Confederate States of America




Eric Tscheschlok, Auburn University

The Confederate States of America came into existence on 4 February 1861, when delegates from the six Deep South states that had departed the federal Union by that date (South Carolina, Mississippi, Florida, Georgia, Alabama, and Louisiana) assembled in Montgomery, Alabama, to form a southern confederacy. Within days Texas also joined the Montgomery proceedings. The rebel delegates moved anxiously to expedite the process of nation building, which they essentially completed in less than two months. During this time the Montgomery convention accomplished a great deal. The delegates wrote a provisional constitution and assigned themselves the dual functions of both a provisional congress and a constituent assembly charged with framing a permanent constitution. They also elected a president, Jefferson Davis of Mississippi, from a pool of prominent aspirants that included the Alabama fire-eater William L. Yancey and the Georgia triumvirate of Howell Cobb, Robert Toombs, and Alexander H. Stephens, who was chos n vice president. Further, by mid-March the fledgling Confederate government had confirmed several cabinet posts, provided for the circulation of its own currency, authorized the recruitment of an army, adopted a legal code composed of all U.S. laws except those deemed hostile to slavery, and finalized a constitution for the Confederate republic.

In drafting a permanent constitution for their new nation, the founders of the Confederate republic borrowed heavily from the U.S. Constitution. The Montgomery government took up the business of constitution making in the first two weeks of March 1861. During this span the Provisional Congress conducted affairs of state by day and assembled as a constitutional convention in the evenings. Two factions emerged in convention. One of these, led by Stephens, looked to fashion a virtual replica of the U.S. Constitution with a few key proslavery measures added. The other more radical faction, led by the fire-eating South Carolinian Robert Barnwell Rhett, advocated a more extreme states' rights compact grounded in the theories of state sovereignty articulated by John C. Calhoun a generation earlier. Due in part to the moderating influence of Cobb, the convention's president, the final instrument was largely patterned after the U.S. Constitution, although it contained significant concessions to the Rhett faction. The preamble, for example, enshrined states' rights and certified the sovereign character of the constituent states. Likewise it omitted the general welfare clause of the U.S. Constitution, which had been construed to augment the power of the central government during the antebellum period. On the other hand the fire- eaters were disappointed that the new constitution remained silent on the issue of nullification and that it created a "permanent federal government," thereby implying rather hypocritically that the states did not possess a right of secession.

The Confederate constitution incorporated verbatim large segments of the U.S. Constitution, including its first twelve amendments. Nevertheless, the Confederate document departed substantially from its predecessor in regard to the relationships among government branches and the relationship between the central government and the states. The constitution vested all legislative power in the bicameral Confederate Congress, which was practically identical to the U.S. version. However, in enumerating the powers of Congress, the Confederate charter expressly forbade the national legislature from enacting protective tariffs or funding internal improvements. Naturally the constitution also protected the South's peculiar institution, prohibiting Congress from passing any "law denying or impairing the right of property in negro slaves" (Article I, section 9). Through these provisions the constitution addressed the three cardinal points on which Southern states' rightists believed the antebellum U.S. government had overstepped its bounds.

In creating an executive branch, the Confederate constitution made only slight modifications to Article II of the U.S. Constitution, but these changes were significant. At once

the Confederate constitution provided for a chief executive with more power than his U.S. counterpart while imposing novel limits on presidential tenure. For example, the Confederate president had line-item veto power and discretionary authority to dismiss civil officers yet was limited to a single six-year term.

The Confederate constitution outlined a national judicial structure that mirrored precisely the federal judiciary of the United States. It vested all judicial power in a supreme court and in other inferior national courts created by the Congress. However, the Confederate judiciary operated much differently in practice. The Confederate Congress did establish a system of federal district courts, but these "lower" courts functioned as the only extant arm of the national judiciary. The Confederate supreme court never came into being because the Congress purposely neglected to pass enabling legislation to create that tribunal. Sensitive to potential federal inroads upon state prerogatives, Confederate lawmakers worried that a supreme court might become a vehicle for consolidation. Southern states' rightists pointed to the example of the U.S. Supreme Court under the chief justice John Marshall, whose judicial nationalism expanded the scope of central power at the expense of local authorities, particularly in e ercising federal appellate jurisdiction over state court rulings. To preempt such judicial usurpation in their own republic, Confederate legislators chose to ignore their constitution and declined to erect a national high court.

The Confederate constitution was no revolutionary instrument. It was a conservative document, designed by its framers to perpetuate the world of the Old South, including slavery and a racial hierarchy based on white supremacy. As vice president, Stephens affirmed in March 1861 that slavery formed the "cornerstone" of the Southern nation, which was founded "upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition" (Durden, pp. 7, 8). Such a social order, assumed the Confederate framers, was best safeguarded in a republic anchored upon the principles of states' rights. In this case, however, states' rights proved to be the cure that killed. Political decentralization greatly hampered the Confederate war effort and provided the basis for the crippling opposition to President Davis's wartime administration. In this sense the Confederate constitution sowed the seeds of destruction for the nation it intended to bring to life.

The Provisional Congress that wrote the constitution remained operative until February 1862. A unicameral assembly, the Provisional Congress was not an elective body. Rather, the delegates were the appointees of the secession conventions of their respective states. From the outset the radical fire- eaters, whose militant Southern nationalism inspired the initial formation of the Confederacy, were shunted aside by more moderate statesmen who took the reins of government. After April 1861 congressional membership swelled with the addition of representatives from the four Upper South states (Virginia, North Carolina, Tennessee, and Arkansas) that seceded following the bombardment of Fort Sumter. Extralegal secessionist councils in the Unionist border states of Kentucky and Missouri also sent delegates to the Confederate Congress, which explains why the national flag displayed thirteen stars when only eleven states seceded. In July 1861, Richmond, Virginia, superseded Montgomery as the capital of the Confede acy.

The nature of congressional legislation was determined by the course of the war. Unlike future congresses, the Provisional Congress cooperated fairly well with President Davis, endorsing most of his emergency war measures. After Abraham Lincoln called for U.S. volunteers to suppress the Southern rebellion in April 1861, the Confederate government faced the urgent tasks of raising an army, mobilizing the home front for war, and funding military operations. To these ends President Davis requested and the Provisional Congress approved a program of three-year enlistments, the suspension of habeas corpus, and various war appropriations.

The Provisional Congress created six executive departments: State, Treasury, War, Navy, Justice, and Post Office. These mimicked the cabinet structure of the old Union except in two instances. First, the Confederacy omitted a department of the interior. Second, it enlarged the office of attorney general by creating a Department of Justice under his direction, a step the U.S. government would not emulate until 1870. Chronic turnover of department heads gave Davis's cabinet far less stability than Lincoln's. In all, fourteen secretaries and three ad interim appointees held cabinet posts during the life of the Confederacy. Personality clashes with Davis led to some cabinet resignations, while other officers left to accept military commissions or alternate political appointments or to escape unrelenting congressional criticism. Only the navy secretary Stephen R. Mallory and postmaster general John H. Reagan held their assignments for the duration of the war. Judah P. Benjamin, who was Davis's ablest and most influential cabinet adviser, also served for the entirety

of the war, but he juggled three different portfolios, those of attorney general, secretary of war, and secretary of state.

Cabinet issues strained relations between the executive and legislative branches throughout the war. The Provisional Congress strenuously objected to two of Davis's original selections, though it eventually confirmed all the president's nominations. As opposition to Davis's administration mounted during the war, the president's congressional detractors consistently blasted the cabinet as incompetent, thereby taking a sideswipe at Davis himself. Beginning as early as winter 1861 the Confederate Congress repeatedly called on Davis to restructure his cabinet. He angrily refused, asserting executive privilege of appointment while aggressively defending his bureau chiefs against congressional charges.

Despite congressional opinions to the contrary, the Confederate cabinet was not inept. Although only a few of Davis's secretaries, like Benjamin, possessed extraordinary talent, most executed their duties adequately. Congress simply demanded miracles from the executive personnel, who never had sufficient resources at their disposal to fulfill legislative expectations. Davis chose his department heads carefully if not always wisely. He sought men of accomplished ability, though of course his decisions reflected political considerations. Before nominating a candidate Davis conferred with influential state leaders, and he made selections that he hoped would mollify all major political factions. Likewise Davis was determined to represent the broadest possible array of states in his cabinet. These practices, while politically savvy, did not always ensure the placement of the best person for each job. Nevertheless Davis maintained good relations with his department heads, meeting with them regularly and giving them an active role in formulating policy.

In November 1861, as the incumbency of the Provisional Congress neared expiration, the Confederate republic held elections to its First (regular) Congress. Little actual campaigning or electioneering accompanied the first elections, which involved few substantive issues. In this election candidates with strong secessionist credentials or who were outspoken antebellum Southern rights advocates enjoyed only minimal advantage over other candidates. Delegates to the First Congress took their seats in February 1862 and remained until December of the following year. Meanwhile, in summer 1863 the Confederacy held elections to its Second Congress, which assembled in May 1864 and continued until March 1865. A bicameral body consisting of a Senate and a House of Representatives, the regular Confederate Congress differed little from its U.S. counterpart. In fact about one-third of the 267 men who served in either chamber of the regular Congress had previous U.S. congressional experience, and one, John Tyler, had be n president of the United States.

Relations between President Davis and the Congress, shaky from the start, deteriorated as the war progressed. The First Congress did enact most war measures initiated by Davis and his cabinet, but it did so grudgingly, with vociferous criticism, and only because the legislators had no better plans to offer. Much to the infuriation of Davis, even when the Congress ultimately approved administration policies, stubborn opposition invariably delayed or weakened legislation on such vital matters as conscription, impressment, revenue, and military governance. For example, the First Congress discussed but failed to renew the suspension of habeas corpus. Hoping to keep taxes low, Congress hesitated in passing income-tax legislation and a tax-in-kind on agriculture until spring 1863. In the meantime, for revenue the Treasury had to rely almost solely on bond issues, which proved insufficient. As the tide of the war turned increasingly against the South, congressional hostility toward the executive mounted. In 186 the Confederacy suffered staggering defeats at Shiloh, New Orleans, Antietam, and Corinth, Mississippi. At the same time the South's "King Cotton diplomacy" failed to secure foreign recognition of the Confederate nation. By early 1863 the Congress made it clear that it had lost faith in Davis's conduct of the war, as evidenced by its openly combative posture toward the administration and by several needless and spiteful investigations into executive departments.

The Second Congress showed even more antagonism toward the president and his advisers, although it conducted legislative business more decisively than its predecessor. Despite some but not overwhelming dissension, the Second Congress passed rigid conscription legislation, and it finally reenacted the suspension of habeas corpus in cases of desertion or treason. These actions, however, scarcely signaled approbation for Davis's war policies. Rather, they merely reflected the desperation of the times, for by 1864 and 1865 Confederate military fortunes were sinking fast. In a final act of desperation the Congress approved the limited emancipation of black slaves and their induction into the military. Favoring the use of slaves in any way that might aid the Confederate war effort, President Davis was an early proponent of enlisting black troops. But the issue was hotly contested, as it entailed a virtual recantation of

the racial doctrines, not to mention the legal and constitutional structures governing the outhern republic. The idea that slaves could be trusted to perform competent and loyal armed service and deserved liberty in exchange did great damage to the assumptions that blacks were innately inferior, unable to function in free society, and suited only to servitude. As Cobb flatly declared, "If slaves will make good soldiers our whole idea of slavery is wrong" (Durden, p. 184). Nevertheless in March 1865 Congress did authorize black enlistments, but the measure came too late to save the Confederacy.

To be sure, Davis had an important cadre of supporters in the Confederate Congress. The speaker of the House of Representatives, Thomas S. Bocock of Virginia, and the senators Benjamin H. Hill of Georgia and Robert W. Barnwell of South Carolina consistently backed administration war measures and urged fellow legislators to cooperate with the president for the sake of national solidarity. Davis, however, had more adversaries than friends in Congress. Among his more venomous critics were the senators Louis T. Wigfall of Texas, Robert M. T. Hunter of Virginia, and Yancey of Alabama. These states' rights extremists obstructed all administration attempts to prosecute the war more vigorously, blasting energetic federal initiatives as catalysts of centralized despotism. The politics of personality also accounted for much of the vitriolic opposition to the Davis government. For example, the leading oppositionist in the Confederate House was the Tennessee congressman Henry S. Foote, whose anti-Davis harangues wer motivated by personal spite. Foote and Davis had been bitter rivals in Mississippi state politics before the war. Because of a similar personal enmity, Davis was the target of scathing criticism from his own vice president, Stephens, who probably did more to sabotage the administration than any other individual.

To a large degree the extraordinary extent of political infighting within the Confederacy stemmed from its lack of a two-party political structure. The Confederate founders had deliberately eschewed dual-party politics, hoping to cultivate a one-party system in which partisanship would not dilute patriotism for the cause of Southern independence. Ironically, the lack of party structure produced the opposite result, allowing the debilitating effects of vindictive personal politics to spread unchecked. In the Union government President Lincoln effectively used the Republican Party to channel Federal authority, to unite the state administrations behind Federal war aims, and to enforce party discipline, thereby minimizing the impact of personal political jealousies. With no party apparatus at his disposal, President Davis was unable to contain internecine political divisions, to bind Confederate leaders to a unified political purpose, or to compel state compliance with federal war directives.

Indeed the most devastating opposition to the Davis administration came from the states. Obstructionist governors, such as the infamous Joseph E. Brown of Georgia and Zebulon B. Vance of North Carolina, undermined the Confederate war effort by resisting federal military policies at every turn. Brown, for instance, railed against conscription laws that placed Georgians in Confederate rather than state service. Likewise he deprived Confederate authorities of the use of Georgia militia, decrying the federalization of state troops as a usurpation of gubernatorial prerogatives. While he claimed powers of impressment, the right to commandeer private property for public use in wartime, Brown fought Confederate impressment endeavors as a transgression against state sovereignty. On more than one occasion Brown told the people of his state that they had less to fear from the Union army than from their own tyrannical government in Richmond. Vance took a similarly defiant stance. He refused, for example, to allocate his state's resources to provision any but North Carolina troops. When General Robert E. Lee finally surrendered his tattered, hungry, and ill- equipped Confederate army in April 1865, Vance bragged that he still had huge surpluses of food and supplies idling in state storehouses.

Such incidents highlighted the Achilles' heel of the Confederate experiment: the incongruity between the commitment to states' rights and the wartime need for strong central controls. Virulent state particularism exposed the fallacy of Confederate national unity and rendered authorities in Richmond unable to truly nationalize the Southern war effort. Thus the unwillingness of the South to surmount its states' rights mentality in order to function as a nation played no small role in the demise of the Confederate republic, whose epitaph might well have read, "Died of States' Rights."

Further Readings

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

Davis, William C. *A Government of Our Own: The Making of the Confederacy*. New York: Free Press, 1994.

———. Jefferson Davis: *The Man and His Hour*. New York: HarperCollins, 1991.

DeRosa, Marshall L. *The Confederate Constitution of 1861: An Inquiry into American Constitutionalism*. Columbia: University of Missouri Press, 1991.

Durden, Robert F. *The Gray and the Black: The Confederate Debate on Emancipation*. Baton Rouge: Louisiana State University Press, 1972.

Eaton, Clement. *Jefferson Davis*. New York: Free Press, 1977.

Faust, Drew Gilpin. *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South*. Baton Rouge: Louisiana State University Press, 1988.

Lee, Charles Robert. *The Confederate Constitution*. Chapel Hill: University of North Carolina Press, 1963.

McKitrick, Eric L. "Party Politics and the Union and Confederate Efforts." In *The American Party Systems: Stages of Political Development*. 2d ed. Edited by William Nisbet Chambers and Walter Dean Burnham. New York: Oxford University Press, 1975.

Owsley, Frank Lawrence. *State Rights in the Confederacy*. Chicago: University of Chicago Press, 1925.

Rable, George C. *The Confederate Republic: A Revolution against Politics*. Chapel Hill: University of North Carolina Press, 1994.

Schott, Thomas E. *Alexander H. Stephens of Georgia: A Biography*. Baton Rouge: Louisiana State University Press, 1987.

Yearns, W. Buck. *The Confederate Congress*. Athens, Ga.: University of Georgia Press, 1960.

Source: *Encyclopedia of the United States in the Nineteenth Century*. 3 vols. Charles Scribner's Sons, 2001.