogatives and to protect the sovereignty of states to act on these issues in a decentralized manner. The Constitutional exclusion of the general welfare provision, similarly, was to leave decisions about general welfare policy to the discretion of the states. Predictably, these adaptations in the power relationships between the Executive and the Legislative, especially under the stressful circumstances facing the Confederacy, had serious consequences.

The Confederate Congress was Constitutionally restricted to a range of national issues, defined by the Confederate conception of state sovereignty. Legislative initiative was mitigated by an administratively and fiscally empowered Executive who enjoyed considerable public support. In a society fighting for its very existence, however, the pressure of public demands on its national legislature were tremendous. As circumstances in the Confederacy deteriorated, the Congress became frustrated and defensive. The public demanded action and accountability for the military, social and economic disaster that was destroying Southern life. In its frustration, the Confederate Congress behaved badly and performed poorly.

Congressional outbursts against President Davis, and especially against his Cabinet Secretaries, were vicious, frequent and intense. Congress passed legislation that was blatantly unconstitutional (bills relating to public officials or functions that did not exist) and amending laws which had never been passed.[16] It refused to pass other measures which might have greatly facilitated Congressional activity had they been adopted. Two measures in particular, the Cabinet-in-Congress provision, and the authorization of the Confederate Supreme Court, would have completely changed the operating context of the Confederate government.

Neither measure was adopted during the life of the Confederacy, however, and the ramifications of the Confederate Congress's failure to do so were critical to Executive-Congressional relations and to the overall functioning of the administrative system.

The Confederate Constitutional provision which stated that "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 measures appertaining to his department,"[17] was, in fact, a compromise provision. Fearful that Congress would resist implementing the provision, influential members of the Constitutional drafting committee unsuccessfully attempted to include a more binding provision that required the President to look to the Congress for his Secretarial appointees. Although the amendment, as adopted, failed to completely satisfy the committee, it was designed to have constructive effects. It was to have given Congress a closer check on the Executive, kept Congress better informed as to administrative policy, and would have placed more direct responsibility upon department heads. Collaboration, cooperation, and coordination between the branches on the level envisioned by the Constitutional drafters could have greatly facilitated policy decision making and analysis for

both branches. However, as noted earlier, Congress could never agree to pass the necessary enabling legislation.

Similarly, Congressional efforts to establish the Confederate Supreme Court were frustrated, setting up a series of important relational challenges for the Confederate administration. There were serious issues with important ramifications for the nation's administrative system, and for the nation as a whole, to which a Supreme Court could have attended: settling questions regarding direct taxation, conscription law, impressment law, and the more general assertion of the supremacy of Confederate law over that of the states.

The Confederate Judicial Branch

During the life of the Confederacy, the only operational Confederate federal courts were the district courts. In an effort to make its justice system more streamlined and efficient, the Confederate Constitution opted to provide only for the district courts (initially one district per state) and the Confederate Supreme Court.[18] The Provisional Confederate Constitution had provided that all of the district court judges, assembled as a body, would constitute the Supreme Court. The Supreme Court was never assembled under the Provisional Constitution, however.

Under the Permanent Constitution, Congress was required to establish the Supreme Court, organized on the U.S. Constitutional design. The first bill to organize the Confederate Supreme Court was introduced in April, 1862, during the First Congress of the Permanent Confederate government. Although the Confederate Congress wrangled, argued, and negotiated legislation to do so throughout its existence, the Confederacy collapsed without its ever passing enabling legislation.

Primarily, the disputes concerning the Supreme Court centered upon the clause in the Confederate Judiciary Act of March 16, 1861, which would have granted the Supreme Court appellate jurisdiction in cases arising in state courts. In the minds of those who had fought so hard for secession and state sovereignty, to allow appellate jurisdiction would be to degrade state courts and compromise states' rights. The centralization of national power which had occurred in the U.S. court under Justice Marshall had, in large part, created the conditions which led to secession. Therefore, Southern legislators were wary of establishing any institution that threatened their new order. Closely associated with the concern about the appellate jurisdiction issue were Congressional suspicions about President Davis's intentions in appointing justices. Davis critics warned of

a court packed with the President's sympathizers resulting in a judiciary which would be controlled by the Executive.

Predictably, without the establishment of a Supreme Court to make national-level decisions, confusion as to the meaning of Confederate legislation was widespread. The confusion, not surprisingly, resulted in interpretations, and therefore, implementations, which varied by state. There were numerous instances of state supreme courts declaring Confederate laws void within their states. The Opinions of Confederate Attorney General Watts are particularly illustrative. Watts opined that the "laws of the several states, as State laws, cannot be legally and constitutionally enforced by either the Civil or Military Courts of the Confederate States." He continued, "... the jurisdictions are separate and distinct..." and when Confederate and State jurisdictions are muddled, the latter determines which has jurisdiction.[19]

According to Watts' Opinion, it was the State Court's proceedings that would determine whether or not the Confederate Government was exercising its powers within its legitimate sphere of action. The State Court or Judge, he held, had the clear right to inquire in this mode of proceeding. Watts opinion was supported by Attorney General Davis in 1864.

In a case familiar to Confederate Constitutional scholars, the Confederate Congress had authorized the Surgeon General to establish alcohol distilleries across the South. The alcohol produced was to be used for medicinal purposes (disinfection of wounds, not for consumption) and was said to be critical to the military. When the Confederate Surgeon General attempted to establish a distillery in Virginia, he ran directly afoul of Virginia State law that prohibited distilleries.[20] After numerous attempts to negotiate the stalemate were unsuccessful, the War Department appealed to the Attorney General. The Attorney General deferred to the state, observing

> In regard to the course to be pursued by the Government, upon which I am requested to advise you, as a conflict of force with the Authorities of a State ought only to be resorted to in case of extreme emergency, if ever; there is but one remedy left, and that is to defend the suits in the Court below, and if necessary take them by appeal to the highest tribunal in the State. I have every confidence that they will be adjudicated by that tribunal with due regard to the constitutional rights f the Confederate States, as well as to those of the State of Virginia.
>
> As the Surgeon-General intimates that delay may be injurious, and as the Legislature of Virginia is soon to assemble I respectfully suggest that the matter be laid before the Governor, with a request that he will call it to the attention of the Legislature, and thus give them an occasion, of which I doubt

> not they will readily avail themselves, so to modify their legislators as not to interfere with the exercise of the just powers of the Confederate States.[21]

The Confederacy was extremely fortunate, however, in that its military authority was not reversed in any state by a decision of a state supreme court.[22]

From 1862 until the Confederacy fell, every Congress considered bills to establish the Supreme Court. Never did any bill pass both houses of Congress. With each attempt, debate raged and eventually stalled on the issue of appellate jurisdiction. In 1863, Attorney General Watts, disappointed at continuing congressional recalcitrance, wrote to President Davis expressing his frustration. He said:

> When the framers of our constitution divided all the delegated powers into the three great departments, Legislative, Executive and Judicial, they never contemplated the system fully organized until each of these departments should be provided with a head. The Constitution has now been in operation nearly one year, and yet no Supreme Court has been established. The many conflicting decisions, under the confiscation, conscription, and other laws, from which appeals have been taken, show, but too plainly, the necessity for prompt action on the part

> of Congress. Uniformity in the construction of statutes, the preservation of constitutional landmarks, and justice to the property and person of the citizen, all call for the establishment of the Supreme Court, the head of the Judicial Department of the Government.[23]

Two of the most persistent Congressional advocates for the establishment of the Supreme Court, Benjamin Hill from Georgia and Thomas Jenkins Semmes from Louisiana, based their support on the admonitions of cabinet secretaries. Hill used the reports of cabinet officials as his text as he spoke when introducing a Senate Bill to organize the court in 1863. He quoted the Attorney General and the Secretary of the Treasury, in particular, attempting to impress upon the other Senators the importance of the immediate organization of the court. Hill argued on behalf of the secretaries that serious administrative problems were developing which needed resolution that only the highest court could provide. Semmes, speaking in support of the same measure, argued that important questions arising from the fiscal operations of the Government established the necessity for the immediate organization of the court.[24]

Over time most of the Cabinet secretaries had complained that the congressional failure to organize the court had compromised the operations of their departments.

One example, written by Treasury Secretary Memminger in mid-1862, is illustrative of the general complaints the secretaries issued. He wrote to the Speaker of the House:

> The collection of the war tax has presented several difficulties that Congress should have in view whenever a further tax shall be levied.... It is also proper to state that *by a judgment of the district judge in South Carolina money invested in State bonds has been excepted from the war tax. An appeal has been ordered from this judgment, but as no supreme court has yet been organized, the effect of this judgment will be to release from future tax all moneys invested in this form in South Carolina, or in any other state wherein the district judge may hold the same opinion*[25] (Emphasis added).

Decisions of the state courts adverse to the Confederate government were considered mildly embarrassing, but these instances were often simply disregarded or subject to later reversal. Confederate officials never considered an unfavorable opinion by one state court as precedent which should direct them in their course in another state. If directed to do so, federal officials obeyed the command of a court within a specific state. Article I, Section 2 of the Confederate Constitution, which allowed state legislatures to bar federal officials from their state, ensured this. In other states, where there had been no state court action, federal officials continued to interpret the laws as they

deemed appropriate.

Had a Confederate Supreme Court been established, it is entirely possible that its decisions might have run counter to administration policy more often than did the occasional adverse decisions of the state courts. In the absence of a court of last resort, the Attorneys General of the Confederacy often passed judgment on the constitutionality of laws, with their decisions accepted as final by the administration. Every Attorney General of the Confederacy regarded the establishment of a Supreme Court as an urgent priority.

Attorney General Thomas Watts was deeply troubled by congressional failure to establish the court. He complained that Congress was not carrying out the intent of the Constitution and he argued for rigid interpretation. "A strict construction," he declared, "is not only demanded by the nature of our federal system logically considered, but it is enforced by the dear bought experience of the past, and by every consideration of the future welfare and greatness of the Confederate States."[26] Watts held that the intent of the Constitution was clear, and that in the absence of such a court, a litigant had the right to have any decision of a District Court stayed until a Supreme Court was established, at which time the case could be

brought before it for review.

Matters coming before the Confederate Attorneys General were wide ranging, and the sources and diversity of the issues are what one could expect in a nation struggling for its very existence. Of the total number of entries in the Opinions Book of the Confederate Attorneys General, 35 per cent were addressed to the Secretary of War; 27 per cent to the Secretary of the Treasury; 17 per cent to the President; 12 per cent to the Secretary of the Navy; 4 per cent to the Postmaster General; 2 per cent to the Secretary of State, and 2 percent to the Bureau Chiefs of the Department of Justice and to judges.

Questions concerning conscription, impressments, the manufacture of whiskey for the supply of the army in states where distillation of grains was prohibited, the powers of commercial agents, and the irritatingly vague line between State and federal authority were settled by the Attorneys General.[27] The Attorneys General construed contracts, employees' classification systems, sanctioned compensation plans for all departments except the State Department, and determined that the Treasury Department had no authority to investigate claims approved by the War Department for payment. Opinions were given to the Treasury Department touching customs, specific taxes, the income tax, taxes-in-

kind, the liability of State securities to federal taxation, the issuance of bonds and currency, and numerous other questions related to the fiscal policy of the government.

Working in the absence of an established Supreme Court, the Attorney General, as the head of the Confederate Department of Justice, unquestionably served his government in a manner unprecedented in the history of American governance. As mediator and arbiter between executive agencies, as advisor to the president, as interpreter of the intricacies of Confederate federalism, and as administrator of the first department of Justice established in the United States, the Confederate Attorney General assumed a prominence and centrality his counterpart in the United States government would not assume for another fifty years.

Beginning in 1861, the United States Congress began a series of additions to the duties and responsibilities of the Office of Attorney General, but it was not until 1870 that the United States government established its Department of Justice. However, as Confederate judicial scholar William Robinson observed, "fifty years of amendments were required before it reached a status comparable to that of its Confederate predecessor."[28]

Confederate Administration and Intergovernmental Relations

In the absence of a Supreme Court the Confederacy's

brand of federalism exacerbated the level of legislative-executive conflict. Administration policies, with their related constitutional questions that caused friction between the state and Confederate governments, tipped the balance of power in Davis's favor. Congress never developed the organization or leadership to effectively challenge Executive prerogatives or formulate government policies on its own. Instead, it reacted with impatience toward Davis and his administration as hopes for an easy war victory began to vanish.

More clearly than many of his congressional critics, the President could see the Confederacy's larger strategic and political picture. Davis was more cosmopolitan and more nationalistic than congressional politicians who prattled irresponsibly about states' rights and individual liberty. For its President, service to the Confederacy meant looking past neighborhood, county or even the priorities of individual states. Unfortunately, on far too many occasions Southern parochialisms prevailed forcing him intermittently. to spread limited resources too thin.

On the other hand, Davis was, frequently, insensitive to the demands of local (state) defense needs and to the political problems of the state governors. As the war intensified, so did dissatisfaction with Confederate

government policies. This undercurrent of dissatisfaction led to disruptions in state political systems all over the Confederacy.

The politics of national unity that prevailed at the beginning of the war began to lose ground to the politics of individual liberty, especially in North Carolina and Georgia. Nationalists emphasized political and social unity and the virtues of the Confederate system and its leaders. Libertarians began to worry about the dangers of concentrated power; they distrusted the Confederate leaders, and claimed to be purer epublicans than their more pragmatic opponents. As Georgia Governor Joe Brown, North Carolina Governor Zebulon Vance, and other state politicians across the south took up the libertarian cause, a disruptive alternative political perspective began to emerge across the South.[29] It was an emergence with ominous implications for the Confederate administration.

The people of the Confederate States had divided their public authority between two distinct governments, state and national. The governments were made distinct not just by territorial lines but by the classes of functions each was to perform. The functions of the federal government were to be the same in every state, but the functions of the State governments differed from state to

state according to the mandates received from its people. Within their separate spheres of operation, the governments were independent. The success of the dual system depended on the cooperation and mutual respect of both State and Federal governments. In the Confederacy's earliest days, relations between the individual state governments and the central government reflected this cooperative dualism. However, as one Confederate observer mused, the relationship would be difficult to maintain even under the best circumstances. He wrote,

> How long shall the doctrine of state rights, so confident of its approved strength, be able to suppress its disorganizing instincts? The answer is patent: until a day or an hour furnish a provocation or a temptation.[30]

Historians of the Confederacy have traditionally focused upon the "disorganizing interests" of states' rights, spotlighting recalcitrance among governors and other state politicians. While clearly there were obstructionist tendencies among these state entities, it is important to recognize that the Confederate Congress and members of the Confederate federal administration were as thoroughly imbued with states' rights doctrine as were local leaders. Ironically, however, it would be the Confederate Congress which first provoked the states by passing legislation that

required implementation at the state level.[31] The legislation creating the Confederate army, along with subsequent acts altering enlistment practices and later, conscription, sparked the beginnings of a series of controversies which would not be resolved during the life of the Confederacy.

Although states were consistently supportive of Confederate fiscal policies throughout the war, the exigencies of the military crisis quickly eroded the relationship. Presidential actions such as suspensions of the writ of habeas corpus and the use of martial law to enforce conscription and control desertion, combined with legislative actions on impressment and civilian manufacturing production, evoked crises between Confederate federal government and States' authority. The failure of the Confederate Congress to establish a Supreme Court together with the Constitutional provision allowing individual states legislatures to impeach federal officials acting within their borders, further exacerbated the problems.

Most of the Southern governors were either ambivalent or patently opposed to Davis's 1862 conscription policy. Most Southerners believed the law was unnecessary, unconstitutional, arbitrary, and subversive to the doctrine

of states' rights. Led by Governor Brown of Georgia, southern governors complained bitterly that constitutional liberty had been stricken by the conscription act. Although no state supreme court or Confederate district court declared conscription unconstitutional, a Georgia Superior Court judge did declare the law unconstitutional and ordered the arrest of a federal enrolling officer.

Several aspects of the conscription policy generated conflict between Confederate and state authorities. One of the most disruptive issues was the scope of state authority over exemptions from service. The Confederate Congress clarified and extended exemption laws from time to time throughout the life of the Confederacy, but never to the complete satisfaction of the states. The Florida Attorney General, for example, ruled that those individuals who held state offices created by state constitutions or those persons whose duties resulted from functions outlined in the state constitutions would be exempted. Mississippi officials, on the other hand, urged that conscription include every able-bodied man in the Confederacy. A resolution passed by the North Carolina legislature opposed the Confederate "Twenty-Negro" provision which released from conscription, one slave owner or overseer for every twenty slaves on farms or plantations. In 1863 the Confederacy did

add to its lists of exemptions all officers whom state governors considered essential to the administration of state and local government; however, the most serious opposition to conscription came after the passage of the 1864 act which drafted men ages 17-50. State laws proliferated which exempted even minor state officials from conscription. In Texas, the legislature took the position that no officer of a sovereign state could be placed in military service of the Confederacy without his consent. Both the North Carolina and Virginia general assemblies passed similar measures.

Lacking a Supreme Court to arbitrate these disputes, and with federal enrollment officials within the various states constitutionally required to submit to local sensibilities, the Confederate administration grew desperate. Recognizing that conscription could be enforced and desertion controlled by the suspension of the writ of habeas corpus and the use of martial law, the administration argued this mechanism was the most effective means for insuring maximum effectiveness of conscription practices. Congress conceded, allowing Davis to try the device by granting him the power to suspend the right to the writ of habeas corpus from February 27 to October 13, 1862: from October 13, 1862 to February 13, 1863; and from February 15,

to August 1, 1864.

Davis's exercise of the power was never extensive; however, the policy generated one of the most important crises between Confederate and State authority. All over the Confederacy state legislatures joined with their governors in obstructing Confederate policies. In most states, legislation approximated nullification of the Confederate acts authorizing suspension of the writ. A North Carolina law instructed sheriffs to take into their custody any person unlawfully detained by Confederate authorities. In Georgia, laws penalized judges and justices who refused to honor writs with $2500 fines.

A second series of critical conflicts between state and Confederate officials concerned meeting the subsistence needs of Confederate armies. In attempting to meet these needs, the Confederacy resorted to impressment early in the war. Initial objections to the policy raised by state legislatures and their governors centered more upon operational inequities than upon impressment policy per se. Most states viewed the policy as something of a necessary evil, given the urgency of the circumstances. However, in response to state complaints and pressure, in 1862, the War Department warned its officers against seizing property belonging to the states. The secretary of war announced

that

> Necessity alone can warrant the impressment of private property for public use; and wherever the requisite supplies can be obtained by the consent of the owners at fair rates, and without hazardous delay, the military authorities will abstain from the harsh proceeding of impressment.[32]

Charges of abuses of the impressment policy, however, soon led to state government action. The North Carolina and Virginia legislatures acted to make impressment more equitable throughout their states. The Confederate Congress, responding to the complaints, attempted to improve impressment practices in the interest of the public. Legislation was passed allowing goods to be appraised, and values established by disinterested local parties when conflicts arose over prices of impressed commodities. It exempted property necessary for the support of families and the conduct of agricultural business. The impressment law of 1863 set up commissions to determine just prices, leading to a reevaluation of established price schedules. The reforms did little to ameliorate the harshness of the effects of impressment, however, and public complaints increased after their adoption. Laws in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina and Texas

set up penalties for fraudulent seizures.

To be completely fair, Confederate impressment agents' behavior in implementing the policy unquestionably left much to be desired. Their actions in enforcing the Confederate law were often harsh and drastic. The utterly ruthless behavior of some local impressment officials led the Georgia general assembly to request that the Secretary of War revoke the appointments of those impressment officers eligible for conscription, and to replace them with local impressment officials exempt from military service.[33]

Requests of this type, issued from a state legislature or by individual state governors directly to administrative department heads, became increasingly common as the war dragged on. Davis's control of the Confederate Congress and his general dismissiveness toward the state governors left state officials feeling they had few alternatives but to appeal to department heads directly. Governor Brown of Georgia and Zebulon Vance of North Carolina, two of Davis's particular nemeses, worked constantly with individual administration officials to advance state causes or to influence administration policy. Both wartime governors of Texas, Edward Clark and Francis Lubbock, communicated extensively with Postmaster General Reagan. Correspondence from the Texas officials indicates that they asked Reagan to

represent the state in questions involving the Confederacy and that they felt they could accomplish much more through him than by attempting to operate through traditional channels.[34]

Davis seemed to realize the importance of using the states and their governors to implement Confederate policies. Apparently, however, he never understood the greater advantage he might have gained by using them to help determine Confederate policy. Had he devised an advisory council or auxiliary cabinet of state governors, he might have avoided some of the vicious quarrelling and animus that sapped the Confederacy's morale. Occasionally, Davis sent duplicate letters to the state governors requesting their help in enforcing conscription, collecting provisions or curbing extortion. Seemingly, he did not appreciate the difference individualized communications could have made in garnering the state governors' assistance. The only governors' conference held during the war was not called by President Davis, but rather by a group of disgruntled governors who were unlikely to have been gathering in support of the administration. Davis was keenly aware of the support the states might have provided the Confederate cause.[35] Late in the war he complained that the Confederacy's

> difficulties have been materially increased by the persistent interference by some of the State Authorities, Legislative, Executive, and Judicial, hindering action of this Government, obstructing the execution of its laws, denouncing its necessary policy, impairing its hold upon the confidence of the people, and dealing with it rather as if it were the public enemy than the Government which they themselves established...[36]

These disorganizing tendencies, while certainly prevalent and problematic among the Southern states, do not negate the fact that the Confederacy could never have existed for as long as it did without at least a minimum of support from the state governors and legislatures. These state bodies reliably supported the Confederate effort by providing manpower, supplies, and by subscribing to Confederate financial policies.

Tensions, quarrels and divisiveness notwithstanding, in no area of federal-state relations was there more dual cooperation than in the area of Confederate finance. This successful relationship was largely attributable to the respect the general public held toward the Confederate Treasury Department. Secretary Memminger's management style had been an early positive influence on the developing administration. His priorities of promptness, economy, efficiency and accountability made him a favorite among the

public. Perceived as something of a management curmudgeon by his employees (for example, he prohibited employees from drinking ice water during office hours--as ice was not a luxury available to the general public), his constant attention to the public's perception of the agency and its actions won the Department widespread respect.

Unlike the resistance and reactionism engendered by conscription and impressment policies, Confederate financial policies generated support and a sense of patriotism. States encouraged the sale of Confederate bonds and worked to promote the public's faith in Confederate Treasury notes. State legislatures continued suspension of specie payments by chartered banks on condition that they receive Confederate notes for debts due them.[37]

Some of the most important illustrations of the responsive, public interest style of government the Confederacy had aspired to, were produced by its Treasury Department. The general perception among the states and the Confederate Treasury Department of a collaborative working relationship helped facilitate the novel policy implementation approaches the department conducted over the course of the war. For example, to implement the 1861 Produce Loan Act and to collect the 1863 Tax-In-Kind, Treasury Department officials worked diligently to develop

policies and implementation strategies the public could respect and support. The Produce Loan Act provided ordinary, average, Southern Citizens an opportunity to support their government. Allowing agrarian citizens the opportunity to purchase bonds with a commodity readily at hand, their agricultural produce, instead of with hard currency which was simply not available to average citizens, more citizens had an opportunity to feel the pride and patriotism of having assisted their country. In providing this mechanism for broad-based participation, the Confederacy hoped to supply its military while engaging the widest possible public support.[38]

The Produce Loan Office was established within the Treasury Department and in 1861-62 Secretary Memminger appointed general agents in the states to direct the work of collecting the subscribed products and recording new subscriptions. To ensure maximum accountability and to establish a structure that could incorporate local conventions and values, these state general agents appointed numerous local subagents to supervise transactions at the community level.

One particularly effective mechanism used to ensure clear communication and effective implementation of the Produce Loan, Tax-In-Kind and numerous other policies was

the extensive use of the "Broadside" to distribute public information. The Treasury Department (and the Confederate Post Office) was especially prolific in the production of these one-page, poster-like announcements, prepared to ensure public awareness and information dissemination. Changes in rules, regulations, procedural adaptations, deadline adjustments, personnel issues and myriad other items of information were meticulously documented in Broadsides to be distributed as widely as possible to agency employees and the general public. These sources of credible, accurate, reliable information were of inestimable assistance in ensuring that federal employees, as well as the public, were consistently apprised of policy implementation requirements. By making the information readily available to agents and to the public, Confederate officials were considered trustworthy, open, and reliable; and the public felt empowered, educated, informed and an integral part of the policy implementation process.

In a similar effort to make the collection of the Tax-In-Kind as broadly acceptable as possible, the Treasury Department established an elaborate system of state tax divisions. These state tax divisions were subsequently divided into local collection districts. Under each chief collector, local assessors were appointed, again in the

interest of accountability and maximum compatibility with local public sensibilities. Assessors were to determine the quantity of products produced by each farmer, and from this estimate, the quantity of goods to be deposited with the government. In the event of a disputed estimate, farmers were allowed to select a citizen of their choice from the area to help resolve the dispute. If this process were unsuccessful, a third local resident would also be consulted to help conclude the negotiations. For small farmers who had never before paid a tax of any kind, this community review system lent credibility to an otherwise threatening process.

Of course, the implementation of The Tax-In-Kind was undeniably uneven, due in large part to military circumstances. As the war progressed, and circumstances worsened, the Confederate tax structure became increasingly complicated and thus harder to administer. However, in attempting implementation strategies that provided for a modicum of public influence and control, the Confederate Treasury department won great respect and widespread support throughout a beleaguered nation. Despite the onerous and sometimes desperate nature of its work, more often than not, the officials administering the policies were held in esteem by the public.

Conclusion

Public Administration scholar Charles Goodsell has observed that the most telling observation possible about a public administrative system is whether it is a faithful product of the democratic political system that produced it.[39] A public administration system, he noted, does not come to its nation from Heaven or Hell, an alien ideology, or solely from the writings of political or administrative theorists. It evolves from the processes of each nation's own unique history and political life. Goodsell went on to explain that when a nation's public administrative agencies are created by elected officials and legislative bodies, they do so representing the consensus of public opinion. The administrative personnel are employed by procedures sanctioned by those legislative bodies. The activities it undertakes are consequences of the efforts of politicians, advocates and activist citizens. Hence, its policies reflect the multiple, often inconsistent values present in the political system. Its methods mirror the varied ways power is exercised in the society and like democracy, the bureaucracy will exhibit the same flaws and foibles. Yet because the bureaucracy is **of** the democracy and hence, of

the nation itself, it is, in fact, a highly legitimate institution. It is a faithful product of the democratic political system.[40]

The Confederate Public Administrative system was just such a faithful product of the democratic political system from which it developed. Unquestionably, as the Confederacy staggered toward its end in 1865, there were administrative wrangles, implementation breakdowns and fundamental defects of character among particular individuals that compromised its effective operation and precluded much that might have been accomplished. As the Confederacy ended, the generalized societal, economic, and political breakdown which accompanied the military defeats made administration of many programs and initiatives impossible. Even as the government in Richmond faced invasion from a hostile force and prepared to evacuate its capital, the public administrative staff remained hard at work. The diaries and papers of Cabinet Secretaries, employees, and average citizens observe, with palpable pride, that even as the Confederacy collapsed, their public administrators remained on the job. Administrators carefully prepared for the transfer of documents and records to maintain the Confederacy's administration as it fled south. As importantly, they took great care to preserve the records of

the Confederate administration's accomplishments for posterity. Even imminent military invasion could not persuade those administrators to abandon their commitment to continuity, order, accountability and responsibility to their public.

Goodsell's observations about the legitimacy of U.S. public administration seem important and relevant to the administration of the Confederate States of America. Bureaucracies act as a force helping to provide logical policy initiatives. Public purposes are refined and connectedness and reasonableness are pursued as disagreements between competing interests are institutionalized in public bureaucracies. In the competition that then ensues, issues are clarified, alternatives are defined and arguments and counter-arguments are refined. The Confederate federal bureaucracy, in fact, can be credited with an exemplary job of structuring disagreement among its rival agencies, hierarchical levels, subject-matter specialties, professions, and levels of federalism.[41]

It seems that the most telling observation possible about Confederate public administration was that it was that faithful product of its democratic political system that Goodsell described. It was generated from the processes of

our own unique history and political life. The Confederacy was grounded in the most fundamental American political philosophies and perspectives. The Confederacy's agencies were created, its personnel employed, and its activities undertaken as a consequence of the actions of politicians who were democratically elected. Its Executive was intentionally shielded from the pressures of partisanship to ensure that policy decisions could be made in the widest public interest, not under pressure from momentary swings in public opinion. Its policies reflected the multiple and inconsistent values of its political system and the horrible exigencies of war. So democratic was the Confederate administration that it never challenged the institution of slavery, understanding it as a fundamental regime value to the citizens of the Confederacy. The Confederate government's methods were intended to reflect its most important values, state sovereignty and safeguarding the public interest. As Goodsell said of American democracy and its bureaucracy, the Confederate democracy and its administration had warts--in fact, many of the same ones the affect the U.S. version. Yet, in being of American democracy and of the southern nation itself, the Confederate administration, as a central framework for lawful authority in that society served a critical legitimation and

stabilization function during a period of profound societal crisis.

NOTES: CHAPTER FIVE

1.Woodrow Wilson, "The Study of Administration," Political Science Quarterly, 2 (June, 1887). Emphasis in original.

2.Leonard D. White, The Jacksonians, pp. 67-85.

3.Searches of Davis's papers, collections of the Official Papers of the Confederacy, and Treasury Secretary Memminger's papers did not reveal what, if any, actions Davis might have taken on individual department appropriations requests.

4. The six initial Secretaries were selected such that each of the original six states of the Confederacy were represented in the Cabinet.

5.D W. Patrick, Jefferson Davis and his Cabinet (Baton Rouge, LA: Louisiana State University Press, 1944), p. 53

6.Patrick, Davis and his Cabinet, p. 32.

7.Patrick, Davis and his Cabinet, p. 63.

8.Reagan could only fill approximately 1/8th of the available routes in 1863.

9.An important holding that would be tested repeatedly throughout the Confederacy's existence.

10.Attorney General Keyes to William M. Brown, Assistant Secretary of State, September 24, 1861. Cited in Robinson, Justice in Grey, p. 515.

11.Robinson, Justice in Grey, p. 515.

12.Jefferson Davis to Secretary of War George Randolph, August 9, 1862, cited in Robinson, Justice in Grey, p. 518.

13.Robinson, Justice in Grey, p. 518.

14.Patrick, Davis and his Cabinet, p. 65.

15.Coulter, The Confederate States, pp. 144--145.

16.Coulter, The Confederate States, p. 147.

17.Confederate Journal I, 853.

18.In consolidating the original jurisdiction of the district and circuit courts, the C.S.A. anticipated by fifty years, similar action by the U.S. (36 U.S. Statutes at Large 1087,1167) cited in Robinson, Justice in Grey, p. 68.

19.The Opinion of the Confederate Attorneys General, 1861-1865, Rembert W. Patrick, ed. (Buffalo, NY: Dennis & Co., Inc., 1950) p. 258.

20.De Rosa, "Analysis," pp. 107-110.

21.Patrick, Opinion, p.530.

22.Coulter, The Confederate States, pp. 122-24.

23.Report of the Attorney General of January 1, 1863, p.3, cited by Robinson, Justice in Grey, p. 424.

24.Robinson, Justice in Grey, p. 425-427.

25.The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies. (Washington, DC: Government Printing Office, 1880-1901), 4 ser. II:63, cited in Robinson, Justice in Grey, p. 424.

26.Patrick, Opinion, p. 307.

27.Robinson, Justice in Grey, p. 529.

28.Robinson, Justice in Grey, p. 38.

29.Rable, Confederate Republic, pp. 159-161.

30.C.S.S. Farrar, The War, Its Causes and Consequences (Memphis, TN 1864), p. 191.

31.Ringold, May Spencer, The Role of the State Legislatures in the Confederacy (Athens, GA: University of Georgia Press, 1966), p. 24-

32.Official Record series IV, II, p. 39, cited in Ringold, State Legislatures, p. 32.

33.Ringold, State Legislatures, pp. 32-33.

34.Proctor, Not Without Honor, p. 144.

35.Coulter, The Confederate States, pp. 400-401.

36.Jefferson Davis to S. J. Peterson, December 15, 1864 cited in Coulter, The Confederate States, p. 401.

37.Ringold, State Legislatures, pp. 35-37.

38.While the Produce Loan Act is regarded as a failure in terms of revenue generation, its symbolic effect on the Confederate citizenry and the credibility it brought to the Treasury Department officials who collected the subscriptions should not be underestimated.

39.Charles T. Goodsell, The Case For Bureaucracy: An Interrogation of Goodsell, Background paper for Plenary Session, "The Bureaucratic State/The State of Bureaucracy," Seventh Annual Symposium, Public Administration Theory Network, Akron Ohio, March 18, 1994.

40.Goodsell, Interrogation, pp. 17-18.

41.Goodsell, "Public Administration In The Public Interest," Refounding Public Administration, p. 110.

CHAPTER SIX

MESSAGES FOR CONTEMPORARY GOVERNANCE FROM THE ADMINISTRATIVE HISTORY OF THE CONFEDERATE STATES OF AMERICA

> Jefferson Davis and other leaders of the South have made an army; they are making, it appears, a navy; and they have made what is more than either, they have made a nation. William Gladstone[1]

Contemporary American concerns regarding the strained social bonds in our society and the failure of the political system to maintain a shared meaning of community have made the concerns of generations of public administrators, scholars, and theorists relevant to our current public discourse. An explosion of recent research and scholarship, most lately recognized as a literature on "Civil Society," along with renewed emphases on community development and activism, suggest a quest is underway, for remedies for the disconnections between our governance mechanisms and the public.[2] Reminiscent of the Anti-Federalists, New Deal Era public administrators, Traditionalist public administration scholars, and, this project has argued, Confederate public administrators, Americans who seek to restore a more

communitarian ethos to contemporary society recognize that if any such reorientation is to occur, the role and place of public administration in developing the basis for a new mode of governance must be reconsidered. A normative grounding for theorizing about public administration and a different modus operandi for politics are considered essential to those who work conscientiously toward this reorientation.[3]

The work of one particular group of contemporary Public Administration scholars, was recently dubbed "The Virginia Polytechnic Institute (VPI) Refounding School," by author Richard Stillman. Identifiable as a subset of scholars within the larger contemporary Refounding public administration movement,[4] their original work, "The Blacksburg Manifesto," was published in 1982. The "VPI Scholars," recognizing that public administration is in urgent need of a normative theoretical underpinning, maintain that normative theorizing is only, however, a beginning. They insist that reorienting the field requires a new conventional wisdom[5] about public administration.

In prescribing a way of understanding public administration that explicates practice as a legitimate partner in the governance process, the Blacksburg perspective redefines concepts and roles for public

administration that have fallen into disrepute in contemporary governance. The Blacksburg scholars' general conclusions are: that public administration should be viewed as broadly involving governance as opposed to simply management or administration in the public sector; that an "agency perspective" should serve as the institutional grounding point for practicing administrators; that the concepts of citizenship and the public interest should be revitalized and become the central normative guideposts for the field; and that public administration should be linked to the purposes and processes of constitutional government, thus legitimizing it within the U.S. Constitutional framework.[6] This work holds that the Confederacy exhibited many, if not most, of the characteristics the Blacksburg scholars advance as central to a Refounded public administration. In its endeavor to restore the concept of the common good or the public interest to Southern citizens, the Confederacy anticipated, and in fact, relied upon, many of the ideas and priorities the Manifesto would lately posit as central to conducting contemporary administration in the public interest.

As the Manifesto authors explain, public administration does not "know" the content of the public interest. Public

Administration's distinctive relationship to the public interest is defined in terms of a process. The decisions, actions, and endeavors of agencies and their officials, then, constitute the pursuit of a positive but ever problematic notion. The authors maintain, however, that despite the somewhat ethereal qualities, "when an institutionalized tradition and support system exist to nurture a process **emphasizing** the relatively comprehensive, long-term, deliberative, and informed efforts essential **to the search for** the public interest, the chances increase that action will follow in accord with these values.[7]

Wamsley has further explained that philosophical pragmatism is an "essentiality to the Refounding project."[8] Philosophical pragmatism, as manifested in public administrative practice, would stand against the familiar utilitarian individualism and positivist scientism traditionally associated with it. Pragmatist administration would, rather, emphasize the constancy of change, the necessity of learning, would prioritize experience and interpretation in conjunction with a loosely defined experimental model, and emphasize the use of naturalistic logic in the development and testing of working hypotheses.[9] Seeing theory and practice as symbiotically linked "through

practical consequences associated with the experiences,"[10] pragmatic administration's learning and knowing would be connected as learning and action.

The predominant American pragmatist philosophers, William James and John Dewey, were preceded by the Confederate founders by some forty years. Subsequent contemporary scholars who explore philosophic pragmatism's application to public administrative theory (White and McSwain and Sheilds)[11] wonder about its ability to serve as one of the major underpinnings for a public administration attempting to cope in a postmodern world. The present project suggests that precursory applications of the thought of these early philosophers, as well as predictions about the relevance of their theoretical perspectives to public administration in the next millenium, might well be drawn from examples of Confederate administration.

Wamsley maintains that pragmatic administration, characterized by experimental problem solving, is possible when there is societal consensus on a normative grounding. Once that normative positioning has been established, it is possible for administration to turn to other approaches to problem solving. Matching approaches to problems is seen, then, as a credible and responsible effort so long as the

fundamental normative grounding has been well established beforehand. As the previous sections of this work have demonstrated, among the things that Confederate administrators did particularly well was conducting an effective public administration in this experimental problem-solving mode. The creativity, responsiveness, adaptation, and reflexive nature of Confederate policy development and implementation illustrates operations very consistent with the pragmatic philosophy approach Wamsley suggests.

Because societal consensus, the preexisting normative grounding required by this experimental approach, had been achieved in the Confederacy, Confederate administrators were enabled (and perhaps, expected) to engage in experimental problem solving. This dissertation has already presented numerous examples of the kinds of pragmatic administrative activities that were necessary under their very unusual circumstances, so they will not be reintroduced here. Rather, the substantive point is that for those who would advocate a pragmatic approach to contemporary administrative adaptation, examples of Confederate administrative activities could provide interesting opportunities to explore possible effects of pragmatic administrative

practice.

For those for whom the "Refounding" of American Public Administration has long been a professional quest and personal commitment, this dissertation has maintained that there are lessons to be learned from the administrative practice in the C.S.A. The Refounder's conception that public administration should be normatively grounded in a public or civic philosophy, which is a prescriptive, teleological, or aspirational subset of broader political culture, describes the aspirations Confederate leaders held for their administrative system. The Refounding perspective holds that this civic or public philosophy amounts to the prioritization of political culture within the operation of the political system and government. The public philosophy, they say, should be based on perspectives shared by elites and informed segments of the public, and accepted by the rest of the public as to how political and governmental institutions should operate. A civic or public philosophy must be consonant with values found in the Constitution and other various founding papers and documents. These related sources include the Declaration of Independence, The Federalist Papers, the Anti-Federalist Papers, Supreme Court decisions, landmark statutes and values reflected in

dominant democratic theories.[12] Interestingly, this description of civic or public philosophy describes precisely the reasons that the Confederate States of America gave as the reasons for its very existence. The Confederate depiction, at least, of a civic philosophy, resonates closely enough with the Refounders' conception to at minimum suggest usefulness in understanding how a pragmatic philosophy may promote the emergence of the public interest in public administrative systems.

The manifesto authors acknowledge that public administration does not "know" the content of the public interest. The Public Administration simply stands, they argue, in the best position to nurture the process of discovering the public interest. Allowing the public interest to emerge from a discovery process is suggested as an optimum circumstance under which a public interest perspective can be generated. Unfortunately, the Manifesto authors then proceed with a series of troubling assumptions.

If examining the Confederate experience accomplishes anything at all, it may be to demonstrate that not "knowing"" the public interest, but rather allowing it to emerge from a discovery process as the Blacksburg authors suggest, cannot be presumptive of legitimate, just, or civil

societal regimes. This emergence process cannot be depended upon to ensure against the manipulation of public administration efforts that could be considered detrimental to large segments of the society.

Furthermore, the Manifesto's argument that a transcendent ideal such as the public interest, which is often undeniable, might best be discussed in terms of what it is not, is similarly discomfiting. The authors' idea, that the process of determining the public interest might possibly be undertaken by working backwards or that it could be explicated negatively, is a challenge. Once again the relevance of the Confederate experience suggests caution in such an assertion. The "Manifesto" claims, for example that we

> ***know*** **that racism is not in the public interest. We may well debate what constitutes a manifestation of racism, but even on that issue we already have considerable definition in statutes, administrative regulations, and court interpretations. We probably have more consensus on what constitutes racism than we realize; it is simply not well explicated**[13] (Emphasis added).

The Confederacy established its administration based upon considerable and elaborate statutory definition, clear

and responsible administrative regulations, and years of court decisions. In fact, there was overwhelming consensus on what constituted racism in their society, and that consensus was very well explicated in all the sources to which the "Manifesto" authors suggest a society ought to refer. More significantly, it must be observed that in the Confederate case, racism (manifest in the institution of slavery, as well as in the intolerance of immigrant populations and genocide of native Americans) was absolutely believed to be in the public interest. In fact, racism was a central element in what the Confederacy's citizens believed to be their ultimate public interest: the preservation of their traditional social order. Conformity to the design offered by the "Manifesto" as appropriate to the emergence of public administration normatively grounded by the public interest resulted, in a public administration considered by many to be among the most reprehensible in human history.

For those scholars who advocate Refounded public administration based on the normative grounding suggested by the "Manifesto," the proviso to be gained from this discussion is, that it is important to be very careful, when using the language of Refounded public administration. If,

as this work argues, the public administration of the Confederacy exhibits many of the characteristics attributed to Refounded public administration, it is crucial to acknowledge that it also manifests a significant weakness in the theoretical conception the "Manifesto" offers. If we were to accept the Confederate governance experiment as a credible exemplar of Refounded public administration in America, we might evaluate that experiment in terms of how well the process approach actualized "efforts to render faithful interpretations of the interests of all relevant stakeholders, including citizens at large." The process orientation of the "Manifesto" perspective, however, does not address the concerns raised by McSwain and others, regarding the challenges inherent in the designation of "citizens at large" in any given society. Refounded Public Administration, like Confederate public administration, can accommodate the experience of only those so designated. "Others" who remain outside the citizenship system are as disenfranchised in one conception as they are in the other.

It is vitally important that Refounding scholars acknowledge that as valuable, productive, liberating and legitimating as process oriented-normatively grounded public administration might be to its public, there can be no

guarantees, no promises, and no assumptions about included and excluded groups. Social, philosophical, and legal rules that fix the designation of citizenship trump subsequent efforts to distill public interest through any process, institutional or otherwise. The practical lesson here is, that even as we are concerned with public philosophy and legitimacy, we must grant corresponding concern to issues of justice and power.

Confederate Public Administration As Refounded Governance

As the preceding sections have explained, Confederate public administration was imbued by its founders, its administrators, and its citizenry, with the fundamental legitimacy the Blacksburg authors maintain is essential to a Refounded conception of public administration. Broadly accepted as administration in the public interest, Confederate public administration enjoyed credibility, popular support, and an empowered self-image that emanated from clearly developed normative guidelines. The Confederate normative grounding conceptualized the public administrator as an agent acting on behalf of others, yet doing so in a vigorous and thoughtful manner.[14] In the

Confederacy, the administrator's role was based, as the "Manifesto" insists, upon several unique claims for its special role in governance. The claims included: 1) expertise in operationalizing policy in the form of specific programs; 2) expertise in creating and sustaining processes and dialogue that results in the broadest possible definition of the public interest; 3) skills in community-building politics and the fostering of active citizenship; and 4) guardianship (along with the other constitutional officers) of the Constitution and its processes.[15] This constitutional guardianship emphasis is of primary importance to an inclusive understanding of what Confederate public administration was most about.

The founders of the Confederacy bequeathed to their public administration a normative theory of Public Administration grounded in their Constitution. The Confederate Constitution was, in turn, grounded in the essential principles of the United States Constitution. It is one of the points in American administrative history (others would be the "Federalist Era" and the New Deal period), when the constitutional theory of Public Administration which informed the actions of administrators, fit Rohr's depiction of administrators who

use their discretionary powers to maintain the constitutional balance of powers in support of individual rights.[16]

Empowered by their firm constitutional acknowledgement, and with the changes and innovations prescribed for administration clearly delineated in their Constitution, Confederate administrators confidently and securely engaged in the process of thinking about administrative behavior in constitutional terms. As they used their discretion to advocate policies they believed most likely to promote the public interest, they measured the public interest against the broader backdrop of their constitutional principles. Their efforts approached a covenantal quality, the fundamental sense of solemn agreement as to the obligations between parties. It seemed to capture what The Public Administration was, is, and ought to be. This solemn agreement, between public administration and the public served, is implicitly a commitment to serve the public with competence directed toward the public interest and the maintenance of the democratic process of government. Professional competence was constrained by the vitality of constitutional heritage, the law, and a common history as a people. "The Public Administration therefore should look to

the past as a prologue to the great public dialogue that inspirits a free society."[17] As a part of the past that forms the prologue, we can no longer afford to exclude the richness of the Confederate administrative experience as one American exemplar of Refounded Governance.

The Contemporary Relevance of Confederate Federalism and Inter-governmental Relations

Historian Bray Hammond has written that there is no older issue in American politics than that of the relation between the federal government's powers and those of the individual states. Differences of opinions as to means have never been reconciled, though sides have often changed and significant players and issues have come and gone. Seventy years after the issue of federalism arose, and despite Chief Justice Marshall's opinions in McCulloch v Maryland and Osborne v Bank of the United States, federalism issues produced a ghastly Civil War. Seventy-five years after that, the welfare state arose--an innovation as far from Hamilton's purpose as Jefferson's, or farther, yet involving the same constitutional questions that separated them in the late eighteenth century.[18]

At no time have these differences in perspective subsided into more than uneasy sleep. The issues are bound

to beset all confederations of groups, unwilling on the one hand to lose their individual sovereignties, and on the other to forgo the incontestable advantages of union. Problems of federalism have historically troubled Canada, they now trouble much of Europe, the former Soviet Union, and they appear sporadically throughout the rest of the world. The nature of federalism is a tempting issue to various interests--economic, political, social, and religious--which see advantages first from one side, then from the other. These characteristics give federalism issues a history, in the United States, at least, in which motives become curiously mixed.

The conventional contrast between Hamilton and Jefferson, for example, is that Hamilton was materialistic and a spokesman for wealth and privilege. Jefferson was humane and a champion of the neglected interests of the common man and the lowly. Over the ensuing years, however, their weapons, like those of Hamlet and Laertes, have somehow got exchanged. At this moment it is a federal government conforming to principles urged first by Hamilton and reaffirmed by Marshall that combats discrimination--political, social, economic--and it is states conforming still to Jeffersonian principles of local sovereignty that

are loudly resisting as Maryland and Ohio did nearly a century and a half ago. With respect to responsibility for employment, security, and welfare in general, it is the posterity of Jefferson's party who thankfully acclaim a strong federal government and the posterity of Hamilton's who shrink away from its alleged hypertrophy.[19]

At the end of the twentieth century, no paucity of interest appears likely in the ongoing exchange regarding the nature of American intergovernmental relations, balance in the American Federal system, and division of responsibilities among various federal entities. The forces which shaped devolution in the 1990's, along with the proliferation of published proposal guidebooks to rebalance state/federal relations and Annual State's Federalism Summits attest to the contemporary salience of this issue.[20]

A recent New York Times Sunday Supplement (May 31, 1998) was directed at just such a consideration of contemporary issues in American federalism. Citing instances such as the recent State of New Jersey border conflict with New York regarding property rights on Ellis Island, the Times published a series of articles including "Pride, Prejudice and Border War Bluster," and "Declarations of Independence, The New American Spirit:

Divided We Stand." [21] As noted earlier here, neither the remedy of secession, nor conflict between intergovernmental entities are new in American history; however, the New York Times reporters describe contemporary American cities and counties in "secession fever." The San Fernando Valley wants to leave Los Angeles, the East End of Long Island has filed suit in the New York state legislature, in an effort to leave Suffolk County and to form a new Peconic County. In Maine, residents in the Northeast have petitioned to become the 51st United State and a Maryland legislator recently requested that the state legislature allow Eastern Shore residents to decide if they want to become their own state. In March, 1998, the residents of Northwest Angle Minnesota had their Congressman propose a Constitutional amendment allowing them to secede from the United States and join Canada.

While certainly many of these actions are nothing more than cries for attention and problem solving, the underlying arguments have familiar and deep seated roots. Conservative California Congressman Tom McClintock who wrote the California law opening the door to secession movements said,

> Large, centralized command and control structures were very much a 20th century phenomenon, actually a throwback to medieval governing modalities. We have been re-learning the lessons of the

> Enlightenment, which human institutions produce far more satisfactory results when powers are decentralized and disbursed.[22]

The traditional arguments that people feel underrepresented in existing arrangements, that minority populations feel exploited in a larger entity, "control of our own destiny" pleas are once again part of the contemporary federal relationship discourse. "So many years; so little progress!"[23]

The Confederate endeavor to restore balance, clarity, and boundaries in its federal relationships thus becomes crucially important to contemporary discourse. In fact, the Confederate "remedy," for American federalism's complexity offers important lessons to all participants in the current debate. By employing a model of federalism which strictly delimited the federal government's policy purview, the Confederacy; rebalanced the federal framework into a consensual model in which no state could be constitutionally coerced into compliance with Confederate public policies and in which sovereignty was to be viewed as a state phenomenon; and, wherein dual administrative systems were to be established as governing institutions in pursuit of the common good. In so doing, the Confederacy addressed many of the (perennial) issues presently bedeviling our policy

discourse.

The list of contemporary policy issues plaguing our federal relationships is overwhelming. Whether the issue is health care, the environment, criminal justice, education, regulation, welfare, immigration, affirmative action or some combination of these challenges, the tension between local, state, and federal entities is palpable and outcomes are uncertain. Traditional models of "layer cake," "marble cake," "picket fence," and fiscal federalism are no longer adequate and fail to address fundamental power imbalances and control issues in the contemporary context. Whether or not there are applicable lessons to be learned from the Confederate endeavor in dual administration and revised federalism is, of course, debatable. However, some observations bear notice at this point.

First, despite its strong state sovereignty imperatives, the Confederate central government approached public policy issues pragmatically. Experimentation and mediation were hallmarks of the relationship between the dual administrative systems. The Confederate federal government went to work immediately on social problems and war materiel supply problems when it was obvious that states lacked resources or political will to do so. There was

significant editorial debate surrounding those initiatives, however, despite the fact that Confederate officials felt they were undermining certain philosophical imperatives, the necessity of the situation demanded that federal agencies take decisive action. The Confederates recognized that in certain instances, only the federal government was capable of taking action or that coordinated action required a federal role. Conscription policies, federal manufacturing operations, and tax collection procedures are three obvious examples of these types of occurrences.

Second, the Confederate Constitutional measures which allowed federal officials operating within the specific confines of an individual state, along with the strictly delimited policy boundaries assigned to each class of government, would certainly have demanded that contemporary difficulties such as unfunded mandates and environmental regulation be resolved differently. Almost certainly these measures would have deeply affected desegregation, affirmative action, gun control, and economic development issues. Recent works such as William D. Eggers and John O' Leary's Revolution at the Roots: Making Our Government Smaller, Better and Closer to Home, are illustrative of the latest manifestation of contemporary reformers in redefining

the scope of governments, challenging how governments conduct their business, and in addressing the panoply of current issues.

Promoting a new cohort of executive mayors and governors who operate from a conservative political agenda, Eggers and O'Leary together with other reform advocates, contend that a circumscribed federal government, held in check by state and local governments and market forces, would foster radical devolution. According to these proponents, a constitutional limit on federal government activity would simply be a return to adherence to the Tenth Amendment. Contending that most federal activities dealing with domestic issues are unconstitutional, they support radical devolution of federal government responsibility combined with an infusion of state and local democracy in decisions about the scope and level of governmental activities. Their caveat, however, is that the purpose of such radical devolution is not to transform unneeded federal programs into unneeded state or local programs. Instead, they would make substantial cuts at all levels while restricting a priori the size and scope of all governments.

Marching under the banner of conservative politics, the radical devolutionists' preference for using highly

restrictive criteria to determine what activities governments should undertake implicitly rejects redistribution of resources and denies governments a role in checking and controlling harmful practices by the private sector. "They are not inclined to identify a common set of standards and priorities that reflect a national consensus but rather a preference to devolve most governmental functions to states and localities."[24] While the devolutionists' discourse intimates that decision making closer to the people is inherently more democratic, in fact, conservative forces have been better able to shape policy making at the state and local levels. The sum total of policy making at the state and local level is portrayed as an outcome of a national policy debate, when in actuality, this patchwork process does not equate.

What is missing from this conservative activity is the informed quality of debate from which the Confederate leadership approached similar issues in their era. Moreover, contemporary conservative debate has ignored the intrinsic message it should have heard from its intellectual and philosophical predecessor, the American Confederacy. Contemporary debate about the purpose and scope of government, the weakening of administrative safeguards,

competing state and local governments, and the unexamined consequences for those who bear the brunt of social policy experimentation, is uninformed by the Confederacy's consideration of the same imperatives. As previous sections of this work have explained, the Confederacy's conservative position on administration and the value of administrative safeguards to society nonetheless assumed a predominant role for public administration in the governance process. The conservatism of the American Confederacy would have been patently offended at the suggestion that there were no viable, appropriate, or a priori legitimate roles for governments and their administrations. The pragmatic approach of Confederate conservatism would never have undermined the legitimacy, capacity, ability, or explicit necessity of administrative governance to stable coherent, civil society. It seems a relevant and desperately important message for those contemporary theorists who would offer such a "skewed and incomplete view of government performance...disdain for public administrators and government's contribution... to reinforce an essentially antigovernment stance."[25] The political and intellectual forefathers of these new, radically conservative devolutionists, in establishing their conservative

revolution, carefully constructed and specifically empowered a dual administrative system designed to support many of the imperatives they presently reject. Rather than portraying their government administration as inflexible, unresponsive, self-aggrandizing, opposed to change, and resistant to outside control, the Confederate administration was characterized by its commitment to fairness, impartiality, accountability, access, citizen involvement and democratic responsibility. The special capabilities and proficiencies of individual administrators and agencies supported a society in turmoil, lending strength, providing direction, and engendering confidence among a people in crisis. An important message to the new conservative revolution is that there is also much for them to learn by revisiting the administrative history of the Confederate government.

Debunking the Anti-State Meta-Narrative

The "dominant story" being told about the state in the late 20th Century, while appearing in many versions, largely characterizes the state as a once noble servant of the common good which has now become society's paradigmatic parasite and tyrannical force.[26] In one particularly

popular version of this story, self-appointed patriots constantly fight from within and without to keep the tyranny, with its excesses, under control. Like all forms of narrative, these anti-state tales construct a coherence to events that is not necessarily real. However, rejecting the stories for real facts is neither easy nor, usually, politically expedient. In the political world, the question of deciding what to do is almost always done on the basis of extra-factual considerations. Facts, plus their interpretations or the recognition that all "facts" come with stories, create unusual roles for those engaged in policy struggles. Rarely do facts serve as final arbiter of truth. Rather, their roles are much less definitive and ambiguous.

Our present version of the anti-state tale, replete with claims that the "era of big government is over," that the "budget is balanced," "smaller government closer to the people is more democratic," "bureaucrats are irresponsible, unresponsive and inefficient," "deficit spending has ended," and that "debt burdens" still plague us, represents part of the linguistic arsenal of a distinctive form of story telling. Whether any of these claims is true may be contestable; however, the images they conjure are important. They are also potent discursive devices. The question for scholars becomes how we contest these troubling and questionable anti-state stories which have demonized the contemporary state in recent years.

Authors Schram and Neisser suggest that narrative analysis offers potential assistance. Narrative analysis first suggests that the contemporary anti-state story is, simply, that. Like any other story, it is a selective, partial rendering of its object of concern in narrative form. Secondly, narrative analysis helps reveal the taken-for granted "reality" which is assumed in narrative constructions. Third, and most importantly, narrative analysis helps demonstrate how the very same reality can be tied to alternative narrative constructions or "counter

stories" helpful in contesting dominant stories. Narrative analysis is a way of looking at social life generally, and at politics particularly. Hence, its utility resides not in uncovering specific sets of myths, but in acknowledging that stories have the capacity to both rationalize and constitute facts.

Once constructed, these facts live to take on careers of their own. They can readily, repeatedly and opportunistically be used to demonize the state as profligate and to rationalize its retrenchment. Folktales of rugged individualism resonate with a popular culture, persistently cynical towards collective endeavor. The contemporary version of the anti-state story is able to use its own factual creations to tap deep-seated reluctances toward supporting government initiatives. Generated from long established suspicion of public power, the contemporary anti-state story deploys its "facts" to become an effective means to impede the development of the liberal welfare state. The anti-state story operates prospectively as well as retrospectively, serving as its own self-fulfilling prophecy. With its selective reading of history, in an ideologically biased and self-serving way, the anti-state narrative provides an interpretive context that sets up the

state for retrenchment and radical devolution. "Stories not only respond to events, they help make events possible."[27]

Narrative analysis could equip us not only to question storied renderings of our past but also to combat the ways these stories constitute or construct our present. In ways that traditional statistical, empirical, and ideological analysis could never approach, examination of the anti-state story, as a story, allows us to examine how its insistence on narrative coherence becomes self-fulfilling prophecy. In contrast to statistical or ideological analysis, narrative analysis focuses on the power that lies within the story itself. The story tells us who we are as actors, defines our relationship to the state and to its problems, assigns our roles, and circumscribes our reactions. How the story actually squares with pre-existing "facts" is much less important than how it constructs its own facts.

> Rather than seeing anti-state stories as something added after the factual realities (taxing and spending, regulation and bureaucracy) have done their work, narrative analysis enables us to see how stories were right there from the very beginning structuring the allegedly objective reality of bloated government as its own self fulfilling prophesy.[28]

An emphasis on the role of stories points researchers

and audiences away from assumptions that attempt to obscure the truth behind every instance of contestable story-telling. The focus on story telling, in fact, turns us to the idea that stories survive and thrive when they serve some important function for those who believe them. Narratives are not perpetrated in the service of "interests," even if they occasionally end up benefiting some at the expense of others. The anti-state narrative, for instance, serves many functions even for those who are hurt by it. Rarely do the stories die or end quietly. Stories are less likely to weaken, in the face of contrary evidence, but usually will do so as the result of a counter-story which can successfully re-structure the world consistent with emerging concerns and needs.

Narrative analysis, then, can be important in helping us appreciate the role of story telling, not just in rationalizing facts, but also in understanding how stories are integral to the construction of those very same facts. Narrative analysis can help reveal today's anti-state stories as their own self-fulfilling and self-legitimating prophesies, and they can help imagine counter-stories--those essential weapons in the contemporary effort to define and serve the public good. However, as Schram and Neisser

rightly acknowledge, a selective reading of history in an ideologically biased and self-serving manner will no longer suffice. We must question those "storied renderings of our past to combat how stories constitute our present."[29]

Incorporating the Confederate governance experience into public administration scholarship, the history of administration literature, and contemporary discourse offers the opportunity for us to challenge the constructed stories of our past and to combat the present pathologies resulting from them. For example, the selective reading of history Schram and Neisser describe has been responsible for the exclusion of the Confederate experience from public administration scholarship, over the past one hundred and thirty years. There are at least two specific reasons for this: First, the Confederate governance endeavor was not socially acceptable as having anything worthwhile to offer public administration scholarship, American politics, or society in general because of its philosophical underpinnings. More than the slavery issue, more than its reaction to the industrialization of the American economy, more than in its resistance to broader social change, the Confederate experiment demanded a fundamental restructuring of power. Such a restructuring was very threatening to

traditional, established bases of power including the centralized U.S. federal government and the U.S. federal judiciary. The meta-story of the Confederacy's government had to be constructed in such a way as to discount, diminish, and undermine any value which might have been derivable from the experience because it was so threatening to numerous established interests and orders.

While there are pertinent and relevant questions about social justice in the Confederate experience, the justice issues have been writ large as the only issues of substance worth knowing about in the emergence of the Confederate nation. It has been important to the American meta-narrative that scholars depict the Confederacy as destined to failure, as it embarked upon an impossible and implausibly unjust mission.

The public administration academy retains its felt need for public administration to emanate from the reformist trappings of the Progressive Era. Between its determination to hold on to its rational, dichotomized, efficiency-driven, value-neutral professional conceptualization, and its reluctance even to consider the incorporation of Confederate administrative experience into its history, the field has dismissed an integral source of its own identity and

perception of itself in the present. In the process, it has lost an opportunity to repair theoretical rifts between politics and administration, between conservative and liberal approaches to administration, and between those who demand neutral competence at the expense of normatively oriented public governance. This loss of historic identity and grounding is as unfortunate as it is unnecessary. As Schram and Neisser note, the potential to create positive counter-stories that contest the dominant meta-stories are important tools in the challenge of deciding what to do and how to live or act in complex situations. For public administration scholarship to leave any longer the richness of the Confederate administrative experience unexplored would be an unfortunate waste of a valuable American meta-story. The present work has been one step in an argument for the inclusion of this American richness in the larger meta-narrative of American public administration.

DIRECTIONS FOR FUTURE RESEARCH

This project was originally envisioned as an initial small effort to explain the relevance, cogency, and necessity of including the Confederate governance experience

as a substantive part of our administrative history and as an integral part of American public administrative history. While the effort evolved to a size and scale it would have been impossible to imagine at its inception, the "first step" nature of the project is still important. If anything, the volume of evidence supporting the project, the relevance of the available material, and the value of including the Confederate interlude in American administrative history are more obvious now, at the end of this project, than they appeared to be at its outset. Having made the journey from the project's beginning to its conclusion, the original questions which motivated the study seem more compelling at the end than at the beginning. Having made that observation, it is important to turn to the numerous and engaging possibilities for future research.

One of the most intriguing questions emerging from this project concerns the influence of Confederate governance and administration on the young scholar, Woodrow Wilson. Wilson, a Virginian, was five years old at the outbreak of the war. Old enough to remember secession and the Civil War Wilson would have, quite naturally, grown up under the tutelage of those who had debated Confederate politics and policies. The influence of these historical events, as a

formative influence on the man who would later be deemed the de facto progenitor of the academic study of Public Administration, should not be underestimated. Wilson later wrote in Division and Reunion, that he believed there was much in the Confederate administrative design that was "thoroughly worth trying;"[30] and, as Rohr observed in To Run A Constitution[31], there is every reason to believe that his exposure to Confederate governance theory may have had a significant influence on the development of his thoughts on Constitutionalism and administration. Wilson's proposals in several subsequent writings, to make the necessary constitutional changes in the U.S. Constitution to allow executive department heads seats in the Congress, mirrors exactly the Confederate arrangement.[32] Moreover, Wilson's call for a nonpartisan President to serve an extended term seems to be directly influenced by the Confederate model. Although Rohr speculates that perhaps the earliest influence on Wilson's constitutional thought may have been Walter Bagehot's The English Constitution,[33] the possibility that Wilson may in actuality, have been advancing positions derived from his early exposure to and later study of Confederate Constitutionalism certainly opens the door for intriguing further research.

In a similar vein, the time and space considerations of this project permitted only the most superficial exploration of the administration of Southern state governments during the life of the Confederacy. From the secession conventions, which drafted language for new state constitutions, to the effects of the dual administrative design of the Confederate federal constitution, the administrative activities of individual states, could form another enlightening research endeavor. One speculation which presents itself, concerns how state and federal administrators must have developed, very early on, highly collaborative and reflexive public institutional arrangements to carry out public policies under the Confederate version of states' sovereignty federalism. This perspective could offer a wealth of insight into the intergovernmental relationships which supported policy implementation in the Confederacy.

Similarly, relationships between individual states were altered in the Confederate model, posing problems for the Confederate federal administration as well as challenges for state administrations. Issues which vexed the relationships between states in the Confederacy are similar to the vexations that presently aggravate confederations all over

the world. Issues of power distribution, economic redistribution, security, responsibility to central governments, and the boundaries of public policy processes, were not endemic only to the Southern Confederacy. Much that could be helpful, valuable, and insightful in mediating the stresses of modern states presently lies quietly in the archives of libraries and museums.

At the micro level of research, individual Confederate administrative departments (as well as individual administrative personnel below the level of Cabinet Secretaries) offer themselves as interesting possibilities for further research. In large, well managed agencies such as the Confederate Treasury Department, an abundance of records and correspondence could potentially provide deep insights into the administrative activities of individual departments, specific policy implementation challenges, and individual administrators. Hence, these sources could offer opportunities to explore administrative activities at a deeper level than could be accomplished in this project.

Similarly, individual federal officials deployed at the state level, or federal administrative operations carried on within individual states could offer fascinating perspectives. The administrative activities, behaviors,

perceptions of responsibility, and the give-and-take of policy implementation strategies between Richmond and local federal officials undoubtedly would provide an object lesson in responsive administration.

In the end, there appear to be as many additional questions and directions for research as there were at the beginning of the project. Yet to be explored are questions about the effects of Confederate administration on the Southern public's expectations of their federal government administration after the war ended; and what, if any, significant connection existed between those expectations and reforms which came later in the century.

Reconstruction, following on the heels of the Confederate governance experiment, was an especially challenging period in U.S. history. How the experience of having lived under Confederate public administration, Reconstruction, and then the Progressive Era may have contributed to the emergence of public administration as a professional practice and academic field has only begun to be explored in this work. My sincere hope is that others will go forward with me in a sustained effort to harvest the knowledge and experience which awaits us.

CONCLUSION

In the conclusion to Refounding Democratic Public Administration, the most recent publication by the Blacksburg Manifesto authors, Gary Wamsley ruminates for the group about the application of their theoretic perspectives for the discipline, for academic practitioners, for administrative practitioners, and by extension, for the political domain and the general public. He challenges those of us who study public administration to "apply our various approaches about which we have been writing and arguing."[34] He goes on to note that our efforts as practitioners and academics are, however, being framed on the academic dimension of the field by various internal constraints. Competition among paradigms, approaches, visions, career pressures and ambitions, institutional cliques, assumptions of irreconcilable epistemological differences, *unconscious or recondite norms and values* (emphasis added), or vague appeals to the advancement of knowledge or the search for "Truth" inhibit the process of framing questions to guide our inquiry and define our problems.

Importantly, Wamsley then goes on to make the following

observation. These conditions, he says, are largely attributable to the fact that without knowing what public administration has been historically, we have been busily applying first one and then another approach to "this misfounded, ill-defined, and widely misunderstood subject in the name of understanding, explanation, and prediction."[35] Our conception of what public administration is now, and what we want it to be, has been disconnected from its history, and we have jumped to the application of these various approaches, "before we have even conceived of a role in governance that would be seen as legitimate in our government of separate institutions sharing power."[36] Wamsley then turns to the presentation of a number of comments, a sampler of his ontological and philosophical stances, and explains that these disclosures "are offered in a spirit of experimentation and of encouraging discourse."[37]

It is important to emphasize that this project was a considered endeavor to take on Wamsley's challenge. As he has observed, this kind of intellectual challenge comes down to the academic practitioner in the form of a "what do I say or do next?" question. This compelling urgency "to do or say something" that Wamsley describes, to bring theory and reflection to bear in some kind of action, and in the wake

of that action to reflect and adjust theory, explains precisely the motivation for this project.

This project was a sincere endeavor in applying the approaches suggested by the Refounding public administration scholars. It is my own engagement in praxis. It is an "outside the academic box" approach, which hopefully has avoided the academic framing to which Wamsley refers, and it is a distinct effort to punch through the unconscious and recondite values which have for so long banished the Confederate governance experience from legitimate academic consideration. Most importantly, the project was an effort to learn to know public administration historically, to know its complete history, so that we can know better what it is now, and why, and only then to determine what we would want it to be.

One of the most important lessons this work offers concerns the key differences in the administrative governance of the Confederate States of America and the United States of America. The differences are attributable to the simple fact that each administrative system was a faithful representation of the public philosophies of the peoples they served. Once again, Wamsley expresses the essence of this idea when he observes that

> American government was designed to

> achieve the purposes of limited republican (not democratic) government by constitutionally guaranteeing civil liberties against encroachment from governments and other sources, by providing for election of key officials, and by systematically fragmenting power within government--(a) among branches of government with different constituencies and legitimacy bases that must share power in order to govern; and (b) among levels of governments, also with different constituency bases, that perform both different and overlapping functions cooperatively and in conflict.[38]

However, as Wamsley notes, from the early 19th century onward, a series of adaptations including the extension of the franchise, the extra-constitutional development of political parties/conventions/primaries, the popular election of senators, have been aimed at democratizing the American republic. How successful this effort at democratization has been is debatable, and certainly depends on the criteria for judgement. However, for Public Administration, these events were confounding. At our nation's founding, public administration was seen as synonymous with good government. It was implicitly but clearly important in the original *republic.* Its role and importance in a democratizing republic, however, were not so clear.

Later, as the traditional misfounding story goes, when

democracy, mass immigration, and social turmoil resulted in machine politics and corruption late in the nineteenth century, public administration was self-consciously conceived as part of an elitist reform movement, rather than something indigenous to our democratic republic's process of governance with its polycentric power.[39] American public administration's intellectual and theoretical heritage of reformism, scientific management, and business model efficiency has misfounded a critical institution of governance. Though it is to a considerable degree a consequence of reformist symbol manipulations and partisan machinations, those associated with public administration still think of themselves, and usually present themselves, as "neutrally competent" subordinates of chief executives, concerned primarily with efficiency, economy and effectiveness. What little legitimacy public administration has managed to muster was derived from the administrative management model which has locked the practice into a what Orion White has described as a "low form of common sense," or logic-in-use recalcitrance. We must, the Blacksburg authors insist, reconceptualize and refound public administration as the valuable core of governance in a constitutional democratic republic.

> Now more than ever public administration needs the appropriate normative theoretical underpinning *it has never had* (emphasis added) and a new conventional wisdom or logic-in-use derived from it. That normative theoretical base must support a *legitimate role for public administration and be grounded in democratic governance, constitutionality, law and pragmatic philosophy*(emphasis added) rather than management concepts misplaced from business.[40]

The abiding message this work hopes to leave with its readers is that, in fact, American public administration has had appropriate normative underpinnings at various times in its history. It had them as the state governments converted colonies into American states. It had them in the founding era when America implicitly understood public administration as good governance. It had them again in the praxis and scholarship of the New Deal Era Traditionalist administrators. Moreover, this project maintains, it had them in the Confederate government. In acknowledging the Confederacy as an experiment in American governance and a trial run of public administration normatively grounded in a public philosophy which allowed it the possibility of becoming everything the Refounding authors suggest public administration should be, we avail ourselves of one more

opportunity. If we permit ourselves one more model, we an facilitate the exploration of one additional experiment, we provide one more circumstance for enriching our own understanding.

As previous sections of this work have explained, Confederate public administration was a legitimate entity of governance to its citizens. It was grounded in the democratic principles, constitutionality, law, and pragmatic philosophy the Refounding authors maintain are central to ameliorating the intellectual identity crisis which currently vexes Public Administration as a field. As scholars, we have chosen to ignore the Confederacy as a precursor to the public administration we want to achieve, clinging instead to our traditional (but acceptable) misfounding myths. We hold the conventional myths surrounding the activities of the Confederate government and its administrative system as truisms, because to acknowledge that there actually may be value in the examination of that government offends the sensibilities of the established academic community. To acknowledge the possibility of learning from the Confederate attempt at governance forces us to admit that we have intentionally excluded a formative period in American administrative development.

Public administration theory can be Refounded, the pathologies associated with its historical misattribution in the Progressive Era can be corrected, and the schism between those who charge that public administration is somehow out of sorts with American constitutionalism and those who maintain that it is a faithful product of constitutionalism, can be healed. The simple answer lies in looking at all of our administrative history. We are no longer required to accept the Wilson essay, Progressive Era version of reformist, elitist, professionalized, value-neutralized administration. The public administration academy could use the intellectual version of angioplasty to break through the existing calcification at the Progressive Era genesis of the field. All that is necessary is for theorists and scholars simply to choose to do so. In that reconnection, the field can reestablish its connections to its historical development, its normative origins, its constitutional legitimacy, and its standards of the practice of administration in the public interest. The reconnection establishes that there is nothing foreign, threatening, or sinister about normatively grounded public administration. However, the normative grounding, legitimation, and historical reconnection of the field does not, by any

stretch of the imagination, finish the intellectual challenge to those who are dedicated to the reconceptualization of administrative governance. In fact, as an earlier section of this chapter suggested, it points out yet another beginning.

The practical lesson of this project is simply this: no matter how well any administrative system connects with the normative grounding, public philosophy, democratic theory, or the public interest, legitimation based on venerated documents, the law or supreme court interpretations of the Constitution, we consider so important, there is no assurance that the government it serves will be a just one. Paul Kahn's caution that we should worry less about democratic theory, administrative legitimacy, and public philosophy, and worry more about justice, power, and authority resonate especially powerfully in a study focused on the Southern Confederacy. Democratic states are considered to be more just than other states under certain conditions. As the Confederacy well teaches us, they may be less just. We should not be completely distracted by our searches for legitimacy, normative underpinnings, historical derivations, and other justifications for our administrative efforts.

Administrative systems exist in a context of dispersed power, and often fragmented authority. Despite the dispersion and fragmentation, however, the voices of power and authority speak, often to the detriment of the voice of justice. John Rohr has observed that before a government can be anything, it must have the qualities of justice and wisdom.[41] To imbue our public administration with justice and wisdom is a different pursuit than the one which has preoccupied us until now. It is a pursuit to which the public administration academy should now dedicate itself.

NOTES: CHAPTER Six

1. Quoted in D. P. Crook, North, South, and the Powers, 1861-1865, (New York, 1974), pp. 227-228.

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APPENDIX I.

PROVISIONAL CONSTITUTION

The *Confederate States of America.*
At a Congress of the Sovereign and Independent States of South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, begun and holden at the Capitol in Montgomery, in the State of Alabama, on the fourth day of February, in the year of our Lord, one thousand eight hundred and sixty-one; and thence continued, by diverse adjournments, until the eighth day of February in the same year:

CONSTITUTION
FOR THE
PROVISIONAL GOVERNMENT
OF THE
CONFEDERATE STATES OF AMERICA

We, the deputies of the Sovereign and Independent States of South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, invoking the favor of Almighty God, do hereby, in behalf of these States, ordain and establish this Constitution for the Provisional Government of the Same: to continue one year from the inauguration of the President, or until a permanent Constitution or Confederation between the said States shall be put in operation, whichsoever shall first occur.

ARTICLE I

SECTION 1.

All legislative powers herein delegated shall be vested in this Congress now assembled until otherwise ordained.

SECTION 2.

When vacancies happen in the representation of any State, the same shall be filled in such manner as the proper authorities of the State shall direct.

SECTION 3

1. The Congress shall be the judge of elections, returns and qualification of its members; any number of Deputies form a majority of the States being present, 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; upon all questions before the Congress, each State shall be entitled to one vote, and shall be represented by any one or more of its Deputies who may be present.

2. The Congress may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

3. The Congress 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 on any question, shall, at the desire of one-fifth of those present, or at the insistence of any one State, be entered on the journal.

SECTION 4.

The members of Congress shall receive compensation for their services, to be ascertained by law, and paid out of the Treasury of the Confederacy. They shall in all cases, except treason, felony, and breach of the peace, be priviledged (sic) from arrest during their attendance at the session of Congress, and in going to and

returning from the same; and for any speech or debate, they shall not be questioned in any other place.

SECTION 5.

1. Every bill which shall have passed the Congress, shall, before it become a law, be presented to the President of the Confederacy; if he approve, he shall sign it; but if not, he shall return it with his objections to the Congress, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such re-consideration, two-thirds of the Congress shall agree to pass the bill, it shall become law. But in all such cases, the vote 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. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner, as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law. The President may veto any appropriation or appropriations and approve any other appropriation or appropriations in the same bill.

2. Every order, resolution or vote, intended to have the force and effect of law, shall be presented to the President, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Congress, according to the rules and limitations prescribed in the case of a bill.

2. Until the inauguration of the President, all bills, orders, resolutions and votes adopted by the Congress shall be of full force without approval by him.

SECTION 6.

1, Congress shall have the power to lay and collect taxes, duties, imposts and excises, for the revenue necessary to pay the debts and carry on the Government of the Confederacy; and all duties, imposts and excises shall be uniform throughout the States of the Confederacy.

2. To borrow money on the credit of the Confederacy:

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the Confederacy:

5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the Confederacy:

7. To establish post offices and post roads:

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

9. To constitute tribunals inferior to the supreme court:

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

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

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

13. To provide and maintain a Navy:

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

14. To provide for calling forth the militia, and for governing such part of them as may be employed in the service of the Confederacy, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

17. To make all laws that shall be necessary and proper for carrying into execution the foregoing powers and all other powers expressly delegated by this Constitution to this Provisional Government.

18. The Congress shall have the power to admit other States.

19. This Congress shall also exercise Executive powers, until the President is inaugurated.

SECTION 7.

1. The importation of African negroes (sic) from any foreign country other than the slave-holding States of the United States, is hereby forbidden; and Congress are required to pass such laws as shall effectually (sic) prevent the same.

2. The Congress shall have the power to prohibit the introduction of slaves from any State not a member of this Confederacy.

3. The privilege of the writ of Habeas Corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it.

4. No bill of attainder, or *ex post facto* law shall be passed.

5. 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.

6. 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.

7. Congress shall appropriate no money form the treasury, unless it be asked for by the President or some one of the heads of Departments, except for the purpose of paying its own expenses and contingencies.

8. No title of nobility shall be granted by the Confederacy; and no person holding any office of profit or trust under it, 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.

9. Congress shall make no law respecting an establishment of religion or prohibiting the free exercises thereof: or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of such grievances as the delegated powers of the Government may warrant it to consider and redress.

10. 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.

11. No soldier shall, in time of peace, be quartered in any house without consent of the

owner; nor in time of war, but in a manner to be prescribed by law.

12. 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.

13. 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 offence be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself; not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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

15. 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 tried by a jury shall be otherwise re-examined in any court of the Confederacy, than according to the rules of the common law.

16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

17. The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

18. The powers not delegated to the Confederacy by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

19. The judicial power of the Confederacy shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the States of the Confederacy, by citizens of another State, or by citizens or subjects of any foreign State.

SECTION 8.

1. 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 (sic) the obligation of contracts; or grant any title of nobility.
2. No state shall, without the consent of the Congress, lay any imposts

or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett (sic)produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the confederacy, and all such laws shall be subject to the revision and control of Congress, lay any duty of tonnage, 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.

ARTICLE II.

1. The Executive Power shall be vested in a President of the Confederate States of America. He, together with the Vice President, shall hold his office for one year, or until this Provisional Government shall be superceded by a Permanent Government, whichsoever (sic) shall first occur.

2. The President and Vice President shall be elected by ballot by the States represented in this Congress, each State casting one vote, and a majority of the whole being requisite to elect.

3. No person, except a natural born citizen, or a citizen of one of the States of this Confederacy at the time of the adoption of this Constitution, 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 of one of the States in this Confederacy.

4. 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, (which inability shall be determined by a vote of two-thirds of the Congress), 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.

5. The President shall at stated times receive for his services, during the period of the Provisional Government, a compensation at the rate of twenty-five thousand dollars per annum; and he shall not receive during that period any other emolument from this Confederacy, or any of the States thereof.

6. Before he enter on the execution of his office, he shall that the following oath or affirmation:

I do solemnly swear (or affirm) that I will faithfully execute the office of President of the Confederate States of America, and will, to the best of my ability, preserve, protect, and defend the Constitution thereof.

SECTION 2.

1. The President shall be Commander-in-Chief of the Army and Navy of the Confederacy, and of the militia of the several States, when called into the actual service of the Confederacy. 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 Confederacy, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Congress, to make treaties; provided two-thirds of the congress concur; and he shall

nominate, and by and with the advice and consent of the Congress, shall appoint ambassadors, other public ministers and consuls, judges of the courts and all other officers of the Confederacy 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, on in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Congress, by granting commissions which shall expire at the end of their next session.

SECTION 3.

1. He 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 the Congress at such times as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the Confederacy.

2. The President, Vice-President, and all civil officers of the Confederacy shall be removed from office on conviction by the Congress of treason, bribery, or other high crimes and misdemeanors; a vote of two-thirds shall be necessary for such conviction.

ARTICLE III.

Section 1.

1. The judicial power of the Confederacy shall be vested in one Supreme Court, an din such inferior courts as are herein directed, or as the Congress may from time to time ordain and establish.

2. Each State shall constitute a District, in which there shall be a court called a District Court, which, until otherwise provided by the Congress, shall have the jurisdiction vested by the laws of the United States, for that State; the Judge whereof shall be appointed by the President, by and with the advice and consent of the Congress, and shall, until otherwise provided by the Congress, exercise the power and authority vested by the laws of the United States in the Judges of the District and Circuit Courts of the United States, for that State, and shall appoint the times and places at which the courts shall be held. Appeals may be taken directly from the District Courts to the Supreme Court, under similar regulations to those which are provided in cases of appeal to the Supreme Court of the United States, or under such regulations as may be provided by the Congress. The commissions of the judges shall expire with this Provisional Government.

3. The Supreme Court shall be constituted of all the District Judges a majority of whom shall be a quorum, and shall sit at such times and places as the Congress shall appoint.

4. The Congress shall have power to make laws for the transfer of any causes which were pending in the courts of the Unites States, to the courts of the Confederacy, and for the execution of the others, decrees and judgments heretofore rendered by the said courts of the United States; and also all laws which may be requisite to protect the parties to all such suits, order, judgments, or decrees, their heirs, personal representatives, or assignees.

SECTION 2.

1. The judicial power shall extend to all cases of law and equity,

arising under this Constitution, the laws of the United States, and of this Confederacy, and treaties make, or which shall be made, under its authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the Confederacy shall be a party; controversies between two or more states; between citizens of different States; between citizens of the same States claiming lands under grants of different States.

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

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

ARTICLE IV.

SECTION 1.

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 of such proof.

SECTION 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. 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.

3. A slave in one State, escaping to another, shall be delivered up on claim of the party to who said slave may belong by the executive authority of the State in which such slave shall be found, and in case of any abduction or forcible rescue, full compensation, including the value of the slave and all costs and expenses, shall be made to the party, by the State in which such abduction or rescue shall take place.

SECTION 3.

1. The Confederacy 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.

ARTICLE V.

1. The Congress, by a vote of two-thirds, may, at any time, alter or amend this Constitution.

ARTICLE VI.

1. This Constitution, and the laws of the Confederacy which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the Confederacy, 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.

2. The Government hereby instituted shall take immediate steps for the settlement of all matters

between the States forming it, and their other late confederates of the United States in relation to the public property and public debt at the time of their withdrawal from them; these States hereby declaring it to be their wish and earnest desire to adjust everything pertaining to the common property, common liability and common obligations of that union, upon the principles of right, justice, equity, and good faith.

3. Until otherwise provided by the Congress, the city of Montgomery in the State of Alabama, shall be the seat of Government.

4. The members of the Congress and all executive and judicial officers of the Confederacy shall be bound by oath or affirmation to support this Constitution; but no religious test shall be required as a qualification to any office or public trust under this Confederacy.

Done in the Congress, by the unanimous consent of all the said States, the Eighth day of February, in the year of our Lord, Once Thousand, Eight Hundred and Sixty-one; and of the Confederate States of America, the first.

(Signatures)

AMENDMENT TO THE PROVISIONAL CONSTITUTION OF THE CONFEDERATE STATES

May 21, 1861

An Ordinance of the Convention of the Congress of the Confederate States

Be it ordained by the Congress of the Confederate States of America, That the second paragraph of the first section of the third Article of the Constitution of the Confederate States of America, be so amended in the first line of said paragraph, as to read, "Each state shall until otherwise enacted by law, constitute a district;" and in the sixth line, after the word, "judge," add "or judges."

APPENDIX II.

PERMANENT CONFEDERATE CONSTITUTION

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 Almighty God—do ordain and establish this Constitution for the Confederate States of America.

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.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall be citizens of the Confederate States, and have the qualifications requisite for electors of the most numerous branch of the State Legislature; but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.

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

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

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

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

SECTION 6.

1. 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 tern of service; and each Senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen by resignation, or 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.

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

4. The Vice President of the Confederate States shall be President of the Senate, but shall have not vote unless they be equally divided.

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

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

7. Judgement in cases of impeachment shall not extend further 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.

1. 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 the Constitution; but the Congress may, at any time, by law, make or alter such regulations, except as to the times and places of choosing Senators.

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

SECTION 5.

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

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

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy;

and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days to any other place than that in which the two Houses shall be sitting.

SECTION 6.

1. The Senators and Representatives shall receive compensation for their services, to be ascertained by law, and paid out of the Treasury of the Confederate States. They shall, in all cases, except treason, felony, and breach of the peach, 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.

2. No Senator or Representative shall, during the time for which he was elected, be appointed by any civil office under the authority of the Confederate States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the Confederate States shall be a member of either House during his continuance in office. But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any matters appertaining to his department.

SECTION 7.

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

2. Every bill which shall have passed both Houses, shall, before it becomes a law, be presented to the President of the Confederate States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law. The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case, he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.

3. Every order, resolution or vote, to which the concurrence of both Houses may be necessary, (except on a question of adjournment) shall be presented to the President of the Confederate States; and before the same shall take effect, shall be approved by him; or being disapproved by him, shall be 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—

1. To lay and collect taxes, duties, imposts, and excises, for revenue necessary to pay the debts, provide for the common defence, (sic) and carry on the government of the Confederate States; but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations (sic)from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States:
2. To borrow money on the credit of the Confederate States;
3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this nor any other clause contained in the constitution, shall ever be construed to delegate the power of Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation, in all which cases, such duties shall be laid on the navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof:
4. To establish uniform laws of naturalization, and uniform laws on the subject of bankruptcies, throughout the Confederate States; but no law of Congress shall discharge any debt contracted before the passage of the same;
5. To coin money, regulate the value thereof and of foreign coin, and fix the standard or weights and measures;
6. To provide for the punishment of counterfeiting the securities and current coin of the Confederate States:
7. To establish post-offices and post-routes; but the expenses of the Post-Office Department, after the first day of March in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenues.
8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:
9. To constitute tribunals inferior to the Supreme Court;
10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:
12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:
13. To provide and maintain a navy:
14. To make rules for the government and regulation of the land and naval forces:
15. To provide for calling forth the militia to execute the laws of the Confederate States, suppress insurrections, and repel invasions:
16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the Confederate States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:
17. To exercise exclusive legislation, in all cases whatsoever, such district (not exceeding ten miles square) as may, by cession of one or more States and the acceptance of Congress, become the seat of the government of the Confederate States: and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings: and
18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the Confederate States, or in any department of officer thereof.

Section 9.

1. The importation of negroes(sic) 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 (sic) prevent the same.
2. Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory no belonging to, this Confederacy.
3. The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.
4. No bill of attainder, *ex post facto* law, or law denying or impairing the right of property in negro (sic) slaves shall be passed.
5. No capitation (sic) or other direct tax shall be laid, unless in proportion to the census or enumeration herinbefore (sic) directed to be taken.
6. No tax or duty shall be laid on articles exported from any State, except by a vote of two-thirds of both Houses.
7. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.
8. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
9. Congress shall appropriate no money from the treasury except by a vote of two-thirds or both Houses, taken by yeas and nays, unless it be asked and estimated for by some one of the heads of departments, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the government, which it is hereby made the duty of Congress to establish.
10. All bills appropriating money shall specify in federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compensation to any public contractor, officer, agent or servant, after such contract shall have been made or such service rendered.
11. No title of nobility shall be granted by the Confederate States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office or title of any kind whatever, from nay king, prince, or foreign state.
12. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances.
13. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.
14. No soldier shall, in time of peace, be quartered in any house, without consent of the owner; nor in time of war, but in a manner prescribed by law.
15. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probably cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
16. No person shall be held to answer for a capital or otherwise infamous crime, unless on 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; not shall nay person be subject to the same offence to be twice put into jeopardy of life or limb; not be compelled in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private

property be taken for public use, without just compensation.
17. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.(sic)
18. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the Confederacy, than according to the rules of common law.
19. Excess bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
20. Every law or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

SECTION 10.

1. 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.
2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett (sic) produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasure of the Confederate States; and all such laws shall be subject tot he revision and control of Congress.
3. No State shall, without the consent of Congress, lay any duty on tonnage, except on sea-going vessels, for the improvement of its rivers and harbors navigated by 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, or 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.

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 Vice President shall be elected as follows:
2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative or person holding an office of trust or profit under the Confederate States, shall be appointed an elector.
3. The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed to the seat of the government of the confederate States, directed tot he President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the

votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States—the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in case of the death or other constitutional disability of the President.

3. 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.

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

7. No person except a natural born citizen of the Confederate States, or a citizen thereof at the time of the adoption of this Constitution, or a citizen thereof born in the United States prior to the 20th of December, 1860, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the limits of the Confederate States, as they may exist at the time of his election.

8. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of 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.

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

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

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the Confederate States, and will, to the best of my ability, preserve, protect, and defend the Constitution thereof."

Section 2.

1. 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.
2. He shall have power, by and with the advice and consent of the Senate, to make treaties; provided two-thirds of the Senators present concur; and he shall nominate, and by and with

the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the Confederate States whose appointments are not herein otherwise provided for, and which shall be established by-law; but the Congress may, by law, vest the appointment of such inferior officers, as they think proper in the President alone, in the courts of law, on in the heads of departments.

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

Section 3.

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

Section 4.

1. 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.

1. The judicial power of the Confederate States shall be vested in one Supreme Court, an din 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.

1. The judicial power shall extend to all cases arising under this Constitution, the laws of the Confederate States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the Confederate States shall be a party; to controversies between two or more states; between a State and citizens of another State, where the State is plaintiff; between citizens claiming lands under grants of different States; and between a State or the citizens thereof, and foreign states, citizens or subjects; but no State shall be sued by a citizen or subject of any foreign state.
2. In all cases affecting ambassadors, other public ministers and consuls, and those

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

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

SECTION 3.

1. Treason against the Confederate States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.
2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION 1.

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.

1. The citizens of each state shall be entitle 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 impaired.
2. A person charged in any State with treason, felony, or other crime against the laws of such State, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.
3. No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

1. Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives and two-thirds of the Senate, the Senate voting by States; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States; without the consent of the legislatures of the States concerned, as well as of the Congress.
2. The Congress shall have the power to dispose of an make all needful rules and regulations concerning the property of the Confederate States, including the lands thereof.

3. The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several 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 (sic) 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.

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

ARTICLE V.

SECTION 1.

1. Upon demand of any three States, legally assembled in their conventions, the Congress shall summon a convention of al 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 nay of the proposed amendments to the Constitution be agreed on by the said convention—voting by States—and the same be ratified by the legislatures of two-thirds of the several States, or by conventions in two-thirds thereof—as the one or the other mode of ratification may be proposed by the general convention—they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.

ARTICLE VI.

1. The Government established by this Constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified: and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.
2. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the Confederate States under this Constitution, as under the Provisional Government.
3. This Constitution, and the laws of the Confederate States made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the Confederate States, shall be the supreme law of the land; and the judges in every State shall be bound there by, anything in the Constitution or laws of any State to the contrary notwithstanding.
4. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the Confederate States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the Confederate States.
5. The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people of the several States.
6. The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people thereof.

ARTICLE VII.

1. The ratification of the convention of five States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.
2. When five States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Constitution shall prescribe the time for holding the election of President and Vice President; and

for the meeting of the Electoral College; and for counting the votes, and inaugurating the President. They shall, also, prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the Provisional Constitution shall continue to exercise the legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.

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

(Signatures)

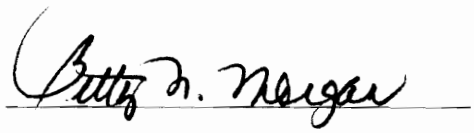
VITA

Betty Nixon Morgan was born in Greensboro, North Carolina. She attended Elon College, (Elon College, North Carolina) graduating in 1975 with a Bachelor of Arts in Social Sciences. Following graduation, she began a series of successful career endeavors in both the private and non-profit sectors.

In 1987 she entered public service, working in county government in both Social Services and Public Health agencies. In 1989, she earned a Master's Degree in Public Affairs from the University of North Carolina at Greensboro. Later in 1989, she enrolled as a doctoral student at the Center for Public Administration and Policy (CPAP) at Virginia Polytechnic Institute and State University. This dissertation completes her program of study for the Doctor of Philosophy in Public Administration and Public Affairs.

While completing the doctorate, she joined the faculty of Elon College as a member of the Department of Political Science and where she presently teaches courses in Political Science, Public Administration, and Public Policy. She is a member of the Phi Kappa Phi academic honor society, the Pi Alpha Alpha academic honor society for Public Administration, and the Pi Sigma Alpha academic honor society for Political Science. Her professional affiliations include membership in the American Society for Public Administration, the

Southern Political Science Association, and the North Carolina Political Science Association.



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