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Cranks, libertarians, and zealots: an examination of opposition to Jefferson Davis in the Provisional and First Confederate Congresses

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**CRANKS, LIBERTARIANS, AND ZEALOTS:
AN EXAMINATION OF OPPOSITION TO JEFFERSON DAVIS IN THE
PROVISIONAL AND FIRST CONFEDERATE CONGRESSES**

**A Thesis
Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Master of Arts**

in

The Department of History

by

**Tereal Wayne Edmondson
B.A., Louisiana State University, 2002
August 2004**

Dedicated to the memory of Lightle Jacob Wooley, Jr.

(1922-2001)

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ABSTRACT

While many historians have maintained that the Provisional and First Confederate Congresses both served as legislatures intent on obstructing Jefferson Davis's policies, these southern assemblies actually provided little notable resistance to the president. Congressmen who did oppose Davis's policies never coalesced into a formal opposition. This lack of cohesion resulted from two factors: the Confederacy's eschewal of political parties following secession from the Union and the inability of disgruntled solons to organize an oppositional faction thereafter. When objections to increased centralization of the war effort came, they were from individuals who acted alone or in small factions. Consequently, Davis had a vast majority of his desired policies enacted during the period from February 1861 to February 1864.

INTRODUCTION

In Jefferson Davis's 1881 work, *Rise and Fall of the Confederate Government*, the former president lamented that the rigid belief in states' rights continually plagued the Confederacy and resulted in the nation's defeat. Historians continue to wrestle with Davis's argument that the Confederacy "died of a theory."¹ Any serious examination of Confederate political culture, particularly the workings of Congress, must address the validity of the hypothesis. The best test of the premise is through analyzing the ability of Congress to take the initiative regarding such issues as conscription, the suspension of habeas corpus, impressments and taxation, and granting Jefferson Davis greater control of the war effort. For early scholars of the Confederacy such as Frank Lawrence Owsley and Albert Burton Moore, the impact of states' rights was all-encompassing and served as the prime motivator for Davis's opponents in Congress.²

From the 1960s to present day, historical treatments of the Confederate Congress have undergone significant transformation. Starting with Buck Yearn's 1960 book, *The Confederate Congress*, the influence of states' rights as an explanation for congressional opposition has diminished considerably. While he wrote that states' rights did contribute to some of the opposition, Yearn maintained that Davis's expanding powers as commander in chief during wartime served as the major cause of dissent for a hesitant and unsure legislature.³ Two landmark quantitative studies, Thomas B. Alexander and

¹ Jefferson Davis, *Rise and Fall of the Confederate Government*, (2 vols. New York: D. Appleton, 1881), I, 581.

² Frank Lawrence Owsley, *State Rights in the Confederacy* (Chicago: University of Chicago Press, 1925); Albert Burton Moore, *Conscription and Conflict in the Confederacy* (1924. Reprint, Columbia: South Carolina University Press, 1996).

³ Buck Yearn, *The Confederate Congress* (Athens: University of Georgia Press, 1960), 222-227.

Richard E. Beringer's *The Anatomy of the Confederate Congress* and Kenneth Martis's *The Historical Atlas of the Congresses of the Confederate States of America: 1861-1865*, also strove to explain congressional division. For Alexander and Beringer, old political allegiances, concerns about one's constituency and its proximity to conflict, one's view of secession and Union, and the changing course of war tended to predicate one's loyalty or opposition to Davis. Martis, on the other hand, unswervingly claimed that one's location determined the depth of allegiance to the nation's cause. He argued that only congressmen from regions under Federal control or heavily disrupted by combat supported Davis's centralization of the war effort, primarily because they knew such measures could not be readily enforced in their home districts.⁴

I maintain, on the other hand, that that Davis's opposition in the Provisional and First Congresses was diffuse and often negligible. These congresses, which met the demands for the nation's defense and established the framework of government, usually complied with their president's desires to give the executive greater control of the nation's war effort. From February 1861 to February 1864, Jefferson Davis requested Congress to supply him with such measures as a military draft, the permission to suspend the writ of habeas corpus, federalized methods of taxation and impressment, and approval of military appointments and strategy. Congress tended to comply with his wishes; modifications or rejections of his requests were rare. When antagonism came, it was generally from individuals who were incapable of coalescing into an organized opposition that could alter Davis's course.

⁴ Thomas B. Alexander and Richard E. Beringer, *The Anatomy of the Confederate Congress* (Nashville: Vanderbilt University Press, 1972), 68, 322, 329; Kenneth Martis, *The Historical Atlas of the Congresses of the Confederate States of America: 1861-1865* (New York: Simon and Schuster, 1994).

CHAPTER I
THE CONFEDERACY'S FIRST YEAR OF GOVERNMENT,
FEBRUARY 1861-FEBRUARY 1862

Following Abraham Lincoln's election in November 1860, seven states in the Lower South held special legislative sessions or formed conventions to examine the prospect of severing ties with the United States. Although the process of secession differed from state to state, a majority of the congressional representatives or convention delegates in each of these states agreed that they could no longer participate in the Union. One by one, they withdrew from the Union before Lincoln's inauguration in March of the following year.¹ Answering South Carolina's call for a national convention of seceded states, the other six states agreed to assemble in Montgomery, Alabama in order to create a new central government.

The compositions of the state commissions to the Montgomery meeting were highly divergent, however. South Carolina and Mississippi both had stridently secessionist delegations that outsiders regarded as radical ideologues. The representatives from Alabama had to contend with a sizable constituency in the northern districts that favored cooperation with the Union, not the chosen path of secession. Florida had an apprehensive electorate that waited to approve of disunion until they sensed that their neighbors Alabama and Georgia would act decisively. Georgia, in turn, had a considerable number of citizens harboring Whiggish political sensibilities and

¹ Buck Yeans, *The Confederate Congress* (Athens: University of Georgia Press, 1960), 3. The dates of secession for the "original seven" states of the Confederacy are as follows: South Carolina on December 20, 1860; Mississippi on January 9, 1861; Florida on January 10, 1861; Alabama on January 11, 1861; Georgia on January 19, 1861; Louisiana on January 26, 1861; and Texas on February 1, 1861. Due to Texas's relatively late date of secession, Congress did not admit her delegation until March 2, 1861.

reservations about leaving the Union. Louisiana was slower in her acceptance of secession, primarily due to New Orleans' prominence as a domestic and international trade hub. She also had a highly lucrative sugar industry that enjoyed the protection of the national tariff, unlike many other southern agricultural products. State delegates would even attempt to retain protective tariffs once the Provisional Congress convened, a motion that the other states flatly rejected.² Texas was a hotbed for secession, but the staunchly Unionist governor Sam Houston thwarted the state's efforts to break away from the United States until late January 1861, when the popular sentiment became so overwhelming that the governor finally relented.³

The newly independent states sent delegates to Montgomery on February 4, 1861 hoping to create a new national government while their constituents' approval of secession remained strong. Popular vote did not determine the selection of envoys; state legislatures or newly formed secession conventions chose the representation.⁴ Almost all emissaries were men of affluence; few held estates valued at \$10,000 or less. As Thomas Alexander and Richard Beringer note in *The Anatomy of the Confederate Congress*, "it is apparent that the roll-call divisions in the Provisional Congress were not significantly associated with personal economic status of the members." Slavery was thoroughly

² *Journal of the Congress of the Confederate States of America, 1861-1865*, Volume I (5 vols; Washington, D.C.: Government Printing Office, 1904), 59-60. Hereafter cited as *JCC*.

³ Emory Thomas, *The Confederate Nation* (New York: Harper Row, 1979), 46-56.

⁴ The processes employed to select provisional congressmen remains a controversial topic. Paul Escott's *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge: LSU Press, 1977) argues that state legislatures and secession conventions bypassed the ballot box when choosing delegates due to voters' initial confusion over the choice to secede. As a result, state officials hurriedly formed the Confederacy before doubts became widespread. Buck Yearn's *The Confederate Congress*, George Rable's *The Confederate Republic* (Chapel Hill: UNC Press, 1994) and Emory Thomas's *The Confederate Nation* give a much more positive assessment. They maintain that an overwhelming number of Confederate voters approved of the choice to secede and had faith in their state officials' actions. Rable and Thomas also are in general agreement that the nation's citizenry overwhelmingly supported their new government. The dearth of protests over the electorate's chance to voice their approval or disapproval for the establishment of the Confederacy signaled approval. Most considered elections to validate Montgomery solons' actions superfluous.

entrenched in the South of the 1860s. Not surprisingly, an overwhelming number of these prosperous solons possessed human property. The size of slave holdings did vary among congressmen, but relative wealth or the number of bondsmen one possessed did not result in much division at all in legislative matters. Slavery served as a unifying element for the Provisional Congress. Much like the social and political elites that constituted the upper tiers of the Confederate armies, Confederate congressmen had the most to lose if they could not maintain their new nation's independence.⁵

The infant nation hoped to eliminate the influence of political parties; with secession, many hoped that old Whigs and Democrats would now unite as Confederates.⁶ While latent political animosity between former party adherents did emerge in First and Second Congresses, the Provisional Congress largely escaped partisan antagonism. The lack of hostilities among Montgomery delegates was not surprising. After all, wealthy southern Whigs and wealthy southern Democrats living in a predominantly agrarian region, the two groups comprising the bulk of the Provisional Congress, were both very likely to own slaves. Despite longstanding political differences pertaining to the size and scope of municipal, state and federal government, southern elements of both parties strenuously defended their right to maintain their domestic institution of bondage.⁷

Delegates' positions on secession would prove to be a more divisive issue. Initial opposition to secession mostly came from some old-line Whigs, but many former party

⁵ Thomas Benjamin Alexander and Richard E. Beringer, *The Anatomy of the Confederate Congress* (Nashville: Vanderbilt University Press, 1972), 78-90.

⁶ The original seven states' delegations numbered 34 former Democrats, 23 former Whigs, and 3 delegates whose prior party affiliation was either undeclared or unknown. The addition of the remaining six states of the Confederacy yielded a final total of 62 former Democrats, 44 former Whigs, and 10 members with unknown or undeclared party affiliations. A quantitative overview of former party affiliation is available in Alexander and Beringer, *Anatomy of the Confederate Congress*, 36.

⁷ E. Merton Coulter, *The Confederate States of America 1861-1865* (Baton Rouge: LSU Press, 1950), 8-11.

members found preservation of slavery to be more important than upholding the Union.⁸ Others harboring Unionist or cooperationist sentiments wanted to wait and see how Lincoln would execute his office. State legislatures and conventions sent large numbers of these lukewarm Unionist advocates and moderate secessionists to Montgomery in order to counter the radical impulses of fire-eating original secessionists. Men such as William Lowndes Yancey of Alabama, South Carolina's Robert Barnwell Rhett, Albert Gallatin Brown of Mississippi, Georgia's Henry L. Benning, Virginia's Edmund Ruffin and Beverley Tucker, and Louis Wigfall of Texas laid the political groundwork for this movement in the 1850s. By 1860, most Southerners agreed with the fire-eaters that Northern political aggression was too much to bear. Many Southerners, however, found these radicals "inflexible" and often "personally difficult and politically obtuse, and they were consistently unable to forge meaningful coalitions even among themselves, let alone ally with the many shades of moderate opinion throughout the South."⁹ Restraint would guide the founding the new nation; the fire-eaters would be largely marginalized by the time the Congress ratified the permanent Constitution. Their choice for the presidency and their vision for the framework of government would never materialize. "Unable to get along with each other or anyone else," David and Jeanne Heidler argue that the fire-

⁸ The original seven states' delegations had 38 delegates favoring secession, 20 who initially favored cooperation with the Union, and 2 whose opinion was either undeclared or unknown. With the addition of Arkansas, Kentucky, Missouri, North Carolina, Tennessee, and Virginia, the final totals were 58 secessionists, 45 Unionists, and 13 undeclared or unknown. Alexander and Beringer, *Anatomy of the Confederate Congress*, 36; Georgia Lee Tatum, *Disloyalty in the Confederacy* (1934; Lincoln: University of Nebraska Press, 2000), 4.

⁹ Quote from David S. Heidler and Jeanne T. Heidler, "Fire-Eaters," ed., David S. Heidler and Jeanne T. Heidler, *Encyclopedia of the American Civil War* (New York: W.W. Norton, 2000), 699; Emory Thomas, *The Confederate Nation*, 61; Rable, *The Confederate Republic*, 67.

eaters “were again demoted in popular esteem to the rank of unreasonable men with dangerous opinions.”¹⁰

Soon after the representatives assembled, the notorious fire-eater Robert Barnwell Rhett nominated Howell Cobb as the chair to preside over the Provisional Congress. Cobb had a formidable record of political service as a U.S. congressional representative, the governor of Georgia from 1852-1854, and James Buchanan’s treasury secretary. The heretofore-ambitious Cobb seemed curiously content with his possible leadership within the makeshift legislature and confided that he did not hold aspirations for higher office in the nascent Confederacy. In a letter to his wife, Cobb observed that “from all I here there is a general disposition to make me president of the convention. It is thought that my taking that position will exclude me from the Presidency of the Confederacy and some of my friends doubted on that account the policy of my taking it.” However, Cobb insisted, “in this I differed from them and have determined to follow my own judgement. The truth is that the Presidency of the Confederacy is an office I cannot seek and shall feel no disappointment in not getting.” Despite his refusal to consider the presidency, he retained a sense of sanguinity regarding the forthcoming proceedings. “There is at present much diversity of opinion as to the course to be pursued in the formation of a provisional government, but there is a general good feeling and predisposition to unite and harmonize on whatever may be found the best policy. I feel confident all will work out in the end.”¹¹

¹⁰ David S. Heidler and Jeanne T. Heidler, “Fire-Eaters”, *Encyclopedia of the American Civil War*, 700.

¹¹ Cobb to His Wife, 3 February 1861, ed. Ulrich B. Phillips, *Correspondence of Robert Toombs, Alexander Stephens, and Howell Cobb, 1911 Annual Report of the American Historical Association, Vol. II* (Washington: American Historical Association, 1913). 536-537. Hereafter cited as *Correspondence*.

Convention representatives quickly approved of Rhett's choice of Cobb on the first day of meeting and then set about creating a new government. Agents assembled in a unicameral legislature and states' delegation numbers equaled the size of their prior allocations in the United States Congress. Each state was allowed one vote to decide matters. Majority approval or rejection by a state's delegation resulted in an aye or nay vote; a split decision yielded the casting of an undecided vote. This framework governed the Provisional Congress for the next year.¹²

The newly formed Provisional Congress confronted two pressing challenges towards establishing a legitimate government: the need for a new constitution and the absence of an executive. Congressional representatives immediately took measures to rectify both problems. In a February 5, 1861 open session, Christopher Memminger of South Carolina presented a resolution calling for the establishment of a provisional central body to govern the seceded states. In a secret session that same day Howell Cobb's brother, Thomas R.R. Cobb of Georgia successfully moved for the swift election of an interim president and vice-president and for the provisional body to last no longer than twelve months. The Congress accomplished both goals. By February 9, 1861, delegates chose their provisional executives; by February 17, they were inaugurated and executing the duties of their offices. Congress elected Jefferson Davis of Mississippi as interim president and Alexander Stephens of Georgia as the temporary vice-president. Then, the First Congress, with a membership largely determined by popular vote,

¹²JCC, I, 7-16. Alexander and Beringer, *Anatomy of the Confederate Congress*, 74-76; Kenneth Martis, *The Historical Atlas of the Congresses of the Confederate States of America, 1861-1865* (New York: Simon and Schuster: 1994) 7-8, 89-90.

assembled for formal proceedings in Richmond, Virginia on February 18, 1862, barely more than a year later.

As delegates pondered the makeup and future of the executive and legislative branches, they drafted and adopted a provisional constitution. On February 7, a committee of twelve led by Memminger offered a document virtually identical to that of the United States. The next day, delegates amended the text. Most congressmen were devout constitutionalists and saw no need to adopt major changes to the new code of laws. Excluding changes that would bolster states' rights and strengthen the protection of chattel slavery, most delegates wanted no major alterations. Consequently, solons made few protests to the provisional document. Duncan Kenner of Louisiana raised objections to the word "nation" in Article 1, Section 6.1 and the committee quickly omitted it. Entitled the "Constitution for the Provisional Government of the Confederate States of North America", many delegates found the word "north" as odious as the word "nation" – if not more so. Consequently, the document's authors removed it as well. With a minimal amount of protest, the Montgomery delegates adopted their new constitution on February 8, 1861. A twelve-man committee, led by Rhett, then began the process of forging a permanent document.¹³

The constitutional committee labored for five weeks on a permanent constitution, which Congress unanimously adopted on March 11, 1861. Much like the provisional constitution, the Confederacy's new framework for government closely resembled the U.S. Constitution. Many Confederates had few grievances with their former nation's constitution. Most Confederate leaders, such as Jefferson Davis, regarded themselves as

¹³JCC, I, 25-39; James D. Richardson, ed., *A Compilation of the Messages and Papers of the Confederacy*, Vol. I, (2 vols., Nashville: United States Publishing Company, 1906). 3-14. Hereafter cited as *M&P*.

devout constitutionalists. Indeed, they viewed themselves as the true adherents to the principles of the American Revolution and guardians of the Constitution, not their former countrymen in the North. Rather than continue in a Union with northern states that appeared intent on irreparably altering the nation's laws and economy, the leaders of the Confederacy saw no other choice but secession in order to preserve their constitution and way of life.

A comparative analysis of the two nations' constitutions reveals many similarities. The new Constitution imposed many limitations on states' powers similar to the old Federal document; state sovereignty was far from absolute. State officers were required to take an oath of loyalty to the Confederacy and to uphold and maintain their new Constitution. The same restrictions on states' rights mentioned in the U.S. Constitution were also in the new Confederate document. Laws issued by the national government continued to take priority over those proclamations and decrees emanating from state legislatures. Once a seceded state joined the Confederacy, it lost the privilege to ally independently or make treaties with other nations or states. Other restrictions placed on the states included the denial of the privilege to coin or print currency, the inability to pass ex post facto legislation or bills of attainder, and forswearing of the right to maintain an army or navy in peacetime. Just as the Constitution precluded the states the ability to engage in independent treaties or alliances, it also denied states the capacity to wage war on their own accord. One major loophole for heightened central powers remained. The "necessary and proper" clause was also part of the Confederate constitution – a provision that Jefferson Davis would rely upon in future years to press for increased centralization of the war effort.

Several significant alterations emerged, however. The discernable variations from the Union centered on a reiteration of states' rights, protections for chattel slavery, and revisions of governmental processes. Protections of states' rights in the Constitution were alternately implicit and overt. The constitutional committee never addressed a state's right to secede from their new nation in the text, though the new document did not specify it as illegal. Most congressmen and most loyal Confederates, for that matter, vociferously believed that states retained that privilege. Confederate state legislatures and secession conventions predicated their decision to dissolve their political ties to the United States and to create a new country on the belief that American nationhood resulted from a compact of states that could voluntarily join and depart from their mutual alliance at any time they saw fit. Since all seceded states recognized the validity of each other's departure from the United States, then certainly a Confederate state maintained the right to secede from the nascent republic if the day arose when an individual state found its condition within the national framework to be unsatisfactory.

Besides the implicit approval of secession, the tangible changes to the document revealed a newly stressed emphasis on states' rights and slavery. No longer a "more perfect union," the states were now regarded as "sovereign and independent" bodies working together to establish and maintain "a permanent federal government." To placate fears of tyrannical federalism within southern borders, officials of the Confederate central government "resident and acting solely within the limits of any State" were eligible for impeachment by state legislatures. Congress could enact no national law denying an individual's "right of property in negro slaves." Additionally, the permanent constitution circumvented fears regarding the legality of slavery in newly

acquired Confederate territories and states. Section 9.4 permitted slaveholders to transport their property to all corners of the Confederacy, irrespective of that locality's laws or position on human bondage. Although some delegates made efforts to revive the international slave trade, concerns over the depreciation of domestic slave values and potential alienation of sympathetic Border States in the Upper South won out. Section 9.1 maintained the ban on foreign importations of Africans; Section 9.2 denied "the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy."¹⁴

Several notable changes in legislative and executive procedure occurred. Maintaining the old spirit of Southern conservative constitutionalism that preceded secession and confederation, the Constitution prohibited Congress from proposing new amendments. Instead, the Constitution placed the initiative for change in the hands of the states. Ratification of the permanent Constitution would come from two-thirds approval by state legislatures or special conventions. No changes to the Constitution occurred during the Confederacy's lifespan, however. Congress could neither implement a protective tariff nor adopt internal improvements. Budgetary legislation had to show specific amounts allotted and explicit reasons for expenditure. A two-thirds vote from both houses was necessary for any disbursement of governmental funds. In order to prevent pork-barrel spending or the insertion of legalistic loopholes, each bill could only address one matter and the legislation's intent had to be clearly expressed in the bill's title. The executive's term in office was limited to a single six-year term; many

¹⁴ Copies of the Confederacy's Permanent Constitution are in *M&P*, I, 3-14 and Rable, *The Confederate Republic*, 307-322. Discussion of the attempts to revive the international slave trade are in Rable, *The Confederate Republic*, 51-53 and Alexander & Beringer, *Anatomy*, 98.

Confederates hoped such a policy would elevate the presidency above the fray of internecine politics and preemptively curb abuses with patronage.

In sum, The United States and the Confederate States had remarkably similar constitutions. “Ironically,” George Rable notes, “the most striking feature of the Confederate Constitution was not its Southern orientation. The permanent Constitution prescribed for the Confederacy much the same kind of union which the Southerners had dissolved.”¹⁵ Nevertheless, political theory differed from actual practice. Article 3 called for a Supreme Court but no such judiciary materialized during the Confederacy’s lifetime, primarily because of war. As a result, the nation’s federal government encompassed only the executive and legislative branches. Managing the war effort consumed Jefferson Davis and the Congress; they were far too busy executing their own duties to provide an adequate check on state courts. Instead, Confederate states had their own districts, which combined district and circuit courts. Although the state district courts generally ruled in favor of Confederate policies, states such as Georgia and North Carolina would become increasingly contentious concerning judicial matters. The Confederacy also lacked organized political parties unlike the United States, which retained a vibrant party system. Although the Republican party dominated the U.S. Congress, the Democratic party provided loyal (and in some cases, not so loyal) opposition to moderate and radical Republican initiatives.

The Confederacy’s eschewal of political parties resulted in a lack of organized loyal opposition. The looming conflict with the North also inhibited much open dissent. Buck Yearns expertly summarized congressional hesitance to offer coordinated means of political resistance. He argues, “. . . during a war, when survival issues face the

¹⁵ Rable, *The Confederate Republic*, 64.

government in quick succession, indecision seems weakness and inaction seems almost treasonable. If Congress passes an unpopular administration, it shares the responsibility of that measure with the president; if Congress rejects an administrative measure, it is considered uncooperative; if Congress proposes alternatives to the president's suggestions, it is considered discordant." Like most American wartime Congresses, Yearns stresses that the Confederate Congress had considerable difficulty itself, "for all considerations in the Confederacy were secondary to winning the war."¹⁶

In the place of well-coordinated and formalized groups that countered the Davis administration with alternative measures for administering the war effort and solving domestic issues, short-lived, often tentative and largely inchoate factions emerged. Within this political context that the Confederate Congress conducted its business.



Shortly after arriving in Montgomery, provisional envoys selected Jefferson Davis and Alexander Stephens as provisional president and vice-president. The first week of meetings generated little overt campaigning for the presidency. A former U.S. senator, publisher of the acerbic Charleston *Mercury*, and the acknowledged "father of secession," the fiery Robert Barnwell Rhett felt he deserved the seat but did not campaign on his own behalf. Fellow South Carolinians assembled in Alabama did not push for his nomination; other delegates mindful of projecting a moderate image to prospective Confederates in the Upper South balked at the prospect. Conservatives were alarmed by his radical desires for the permanent Constitution, including the resumption of the international slave trade. Particularly disconcerting was the "Great Debate," in which Rhett, William P. Miles of South Carolina and T.R.R. Cobb proposed to exclude free states from future

¹⁶ Yearns, *The Confederate Congress*, vii.

admission into the Confederacy. John G. Shorter of Alabama would eventually offer an acceptable compromise measure: a two-thirds majority vote in both houses of Congress would admit new states. Once Congress ratified the document, conservatives relegated Rhett to the Committee on Foreign Affairs. Ezra Warner and Buck Yearns note that for “the balance of the war he joined his son on the *Mercury* to mount a vitriolic attack on Jefferson Davis, his administration, his appointments, [and] his strategy. . .”¹⁷ Most also deemed William Lowndes Yancey of Alabama, another of the leading fire-eaters, to be too radical and vituperative to be a serious candidate. After failing to gain significant diplomatic concessions during his stint as a European commissioner, Yancey returned to the Senate and became a vocal critic of Davis before dying in July 1863.¹⁸

Delegates briefly considered “Georgia Triumvirate” of Robert Toombs, Howell Cobb, and Alexander Stephens as possible candidates. None distinguished himself as a truly satisfying choice. Toombs, a noted attorney and prominent U.S. senator, was the early favorite for the office, but he lost support when several states’ delegates tipped their hand regarding their preference for Jefferson Davis. Longstanding animosities with old political rivals did not help his cause either. His erratic behavior and heavy drinking during the opening days of the Montgomery Convention probably vanquished whatever prospects Toombs had for capturing the presidency. As his lifelong friend Alexander Stephens noted with dismay, Toombs was “tight every day at dinner” and “about two days before the election” he was “tighter than I ever saw him.”¹⁹ Davis named Toombs

¹⁷ Quote from Ezra J. Warner and W. Buck Yearns, *Biographical Register of the Confederate Congress* (Baton Rouge: LSU Press, 1975), 205-206; Thomas, *The Confederate Nation*, 64-65; *JCC*, I, 876-893. Also see William C. Davis, *Rhett :The Turbulent Life and Times of a Fire-eater* (Columbia: University of South Carolina Press, 2001).

¹⁸ Warner and Yearns, *Biographical Register of the Confederate Congress*, 264-265.

¹⁹ Thomas, *The Confederate Nation*, 59.

as secretary of state, a job that Toombs accepted but with which he quickly grew disenchanted. He would go on to serve tumultuous stints in both the Congress and the Confederate Army. Always critical of President Davis's centralization policies, Toombs would eventually ally openly with Stephens, his brother Linton, and Georgia governor Joseph Brown. These men would emerge as some of the most critical opponents of the Davis administration.²⁰

Some favored Howell Cobb, a short-lived prospect for the Democratic presidential nomination in 1860 and current president of the Provisional Congress. Curiously, the position as the Confederacy's chief executive did not appeal to heretofore-ambitious Cobb. Notably quiet during his tenure as president of the interim Congress, he provided little more to the proceedings than his physical presence. His lack of assertiveness in the new Confederacy may have been due in part to his political past as a political moderate who was lukewarm on secession until 1860. Simmering distrust by more assertively secessionist delegates could explain his resulting reluctance to take a more active role in government affairs. What is known is that he did not want the job of president and made no effort to seek it. A February 6, 1861 letter to his wife provides ample evidence that Cobb lacked interest in the presidency. The correspondence also reveals a disinclination by many provisional delegates to put forth any nominee. Despite the seeming reluctance by many of the delegates to campaign actively for a candidate, Cobb astutely commented that "I rather think that Jeff. Davis will be the man, though I have not heard any one say that he is for him. The truth is – and it is creditable to our public men here – there is no effort made to put forward any man, but all seem to desire

²⁰ Warner and Yearn, *Biographical Register of the Confederate Congress*, 238-239. For a biographical treatment, see William Y. Thompson, *Robert Toombs of Georgia* (Baton Rouge: LSU Press, 1966).

in everything to do what is best to be done to advance and prosper the cause of independence . . .”²¹

Alexander Stephens was the third prospective contender from Georgia. He had ample political experience, including sixteen years as a prominent U.S. congressman. While a lengthy record of public service normally would have made him a highly attractive nominee, his record as a Unionist Whig who only recently converted to the secessionist cause surely diminished his prospects for the presidency. As late as New Year’s Eve 1860, Stephens still privately bemoaned what he saw as his home state’s recalcitrance, claiming, “the truth is our ultra men do not desire any redress of . . . grievances. They would really obstruct indirectly any effort to that end. They are for breaking up.” The idea of secession left Stephens truly distraught. All is now dark and gloomy,” he lamented, “I see no ray of hope . . . I now feel almost confident that this State will go for secession. I think it unwise and have done what I could to prevent it; but it is beyond my control, and the movement will before it ends I fear be beyond the control of those who started it . . .”²²

After Georgia seceded, the state chose Stephens as one of her ten delegates to the assembly in Montgomery. He went reluctantly and accepted his seat only after he received assurances from other convention attendees that the conference would base the new Confederate constitution on the old federal document.²³

²¹ Cobb to His Wife, 6 February 1861, *Correspondence*, 537. Warner and Years, *Biographical Register of the Confederate Congress*, 56-57. Biographies of Cobb include John Eddins Simpson, *Howell Cobb: The Politics of Ambition* (Chicago: Adams Press, 1973) and Randy L. Reid, *Howell Cobb of Georgia: a Biography* (3 vols., Ph. D. dissertation, LSU, 1995).

²² Stephens to J. Henly Smith, 31 December 1860, *Correspondence*, 526-527.

²³ For a biography of Stephens, see Thomas Edwin Schott, *Alexander H. Stephens of Georgia* (Baton Rouge: Louisiana State University Press, 1996).

Although Stephen's past as a Whig and Unionist precluded his selection as provisional president, many delegates did deem him an excellent choice for office of vice-president. Although many convention members did not agree with his politics, he was awarded the vice-presidency because of his potential appeal to indecisive Border States contemplating disunion. His presence in the executive branch would also placate moderates and Unionists within current Confederate borders, giving them a sense of inclusion. Additionally, Georgia was the most populous state among the original seven to secede. As Emory Thomas argues, "now he was vice-president because he had been a cooperationist, because he was a Georgia Whig, and because his friends in the Georgia delegation had worked for his election."²⁴ The provisional Constitution did not specify any duties for Stephens, so he participated in the Congress like a normal member. He was very active in the Constitutional committee, as well as the Rules and Executive Department committees. While Stephens never had warm personal relations with Jefferson Davis, they did have a cordial professional relationship during the Confederacy's first year, particularly during the four months that Montgomery housed the Confederate government.²⁵

Jefferson Davis of Mississippi was the only truly acceptable choice for most delegates in Montgomery. Although he resolutely accepted his home state's secession and swiftly resigned from his U.S. Senate seat, he had a long record as a moderate on secession. A West Point graduate, Davis had a formidable political career. His record included service as a U.S. representative; a stint as a colonel in the 1st Mississippi Rifles,

²⁴ Quote from Thomas, *The Confederate Nation*, 61

²⁵ Warner and Yearn, *Biographical Register of the Confederate Congress*, 231-233; James Z. Rabun, "Alexander H. Stephens and Jefferson Davis," *The American Historical Review*, Vol. 58, No. 2 (Jan. 1953), 290-296.

during which he distinguished himself as a bona fide war hero in the Mexican War; secretary of war in the Pierce administration; and finally, service as one of the preeminent Democratic senators in Washington. Following his resignation from Congress, he returned to his plantation near Vicksburg, where he soon learned that he received a state commission as major general of Mississippi troops on January 25. Inclined towards the military, Davis welcomed this position eagerly. Although Davis embraced the prospect of commanding troops, he never had the chance to fulfill this duty.²⁶ While at his plantation home Brierfield, Davis received a telegram the very day Congress elected him, notifying him of his new post. “Sir”, the message read, “We are directed to inform you that you were this day unanimously elected President of the Provisional Government of the Confederate States of America, and to request you to come to Montgomery immediately. We send also a special messenger. Do not wait for him.”²⁷ Davis’s wife, Varina, noted that the message floored Davis; she remarked that he responded to the telegram with a sense of grief and shock comparable to hearing of a sudden death in the family. Despite his misgivings, Davis accepted his new responsibility, departing promptly for Montgomery. Sworn in on February 17, 1861, Davis immediately went to work as the new chief executive.²⁸

Although the drafting and ratification of the permanent Constitution only took five weeks, Davis and the Montgomery Congress simply did not have time to wait for the final draft document. The provisional constitution provided a sufficient temporary

²⁶ Several recent biographies of Jefferson Davis are readily available, including William C. Davis, *Jefferson Davis: The Man and His Hour* (New York: Harper Collins, 1991) and William J. Cooper, Jr., *Jefferson Davis, American* (New York: Knopf, 2000). Herman Hattaway and Richard E. Beringer, *Jefferson Davis, Confederate President* (Lawrence: University of Kansas Press, 2002) offers an exhaustive overview of the Davis presidency.

²⁷ *M&P*, I, 30.

²⁸ Cooper, *Jefferson Davis: American*, 328-332.

blueprint for confronting matters of finance, diplomacy, and measures to bolster national defense. Additionally, W.P. Harris of Mississippi introduced a bill in secret session on February 9, 1861 that resolved to continue all Union laws consistent with the Confederacy's temporary foundations of government, a course of action swiftly adopted.²⁹ Within this framework, Davis and the Provisional Congress scrambled to stabilize their makeshift nation.

Steady and industrious activity marked the first session of the Provisional Congress. Facing imminent conflict with the North, Davis received authorization on February 20 to make war contracts. Sensing that the nation could not arm itself in a timely manner, he pressed for the Confederacy to assume control of arms, munitions, forts, arsenals and navy yards that the Union formerly held in Southern borders on February 26.³⁰ A provisional army was created on February 28; quickly on its heels came the establishment of a twelve-month regular army on March 9.³¹ The assembly retained a decades-old reluctance to build up a large standing army, though. Duncan Kenner's March 4 amendment to the army bill typified such sentiments, mandating "that the president shall call into the service of the Confederate states only so many of the troops

²⁹JCC, I, 41. A note on documenting the proceedings of the Provisional Congress: The *Congressional Journal* and James D. Richardson's *A Compilation of the Messages and Papers of the Confederacy* both offer a treasure trove of official messages, legislation, and resolutions. They offer little, however, in the means of verbatim debate in the interim legislature (or the Regular Congress, for that matter). No comprehensive anthology of speeches made in the Provisional Congress exists. The *Southern Historical Society Papers XLIV-LII* (hereafter cited as *SHS*) offers a fine account of the dialogue in the First and Second Congresses, albeit only for discourse in open sessions. Montgomery and Richmond solons barred congressional reporters and spectators alike from secret sessions. There is scant information of secret session communications beyond the formal bills and resolutions recorded in *Congressional Journal*. Likewise, there is very little evidence that congressional representatives took detailed notes from committee meetings and even less substantiation that significant records from those meetings survived. Given the scarcity of available documentation regarding available minutes in the Confederate Congress, there will be no attempts to postulate on what these men said or thought – either in public or in private – unless verified sources are available.

³⁰JCC, I, 71, 88-89.

³¹JCC, I, 94-95, 120.

herein provided for as he may deem the safety of the Confederacy may require.”³² The nation initially intended for an army of 100,000 men – a number that would quickly prove insufficient following the firing upon Fort Sumter and Lincoln’s subsequent call for 75,000 militiamen on April 15. Of course, few anticipated the size, scope, or duration of the war during these early days in the legislature.

Solons acceded to requests by Christopher Memminger, the new secretary of the treasury, for an issue of treasury notes and bonds. On February 28, Congress approved a domestic loan for fifteen million dollars and authorized the issue of one million dollars in treasury notes on March 8.³³ Other issues occupied the Congress, such as postage and railroad rates, establishing bureaus regulating concerns from lighthouses to Indian affairs, registering ships and vessels, and prohibitions on the manufacture of liquor. The establishment of a centralized judiciary branch produced strenuous debate, but no results. The first session adjourned on March 16 with no Supreme Court; the institution of the third federal branch remained elusive for the rest of the nation’s existence.³⁴

The firing on Fort Sumter on April 12, and Lincoln’s subsequent call for the states to provide 75,000 militia troops on April 15 dominated the Provisional Congress that convened for a special session on April 29. War was now a reality, requiring renewed efforts regarding the nation’s defenses. Davis sent a message to the assembled legislature declaring, “all we ask is to be left alone.”³⁵ His communication stressed that the Confederacy – which he noted as a compact of states – was always the target of Northern subjugation efforts, particularly from strident abolitionists. The Union tipped

³²*JCC*, I, 105.

³³*JCC*, I, 96, 116.

³⁴*JCC*, I, 127-129, 132-140.

³⁵*M&P*, I, 63.

its hand concerning its aggressive intent with the shifting of troops to Fort Sumter and then ignoring Davis's peace delegation recently sent to Washington, D.C. Lincoln's resulting call for 75,000 militia was nothing less than a "declaration of war." Citing the deficiencies with the Confederate navy, Davis called upon Southern private vessels to enlist for the cause. He pressed the Congress for more defense appropriations and an additional 100,000 troops to counteract Lincoln's buildup of men. The sense of urgency in Davis's message impressed even Robert Barnwell Rhett, already an open critic of the administration. Rhett moved the next day for the Congress to act immediately upon "so much of the said message."³⁶

By May 3, Congress passed a bill recognizing the existence of war between the Confederacy and the United States.³⁷ Davis signed the bill on May 6, along with a measure awarding letters of marque to privateer ships.³⁸ By May 9, Davis signed a bill calling for additional troops – a measure that Congress passed a day earlier. Although many congressmen still harbored some reluctance to grant troops terms of service longer than 12 months, the act allowed the Confederacy to accept into volunteer service forces that the chief executive deemed expedient for the duration of the war.³⁹ Financing the war also occupied solons. By May 17, Davis signed a bill authorizing \$50 million in new loans and \$20 million in treasury notes⁴⁰. Legal precedent for centralization of the infrastructure came when a bill granting the executive branch control of telegraph lines for defensive purposes passed on May 9.⁴¹ Anti-Davis forces did little to obstruct matters

³⁶*JCC*, I, 161-167, 171.

³⁷*JCC*, I, 177.

³⁸*JCC*, I, 188.

³⁹*JCC*, I, 198-199, 201.

⁴⁰*JCC*, I, 241.

⁴¹*JCC*, I, 202-203.

during the second session; one of the few open displays of opposition was a May 18 effort by South Carolina's Rhett, Robert Woodward Barnwell, and Thomas Jefferson Withers to strike out a clause granting \$987.50 for executive mansion furniture. The motion lost on a 8 to 1 vote.⁴² By the time of adjournment on May 21, Congress had enacted significant measures to bolster the nation's defenses – most of which Davis wanted and needed.

Hostilities at Fort Sumter and Lincoln's call for troops triggered the final wave of Southern secession.⁴³ Unlike the states in the Lower South, these Upper South and Border States depended less on intensive plantation agriculture. Although slavery was certainly prevalent in Virginia, Arkansas, Tennessee, North Carolina, Missouri and Kentucky, levels of slave ownership in the newly admitted states did not approach the numbers held in the original seven states of the Confederacy. While these states certainly were protective of slavery within their borders, the prospect of invading Union forces marching across their home soil also propelled Upper South states to act. Although the admission of six more states did not significantly distort voting patterns during the first year of the Confederacy, the increasing levels of Union conquest and disruption did eventually alter voting patterns in Congress. Missouri and Kentucky never formally seceded, but Congress recognized rump delegations on November 28 and December 10, 1861, respectively. Missouri and Kentucky's rump delegations in particular served to alter the balance in Congress, even though these states never formally seceded and were under Union control for virtually the war's entirety. Despite these impediments, Missouri and Kentucky's congressmen were capable of casting the deciding vote on controversial

⁴²*JCC*, I, 247-248.

⁴³ The remaining four official states of the Confederacy's dates of secession are as follows: Virginia on April 17, 1861; Arkansas and Tennessee on May 6; North Carolina on May 20.

measures - in spite of the fact that they probably would be subject to limited enforcement at best in their home states. The longer the war lasted, Confederate states that came under Union control sent delegations that were often Davis's most ardent supporters; after all, they wanted and needed a centralized war effort to reestablish a Confederate foothold in their native land.⁴⁴

By the time Congress convened on July 20 for its third provisional session, the seat of government had relocated to Richmond, Virginia. Davis arrived in Richmond on May 29 to congratulatory crowds. Several reasons prompted the shift. Facilities and amenities in Montgomery proved to be woefully inadequate; politicians and citizens alike lamented the city's inability to handle the crush of delegates, dependents, press, and patronage seekers. A much larger city, replete with major railroad hubs, banks, and the invaluable Tredegar ironworks, which became the Confederacy's leading munitions producer, Richmond was a logical choice for the new capital.⁴⁵ Relocating the nation's first city placed it within 100 miles of Washington, D.C., a perceptive strategic move. It would have to be defended and doing so served to place pressure on the Union's capital.

More than a few skirmishes and battles occurred since Sumter, including Big Bethel, Virginia and a heated series of conflicts in Missouri. Both sides anticipated a major conflict in the East, a battle that both sides prayed would be decisive. Impending conflict between sizeable Union and Confederate forces loomed when Davis sent his opening message to Congress on July 20. The president blasted what he deemed as deceitful activity by the Union:

⁴⁴ Martis, *Historical Atlas*, 117.

⁴⁵ Emory Thomas, *The Confederate State of Richmond* (Austin: University of Texas Press, 1971), 21-24.

The rapid progress of events for the last few weeks has fully sufficed to strip the veil behind which the true policy and purposes of the Government of the United States had been previously concealed; their odious features now stand fully revealed; the message of their President and the action of their Congress during the present month, confess the intention of subjugating these States by a war, whose folly is equaled by its wickedness; a war by which it is impossible to attain the proposed result, whilst its dire calamities, not to be avoided by us, will fall with double severity on themselves.⁴⁶

Davis cited Lincoln's calls for half a million troops and \$400 million in military appropriations as indications that the Union sought to conquer the South. He then attacked alleged Union abuses of Confederate prisoners of war and threatened to reciprocate against Union prisoners if cruelties did not cease.⁴⁷ Davis also assailed Lincoln's suspension of the writ of habeas corpus in Border States, citing it as a gross abuse of civil liberty. Little did Davis realize that he soon would request similar measures himself in order to stabilize chaotic regions of the Confederacy.⁴⁸ Davis also requested additional troops in order to offset Lincoln's increases in arms, citing that "a corresponding increase in our forces will become necessary. The recommendations for the raising and efficient equipment of this additional force will be contained in the communication of the Secretary of War, to which I need scarcely invite your earnest attention."⁴⁹

Congress went to work as the guns at Manassas roared in the distance. News of a Confederate victory led to wild exultations. Staggering numbers of wounded troops streaming back into the city after the battle quickly abated Richmond's initial outbursts of joy. Seemingly, every empty space in Richmond became a makeshift hospital.⁵⁰

⁴⁶JCC, I, 272.

⁴⁷JCC, I, 273.

⁴⁸JCC, I, 274.

⁴⁹JCC, I, 274.

⁵⁰Yeans, *The Confederate Congress*, 17.

Congress realized that the war would now be a long and bloody one and quickly moved to safeguard against the possibilities of sensitive material leaking to the enemy. On July 26, a resolution passed directing Howell Cobb, president of the Congress, to order secret sessions after the each day's preliminary reading of the legislative journal, despite his brother T.R.R. Cobb's protestations against legislation protecting secret sessions.⁵¹

The third session had five weeks of frenzied activity. Congressional representatives diligently labored to increase the size of the army, pondered the resumption of slave importation, and enacted new means for funding the war effort. On August 8, Davis signed laws authorizing the raising of volunteer troops in the border states of Kentucky, Missouri, Maryland, and Delaware; another gave permission for the deportation of enemy aliens; and "an act further to provide for the public defense" was also enacted.⁵² After considerable debate, Congress implemented a war tax, including a rather high 15 percent tariff that stayed in place for the duration of the war. Although delegates realized such measures might prove to be unpopular, they passed the levies unanimously.⁵³ On August 19, Davis approved a \$100 million produce loan bill, passed in hopes of providing additional funding for the war effort.⁵⁴

Davis enjoyed a considerable degree of legislative success during the Confederacy's first year. The Provisional Congress approved all of his cabinet nominees.⁵⁵ Nominated to head the Navy Department, only Stephen R. Mallory of Florida encountered significant delay. His initial nomination was referred to the

⁵¹JCC, I, 287, 291.

⁵²JCC, I, 327.

⁵³JCC, I, 373.

⁵⁴JCC, I, 367,371.

⁵⁵ Davis's initial nominee for Postmaster General was Henry T. Ellet of Virginia. Congress approved Ellet on February 25, 1861, but Ellet did not want the job and refused to take it. Congress approved Davis's second nominee, John H. Reagan of Texas, on March 6. See *Congressional Journal*, I, 85, 112.

Committee on Naval Affairs on February 25.⁵⁶ His political past as a cooperationist and his alleged personal past as “a rake” led to a reluctance by some congressmen to confirm him. In fact, the delegations from both Texas and Florida, his home state, voted against his confirmation.⁵⁷ Congress eventually confirmed him on March 4.⁵⁸

Other political appointees enjoyed swift confirmation during the Confederacy’s first year. Unanimous consent came for all of Davis’s nominations for district court judgeships on March 16 and again on May 9, 1861, the last day of meeting for the Provisional Congress’s first session.⁵⁹ Congress did not often contest the commander chief of the army, especially during the first year. The president’s choices for military appointments generally had smooth and swift passage. Rejections seldom occurred; a notable example being the denial of D.H. Todd as a lieutenant in the infantry because he was “Lincoln’s brother-in-law.”⁶⁰ Even when presented with controversial military appointees, Congress normally agreed with Davis’s choices. An exception was the contentious confirmation process for George Bibb Crittenden of Kentucky, whose brother Thomas served as a general in the Union army. Although a military court of inquiry ruled Crittenden guilty of drunkenness during the Battle of Mill Springs (and innocent of harboring Union sympathies, despite his family connections), Congress confirmed the Kentuckian to the rank of major general by a vote of 25-19 on February 17, 1862.⁶¹

General goodwill between Davis and the Provisional Congress did not mean that Davis was unwilling to exercise his power to veto legislation. He returned twelve bills to

⁵⁶JCC, I, 85.

⁵⁷Rable, *The Confederate Republic*, 72.

⁵⁸JCC, I, 105-106.

⁵⁹JCC, I, 153, 204.

⁶⁰JCC, I, 840.

⁶¹JCC, I, 846; James McPherson, *Battle Cry of Freedom* (New York: Ballantine, 1988), 297, 305.

the Provisional Congress; within a single year, Davis's veto totals eclipsed the number of executive rejections issued by any prior American president. Vetoes came on such matters as the slave trade, the establishment of additional jurisdictions along the Mississippi River, and military furloughs. Most of the vetoes centered on improper wording or legal inconsistencies; as a stringent constitutionalist, Davis would not permit the legislature to make the slightest deviations from their legal charter. Other vetoes simply responded to the Congress's carelessness. Davis vetoed the initial bill allowing the seat of government to change its location to Richmond because Congress forgot to include the executive branch's transfer in the initial bill. Pragmatism guided vetoes on various munitions and furlough bills. The president often cited redundancies, potential for abuse, or inevitable logistical logjams. No serious efforts to override any of Davis's vetoes materialized during the first year of government. Congress removed the constitutionally offensive passages or watched feeble efforts to counteract his wishes die on the floor.⁶²

National elections for the executive and First Congress took place on November 7, 1861. The results produced smashing victories for Davis and his supporters and offer ample proof that the Confederate electorate strongly endorsed the continuance of his policies. The army enjoyed success in the field; relations between Davis and his Congress still were harmonious; and the Confederate government demanded minimal sacrifice from the citizenry, hoping that the early spirit of volunteerism would sustain itself. Davis and Stephens faced no challenges to their respective offices and did not have to campaign to retain their seats. The interim executives ran on a single ticket and won an uncontested race. The inauguration took place on February 22, 1862 for their

⁶²JCC, I, 95-96, 97-8, 242-243, 261, 391, 369-370, 603, 679, 696-698, 743-746, 758-760.

constitutionally mandated single, six-year terms.⁶³

The congressional elections also had minimal campaigning; most candidates simply announced their intentions to seek office through announcements in their local newspapers. Beyond that, little electioneering took place. Lingering enmity towards political parties remained, thus many candidates jettisoned references regarding former political allegiances in favor of messages for Confederate unity. Old party divisions could and did affect some local elections; conflict arose primarily over a candidate's stance on secession or cooperation with the U.S. Excluding the occasional squabble regarding one's former position on secession or cooperation, most elections were colorless affairs. Many elections went uncontested, particularly those in which soldiers (enlisted or commissioned) ran. There was little open criticism of Confederate policies by candidates and there was little coverage to campaigns and elections by the press.⁶⁴

Comparisons between the membership in the Provisional and First Congresses show a sizeable loss in seats for ex-Whigs. Voters in the November 1861 elections chose 35 former Whigs, ten fewer than in the Provisional Congress. Past Democrats had a slight increase in numbers, from 62 in the Provisional Congress to 64 in the popularly elected First Congress. Congressional representatives with unknown or undeclared party histories increased from 10 seats in the Provisional Congress to 13 in the First Congress. Significant changes in the Congress did occur if totals are analyzed by candidates' secession stance – Secessionists expanded from 58 to 64, Unionists or cooperationists diminished from 45 to 34, unknowns or undeclared grew from 13 to 18. If nothing else, these shifts indicate it behooved a candidate to remain silent on the issue – even if they

⁶³ William Cooper, *Jefferson Davis, American*, 360-361, 372-373; E. Merton Coulter, *The Confederate States of America*, 103-104.

⁶⁴ Alexander and Beringer, *Anatomy*, 43-44; Kenneth C. Martis, *Historical Atlas*, 131-134.

opposed secession - if they hoped for a realistic chance to retain or win office. The 1861 election totals indicate that voters retained considerable support for the war effort and Jefferson Davis's policies.⁶⁵

Davis quickly became a polarizing figure for the Richmond press, particularly in the wake of the First Battle of Manassas. General Joseph E. Johnston, General P.G.T. Beauregard, and Davis became mired in considerable controversy regarding what should have been the proper course of action following the Union army's retreat. None handled the others' criticisms diplomatically, and the ensuing debates among the men spilled into the public forum. The local press pounced on the increasingly acrimonious conflict. The Richmond *Examiner* became a strident critic of the Davis administration – only Rhett's Charleston *Mercury* rivaled the *Examiner's* dislike for Davis. Founded in 1847 by the mercurial John Moncure Daniel, the *Examiner* had long been an ardent advocate of secession and states' rights. One of the *Examiner's* leading rivals, the *Whig* converted from the paper least sympathetic to secession and the Confederacy to a fervent supporter to the cause, even though the paper became a harsh Davis critic in the process. Both the *Dispatch* and *Enquirer* generally supported the president. Davis was often far too busy to trouble himself with the often-hostile assessments of the local press. After all, he did not have to worry about standing for reelection after November 1861. Maintaining the support of the press was essential for his pursuit in implementing preferred domestic policies and plans for defense however. Congressional representatives, who did have to consider the influence the printed media held on their constituency, were incredibly mindful of the press and often expressed on the floor their concerns regarding journalistic

⁶⁵ Alexander and Beringer, *Anatomy*, 36.

disapproval. The displeasure expressed by members in open session was infrequent from February 1861 to February 1862. Increased demands for public sacrifice after February 1862 - combined with military setbacks – would give way to increasingly numerous public vexations by lawmakers as the war dragged on.⁶⁶

The fifth and final session of the Provisional Congress assembled in Richmond on November 18, 1861 and adjourned on February 17, 1862.⁶⁷ A series of setbacks plagued the assembly. Policymakers convened in the midst of heightened international tensions. On November 8, the USS *San Jacinto* seized Confederate diplomats James Mason and John Slidell while they were aboard the *Trent*, a British cutter en route to Great Britain. British officials were outraged; the next six weeks proved to be the closest that England came to going to war against the Union. Lincoln decided to free the captured envoys, however, and the two envoys resumed their eastern voyage on January 1, 1862 and arrived at Southampton on January 29.⁶⁸

More misfortune plagued the fifth session. The winter months also included Georgia and South Carolina weathering a rash of fires along their respective coastline after local planters decided to raze their stockpiles of cotton rather than face possible seizure by lurking Union forces. Ex-president John Tyler, now a congressional

⁶⁶ Harrison A. Trexler, “The Davis Administration and the Richmond Press, 1861-1865” *The Journal of Southern History* Vol. 16, No. 2 (May 1950), 177-195. George Rable contends that the rancor in the Richmond press was anomalous. He stresses in *The Confederate Republic* that the press’s support for Davis was much more consistently pro-Davis throughout the rest of the nation for much of the Confederacy’s lifespan. Also see Thomas, *The Confederate State of Richmond*, 17-19. Additionally, see work by the preeminent authority on Confederate newspapers: J. Cutler Andrews, *The South Reports the Civil War* (Princeton, NJ: Princeton University Press, 1970).

⁶⁷ The fourth session lasted only one day – September 3, 1861. Davis called for a special session and a sufficient number of Congressmen were available in and around Richmond to form a quorum. Davis noted that Congress failed to send him a bill regarding his legal power to continue military appointments during the legislative recess. Ever the constitutionalist, Davis dared not to act unless he was given governmental permission to do so. Congress granted him this right and, in addition, passed a supplemental postage act. *JCC*, I, 465-466.

⁶⁸ McPherson, *Battle Cry of Freedom*, 367, 389-391.

representative in Richmond, died on January 18, 1862 and the government ceased operations on January 21 in order to mourn him.⁶⁹ Military disasters at Fort Henry, Roanoke Island, and Fort Donelson occurred within a week and a half in February 1862. In a fit of desperation, the Committee on Military Affairs on February 10 resolved to investigate the use of “pikes, lances, or spears and shotguns” as methods of armament.⁷⁰ Secretary of War Judah P. Benjamin became a convenient scapegoat for recent military setbacks and calls for his ouster from the War Department grew thunderous.

Hesitant to supersede the electorate’s mandate in November, the lame duck Provisional Congress often balked at implementing major policy changes until the first regularly elected Congress convened on February 18, 1862. One exception to this general practice was the matter of maintaining the size and strength of the Confederate army. Most troops enlisted for only one year, envisioning a short and bloodless war. These terms of enlistment were now ending as the fifth session convened, forcing Congress to formulate measures to keep the army intact. On December 2, 1861, Congress began debating methods to encourage additional volunteers and re-enlistment. By January 23, 1862, Davis signed a congressional bill allowing him to accept re-enlistments and new volunteers for two or three years of service. In hopes of inducing large numbers of volunteers, the act also gave men a \$ 50 bounty and 60 days of leave. Davis also vetoed a bill “granting furloughs in certain cases” on February 3, 1862. Although he stressed his primary objection to the measure was the impracticality of “administer[ing] an army in the field by statute,” the president did acknowledge concerns that were more prosaic. The furlough proposal, if enacted, would have placed up to five

⁶⁹*JCC*, I, 687-689.

⁷⁰*JCC*, I, 778.

per cent of all troops on leave simultaneously, producing a massive strain on Confederate railroads that were already overwhelmed with freight demands. Most importantly, the terms of many twelve-month Confederate volunteers were about to expire. The rush to volunteer for combat slowed to a trickle by winter 1862, and the commander in chief simply could not afford to send men home who may not return to the front lines. The Provisional Congress was surprisingly contentious with the president and came very close to overriding Davis's veto. The final vote to overturn Davis's decision resulted in eight yays, three nays, and two undecided votes – one vote shy of reversing the veto.⁷¹

Still reluctant to ask the Confederate citizenry for additional contributions, Congress did what it could to keep the army solvent with forceful exhortations for volunteer service. The burden of requiring further sacrifice from the people would fall on the First Congress's shoulders, which would face the necessity to tackle legislation on impressments and conscription. It was in this troubling environment that the Provisional Congress adjourned for the last time on February 17, 1862, exactly one year after Davis's inauguration as provisional president. Although the Provisional Congress ended during a tumultuous period, no one could envision the troubling times that awaited the Davis and the First Congress.

⁷¹JCC, I, 511, 523,639, 652-653, 673-675, 682, 698, 744-745, 830-831.

CHAPTER II
FILLING THE RANKS AND IMPOSING MARTIAL LAW:
CONFLICTS OVER CONSCRIPTION LEGISLATION AND SUSPENDING THE
WRIT OF HABEAS CORPUS

The Confederate government was a makeshift body always plagued with a multitude of logistical problems, particularly during its first year of existence. In order to field an army large enough to thwart Union invasion, the Provisional Congress in Montgomery had no choice but to rely on the states to provide men, munitions, and armaments. Given the improvisational nature that guided the formation of defensive measures, along with the varying amount of resources available in each state, it is not surprising that states had difficulties coordinating efforts with one another and with the central government.

The Provisional Congress's initial measures for national defense showed that few envisioned a long or extensive conflict. Both the provisional and permanent constitutions gave Davis as commander in chief control of all military operations. Although Davis realized that mobilization of troops on the national scale was essential in order to provide adequate defenses, he realized that the Congress had to grapple with the formation of a new federal government and bureaucracy. Therefore, he did not press for greater executive control of manpower and allowed the states to enroll and muster men for protection. First Manassas and Lincoln's requisition of 75,000 troops from the states changed everything, however. Legislation passed on May 8 and May 11 removed limits on the number of volunteers the Confederacy could receive and allowed men to submit

their services for the duration of the war. By July 21, Davis advocated a measure allowing the Confederate government to receive 400,000 volunteers. The preliminary deluge of volunteers overwhelmed both state and national authorities. Many men found themselves turned away because the War Department could not supply or arm all of them.¹

The First Congress convened for its initial session on February 18, 1862 mindful of an impending crisis within Confederate ranks. Expecting a short, glorious, and largely bloodless conflict, the bulk of the army consisted of volunteers who enlisted for twelve months of service in the spring of 1861, an obligation most considered too long. Jefferson Davis commented on this general sentiment in his February 25, 1862 congressional message noting, “When the war first broke out many of our people could with difficulty be persuaded that it would be long or serious. It was not deemed possible that anything so insane as a persistent attempt to subjugate these States could be made, still less that the delusion would so prevail as to give to the war the vast proportions which it has assumed.”²

By fall 1861, however, Confederate participants came to realize that the war would be much longer and more arduous than anticipated. Often unhealthy and dispiriting, camp life quickly lost its luster. The enemy quickly proved far more resilient than initially expected and the initial flush of war fever quickly abated. Scores of men initially hesitant to enlist in the military now balked at the prospect. Even men more

¹ *Journal of the Congress of the Confederate States of America*, I (5 vols; Washington, D.C.: Government Printing Office, 1904), 95,197, 211, 273 - hereafter cited as *JCC*; Buck Years, *The Confederate Congress* (Athens: University of Georgia Press, 1960), 60-63. Frank Owsley, *State Rights in the Confederacy* (Chicago: University of Chicago Press, 1925), 76-78.

² James D. Richardson, ed., *A Compilation of the Messages and Papers of the Confederacy*, Vol. I, (2 vols., Nashville: United States Publishing Company, 1906), 190 – hereafter cited as *M&P*; *JCC*, V, 25.

hawkish in temperament now shrank back. As Albert Burton Moore noted in *Conscription and Conflict in the Confederacy*, once the original wave of enthusiasm died down, a large number “of these ‘do or die’ patriots were to be found later in the ranks of the so-called ‘stay at home gentry.’”³ George Rable comments in his book *Civil Wars* that “many women had sent their men off to fight in an outburst of patriotic zeal, but defeats and mounting casualties soon slaked their enthusiasm.” Even before the first conscript law took effect, “thousands scrambled to get their men discharged or detailed; others worked just as assiduously to arrange for substitutes, transfers, or furloughs.”⁴ In addition to less than ideal conditions in the field, news of hardship on the home front made many troops in the ranks eager to return home. With the infant nation’s survival hanging in the balance, the country’s defenses could not long survive without a new influx of men to counter ever-growing Union forces. Retaining the army’s seasoned combat veterans in the meantime was equally essential, if not more so.

Mindful of long-held Southern fears of an intrusive central authority, Jefferson Davis and the Confederate Congress desperately wanted to maintain the spirit of volunteerism when addressing problems with the army’s numbers. The fifth session of the Provisional Congress yielded several measures designed to persuade re-enlistment from men already in the ranks. Congress also hoped these bills would bolster the ranks by enticing men who had yet to take arms. A December 11, 1861 act offered incentives such as \$50.00 bounties and 60 days leave in exchange for two or three year commitments. The law did not yield the large numbers of re-enlistments and new

³ Moore, *Conscription and Conflict in the Confederacy*, 6.

⁴ George Rable, *Civil Wars: Women and the Crisis of Southern Nationalism* (Urbana and Chicago: University of Illinois Press, 1991), 89.

volunteers that Davis and Congress expected. An unintended consequence of the law, however, was massive numbers of men who did sign up proceeded to clog up the railroads as they went home on furlough for Christmas. More than a few men, weary of war and homesick, would never return from their holiday. It quickly became apparent to Davis that merely enticing men to enlist voluntarily would neither fill the ranks to satisfactory numbers nor induce many combat veterans, who fretted about their homes and communities, to stay in the army once they completed their obligated year of service.⁵

In order to maintain the soon-to-be discharged twelve-month volunteers and close the quickly widening gap in manpower between North and South, Davis pressed for a military draft in his introductory message to the first session of the First Congress. “The policy of enlistment for short terms, against which I have steadily contended from the commencement of the war, has, in my judgment, contributed in no immaterial degree to the recent reverses which we have suffered, and even now renders it difficult to furnish you an accurate statement of the Army,” he wrote. Mindful that most of the Confederate population had been “incredulous of a long war” and “naturally averse to long enlistments”, Davis and the Provisional Congress could not ask for long-term commitments. Composed mostly of unelected officials, the Provisional Congress hesitated to enact bold measures. The ephemeral nature of that legislature, fearful that it did not always act by popular mandate, “rendered it impracticable to obtain volunteers for a greater period than twelve months.” The November 1861 elections, however, were smashing victories both for Davis and for his supporters – an emphatic indication that the people approved of Davis’s efforts to ensure national survival.

⁵ Yearns, *The Confederate Congress*, 63-64.

By now, all recognized that the war would be a long and bloody one. Maintaining troops already in the field and compelling those on leave to return to camp was the first priority. Davis acknowledged twelve-month volunteers were “generally reenlisting” but often “compelled in many instances to go home to make the necessary arrangements for their families during their prolonged absence.” Consequently, he noted, “it is exceedingly difficult to give an accurate statement of the number of our forces in the field.” Large numbers of soldiers on leave and new volunteers in transit left many units with woefully low numbers. But “this evil,” which Davis “had foreseen and was powerless to prevent, may now be said to be substantially at an end, and . . . we shall not again during the war be exposed to seeing our strength diminished by this fruitful cause of disaster short enlistments.” Although Davis did not explicitly ask for a conscript law in the message, his attack on the current system wholly composed of volunteers made the implications in his message obvious.⁶

Members of both houses quickly went to work satisfying Davis’s demands. On February 26, the day after receiving the executive message, the Confederate House of Representatives began debate on the various occupations to be exempted from the national draft. James Lyons of Virginia, who would become one of Davis’s most trusted friends in Richmond, attacked the potential exemptions offered. He noted that a glut of minor civil officials proposed, particularly deputy postmasters – a common patronage position in the antebellum era. Despite his former prominence in the Virginia Democratic party, Lyons would establish himself as one of the foremost proponents for centralized defense and taxation. He was one of the first congressmen offering criticism

⁶ *M&P*, I, 190-191.

of the exemption clause, noting that “this law not only exempts postmasters, but their *deputies*, and we ought not to lose many a good soldier in consequence of such a law.”⁷

While there is ample documentation of the exemption debates, evidence of the debate on the actual conscript bill is limited. Mindful of compromising the nature of deliberations, both the House and Senate confined discussion of conscription to secret sessions.⁸ Discussions on draft exemptions did take place in open session, however. The public knew of a large number of potential exclusions by March 12. By this point, the House agreed to bar members from the Confederate Congress, along with their assistants “and the regular clerks belonging to the same;” Confederate judges, marshals, and their clerks; Confederate congressmen; customs officials; “all persons actually employed in the conveyance of the mail;” river pilots and “all mariners actually employed in the sea service of any citizen or merchant within the Confederate States;” and all men exempted by state law.⁹

The House spent the remainder of the day debating additional possible occupations that it might exclude from the forthcoming draft. Lengthy discussions ensued on the conscription of postmasters and their assistants, as well as those employed in ironworks and mining. The next day witnessed continued debate on excluding all men engaged in iron, lead, copper, and zinc production, along with other industries such as telegraph companies and textiles. Long and tedious deliberations on exclusions typified

⁷*Southern Historical Society Papers*, XLIV, 57 – hereafter cited as *SHS*. Ezra J. Warner and Buck Years, *Biographical Register of the Confederate Congress* (Baton Rouge: LSU Press, 1975), 155-156.

⁸ The Confederate Congress typically relegated matters of national defense, taxation, and executive appointments to secret sessions. Senate and House rules excluded spectators and reporters alike from the floor and galleries. *JCC* does provide official proposals of resolutions, bills, and amendments but do not offer any recorded debate.

⁹*SHS*, XLIV, 153. Congress would not exempt President Davis from military service. After all, the Constitution made him commander in chief. He had a fondness for monitoring operations in all theaters and continued to make occasional trips to the field in order to observe the army’s undertakings over the next three years.

conscription discussions. Most congressmen wanted to exercise the utmost caution as they decided between the men liable for military service and those judged indispensable in the public and private sectors. Slow and steady consideration of the matter provided little comfort to the public and the press, who wanted a swift resolution to the matter. When the House temporarily ceased debate of the conscript law on March 14 to assess a measure amending their pay and additional compensation for mileage, harsh reaction followed. The *Richmond Dispatch* grumbled “It is a little unfortunate, we think, that members should, at this period of the session, and in this hour of the country’s peril, devote themselves to legislation pertaining to their own comfort and convenience, rather than the mighty issues, which, to an outsider, seem to demand their consideration.”¹⁰

By late March, Davis pushed the House for action. After receiving a message from Robert E. Lee approving of the conscript system, he sent a message to Congress requesting a streamlined and standardized conscript system for men between the ages of 18 to 35. Citing an “embarrassment from conflict between State and Confederate legislation,” Davis urged for a law satisfactory to national and state governments alike. Careful not to anger state officials and their citizens, he stated that Union aggression had “animated the people with a spirit of resistance so general, so resolute, and so self-sacrificing that it requires rather to be regulated than to be stimulated.” Nevertheless, he asserted bold and authoritative measures were urgently needed, possibly even repealing all military manpower laws currently on the books. “I, therefore, recommend the passage of a law declaring that all persons residing within the Confederate States, between the ages of 18 and 35 years, and rightfully subject to military duty, shall be held to be in the military service of the Confederate States, and that some plain and simple method be

¹⁰ *SHS*, XLIV, 154-155, 159, 160-161. *Richmond Dispatch*, 15 March 1862.

adopted for their prompt enrollment and organization, repealing all of the legislation heretofore enacted which would conflict with the system proposed.”¹¹

Debate commenced over the stringency of Davis’s proposal. In the Senate, Edward Sparrow of Louisiana and John Bullock Clark of Missouri both lauded Davis’s measure. Williamson Oldham of Texas disapproved of the message, arguing Congress could only get state approval before forcing citizens into the army. “This was not circumlocution,” he argued, “it was the theory of our government.” He professed his utter confidence in the nation’s ability to vanquish Northern incursion and stressed, “. . . we can accomplish our deliverance without violating the fundamental law. We have always been able to get more volunteers than we could arm.” Louis T. Wigfall, his fellow senator from Texas, offered a conflicting assessment. “Cease this child’s play,” he cried. “The enemy are in some portions of almost every State in the Confederacy . . . We need a large army. How are you going to get it?” Conscription, he insisted, was the only way to fill the ranks because the citizenry “will not volunteer to fill up the old regiments.” There was simply no time to talk “about the justice of our cause, the favour of Providence, or the aid of foreign nations. We must have heavy battalions.” Oldham then countered that he did not approve of state or national measures to conscript men into military service. He believed most proposed measures violated civil liberties. “Did Washington ever propose to convert this country into one great camp?”, he protested.¹²

Following the initial open debate offered in the upper house regarding the conscript bill, senators confined dialogue on the matter to secret sessions. The recorded debate in the House prior to the passage of the draft law was considerably less

¹¹JCC, V, 156-157. Yearns, *Confederate Congress*, 64-65.

¹²SHS, XLV, 26-29.

contentious, with a few publicly recorded comments and measures. Charles Wells Russell's quipped on March 29 that Davis merely wished to abolish state militias. Speaker of the House Thomas Boccock at once ruled Russell's comments out of order. Russell's early skepticism quickly abated – he would eventually emerge as one of Davis's strongest supporters on centralization policies and habeas. On March 31, Henry Marshall of Louisiana, whose extreme states' rights advocacy ran counter to the remainder of his colleagues from his home state, offered a resolution that the House quickly adopted, extending the terms of service for twelve-month men for 90 days until a conscript act could be solidified. Tennessean Henry S. Foote, who emerged as a cantankerous opponent to Davis, would offer similar measures on April 5 and April 14 in hopes of delaying passage of the conscript bill. The former intended to make congressmen subject to service between sessions, and the latter demanded that nothing in the law to interfere with "the separate state sovereignty."¹³

The first conscript act - signed into law by Davis on April 17, 1862 - solved the most pressing problem for national defense. The men already in the army had their enlistments extended for three additional years or war's end. Additionally, all men between the ages of 18 and 35 were required to register for similar terms of service. The incentives: The old enticement of a \$50.00 bounty remained for men who volunteered for service before May 15, 1862. If men reported for service by the deadline, the law offered volunteers the privilege of forming their own combat units or reorganizing old ones in order to serve with friends, family, and citizens from their home state. Additionally, the

¹³ *SHS*, XLV, 30-31, 32, 35, 80. *JCC*, V, 224,227-228. Warner and Yearn, *Biographical Register*, 166-167, 211-212.

law permitted men who willfully volunteered to elect their own company, battalion, and regimental officers.

Men who did not volunteer by the May 15 deadline lost these privileges. Those conscripted lost access to the \$50.00 bounty. They also faced the very real possibility of placement in combat units not from their home states and without any known companions. Additionally, conscript status denied men the right to vote for the officers who led them in the field. In addition, they faced the very real possibility of ostracism from those who mattered most. Fellow troops in the field generally viewed conscripts with scorn, believing their commitment to country and cause suspect. The citizenry at home could and did regard conscripted men as slackers who attempted to shirk their duties, but they were just as likely (if not more so) to perceive conscripted men as the hapless victims of increasingly distant and unfeeling Richmond bureaucrats. Such antipathy was especially prevalent in disaffected regions of the Confederacy, particularly Appalachia.¹⁴

Many draft-eligible men who did not rush to volunteer were indeed patriots, but personal hardships often prevented them from appearing for service before May 15. Financial difficulties at home forced many men to wait until the last minute to volunteer. Others remained with their families until forced into the ranks. The mounting costs of living and increasing shortages of basic goods made many husbands and fathers hesitant to leave their loved ones. The \$11.00 a month salary for privates quickly proved to be an inadequate means of support for a family trying to survive in an inflation-plagued market.

¹⁴ Bell Wiley, *The Life of Johnny Reb* (1948; Baton Rouge: LSU Press, 1978), 124-125,342. For a differing contemporary opinion, see Aaron Sheehan-Dean, "Everyman's War: Confederate Enlistment in Civil War Virginia", *Civil War History*, 2004, Vol. 50, Number 1. 5-26.

Young adult men in the civilian community became increasingly scarce, especially in more remote rural communities. As the demands for men multiplied, the few remaining behind did not want to abandon their roles as breadwinners and protectors of their families and communities. Some also perceived the reliance on a military draft as a sign of panic by Richmond lawmakers. As Bell Wiley notes in *The Life of Johnny Reb*, many “saw in forced exemption an admission of despair on the part of government authorities.”¹⁵

Of course, not all white Confederate males between the ages of 18 and 35 joined the army. On April 12 in the Senate, William Lowndes Yancey introduced the exemption bill that became law nine days later. The Senate made very few changes to Yancey’s draft, with the only proposed House amendment of consequence exempted all men already exempted by state law. This modification never came to fruition, dying in committee. The law excluded all physically and mentally handicapped men. It also granted protections to government officials and various bureaucrats, exempting executives, judges, and their clerks on the state and national level as well as Confederate and state legislators. Those laboring in industries vital to civilians and soldiers also had blanket protection, including men involved in communications and transportation industries, the clergy, men employed in ironworks, teachers, textile workers, druggists, and apothecaries. Most men exempted under the law were honest and qualified men, but there were many who made abrupt career changes and sought refuge in “bomb-proof”

¹⁵ Herman Hattaway and Richard E. Beringer, *Jefferson Davis, Confederate President* (Lawrence: University of Kansas Press, 2002), 135; Paul Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge: LSU Press, 1977), 105-108; Moore, *Conscription and Conflict in the Confederacy*, 12-16, 130-131; Wiley, *The Life of Johnny Reb*, 129.

occupations. Some rural areas had several teachers, druggists, and ministers appear in their communities seemingly overnight.¹⁶

The conscript law also upheld the practice of substitution, a tradition dating back to the American Revolution. Draft-eligible men could pay exemption fees or employ men who were not eligible for conscription to serve in their stead. The policy's objective was to preserve men in vital industries; as May Spencer Ringold notes, states encouraged the practice to "maintain as nearly as possible business as usual under war-time conditions."¹⁷ By April 1862, when the Confederate Congress and Davis adopted the conscription act, the policy was thoroughly entrenched in southern states and Congress was reluctant to abolish it. By this point, substitution, originally intended to preserve much needed industrialists and professionals, was predominantly a means for wealthy men to avoid service. Various governors, Joseph E. Brown in particular, began enrolling men in state militias or declaring thousands of men state employees to keep them out of action. The cost for providing a substitute was always high; eventually it became exorbitant. The price went from \$300 in early 1861 to several thousand dollars by the time Congress abolished the policy on January 9, 1864. Until legislation forced principals to enlist for service by July 2, 1864, the armies lost access to tens of thousands of men who stayed home by merely paying a fee.¹⁸

The first session of the First Congress adjourned on April 21, 1862, only four days after the passage of the conscript law. The final day of business also happened to be

¹⁶JCC, II, 158; JCC, V, 280; Alexander and Beringer, *The Anatomy of the Confederate Congress* (Nashville: Vanderbilt University Press, 1972), 109; Yearn, *The Confederate Congress*, 67-68; Moore, *Conscription and Conflict in the Confederacy*, 53-65.

¹⁷ May Spencer Ringold, *The Role of the State Legislatures in the Confederacy*, 19.

¹⁸ Moore, *Conscription and Conflict in the Confederacy*, 27-34; Escott, *After Secession*, 117-119; JCC, III, 546-547; Hattaway and Beringer, *Jefferson Davis, Confederate President*, 162-164. The Union also had substitution and maintained it for the duration of the war.

the same day Jefferson Davis signed a law granting him the power to suspend the writ of habeas corpus.¹⁹ Many solons returned to their home districts to assess their constituents' attitudes and to explain the necessity of passing legislation on conscription and martial law. They also had the opportunity to witness the renewed waves of volunteering and the first batches of compulsory enlistments. News spread of disaffection in the Confederacy following the passage of the first draft law. Some rushed to enlist in partisan ranger service, realizing that action in these units would be limited. While many citizens expressing discontent were simply dissatisfied with the government's policies and looked to extralegal means of protest in order to enact constructive change, others were ardently Unionist. Not only did concerns about possible insurrection concern the executive, but also the very real threat presented by McClellan's advances on Richmond and Union disruptions in other regions forced Davis to request Congress for permission to suspend the writ of habeas corpus in areas that he deemed it militarily expedient.²⁰

Unlike Lincoln, who swiftly suspended the writ in order to keep the border states in the Union and to keep information concerning the Federal army from the enemy, Davis was far more judicious in his power to declare martial law within Confederate borders. Earlier denunciations of Lincoln's policies now served as a political millstone for the Confederate president. At the moment, however, necessity dictated that Davis suspend the writ of habeas corpus in disrupted and Unionist regions. Still, Davis feared public opinion viewing him as the same type of despot that he accused Lincoln of being. He therefore would never suspend the writ of habeas corpus without legislative consent.²¹

¹⁹ *JCC*, V, 290.

²⁰ Tatum, *Disloyalty in the Confederacy*, 3-4, 13-17; Moore, *Conscription and Conflict in the Confederacy*, 121-122.

²¹ *SHS*, XLV, 138. *JCC*, V, 290.

The absence of a Supreme Court compounded Davis's legal difficulties.

Although Article 3 of the Confederate Constitution and the March 16, 1861 Judiciary Act both provided for its establishment, the court never materialized. The March 16 law provided for annual sessions in Richmond; it also dictated that the judges presiding over Confederate districts would act as the Supreme Court. A simple majority of the panel in Richmond would form a quorum.²² Shortly after the law took effect, however, both the Provisional Congress and Davis realized that the geographical expanse of the nation and actual and potential disruptions by Union forces made the scheduled first meeting in January 1862 highly unlikely. Equally distressing was the very real possibility that logistics and warfare might prevent judges from returning to their home districts after arriving in Richmond. Consequently, Davis signed a July 31, 1861 law that postponed sessions until further notice.²³

Davis and the regularly elected First Congress certainly harbored no intentions of preventing the organization of the government's third branch. Nevertheless, legislators devoted their efforts towards addressing more immediate matters, primarily staffing the army and financing the war effort. The House and Senate struggled with the matter in March and April 1862; both failed to produce legislation that resulted in the institution of the Supreme Court. The House killed its bill before it ever came out of committee and the Senate tabled its own legislation, which streamlined the makeup of the court by providing a chief justice and three associates instead of the more cumbersome

²² There were officially 18 Confederate district benches. Kentucky's court never actually organized, but Confederate statute provided for it if the state ever came under Confederate rule. The remaining districts were Western Texas, Eastern Texas, Louisiana, Western Arkansas, Eastern Arkansas, Louisiana, Mississippi, Alabama, Eastern Tennessee, Middle Tennessee, Western Tennessee, Florida, Georgia, South Carolina, North Carolina, Western Virginia, Eastern Virginia, and Missouri.

²³ *JCC*, I, 152, 301.

assemblage of Confederate district judges. The second session of the First Congress saw the Senate resume discussion on the court but once again, the solons tabled it. By 1863, declining Confederate fortunes produced increasingly vocal opponents willing to debate the establishment of the court.

Opposition often came couched in platitudes defending the legal sovereignty of states. Others fretted over Davis's potential nominees for the federal posts. The enmity between the leading advocate of the Supreme Court and its foremost opponent also crippled progress. Senate Judiciary Committee chair Benjamin Hill, one of Davis's closest allies, sponsored the bill establishing the court. William Lowndes Yancey, by now one of Davis's most strident critics, opposed it. Antagonism between the two men escalated to the point of physical confrontation. One particularly heated debate between the two degenerated into an exchange of insults. Yancey called Hill a man devoid of ideas, much like a fox without a tail. Complaining that Hill "attacks and portrays my intellect," Yancey then proceeded to offer a portrait of his own, referring to Hill and Louis T. Wigfall as "Thimble Nigger and Little Joker." Hill then retorted that any time Yancey opened his mouth "words rush out like shot from his bag." Hill then threw an inkstand at Yancey; the volley struck him on the cheek and drew blood. Either stunned or dismissively arrogant, Yancey ignored the attack and remained seated at his desk. The indifference shown by Yancey further enraged Hill, who grabbed a chair and tried to charge Yancey before other members on the Senate floor halted and disarmed him.

Although the Supreme Court never materialized, there were no serious legitimate threats to the conscript laws. State courts struck down every legal challenge posed, upholding the legality of the draft. On the other hand, state courts did present

considerable resistance to the suspension of habeas corpus, particularly when they judged that army officers were excessive in their administration of the law and when they applied it in an extralegal manner. Most notably, Georgia and North Carolina benches provided substantial defiance.²⁴

Debate on conscription began anew when the second session of the First Congress convened on August 18, 1862. President Davis demanded revisions to the initial statute.²⁵ In his opening message to the Congress, Davis noted, “The acts passed at your last session intended to secure the public defense by general enrollment, and to render uniform the rules governing troops in the service, have led to some unexpected criticism that is much to be regretted.” The president had confidence that the Congress could correct difficulties between states and the Confederate government. “You can best devise the means for establishing that entire cooperation of the State and Confederate governments which is essential to the well-being of both at all times, but which is now indispensable to their very existence,” he wrote. “And if any legislation shall seem to you appropriate for adjusting differences of opinion, it will be my pleasure as well as duty to cooperate in any measure that may be devised for reconciling a just care for the public defense with a proper deference for the most scrupulous susceptibilities of the State authorities.”²⁶

Grumblings from local constituents and state governments, a still appreciable shortage in manpower, and military setbacks at Shiloh, New Orleans, and Memphis

²⁴JCC, III, 176,177; Warner and Yearn, *Biographical Register*, 118-119, 264-265; Yearn, *The Confederate Congress*, 16; Coulter, *The Confederate States of America*, 121-123, 141; William C. Davis, *Look Away: A History of the Confederate States of America* (New York: The Free Press, 2002), 357; Moore, *Conscription and Conflict*, 238-239, 270, 280, 342.

²⁵JCC, II, 191; JCC, V, 291; SHS, XLV, 191.

²⁶M&P, I, 234-235.

compelled Congress to act. Even Foote appeared surprisingly conciliatory as the second session convened. Acknowledging his past animosities with Davis, he stated that he was now “hand and heart with him” as he proffered a resolution calling for 250,000 additional troops on August 19. By August 22, however, he was back to his old tricks as he offered a longwinded attack on any extension of conscription and went as far as alleging that Davis and Secretary of War Judah P. Benjamin saw no need to expand the law.

Congressman Robert Woodward Barnwell, who was much more moderate and supportive of Davis than his colleagues from South Carolina, offered two nationalistic measures on August 21. He proposed that all men between 18 and 35 declared eligible for conscription; that those men not yet enrolled be immediately registered, regardless of what municipality or state they were located; and labeling anyone avoiding service without governmental permission a deserter. He also suggested abolishing the partisan ranger service. While few members of Congress were unwilling to take such drastic measures, most showed an eagerness to modify current laws. By September 27, the draft age went up from 35 to 45. On October 9, Congress established the means to provide a uniform process of military training by instituting standardized camps of instruction and drill officers to administer them. An October 11 law allowed for the encouragement of volunteers from Missouri and Kentucky, two states represented in the Confederate Congress, even though they never formally seceded and remained outside of the authority of the conscript law.²⁷

Despite these implementations to improve the process of receiving men and training them, the second conscript act - which Davis signed on October 11 - did not

²⁷ *SHS*, XLV, 182, 204-208, 190-191; Warner and Years, *Biographical Register*, 14-15; *JCC*, II, 372, 452, 467; *JCC*, V, 450, 518, 551.

provide the expanded pool of men that the nation needed for defense. Although the law allowed for the raise in age of eligibility from 35 to 45, men still could provide substitutes to serve in their stead. Even so, many congressional representatives hoped that raising the age limit to 45 would eliminate almost all potential surrogate combatants. This helps explain in part why Congress then amended the number of occupations protected from the draft through statutory exemptions. Excluded groups actually increased, placing even more men outside of the law's scope. Many of the new occupations spared included artisans and professionals. Even so, the new series of laws for conscription caused considerable rifts in the besieged nation.²⁸

Although alterations in occupational restrictions and age limits produced considerable tension, few issues were as politically explosive as a new law providing draft exemptions to large slaveholders and their overseers. Concerns about slave discipline grew exponentially as the war dragged on and more men left for the front. It became increasingly difficult for rural communities to provide adequate numbers of young men staffing slave patrols. Congress labored to remedy anxieties about possible servile insurrection by drafting and then passing as a law exempting plantation overseers. Popularly known "twenty-slave law" - more derisively labeled the "twenty-nigger law" - the new legislation was highly controversial. The law required that in order to secure the proper security over large numbers of slaves, "...one person, either as agent, owner, or overseer on each plantation . . . is required to be kept by the laws or ordinances of any States, and on which there is no white male adult not liable to do military service, and in States having no such law, one person agent, owner or overseer, on each plantation of twenty negroes, and on which there is no white males adult not liable for military

²⁸*JCC*, II, 477; *JCC*, V, 561.

service.” This legislation, more than any other, led to the multitudes of accusations that the South engaged in a rich man’s war and a poor man’s fight. An overwhelming majority of congressmen and newspapers supported the measure and tried to explain its necessity but they had much difficulty convincing small slaveholders and non-slaveholding yeomen that the law was indeed essential.²⁹

More controversy arose when Davis once again requested and received congressional approval to suspend the writ of habeas corpus, this time during the period of legislative recess between the second and third sessions. Worries of Union encroachment remained and certainly factored into the Congress’s decision granting the president the power to suspend habeas corpus. New and equally dispiriting concerns also guided the measure, however. The first conscript law did not enjoy a popular reception from many Confederates. Southerners had long harbored suspicions of an intrusive and expansive central power. They also were unaccustomed to making significant forfeitures to government and scores of citizens believed they already made more than adequate sacrifice to the cause. Most Confederates (particularly those in regions still untouched by Union arms) came to accept the conscript laws and contributed their men, often begrudgingly. For others, however, the conscript laws were simply too great of a demand. Men began to defy the law. Some simply refused to report to camp, only joining the army through draft officials’ intimidation and force. A number of men violently resisted. Absconders shirking the draft and deserters already in the army

²⁹ “An Act to exempt certain persons from military duty, and to repeal an ‘Act to exempt certain persons from enrollment for service in the army of the Confederate States,’ approved April 21, 1862,” October 11, 1862, in James Matthews, ed. *Public Laws of the Confederate States of America, Passed at the Second Session of the First Congress, 1862*. (reprint, Holmes Beach, Florida: William W. Gaunt and Sons, 1970)77-79, as quoted in Hattaway and Beringer, *Jefferson Davis, Confederate President*, 169; Rable, *The Confederate Republic*, 156.

formed guerilla bands and preyed upon conscription agents, Confederate and Union troops, and even their fellow citizens. Others never supported the Confederate cause to begin with. The piney woods of north Mississippi, middle Alabama, western North Carolina, northeast Georgia, east Tennessee and southwest Virginia were rife with disloyal men, many who used the conscript law as validation for counterrevolutionary and Unionist activities. These internal tensions certainly factored into Congress's decision limiting Davis's power suspending habeas corpus to the period spanning from the adjournment of the second session and ending thirty days into the third session.³⁰

Many voters went to the polls distraught over crushing military defeats at Gettysburg, Vicksburg, Port Hudson, and Chattanooga. Additionally, the 1863 congressional elections turned on such issues as conscription, exemptions from compulsory service, and the suspension of habeas corpus, issues that many incumbents had difficulty defending to increasingly dispirited and war-weary constituencies. The campaigns and returns in 1863 make it difficult to assess the public's support for Davis and his manpower initiatives. Original secessionists and Democrats lost representation while former Unionists and Whigs gained members, initially indicating that increasing numbers of Confederates opposed aspects of the war effort.

Closer analysis leads to further questions, however. Nearly half of the voting districts were either occupied by Union forces or severely disrupted by combat. Many newspapers folded due to inflation, material shortages, and conquest, resulting in minimal press coverage for many elections. Many candidates once again ran unopposed. Other races focused primarily on local concerns and less on national affairs. Consequently,

³⁰JCC, V, 561; Tatum, *Disloyalty in the Confederacy*, 66-72, 73-75, 88-97, 107, 124, 143-152. For a countering viewpoint, see William Blair's *Virginia's Private War* (New York: Oxford University Press, 1998).

arguments proclaiming the 1863 elections as a direct referendum on conscription and civil liberties are exaggerations.³¹

The fourth session of the First Congress convened on December 7, 1863, a month after states held elections for legislative seats. The president presented his agenda for the lame-duck assembly on December 8, once again expressing his desire for revisions to the conscript system. Major military setbacks withered Confederate defenses and necessitated more men in the ranks as soon as possible. It is also possible Davis harbored uncertainties regarding the incoming Congress's makeup and cooperation. The current legislature had already provided the president with two conscript laws, and Davis hoped for continued cooperation before it adjourned for the last time. Despite losses of men and setbacks in the field, he declared, "the army is believed to be in all respects in better conditions than at any previous period of the war." Even so, he stressed the necessity of obtaining more troops by revising the conscript law yet again, citing the need to match the Union's June and October 1863 draft orders that called for 600,000 new men. "In view of the large conscription recently ordered by the enemy and their subsequent call for volunteers, to be followed if ineffectual by a still further draft, we are admonished that no effort must be spared to add largely to our effective force as promptly as possible."

Davis also requested the abolition of the substitute system, noting that the "policy of granting this privilege has not been sustained by experience. Not only has the numerical strength of the Army been seriously impaired by the frequent desertions for which substitutes have become notorious, but dissatisfaction has been excited among those who have been unable or unwilling to avail themselves of the opportunity thus

³¹ Martis, *The Historical Atlas of the Congresses of the Confederate States of America*, 66-67, 71-74; Rable, *The Confederate Republic*, 221-235.

afforded of avoiding the military service of their country.” He also requested all those who had previously avoided duty by hiring substitutes to enroll for military service. Finally, he mildly criticized the current system of exemption and appealed for change. Although he maintained Congress’s motive “has not been to confer privileges on classes . . . the result would,” he suggested, “be better obtained by enrolling all such persons and allowing details to be made of the number necessary to meet the wants of the country. Considerable numbers are believed to be now exempted from the military service that are not needful to the public in their civil vocation.”³²

The Senate attempted several bold measures shortly after receiving Davis’s memorandum. Albert G. Brown took his president’s message to heart, introducing a resolution on December 10 that essentially placed the nation on a total war footing. Louis T. Wigfall offered a bill in a similar vein the next day, making all white males between the ages of 16 and 60 liable for military duty. Although both initiatives would eventually be tabled, they served as a clear indication that many in the upper house were receptive to streamlining the draft process. The drive for greater consolidation of manpower did yield swift action on one project – the abolishment of substitution. After a bit of tinkering, Congress quickly sent it to Davis. By December 28, Davis signed the finalized bill ending the practice and then approved the law requiring all former principals to enlist on January 5, 1864. Both bills had passed the houses by wide margins. The House voted 52-13 on both bills and the Senate voted 17-4 and 17-2, respectively.³³

³²*JCC*, III, 446; *JCC*, VI, 507; *M&P*, I, 370-371.

³³ *SHS*, L, 25, 26, 33-34, 121-122; *JCC*, III, 499; *JCC*, VI, 561; Moore, *Conscription and Conflict*, 44-45.

With a few exceptions, there was little heated debate over the new conscription law. Both houses carefully deliberated refinements of the draft and its exemptions, slowly designing a law that they hoped would satisfy Davis. The third conscript act passed on February 17, 1864 – the third anniversary of Davis’s provisional inauguration. While not the levee en masse that Davis hoped for, the law made even more men potentially liable for conscription and took bold steps to remedy criticisms of class discrimination. More than half of the occupations once exempted now became liable for military duty. Most of the jobs still excluded were professionals and public servants; those now within the law’s reach were engaged in farming and industry. The overseer exemption was modified to now exclude men who watched over 15 or more slaves, mollifying some complaints that prior legislation protected only the planter class. Additionally, the new law required overseers and planters to supply the government with 100 pounds of bacon (or 100 pounds of pork and 100 pounds of beef) for each able-bodied slave they held. An additional obligation by large slaveholders included the mandate that they sell surplus goods and produce to the government or soldiers’ families at discounted prices. More families stood the chance of losing their breadwinners, after all. Modified age limits for the draft now ranged from 17 to 50.³⁴

Again, Congress granted Davis the right to suspend the writ of habeas corpus and he signed the measure into law on February 16, 1864. The process from bill to law was less harmonious than previous measures. In a February 3 joint message, Davis appealed to the Congress to grant him the right to execute the power to declare martial law once again. This time, however, the request had a strikingly ominous tone to it. He warned that the nation was rife with Union spies and a significant number of disloyal

³⁴ Moore, *Conscription and Conflict*, 83-85.

Confederates, some even within the capital city of Richmond. He also feared that servile insurrections were increasingly probable, even alleging that Benjamin Butler was concocting a scheme to incite slave revolts. Furthermore, he wanted added legal muscle to counteract contentious state legislation enabling local and state judges to issue writs of habeas corpus when the military sought the apprehension of suspected traitors and draft dodgers.³⁵

Congress reluctantly agreed to give Davis permission this time. The tone of debate is unknown, as both houses conducted their deliberations in secret session. The final bill that Davis signed limited his suspending powers to 90 days after the Second Congress's first session began. The lame-duck nature of this final session certainly factored into the decision, as did a greater sense of reluctance by many congressmen to increase the scope of Davis's powers. The new writ law was much more limited in its scope, granting the power to only Davis, Secretary of War James Seddon, and the army commander of the Trans-Mississippi Department. Previous habeas laws were not as restrictive and allowed Davis a much more expansive authority in its delegation. Offenses for apprehending suspects now had clear definitions and were limited to the most egregious offenses against the government. Confederate soldiers and law enforcement officials needed palpable evidence to seize men suspected of crimes such as treason, conspiracy to overthrow the government, assisting the enemy, spying, or encouraging slave revolt. Confederate officials were now tightly constrained in their

³⁵*JCC*, VI, 744-746,845; *JCC*, III, 669-671.

ability to arrest and hold, without due process of the law, men whose detention was essential for the public good.³⁶



The conscript laws did little to ease class strife. Relations between the planter and yeomen classes, which were rather harmonious before the war, grew increasingly tense as the conflict prolonged. The poorer yeomen, tenants and laborers generally could not afford to pay exemption fees or hire substitutes; their jobs usually were not the occupations protected by exemption clauses. Many poor whites would use the series of conscript laws as justification to desert or abscond from service. Some even used the laws to engage as an excuse to form bands that engaged in guerilla warfare with conscript agents or small gangs of criminals that terrorized those remaining on the home front; many of these lawless bands failed to make distinctions regarding their prey. One must not lose sight of the overwhelming support that the cause received from much of the middle and lower classes, however. Thousands of men outside of the planter class rushed to arms with the commencement of hostilities; many more volunteered with the passage of the first conscript act. The planter aristocracy hardly had a monopoly on support for the cause. Had that been the case, the armies in the field would have been much smaller and the war much shorter.³⁷

³⁶JCC, III, 673-674, 692-693,701-703,805-807; JCC, VI, 761-764; Hattaway and Beringer, *Jefferson Davis, Confederate President*, 283-285.

³⁷ Escott, *After Secession*, 80-88; Emory Thomas, *The Confederate Nation* (New York: Harper Row, 1979), 152-155.

While Davis did get the conscript laws he needed in order to save his nation's army, they lacked the breadth that he desired for maximum effectiveness. Draft measures also suffered from irregular execution. Support from congressmen was often tepid. Many had strong commitments to the war effort but were often reluctant to yield to Davis's wishes of blanket enrollment; they simply did not want to strip their constituencies of the men needed to keep state militias and the civilian sector functional. Others, such as Reuben Davis of Mississippi and William Yancey, wanted to keep a check on the executive's authority; they thought Davis's power was escalating to dangerous levels and desired to curb it. Solons such as these often veiled protests by appealing in the name of states' rights. Then there were others among the inchoate opposition who simply did not like Davis, such as Foote.³⁸

By spring 1862, Union forces disrupted or captured a significant portion of the Confederacy. The available pool of men to draw from continued to shrink as the war dragged, due to continued conquest and disturbance by Federals. Given the chaos that engulfed much of the Confederacy, it is remarkable that the conscription laws would eventually bring well over 80,000 men into the ranks. The number of men who volunteered rather than face the scorn and lack of privileges afforded conscripts remains unknown, but it certainly was high.

Despite the criticisms leveled at the conscription system, it was a remarkable success. The first law certainly saved the army. The series of laws did allow for greater federal consolidation of the war effort and were pivotal in prolonging the Confederacy's lifespan. The First Congress was certainly more cooperative than the Second Congress,

³⁸ Warner and Yearn, *Biographical Register*, 73-74; Coulter, *The Confederate States of America: 1861-1865*, 142-3.

but the warfare sapped the nation of men and resources by 1864. While there were indeed a greater number of malcontents and obstructionists in the Second Congress, almost all still supported the war effort. Overt resistance usually came from men who simply believed their constituents had already sacrificed more than they could bear for a quickly dying cause.

CHAPTER III

SUSTAINING A NEW NATION: DEBATES ON CONFEDERATE FINANCE AND SUPPLY

The size of the Confederacy's armies never matched the Union's masses, despite the institution of a vigorous military draft. While Jefferson Davis and the Confederate Congress certainly could have enacted conscript laws more expansive in scope, the Confederacy never could keep pace with the North in terms of manpower. The Union's population of 22 million dwarfed the Confederacy's 9 million, including 4 million slaves. The nation's defenses also suffered from an initial disadvantage in materiel and industry – shortcomings the Confederacy never overcame. Hampered by inadequate industrial and natural resources, the Confederate war effort also suffered from inadequate financial foresight and preparation. The southern states were typically cash-poor; most invested in slaves, land, and agricultural products. The Confederacy had very small holdings in hard currency, totaling between 25 to 27 million dollars in specie. In addition, Confederate citizens were unaccustomed to heavy tax burdens and expected a short war requiring minimal sacrifice.

A swift and bloodless conflict never materialized. As the war dragged on, the Provisional and First Congresses faced mounting fiscal crises. Both the executive and legislative branches lacked adequate resources and financial expertise from the outset. Misguided hopes lingered, particularly those concerning the political and economic impact of cotton. Not only did many southerners believe the staple crop would keep both

the private sector and the war effort afloat, they also assumed northern and European reliance on cotton would force a peace settlement and independence. But King Cotton did not deter the United States from its goals of victory and reunification. It also could not persuade France or Great Britain to open its coffers, nor could it garner diplomatic or military assistance from the Western European powers. These delusions contributed heavily to the Confederate economy's collapse.

The overestimation of cotton's impact was not the only misstep committed by the Confederate government. The hopes for a brief conflict also contributed to many shortsighted economic pursuits by the executive and legislative branches. Initial expectations for the war's swift resolution persuaded Davis, Secretary of the Treasury Christopher Memminger, and Congress to seek short-term economic solutions. Rather than implement wide-scale taxation on the Confederacy's most valued assets, land and slaves, many in Congress preferred pumping in more currency or cotton bonds, both of which became increasingly worthless in value. Once Davis and Memminger called for more extensive fiscal measures, Congress successfully blocked or diluted the potency of many such proposals. Fears of an expansive federal government and belief that southerners had already sacrificed enough for the cause fueled much of the congressional opposition. Others opposed the Davis administration's economic policy because they believed the president and secretary of the treasury simply did not know what they were doing. In many ways, Congress was right, for Davis knew little about the nuances of finance. While Memminger had a more expansive fiscal background, he was slow in his response to the nation's mounting economic crises. Congress's lack of financial proficiency did little to help matters, however.

A crippling deficiency of adequate railroads, easily navigable water routes, and roads also hindered the Confederate war effort. Not only did a faulty infrastructure impede the war effort, but it also devastated the Confederate economy. Establishing self-sufficient means of transport - a daunting prospect even during peacetime- would prove impossible once hostilities commenced. The central government never overcame these compounding economic disadvantages hobbling the nation, and it struggled mightily with new challenges plaguing them. By the time the First Confederate Congress adjourned for the last time in February 1864, the southern economy teetered on the verge of collapse.



Prior to the onset of hostilities, the states of the Confederacy monopolized the leading export. Southern cotton totaled one-half of all American products sold abroad by 1860. European markets, particularly British and French, voraciously consumed the staple. The English textile industries boomed during the antebellum period and became an economic colossus on the world stage. On the eve of the Civil War, Britain's textile manufacturers purchased up to 80 percent of their cotton from the South. Southerners were highly cognizant that northern mills and the international market relied heavily on their cotton product. The South had a virtual monopoly on raw material sent to northern textile industries; disunion and warfare certainly would disrupt the trade of material essential to major European industries as well. The perceived northern and European dependence on King Cotton gave the Confederacy a false sense of confidence that economic concerns would maintain or restore peace during the southern nation's early

months of existence. Most southerners believed that northern disruption of the cotton trade - via blockade, warfare, or both – would trigger an international financial crisis. The great European powers, most notably Great Britain, would face a choice: rush to aid southern arms or face certain economic ruin. The hopes that economic pragmatism, both by northern neighbors and European customers, could uphold the peace quickly proved misguided and short-lived.¹

When Lincoln ordered the blockade of the Confederate coastline on April 19, 1861, Confederates held out hopes that the resulting impact on British and French markets would bring about swift diplomatic intervention. If naval trade could not resume, almost all Confederates believed that the European powers would respond with military force. The expected foreign intervention never arrived. Bumper crops in the late 1850s led to a glut of cotton on the international market. In addition, British agents purchased record amounts in 1859 and 1860, sensing that conflict loomed near. As a result, warehouses held record surpluses by the time of secession and warfare. By 1863, the British found adequate alternate sources for cotton and began importing Egyptian and Indian crops. The demand for Confederate cotton did not intensify during the war. Instead, it plummeted.

The search for and acquisition of new cotton outposts came during British debates for intervention on behalf of the Confederacy. Prime Minister John Temple, Lord Palmerston, and his foreign secretary Lord John Russell certainly found the prospect of an independent Confederate States of America attractive. The Confederacy's

¹ For more on cotton trade, see Stuart Bruchey, *Cotton and the Growth of the American Economy: 1790-1860* (New York: Harcourt, Brace and World, 1967), Frank Owsley, *King Cotton Diplomacy: Foreign Relations of the Confederate States of America* (Chicago: University of Chicago Press, 1959) and Paul Escott, *After Secession* (Baton Rouge: LSU Press, 1977) 174-175.

survival would weaken the United States as a commercial and naval rival. British assistance in exchange for southern independence also meant that the Confederacy's recompense for alliance would result in acquiescence to an expanded British economic and political presence in the Western Hemisphere. The high costs of the recently concluded Crimean War, however, gave both Palmerston and Russell pause. In addition, the *Trent* affair from November 1861 to January 1862 led the British leadership to conclude that any decisive measures on the Confederacy's behalf would probably result in warfare with the United States. As a result, the British never made official overtures for diplomatic recognition of the Confederacy, nor did they make serious efforts to end the Union blockade.²

Great Britain also wished to avoid setting a naval precedent that could work against her in a future conflict. Davis and his diplomats pressed Britain for a ruling that stated the Union blockade was physically ineffective. Such a declaration meant the blockade did not pertain to non-belligerent powers, such as France and England. In an interesting twist, the Confederacy adopted the stance that the United States had taken in earlier European conflicts – the blockading power must completely seal off its enemy's ports. From the onset of the blockade until war's end, Confederate blockade-runners successfully evaded Union naval ships and made their way to Caribbean and European harbors. The success of these vessels, the Confederacy argued, offered tangible proof of the Union's inability to obstruct southern naval traffic. During the Civil War, however, the Union now adopted the stance that the British always held: patrolling warships

² Buck Yeans, *The Confederate Congress* (Athens: University of Georgia Press, 1960), 165-168. For more on Confederate-British relations, see Muriel E. Chamberlain, *British Foreign Policy in the Age of Palmerston* (London: Longman, 1980), D.P. Crook, *The North, the South, and the Powers, 1861-1865* (New York: John Wiley and Sons, 1974) and Howard Jones, *Union in Peril. The Crisis over British Intervention in the Civil War* (Chapel Hill: University of North Carolina Press, 1992).

making a concerted effort to deny exit or entry to a port constituted a legally binding blockade. Great Britain would not reverse its long held naval policy, declaring the blockade lawful in early 1862.³

The French were reluctant to do anything without British assurances. Emperor Napoleon III maintained an officially neutral position, despite his anxieties regarding the potential economic difficulties posed by the loss of Confederate cotton and his personal sympathy for Confederate independence. In 1861, Louis Napoleon already had French soldiers in Mexico as part of an international debt collection force and seized the opportunity provided by the American Civil War for further intervention in Mexican affairs. By June 1863, Napoleon III's forces overthrew the government of Benito Juarez, and Napoleon placed Archduke Maximilian of Austria as a puppet governor.

Confederates remained optimistic that Napoleon would seek Confederate recognition and support for Maximilian's regime in return for Maximilian's recognition of the Confederacy. Consequently, de facto French recognition of the Confederacy would have resulted. By summer 1863, however, the course of war turned decidedly in favor of the Union, and Napoleon III hedged his bets on his Mexican empire's survival by openly courting U.S. diplomatic recognition. Louis Napoleon did not wish to annoy the Lincoln administration with formal talks with the Confederacy. Lincoln and Secretary of State William H. Seward, for their part, intimated possible diplomatic recognition of the Maximilian dictatorship in order to prevent a potential Mexican-Confederate alliance.⁴

³ William J. Cooper, Jr., *Jefferson Davis, American* (New York: Knopf, 2000), 367.

⁴ David Donald, *Lincoln* (New York: Simon and Schuster, 1995), 323, 413, 414-416, 499. Also see William E. Echard, *Napoleon III and the Concert of Europe* (Baton Rouge: LSU Press, 1980).

The Confederate Congress did little that positively affected international commerce. One of the few successful foreign financial endeavors came not from congressional action, but from the Confederate minister in France, John Slidell. In October 1862, he successfully brokered a deal with the Parisian firm Erlanger and Company. The Erlanger Loan gave the Confederacy a \$15 million advance secured by the future sale of Confederate cotton bonds. Most of the loan's subsequent proceeds went towards the purchase of French naval ships. When Davis requested Congress's approval, some congressmen thought his appeals for legislative sanction unnecessary. Others found the loan request too small and desired for a much larger advance, some even suggesting \$50 million. When Confederate secretary of the treasury Christopher Memminger insisted on the original amount in the loan, Congress relented and passed the measure. Although the secret nature of congressional proceedings on the matter prevents scholars from knowing the nature of debates on the Erlanger Loan, opposition was short-lived and fragmented. By January 30, 1863, Davis gave final approval to the Erlanger Loan.⁵

Davis nominated Christopher G. Memminger of South Carolina as the first secretary of the treasury, and Congress unanimously confirmed the choice on February 21, 1861.⁶ The German-born secretary's rise to prominence before the war truly was remarkable. Orphaned at age four shortly after settling in Charleston, Memminger lived in an orphanage for seven years until a prominent local attorney, Thomas Bennett,

⁵ *Journal of the Congress of the Confederate States of America, 1861-1865*, VI (7 vols. Washington, D.C.: Government Printing Office, 1904-1905) 33-34, 53-55. Hereafter cited as *JCC*. *JCC*, III, 28-29, 41, 42. Also see Yearns, *Confederate Congress*, 196, Beckles Willson, *John Slidell and the Confederates in Paris, 1862-1865* (New York: AMS Press, 1970), and Judith Fenner Gentry, "A Confederate Success in Europe: The Erlanger Loan", *Journal of Southern History* 36 (May 1970), 157-188.

⁶ *JCC*, I, 73.

became his guardian and benefactor. Impressed with his natural intelligence and aptitude, Bennett encouraged and supported Memminger's education, enrolling him at South Carolina College and then encouraging his study for the bar. Memminger rose to prominence as a Charleston lawyer and gained a seat in South Carolina state legislature, where he established himself as a moderate states' rights advocate who opposed the concept of nullification and its implementation in the crisis of 1832. He gained the confidence of his colleagues in Columbia by demonstrating remarkable skill in economic matters. He had multiple terms in the state legislature, serving as the chairman of the committee on finance, and made efforts to regulate the state's banking industry. He also functioned as a Charleston school commissioner and was on the Board of Trustees for South Carolina College for over thirty years.

Fire-eating swept through South Carolina in the 1850s, yet Memminger maintained a moderate political stance until John Brown's raid on Harper's Ferry in October 1859 and Abraham Lincoln's election in November 1860. He quickly became an advocate for disunion, and voters chose him a member of the state's secession convention. In January 1861, he joined the Provisional Confederate Congress as a South Carolina delegate. While serving as a congressman in Montgomery, Memminger played an integral role in the drafting of the Confederate Constitution. The newly elected Jefferson Davis needed a moderate South Carolinian for his cabinet and followed Robert Woodward Barnwell's urgings to select Memminger as secretary of the treasury. Following his unanimous confirmation, Memminger struggled with the onerous task of managing Confederate finances. Once hostilities commenced, few of his proposals succeeded. Memminger's trade proposals, such as support for a tariff and opposition to

the Confederacy serving as cotton brokerage, rankled many. Most opposition to these measures resulted from solons' constitutional beliefs that such proposals violated the rights of private agriculturists. Debate over foreign trade initiatives became moot due to the crippling Union blockade. Lacking easily liquidated assets and choked off from foreign commerce, Memminger had little choice but to fund the war effort with escalating amounts of currency backed with only trace amounts of specie. Exacerbating the soaring inflation that inevitably resulted from a depreciated currency was reluctance by Provisional and First Congresses to increase taxes. For their part, Davis and Memminger also opposed new taxes until the midpoint of the war.

The relationship between the First Congress and Memminger grew increasingly acrimonious. Congressional denigration of the secretary increased, and he gradually shouldered the brunt of criticism for the nation's faltering system of finance. The Second Congress placed even more pressure on Memminger, blaming him for the near-total collapse of the Confederate economy. Faced with strident opposition by this Congress that offered little support for his current policy or new financial initiatives, he finally resigned on June 15, 1864.⁷

Memminger, like many of his colleagues, initially envisioned an unobtrusive central government with limited influence and power. The new secretary of the treasury made few suggestions for centralized methods of generating revenue. Like many of his peers, Memminger believed that a possible war against the United States would be a short

⁷ David S. Heidler and Jeanne T. Heidler, "Christopher Gustavas Memminger," ed. David S. Heidler and Jeanne T. Heidler, *Encyclopedia of the American Civil War* (New York: W.W. Norton, 2000), 1314-1315. Ezra J. Warner and W. Buck Yearns, *Biographical Register of the Confederate Congress* (Baton Rouge: LSU Press, 1975), 171-173. Also, see Henry D. Capers, *The Life and Times of C.G. Memminger* (Richmond: Everett Waddey, 1893).

one. Not surprisingly, he made modest requests to fund defensive measures during the first months of the Confederacy.

When the Confederate Congress first convened in Montgomery in February 1861, it operated on a \$500,000 budget – a donation by the state of Alabama. The first national tax implemented in the Confederate States was the then-current U.S. tariff. The Provisional Congress voted to honor the Union import duty on February 9, 1861, a result of the agreement to continue all United States laws consistent with the provisional Confederate Constitution. The secret accounts of the Provisional Congress’s sessions reveal little in terms of debate, but the decision to maintain the old tax must have produced acrimony among some Montgomery representatives. The Louisiana delegation introduced measures on February 16 stressing the necessity to preserve the current system of tariffs. Louisiana was rich in cotton and sugar, and New Orleans was the largest port city in the Confederacy. Not surprisingly, the state’s delegation had a keen interest in upholding sources of revenue and quite possibly perceived they were under attack.⁸ The Louisiana delegation’s fears proved prophetic; amendments to the tariff came shortly thereafter. On February 18, Congress passed a bill to exempt from duty certain commodities, including “all agricultural products, in their natural state.”⁹ Yet ten days later legislation passed mandating the taxation of all cotton exports at the rate of one-eighth of a cent per pound. Davis and the Congress hoped the tax would fund the issuance of ten year, eight percent bonds, totaling 15 million dollars. Resistance from cotton planters and the forthcoming Union blockade would limit cotton loan

⁸ *JCC*, I, 59-60.

⁹ *JCC*, I, 63.

subscriptions to only 11 million dollars. Even so, it would prove to be one of the more effective means of Confederate finance, due in large part to its early passage.¹⁰

The conservative nature of the first session's tax policy demonstrates considerable reluctance by the Provisional Congress to provide the central government with substantial revenue. Not only did the Congress attempt to lighten the tariff but it also hesitated to grant the commander in chief unrestricted access to war materiel. On February 26, shortly after assuming office, Davis pressed Congress to grant him greater control of defensive measures, proposing that the Confederacy seize all Federal arms, munitions, forts, arsenals, and naval yards in southern states. Congress did pass a resolution regarding states' cession of Federal holdings, but it was merely a resolution that recommended that states yield their captures of Union property and was not mandatory.¹¹ Of course, one must bear in mind that the first session of the Provisional Congress witnessed no armed conflict between the United States and the Confederacy. This may explain in part the lack of urgency by many congressmen to mobilize defenses or accrue assets for warfare.

Provisional congressmen rushed back for their second session following the onset of hostilities, convening on April 29, 1861. Davis's written message presented that day addressed the Confederacy's lack of resources, and called on both private citizens and the Congress to act. For the former, he requested private vessels to join the Confederate navy; for the latter, he called for more defense appropriations.¹² For most of the session, Congress deliberated over financial measures but acted slowly. Congress issued a

¹⁰ Hattaway and Beringer, *Jefferson Davis, Confederate President*, 55. Also see Douglas Ball, *Financial Failure and the Confederate Defeat* (Urbana and Chicago: University of Illinois Press, 1991).

¹¹ *JCC*, I, 88-89, 144-5.

¹² *JCC*, I, 165-167.

censure of Lincoln and the Union blockade on May 3, two weeks after Lincoln ordered the cordon of the Confederate coastline.¹³ It considered a bill granting Davis presidential control of telegraph lines within Confederate borders before killing it on May 9.¹⁴ By May 16, the first Produce Loan passed, a revenue-generating proposal endorsed by both Memminger and Davis. Under the direction of a leading southern economist J.D.B. DeBow, treasury agents and congressmen canvassed their home districts purchasing staple crops in exchange for 20-year bonds with an 8 percent interest rate. The first Produce Loan allotment was designed to raise 50 million dollars in revenue for the national government. Initially, congressmen and loan agents had success pushing the loan, and it appeared enough investors would subscribe to meet the goal. Naturally, the prospect delighted Davis and Congress.

The third session of the Provisional Congress convened in Richmond on July 20, 1861. Jefferson Davis's memorandum delivered to Congress the same day glossed over issues of finance and material shortages. Instead, Davis primarily attacked Lincoln's troop allocations of 500,000 men and budget appropriations of \$400 million in military expenditures – measures Davis lambasted as clear indications that Lincoln intended conquest.¹⁵ In an effort to boost his nation's morale, Davis did go on to praise agriculturists for excellent harvests. “The grain crops, generally, have since been harvested, and the yield has proven to be the most abundant known in our history,” Davis noted. He asserted that he and many others believed “the supply adequate to two years' consumption of our population. Cotton, sugar, and tobacco, forming the surplus

¹³ *JCC*, I, 178-179.

¹⁴ *JCC*, I, 183-184, 202-203.

¹⁵ *JCC*, I, 273. James D. Richardson, ed. *A Compilation of the Messages and Papers of the Confederacy*, Vol. I (2 vols., Nashville: United States Publishing Company, 1906), 117-119. Hereafter cited as *M&P*.

production of our agriculture, and furnishing the basis of our commercial interchanges, present the most cheering promise; and a kind Providence has smiled on the labor which extracts the teeming wealth of our soil in all portions of our Confederacy.”¹⁶ Hope remained high that the southern wealth in agricultural resources and the Union’s attempts to deny European markets access to Confederate exports, particularly cotton, would result in foreign intervention and a swift end to the war. Davis then went on to praise initial investors in the Produce Loan who answered their government’s call for assistance. He wrote, “In the single article of cotton the subscriptions to the loan proposed by the Government cannot fall short of fifty millions of dollars, and will probably largely exceed that amount; and scarcely an article required for the consumption of the Army, is provided otherwise than by subscription to the produce loan.”¹⁷

Despite Davis’s glowing assessment of Confederate finance, Congress resumed debate on the best means to sustain the nation. John Perkins, Jr. of Louisiana introduced a bill on July 29 to suspend all import duties except for goods originating in the United States – a clear effort to make blockade running more attractive to foreigners. The third session saw no progress on the matter, and congressmen eventually tabled the bill on August 28.¹⁸ Unauthorized smuggling of cotton out of Confederate harbors, thereby circumventing national levies imposed on the product, quickly became commonplace. Congress moved to end the practice. In an effort to obtain cotton revenues more effectively, Congress passed a bill prohibiting cotton exports except through designated ports of entry. Davis signed it into law on August 3.¹⁹

¹⁶ *M&P*, I, 123; *JCC*, I, 274.

¹⁷ *M&P*, I, 123.

¹⁸ *JCC*, I, 290-291, 432.

¹⁹ *JCC*, I, 308, 313.

Because tariff duties alone would not fund the war effort, Congress sought new measures to fund the nation's expenses. Debates for a comprehensive war tax began on August 8, 1861, and Davis signed the proposition into law on August 19. Although the negotiations took place in secret session, clues remain indicating the careful and deliberate nature of planning. For a week, Congress focused on little else but the tax legislation. By the time Congress constructed an acceptable bill on August 16, it agreed on a resolution offered by Duncan Kenner of Louisiana stating that once Davis signed the bill into law, the public record should show a unanimous vote by the Congress. However odious some congressmen may have found the notion of their central government taxing private citizens, they passed Kenner's resolution by an overwhelming majority and did record a unanimous vote on the war tax once Davis returned it on August 20. Overall, the tax itself was a relatively light duty. It required that Confederate citizens relinquish one-half of one percent on all taxable wealth held. Immunities protected poor men volunteering for service as well as their families, exempting personal holdings of \$500 or less and family estates of \$1000 or less. All families, regardless of their military status, received a \$500 deduction. Additionally, all schools, charities, and religious organizations enjoyed property exemptions.²⁰

The first war tax required only modest sacrifices by most Confederates, and the Confederate press overwhelmingly supported the measure. Opposition papers offered only mild rebuttals, arguing that taxation should remain a matter for individual states. Cognizant of such resistance on a wider scale, the law designated Confederate states as separate tax divisions and even offered a 10 per cent rebate if complete returns arrived to the national treasury before April 1, 1862. States were slow in their collection or

²⁰*JCC*, I, 331-332, 334-336, 338-340, 344-348, 349-356, 359, 367, 371, 373.

compliance with Confederate tax laws, however. Disruptions by Union armies or the often-viable threat of invasion often made state collection agents' jobs impossible. National laws occasionally conflicted with state assessment regulations, resulting in an obstinate adherence to old laws or confusion over which one should take precedence. Secretary Memminger also recommended the issue of 150 million dollars in currency in July, and Congress responded by amending Produce Loan on August 19, issuing an additional 100 million dollars in treasury notes.²¹

The last week and a half of the session witnessed considerable debate on the sequestration of property held by United States citizens and Unionist sympathizers within Confederate borders. Not until the United States passed laws confiscating southerners' property in the North did the thrust for comprehensive sequestration laws in the South slowly gain momentum. On August 30, the Confederacy established its own sequestration law. Davis signed the amendments into law on December 23 and again on February 15, 1862, one of the final days of the Provisional Congress's existence. The laws had minimal economic impact but served as effective propaganda tools by ordering that all proceeds from enemy property seized by the Confederacy go to southerners deprived of their own property by the Union's seizure laws.²² Likewise, a finished bill on states' claims versus the Confederacy was slow to develop, and none resulted during the third session.²³

The fourth session of the Provisional Congress lasted only one day: September 3, 1861. No discussions on finance took place. The fifth session convened barely two

²¹ Hattaway and Beringer, *Jefferson Davis, Confederate President*, 87-89.

²² *JCC*, I, 385-389, 392-394, 397-9, 402-406, 417-422, 426-427, 606, 821-822. Yearn, *Confederate Congress*, 191.

²³ *JCC*, I, 408-409, 413-414.

months later, assembling in Richmond on November 18. Congress received Davis's message the next day, in which he praised the efforts of southern farmers but stressed the need for more industry to meet the demands of war.²⁴ Although inflation and currency depreciation already hampered many Confederate business endeavors, the president still expressed confidence in the nation's financial health.²⁵ Davis then attacked the Union blockade, stressing the inefficiency of naval barriers resulted in violation of international law. Even so, Davis heralded the nation's increasing independence, scoffing at the Union's attempts to choke off the Confederacy's lifelines of supply.²⁶

While Davis wanted centralized control of weapons and munitions manufacture, Congress hesitated and retained hope that the private sector could meet demands. On December 10, the Committee on Military Affairs prepared to debate a proposed law granting bonuses to private businesses and individuals contributing to the manufacture of arms.²⁷ By January 13, Congress approved a bill encouraging the manufacture of small arms, saltpeter, and gunpowder. The measure promised 50 per cent advances for investors but required entrepreneurs take an oath of allegiance to the nation before dispersing funds, in hopes of deterring fraud. On January 23, Davis returned his veto, objecting to the clause providing 50 per cent advances to investors who were required only to devote 25 per cent of their own funding upfront. Leery of speculators who could defraud the government, Davis balked at Congress's proposals. He attacked what he considered redundancies in the bill. For example, Davis criticized the need to encourage additional manufacture of gunpowder and stressed that the Confederacy already had

²⁴ *JCC*, I, 468

²⁵ *JCC*, I, 470

²⁶ *JCC*, I, 471-472.

²⁷ *JCC*, I, 550.

enough powder mills. The nation needed more munitions and materiel in a finished state, Davis argued.²⁸ On February 12, Congress made an unsuccessful effort to override Davis's veto, killing the bill for the last time.²⁹

During the final session of the Provisional Congress, the president and his supporters pressed Congress for legislation enabling governmental assistance for material support. On December 18, Davis sent a message to Congress requesting funding for new railroads. Congress would not comply with Davis's wishes for rail appropriations, however, citing the constitutional ban on internal improvements. Hopes that private businesses and state governments could meet demands for new and refurbished track still lingered.³⁰

A highly critical appraisal of the military's financial and supply sources came on January 29, 1862, when Congressman Thomas Waul of Texas issued an exhaustive report on inadequacies in the quartermaster, commissary, and medical departments. Waul cited numerous shortcomings within the quartermaster's department such as volunteer troops lacking adequate clothing, too few storage depots, and a critical paucity in available railroad track and service. He went on to demand that troops receive their pay on a bimonthly basis.³¹ Waul then urged for more organization in the commissary department, emphasizing the need for more cooks, more variety in rations provided to troops in the field, and funding for rations for the sick and convalescent.³² Finally, Waul cited numerous deficiencies in the medical department, centering on inadequate preparation and provision. Few army surgeons had proper instruments, a scarcity exacerbated by

²⁸ *JCC*, I, 696.

²⁹ *JCC*, I, 661-664, 696, 808-809.

³⁰ *JCC*, I, 586.

³¹ *JCC*, I, 721-722.

³² *JCC*, I, 722-723.

“the present state of our commercial atrophy,” he argued. Even so, Waul “presumed that sufficient encouragement would secure the manufacture of instruments within the Confederate states.”³³

The unfavorable assessment offered in Waul’s report exemplified mounting discontent with the Confederacy’s growing shortages. The quartermaster and commissary departments increasingly became targets of criticism. Lucius Northrop, the Confederate commissary general, was an old friend of Jefferson Davis and served in the U.S. Subsistence Department when Davis was Franklin Pierce’s secretary of war. When his home state of South Carolina seceded, Northrop resigned his post in the U.S. Army. Following the Confederacy’s formation, Northrop accepted Davis’s offer as acting commissary general of the Confederacy with the rank of lieutenant colonel. In June 1861, Northrop received a promotion to full colonel and became commissary general.

Northrop faced a tremendous challenge, and the effects of warfare made it increasingly difficult. He assumed his post with very little bureaucratic structure in place. The Confederacy also lacked coordinated transportation via railways, roads, or rivers, which further hampered Northrop’s efforts to supply armies in the field. In an attempt to streamline resource allotments, Northrop insisted that all commissary agents at military posts and in the field report to him. Had the Confederacy possessed more efficient transport and communication, Northrop’s goal for a diligent supply czar overseeing the sustenance of all armies in the field might have worked. Instead, logistical shortcomings made supply increasingly problematic, and Northrop’s domineering policies angered many commissary agents in the field. Army officers, soldiers in the field, and troops’ families flooded their congressmen with letters complaining

³³ *JCC*, I, 725.

vociferously about the scarcity and poor quality of food received in the field. As the war dragged on, Congress made repeated calls for action limiting Northrop's power or removing him from office altogether. Although Northrop remained in office for the duration of the Provisional Congress, he became an increasingly convenient scapegoat for Congress and the public at large.³⁴

Abraham Myers, the first Confederate quartermaster general, received similar disparagement from the army and Congress. Like Northrop's commissary department, Myers's quartermaster division suffered from a substandard railroad network, an increasingly forceful Union blockade, and dwindling manufacturing resources. By the summer of 1863, Myers lost Davis's support. While Davis was certainly mindful of the logistical impediments hindering Myers's efforts, many believed that the president's opposition resulted from a feud between the two men's wives. While it is doubtful that Davis used such petty matters to justify his removal of Myers as quartermaster general, the president certainly grew frustrated with Myers's ability to supply the armies. He replaced Myers with Alexander R. Lawton on August 7, 1863. Myers protested his ouster and claimed Davis violated the Constitution because he failed to consult the Senate regarding Lawton's nomination. The Senate did request a formal nomination, with which Davis complied. The Senate finally confirmed Lawton in February 1864.³⁵

The first elected Congress assembled for its initial session on February 18, 1862. Although the legislators devoted most of their time to conscription, the establishment of

³⁴*Southern Historical Society Papers*, Vol. XLIV, 79-80, 84-85. Hereafter cited as *SHS*. *SHS*, XLV, 122, 145. *SHS*, XLVI, 56-57, 68, 112. *SHS*, XLVII, 145, 215-216. *SHS*, XLVIII, 71, 161-163, 246, 286-287. *SHS*, XLIX, 6, 132, 133-134, 188, 264. Also, see Jerrold Northrop Moore, *Confederate Commissary General: Lucius Bellinger Northrop and the Subsistence Bureau of the Southern Army* (Shippensburg, PA: White Mane Publishers, 1996) and William J. Cooper, *Jefferson Davis, American* (New York: Knopf, 2000), 60, 62.

³⁵ Years, *Confederate Congress*, 233-234. *JCC*, III, 627-628.

the Supreme Court, and the suspension of the writ of habeas corpus, solons did not neglect financial matters entirely. Desperate for foreign revenue, congressmen made repeated efforts to end the tariff. None of them succeeded. Senators Edward Sparrow of Louisiana and James Phelan of Mississippi made requests for exemptions of all duties shortly after Congress convened.³⁶ On March 3, Williamson Oldham of Texas presented a bill repealing import duties. Despite Benjamin Hill's protests, the Senate placed the bill on the committee on the whole's calendar.³⁷ In secret debates on March 27, the Senate voted 17-6 that it lacked constitutional jurisdiction and rejected the repeal of import duties.³⁸ One week later, however, the House passed a bill authorizing the free trade of all goods except for those originating in the United States.³⁹ The Senate did not pass the measure, ignoring Thomas Semmes's repeated pleas to repeal the tariff.⁴⁰

Congressmen also had growing concerns that farmers placed too much emphasis on staple crops, thereby neglecting production of food. On March 10, the House began discussing potential legislation regarding cotton and tobacco.⁴¹ On March 12, an 11-8 vote in the Senate killed a measure discouraging commercial planting and encouraging the cultivation of grains and livestock. Three days later, the Senate debated the national government's ability to limit cotton growth. James Phelan, an extreme Confederate nationalist from Davis's home state of Mississippi, raised the question to his colleagues: did the Confederacy indeed have the right of seizure if agriculturists violated potential legislation capping production? Benjamin Hill, who was one of Davis's most ardent

³⁶ *SHS*, XLIV, 47-48, 54.

³⁷ *SHS*, XLIV, 79.

³⁸ *JCC*, II, 96.

³⁹ *SHS*, XLV, 59-61.

⁴⁰ *SHS*, XLV, 94, 169.

⁴¹ *SHS*, XLIV, 128-129.

supporters, replied, “Certainly – yes,” but stopped short of endorsing a plan that forced farmers to produce foodstuffs.⁴² Hill’s answer vexed Phelan. “Is not grain, then, as important as saltpetre or arms?” he asked. “If . . . there were but one farm on which grain could be raised, and the owner refused to raise it, could not the government, if necessary, make him raise it?” Hill replied, “The government could do no such thing. The government had no right to make a man make saltpetre, nor guns, nor anything else. It could seize the farm, but could not force the man who owned it to raise any certain grain upon it.”⁴³ Williamson Oldham of Texas also rejected Phelan’s proposals, stating, “If we had the power to do what the gentleman said, there would be no use for State Governments.”⁴⁴

Phelan’s sentiments were decidedly in the minority, and in this session, Congress refused further consideration of the matter. Most congressmen recoiled at the prospect of forcing their constituents to make even further sacrifices. After all, Congress was debating the first conscription law at the same time. They also wanted to wait and see if state initiatives limiting commercial crop growth would have any effect before redundant or additionally restrictive laws took effect. In the end, the first session did nothing, which historian Buck Yearns argued was “a decision justified by the sharp decline during 1862 in staple crop production.”⁴⁵

Although Congress remained apprehensive about the prospect of centralizing the nation’s economy, it harbored no such trepidations when faced with amending demands for the Produce Loan. Bond issues soared to \$250 million, with very little of it backed by

⁴² *SHS*, XLIV, 163.

⁴³ *SHS*, XLIV, 164.

⁴⁴ *SHS*, XLIV, 165.

⁴⁵ Yearns, *Confederate Congress*, 131.

hard currency or specie. Not surprisingly, costs continued to soar, in large part due to inflation. State payments to the federal government further depreciated the strength of treasury holdings. Following their initial contributions, almost all state debts owed to the Confederate treasury came in the form of state bonds for the duration of the war. Like the national currency, state bills also held little or no real value because they lacked backing in specie. Both state and federal governments retained hope that the war would end soon, and most did not think an all-inclusive system of taxation necessary for a short-term conflict.⁴⁶

No comprehensive mode of taxation came in the second session of the First Congress. It was a short autumn assembly, meeting from August 18 to October 10, 1862. Although Congress considered several financial matters, it generated few significant pieces of fiscal legislation. Salt quickly became a rarity in most southern states once the disruptions of war came. Shortly after convening, Louisiana senators Thomas Semmes and Edward Sparrow proposed separate bills authorizing centralization of salt mines and springs. Both pieces of legislation lacked adequate support in the Senate, and the push for nationalized salt distribution quickly sputtered.⁴⁷

Frustrations with the hardships of war became increasingly apparent. On October 8, Benjamin Hill presented a resolution of inquiry for Secretary of War George Randolph regarding the military's interference with interstate trade. After Hill commented that the army's meddling with the commerce between Tennessee and Georgia "is daily done," Williamson Oldham delivered a stinging invective against the army's methods of supply and the commander in chief. "A good deal had been said about the danger we were in of

⁴⁶ Hattaway and Beringer, *Jefferson Davis, Confederate President*, 195.

⁴⁷ *SHS*, XLV, 234-235, *SHS*, XLVI, 19-20.

drifting into a military despotism,” Oldham opined. He then asserted, “. . .that despotism was already established.” Edward Sparrow, miffed at Oldham’s accusations, successfully moved for President Davis to receive the resolution, not the secretary of war.⁴⁸

The brevity of this session precluded lengthy discussions on a new tax bill. Both houses made some efforts to revise methods of assessment but on October 6, the House struck out the enacting clause in their proposal, effectively killing the bill.⁴⁹ On October 8, William Lowndes Yancey made requests for a new census, a constitutional requirement for any new changes in the Confederate tax code. After Gustavus Henry of Tennessee and Robert Ward Johnson of Arkansas noted the impossibility of assessing and collecting taxes in states invaded or occupied by Union forces, the Senate agreed to postpone consideration of a new census until the third session.⁵⁰ In that session, the only major initiative for meeting financial demands was the passage of a new law granting Secretary Memminger the right to borrow \$150 million from the states. The states, however, often paid their notes with state bonds that had little to no specie backing them.⁵¹

As the war dragged on, armies in the field began impressing food and supplies from civilians. Soldiers often had little choice, for provisions and materiel were becoming scarce. Commissary and quartermaster supplies often could not keep up with armed forces, due in large part to the deterioration of methods of transport. The Union blockade of the Atlantic and the Gulf of Mexico, along with the capture in 1863 of the Mississippi, made water transport nearly impossible. Many railways fell into Union

⁴⁸ *SHS*, XLVII, 47.

⁴⁹ *SHS*, XLVII, 61-62.

⁵⁰ *SHS*, XLVII, 70-71.

⁵¹ *JCC*, II, 446-447.

hands and were either destroyed or converted into Union lifelines. Confederate forces destroyed other lines rather than allow the enemy to utilize them. Lines beyond the scope of invading armies often suffered from excessive use and neglect. This disrepair resulted from Confederate ironworks focusing almost exclusively on the production of weaponry. Inconveniences plaguing railways during peacetime became nightmares with the onset of conflict. Disagreements between connecting railroads over matters such as corresponding gauges of track were commonplace and crippled shipments of troops and supplies. When Congress did approve funding for new railways, these projects often suffered from logistical delays, inadequate provisions, insufficient funding, and political infighting. For example, Congress approved a loan to build a 48-mile stretch of road connecting Danville, Virginia to Greensboro, North Carolina on February 6, 1862. Only when William MacFarland of Virginia added a supplemental travel subsidy for congressmen riding the line did it finally pass.⁵² Robert Toombs moved to reconsider passage of the project four days later and filed a petition of protest. Claiming that he spoke on behalf of other states' rightists, Toombs argued the Confederate Constitution did not allow for the internal improvement because it was not a military necessity.⁵³ Following the passage of the law, implementation was slow; construction of the Greensboro-Danville line took more than two years.

Lacking adequate transport of supplies, Confederate armies often faced little choice but to seize food and supplies from the citizenry. Even during the initial weeks and months of the war, military forces impressed provisions in order to stay in the field.

⁵² *JCC*, I, 765, 769-770.

⁵³ *JCC*, I, 781-782. Richard Franklin Bense, *Yankee Leviathan* (Cambridge: Cambridge University Press, 1990), 137, 148-151, 182-185. For more on Confederate railroads, see Robert C. Black, III., *The Railroads of the Confederacy* (1952, reprint: Chapel Hill: UNC Press, 1998) and George Edgar Turner, *Victory Rode the Rails: The Strategic Place of the Railroads in the Civil War* (Indianapolis: Bobbs-Merrill, 1953).

The practice frequently consisted of military commanders acquiring necessary items and leaving a promissory note that typically paid little beyond the cost of production.

Logistical concerns also made it much easier for massive armies to strip clean areas within the immediate vicinity of camp rather than have agents fan out and selectively appropriate goods. Such a practice expended far less manpower and man-hours, and the army naturally wanted to cut its costs as much as possible and avoid sinking the nation into even further debt.

Impressment, though necessary for the maintenance of troops in the field, created a backlash. One's personal encounter with a stingy army officer or impressment – or accounts of similar misfortunes suffered by friends and family – led many to fear the Confederate defenders almost as much as the invading Union blue. Annoyed citizens inundated leaders on the state and national levels with complaints about army officers and impressment agents who offered payment well below the market price, thus depriving agriculturists of a fair profit and all but guaranteeing further hardship due to growing deprivations and inflation. Another very real problem was an increasing proliferation of imposters masquerading as army officers and impressment agents. These men arrived with counterfeit orders and seized goods for their own consumption or private enterprise. Others were even more brazen and little more than robbers, taking families' remaining crumbs at gunpoint while claiming to be Confederate agents. Not surprisingly, there was growing antagonism by many farmers, and thousands balked when ordered to supply armies in the field. With rising inflation, speculation by private

citizens soared. Increasing numbers of Confederate citizens held goods in hopes of achieving maximum value once they brought crops to market.⁵⁴

The Provisional Congress never proposed significant legislation addressing impressments, and the First Congress did not take up the topic until goaded by President Davis. A January 3, 1863 message from Secretary of War Seddon to Davis maintained that impressments were essential for the army's survival, but also emphasized the need for implementing safeguards against abuse.⁵⁵ In Davis's opening message to the third session, he expressed his hopes that 1863 would be the final year of the war and therefore did not desire to enact drastic changes in financial policy. Sacrifices were in order, however. He called for the "adoption of some comprehensive system of finance," including a regulated mode of impressment.⁵⁶ He urged the Congress for legislation contracting the amount of currency passing through Confederate hands and stressed the need for "revenue for from the taxation adequate to support the public credit."⁵⁷ If Congress could enact adequate taxation and remove surplus currency, Davis professed, "there is little doubt we shall see our finances restored to sound and satisfactory condition."⁵⁸

After receiving Davis's message, the House immediately tackled the issue of impressment. Virginians Muscoe Garnett and John Goode proposed a resolution of inquiry on military confiscations. In open debate, Garnett expressed his admiration for Secretary of War Seddon and his policies but confessed that he "fear[ed] abuses

⁵⁴ Thomas Benjamin Alexander and Richard E. Beringer, *The Anatomy of the Confederate Congress* (Nashville: Vanderbilt University Press, 1972) 149, 206; George Rable, *The Confederate Republic* (Chapel Hill: UNC Press, 1994), 192-193.

⁵⁵ Seddon to Davis, January 3, 1863. *War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (70 vols. in 128; Washington, D.C., 1880-1901), Ser. IV, Vol. II, 292.

⁵⁶ *JCC*, III, 14.

⁵⁷ *M&P*, I, 293.

⁵⁸ *M&P*, I, 294.

entrenched in the system” of impressment.⁵⁹ For two months both houses debated impressment, and congressmen proposed a series of bills and amendments. In the House, James Holcombe of Virginia offered a bill that passed by a 52-7 margin on February 17. Chief components of his proposal included the institution of a board of “three disinterested citizens” from the surrounding community that would preside over disputes when impressment agents and property owners could not agree upon a satisfactory price. The bill also allowed the army the right to impress slaves for work details, a practice that many armies in the field already performed.⁶⁰ After considering several bills on the matter, on March 10 the Senate agreed on a bill that closely mirrored the House bill. Two key amendments differed from the House plan, however. The Senate bill forbade the impressment of slaves used for agricultural purposes and granted the army access to surplus goods only, not produce necessary for private citizens’ survival.⁶¹

A joint committee of conference met, resolved differences, and agreed on a satisfactory bill on March 23.⁶² When disagreements occurred between the army and property holders over goods grown or held for private use, two supposedly disinterested local citizens were chosen, one by the agent and one by the owner. If the two parties still could not reach an agreement, a third disinterested citizen rendered a decision that was final. Disputes over goods intended for commercial sale came under the authority of state commissioners appointed by the president and state governors. These commissioners could then appoint umpires to arbitrate conflicts over the proper market value of commercial goods. Armies could now legally impress slaves for work details

⁵⁹ *SHS*, XLVII, 127.

⁶⁰ Yearn, *Confederate Congress*, 117-118.

⁶¹ *JCC*, III, 147-148. Yearn, *Confederate Congress*, 119.

⁶² *SHS*, XLIX, 9.

but were required to adhere to state laws or decrees issued by the secretary of war.⁶³ The next day saw the resumption of debate in the Senate. Thomas J. Semmes of Louisiana opposed the bill, arguing, “it gave up everything which the Senate had contended for” by forcing the government to pay the highest possible market price, a condition benefiting speculators and traitors. Landon Carter Haynes of Tennessee and Benjamin Hill both objected to Semmes’ allegations, explaining that the arbitration process for vicinage appraisement did not guarantee exorbitant bills owed by the treasury. In addition, they stressed compensation came only to those who took oaths of allegiance and swore that they were indeed producers. An overwhelming majority of the Senate agreed with the bill and passed it by a 17-4 margin.⁶⁴ On March 26, Davis signed the bill into law.⁶⁵

Problems with impressment continued to plague the nation, however. The March 26 law only legalized many practices already in place. With Union advances resulting in more conquest and destruction, Confederates operated within shrinking boundaries. Instead of lightly gathering resources from wider areas, many military forces again had little choice but to comb the immediate vicinity and gather all that was immediately accessible. Rather than surrender or disband due to a lack of provisions, Confederate forces continued many of their old habits for supply. In turn, many Confederate civilians became increasingly unable or unwilling to part with their crops and livestock. For some, resistance resulted from soaring inflation and mounting deprivations. For others,

⁶³ Yearn, *Confederate Congress*, 119-120. Hattaway and Beringer, *Jefferson Davis, Confederate President*, 203-211.

⁶⁴ *SHS*, XLIX, 17.

⁶⁵ *SHS*, XLIX, 45.

opposition resulted from sagging morale and a loss of confidence in the cause or the army's ability to defend them.⁶⁶

A month after legalizing the army's impressment of civilians' goods, Congress also passed the tax-in-kind. The permanent Constitution forbade Congress from imposing direct taxes on the population unless the national government obtained a new national census. With the disruptions of warfare making such a venture impossible, Congress circumvented the legal restrictions and levied a tax against all farmers and livestock producers. The tax law also resulted from a compromise between the House and Senate. While the House generally supported Memminger's recommendations for a ten percent earned income tax and a one percent property tax, the Senate very strongly opposed the treasury secretary's proposal for land duties. A committee of conference finally yielded satisfactory concessions from both sides, and the compromise measure quelled Senate fears that slaves and land would be taxed.⁶⁷ On April 24, the bill became law, implementing a series of occupational and license taxes. A national income tax also went into effect, withholding one percent of all salaried employees' wages between \$1000 and \$1500. All salaries higher than \$1500 were taxed at two percent rate. All non-fixed incomes from \$500 and up were taxed on a sliding scale from five to fifteen percent. The maximum rate applied to all incomes higher than ten thousand dollars. Soldiers' salaries were exempt from taxation.⁶⁸

⁶⁶ For resistance to impressments, see Escott, *After Secession*, 64-67, 72. For more on Confederate class conflict, see Wayne K. Durrill, *War of Another Kind: A Southern Community in the Great Rebellion* (New York: Oxford University Press, 1990); Mark E. Neely, Jr., *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism* (Charlottesville: University Press of Virginia, 1999) and David Williams, *Rich Man's War: Class, Caste, and Confederate Defeat in the Lower Chattahoochee Valley* (Athens: University of Georgia Press, 1998).

⁶⁷ Richard Cecil Todd, *Confederate Finance* (Athens: University of Georgia Press, 1954), 138-139.

⁶⁸ E. Merton Coulter, *The Confederate States of America* (Baton Rouge: LSU Press, 1950), 179; Hattaway and Beringer, *Jefferson Davis, Confederate President*, 198-199.

Most controversial was the requirement that all farmers to set aside 10 percent of their harvests and one percent of all livestock not used as draft animals as a federal tax. The government's agricultural requisition plan worked twofold; it called for appropriations to bolster funds in the national treasury and provided direct relief for armies in the field. Like conscription and impressment, however, many Confederates scoffed at additional demands for sacrifice by the national government. The regressive nature of the agricultural taxes in kind particularly chafed small farmers. A fraught yeoman often made greater struggles submitting his tenth of all produce than a wealthy planter required to submit the same percentage of his crop. Disgruntled southerners grew increasingly disaffected; some outwardly defied collection agents and refused compliance.

The fourth and final gathering of the First Congress convened for a lame duck session on December 7, 1863. Jefferson Davis's message arrived the next day, addressing many aspects of the faltering Confederate economy. He continued his attack on the Union blockade, questioning its legality and the lack of British efforts to end it. Because of Great Britain's inactivity on the diplomatic front, Davis felt he had no choice but to recall James Mason, his representative in London.⁶⁹ He then stressed the urgent need for alterations in public finance but maintained, "...the resources of our country are so ample and the spirit of our people so devoted to its cause, that they are ready to make any necessary contribution."⁷⁰ He pleaded for major efforts to curb inflation. "I need not enlarge upon the evil effects of this condition on things," he wrote. "They are

⁶⁹ *JCC*, III, 437-440; *JCC*, VI, 498-501.

⁷⁰ *JCC*, III, 442.

unfortunately but too apparent.”⁷¹ He also vowed “to approve any law levying the taxation which you are bound to impose for the defense of the country in any other practicable mode which shall distribute the burthen uniformly and impartially on the whole property of the people.”⁷² Complaints about the imbalances of impressment not sway Davis, however. He maintained the necessity for preserving the current mode of military seizures and stressed a stabilized currency would remedy the troubles with the system.⁷³

Three major financial directives passed on February 17, 1864, the final day of the Confederate Congress. In Davis’s opening message, he had called for a shift from treasury notes to interest-bearing bonds to fund the war effort.⁷⁴ Congress responded with a new funding law that ordered all holders of Confederate treasury notes bearing no interest to exchange their old notes for 20-year bonds with a 4 percent rate of return or new treasury notes at two-thirds value.⁷⁵ Inflation was hopelessly out of control, and Memminger desperately needed the authorization to contract millions of dollars from the Confederate economy.⁷⁶ The law allowed Memminger such privileges and demanded that Confederate citizens east of the Mississippi River surrender their old notes by April 1. Residents in the Trans-Mississippi had until July 1 to comply. Notes denominated at one hundred dollars or higher not received before the deadlines were no longer accepted for any government debts and were additionally taxed at one-third their value plus an additional 10 percent a month until relinquished. Bills in smaller denominations could

⁷¹ *JCC*, III, 444.

⁷² *JCC*, III, 445.

⁷³ *JCC*, III, 448.

⁷⁴ *JCC*, III, 445.

⁷⁵ *JCC*, III, 786-787.

⁷⁶ It is unknown exactly how much currency circulated at the time. E. Merton Coulter estimated the number at \$973 million and Richard C. Todd projected an amount close to \$800 million. Coulter, *Confederate States of America*, 161; Todd, *Confederate Finance*, 75.

continue circulation, but they were now funded at a two-thirds rate until January 1, 1865. At this time, they too would become worthless.⁷⁷

A five percent property tax passed the same day.⁷⁸ Memminger made earlier requests for taxation on land and slaves, the two components of the Confederate economy previously untouched by Congress. Davis agreed with Memminger's appeals. In his opening message to the fourth session, Davis directed Congress to consider untapped sources for revenue from the "two-thirds of the entire taxable property in the Confederate States . . . land and slaves".⁷⁹ Acknowledging that the 1863 tax law unfairly taxed the remaining one-third of all Confederate property, he urged Congress for a new statute. If the new ordinance bypassed constitutional requirements for a new census, so be it. After all, no Supreme Court could overturn such a law, and national survival was imperative.⁸⁰ Congress did not yield to Davis's wishes for slave taxes, but they did institute a five percent tax on all landed property and a ten percent tax on all precious metals and jewelry. The law also levied additional duties on gold and silver coins, stocks, and other tradable commodities. While the law did not completely satisfy Davis, it did provide a new comprehensive means of generating revenue.⁸¹ The April 24, 1863 tax act also underwent several revisions, increasing the number and amount of occupational taxes levied throughout the nation.⁸²

None of the financial measures passed during the final session of the First Congress provided sufficient financial support for the national government and army. In

⁷⁷ Hattaway and Beringer, *Jefferson Davis, Confederate President*, 279.

⁷⁸ *JCC*, III, 786.

⁷⁹ *M&P*, I, 363.

⁸⁰ *M&P*, I, 363-5.

⁸¹ Hattaway and Beringer, *Jefferson Davis, Confederate President*, 273-274.

⁸² *JCC*, III, 787.

large part, these breakdowns resulted from Union army advances and a crumbling transportation system that made a thorough and equitable collection impossible. Despite the many disappointments associated with Confederate finance and supply, not all efforts sustaining the war effort were failures. Josiah Gorgas labored mightily to make the Department of Ordnance the most efficient bureau within the entire War Department. Gorgas, with very little oversight by either the executive or the legislative branches, began a comprehensive program for Confederate armament. Soldiers received instructions on properly scavenging battlefields for weapons and munitions. Gorgas acquired pipes and church bells by the ton and converted them into cannon balls, guns, and bullets. He formed nitre and mining corps for extracting raw materials and established foundries in Selma, Alabama and Columbus, Georgia to produce finished materials. Agents were dispatched to Europe and received ordnance in exchange for cotton, employing a fleet of blockade-runners that smuggled in additional munitions, gunpowder, and metals. Confederate armies often went into battle outmanned, hungry, and poorly clothed. But thanks to Gorgas's efforts, rarely did they face the enemy with a shortage of weapons or bullets.⁸³

Unfortunately, the efficiency of Josiah Gorgas did not typify southern finance and supply. A lack of economic foresight and a crippling lack of resources devastated the Confederate war effort, arguably dooming the nation's chances for survival from the outset. Managing the country's treasury overwhelmed Memminger and few of his measures bolstered the Confederate financial system. He mismanaged the nation's

⁸³ For more on Josiah Gorgas, see the following: Frank Vandiver's *The Civil War Diary of Josiah Gorgas* (Tuscaloosa: University of Alabama Press, 1947) and *Ploughshares into Swords: Josiah Gorgas and Confederate Ordnance* (1952, reprint. College Station: Texas A&M Press, 1994); Sarah Woolfolk Wiggins, ed., *The Journals of Josiah Gorgas* (Tuscaloosa: University of Alabama Press, 1995).

limited specie holdings, did not press for tax legislation during the early stages of war, overestimated the economic influence of cotton, and printed so much currency that it quickly became worthless. Jefferson Davis's near-total lack of fiscal expertise only served to exacerbate the administration's haltering financial policy.⁸⁴ Congress took little initiative in the amelioration of economic woes and typically responded negatively to proposals by the president and secretary of the treasury. An overall deficiency in financial expertise in the national legislature hindered progress. Stubborn allegiance to King Cotton persisted throughout the Provisional and First Congresses. In addition, congressmen delayed the implementation of higher taxes and economic sacrifice because many believed the war would end shortly. As victory and an honorable peace became increasingly remote prospects, criticism of the war effort mounted. But just as Congress's criticisms of Davis's conscription and economic policies came from a scattered and amorphous opposition, so would the resistance to the Confederate president's war policies.

⁸⁴ Douglas B. Ball, *Financial Failure*, 135,261,267.

CHAPTER IV
“AUDACITY IS THE KEY TO SUCCESS”:
CONGRESSIONAL CONFLICTS OVER THE WAR EFFORT

Both the Provisional and First Congresses overwhelmingly supported the war and desperately hoped that the Confederacy would win the conflict. All senators and representatives wanted independence and abhorred the idea of reunification or reconstruction. They envisioned themselves as the rightful heirs of the American Revolution and the true guardians of American ideals. The Union, on the other hand, was in their eyes a region now perverted by abolitionism and Black Republicanism, beliefs Southerners deemed antithetical to their (and therefore all right-thinking Americans’) way of life.

For the men who sat in the Provisional and First Congresses, the only sure means for preserving their nation and lifestyles was success on the battlefield. At first, many harbored naïve hopes that a nation of effete Yankees would balk at the prospect of bloodshed and strive to avoid conflict altogether. Once hostilities began, the hope of a short and largely bloodless war remained until it became increasingly apparent that the Union’s guns shot just as straight and that Billy Yank’s courage was as true as Johnny Reb’s. While the Confederacy did not need to win a majority of its battles in order to win the war, its armies certainly needed to endure the ravages inflicted by northern invasion and, in turn, exact punishing blows to Federal armies. Hopes remained high that southern forces could withstand the onslaughts of attack and make the price of northern campaigning so high that the Union would lose its resolve and end the conflict.

Only the withdrawal of Union troops would ensure the survival of the Confederate States of America. All in the legislative branch sitting first in Montgomery and then in Richmond recognized success in battle was the only means to maintain independence. The Confederate Congress stood foursquare behind Jefferson Davis's intentions to drive northern invaders from its home soil. Davis and the Congress were not always in lockstep when considering the planning and implementation of military strategy, however. A number of congressmen complained that Davis was not sufficiently aggressive in his choice of tactics. Others thought he was too aggressive and should make greater overtures for peace. Almost all, at one point or another, complained that their home states needed greater defenses and made efforts to secure additional military protection.

Some congressmen, like Henry S. Foote of Tennessee, used the occasional criticisms of Davis's war policy as opportunities for personal attacks against Davis, his cabinet members, and his generals. While few legislators employed similarly vituperative lines of attack, conflicts did emerge over Davis's choices for military leadership, particularly his generals. Many lambasted Braxton Bragg and James Pemberton; other generals, such as P.G.T. Beauregard and Joseph E. Johnston, saw their estimation by Congress vacillate wildly. Not even the venerable Robert E. Lee escaped scrutiny, particularly during the 1862 Maryland campaign.

Similar critiques of Davis's cabinet also emerged during the Provisional and First Congresses. Lawmakers in Montgomery and Richmond were especially critical of the men who headed the War and Navy Departments. Judah P. Benjamin and Stephen Mallory both became convenient scapegoats for major military setbacks. While Davis

eventually moved Benjamin from the War Department to the State Department, he retained Mallory in the Navy for the duration of the war, even as a joint committee questioned Mallory's competence. By the end of the First Congress, legislators concluded a lengthy investigation and absolved Mallory of any wrongdoing. Although the naval secretary remained an unpopular public figure, there was no substantial evidence of incompetence by Mallory, and Congress would not press for his removal.

While opposition to Davis and his war effort in the Provisional and First Congresses was not as prevalent as the resistance posed in the Second and final Congress, it was present and could be strident. His antagonists did not coalesce during the Confederacy's first three years of existence, and protests typically came from individual members of the legislative branch, not organized factions. As a result, hostility came from a very vocal minority that had limited success deterring the president's war policy.



War did not come during the first session of the Provisional Congress, which convened on February 4 and adjourned on March 16, 1861. While some congressmen may have secretly harbored hopes that the North would allow the secession of the original seven Confederate states to stand, the Provisional Congress did implement several measures for securing the infant nation's defense. With the absence of military hostilities, Davis's relations with the first gathering of Confederate congressmen were harmonious, and discussions over defensive measures avoided internecine conflict. On the final day of the first session, the legislature unanimously approved all of Davis's

nominees for military appointment, having already agreed to give preference to men who resigned their commissions in the U.S. Army.¹ A provisional army was quickly established, but concerns over a large standing army, a deeply ingrained fear held by most Americans – both in the North and the South, remained. The Louisianan Duncan Kenner’s March 4 amendment to the provisional army bill reflected such sentiments, as it mandated “that the president shall call into the service of the Confederate States only so many of the troops herein provided for as he may deem the safety of the Confederacy may require.”² With these restrictions in place, Congress passed a bill to create a 12-month regular army on March 9, 1861, and Davis approved it shortly thereafter.³ At the time, many thought war would never come and few envisioned a lengthy conflict.

Although solons harbored hopes that war would not occur, official proceedings of the first provisional session show a Congress certainly assertive in its dealings with its northern adversaries. Shortly after convening, Congress overwhelmingly endorsed a February 15 resolution demanding Union forces vacate Forts Pickens and Sumter.⁴ While the lame duck Buchanan administration showed no signs of offering any stern resistance to southern secessionists, the Congress had little confidence that the incoming Abraham Lincoln would remain passive. The preliminary buildup of the infant nation’s defenses reflected this mistrust.

The second session of the Provisional Congress convened on April 29, flush with the victory at Fort Sumter. A May 2 resolution of thanks to P.G.T. Beauregard for

¹ *Journal of the Confederate States of America, 1861-1865*, I (7 vols. Washington, D.C.: Government Printing Office, 1904-1905) 82, 154-158. Hereafter cited as *JCC*.

² *JCC*, I, 105.

³ *JCC*, I, 120.

⁴ *JCC*, I, 56-58.

gaining control of the stronghold quickly passed.⁵ A May 3 bill on recognizing the existence of war produced more disagreement before passage. Debates centered over the language in the measure; opponents wanted a more strident tone to show Union aggression and southern hesitance in the prelude to hostilities.⁶ The same day, a censure of Lincoln and his blockade of the Confederate coastline produced little debate.⁷

Lincoln's call for 75,000 troops to suppress the rebellion led to the passage of a May 8 bill calling for more Confederate troops. Many congressmen were still reluctant to have terms of enlistment lasting longer than 12 months. While the fears of a large standing army gave way to the demands of national survival, the hopes and expectations of a short conflict had not.⁸ During these early and heady days of nation building, Congress offered tremendous support for their president's war measures. On the final day of the session, the Provisional Congress gave unanimous approval for all of Davis's submitted candidates for military appointment.⁹

The Provisional Congress met for its third session in Richmond on July 20. By now, several skirmishes had taken place in Missouri and Virginia. No major engagement had yet occurred, though. Yet as the Congress convened, sizeable Union and Confederate forces maneuvered within striking distance of the Confederate capital. Provisional delegates breathlessly awaited news of the ensuing conflict at Manassas Junction, Virginia. After receiving Davis's July 22 dispatches of the battle, congressmen celebrated as jubilantly as their constituents did.¹⁰ Many believed the conflict was an

⁵ *JCC*, I, 174.

⁶ *JCC*, I, 177.

⁷ *JCC*, I, 178-179.

⁸ *JCC*, I, 198-199.

⁹ *JCC*, I, 265-267.

¹⁰ *JCC*, I, 275.

American Waterloo. Southerners hoped the battle that would convince northerners to abandon efforts restoring the Union by force. Shortly thereafter, Congress passed a resolution thanking Confederate commanders Joseph E. Johnston, P.G.T. Beauregard, and the troops for their efforts.¹¹



Davis faced intermittent opposition from a testy minority in Congress following the stunning victory at Manassas. From July 1861 until the conclusion of the First Congress's final session, critics contended that Davis and his subordinates had inadequately prepared for war. A few complained that the president had exploited the vicissitudes of war for his own benefit and was determined to establish a military despotism. Conversely, some wanted the implementation of a total war effort. Several congressmen argued that Davis's strategy was too timid, while others complained that Davis was too aggressive once he made the decision to invade Maryland in 1862.

After the victory at First Manassas, some congressmen and citizens alike expressed worries about inadequate Confederate defenses. On July 31, Davis sent a message to Howell Cobb, president of the Provisional Congress, addressing the defense of the Mississippi River, in which Davis articulated his concerns over press rumors regarding deficiencies of coastal defense.¹² These same anxieties prompted Louisianan Charles Conrad's delivery of an August 12 resolution demanding Secretary of War Leroy P. Walker report on defensive measures for New Orleans, "in view of a probable attack

¹¹ *JCC*, I, 315.

¹² *JCC*, I, 300.

upon that city at no distant period.”¹³ Two days later, Walker replied, stressing that the city would soon receive adequate fortifications and guns.¹⁴ Walker’s message may have temporarily placated Louisiana delegates, but the apparent lack of action on the Atlantic coast alarmed other congressmen. On August 31, the final day of the session, Congress sent to Davis a resolution seeking information on measures to prevent invasions of North Carolina’s coasts.¹⁵

Davis wanted Missouri and Kentucky admitted into the Confederacy despite the lack of majority approval for secession in either state. On August 3, he recommended one million dollars to Missouri for its aid and relief. Two days later, Congress passed the measure.¹⁶ On August 3, Congress amended Conrad’s bill for public defense by stipulating that men in the Confederate army must remain in service for no less than 12 months or more than three years. Although hopes remained strong that the war would be brief, the alteration of the bill offers evidence that many in Congress had begun to contemplate a prolonged and extensive conflict. Examination of the bill also offers evidence that hopes remained that men from Border States still under the Union flag would enter the conflict. It authorized the secretary of war to provide transportation to troops and volunteers from Kentucky, Maryland, Delaware, or Missouri.¹⁷

Missouri’s admission to the Confederacy was not entirely free of congressional dissent. Wiley Pope Harris of Mississippi tried to keep the Missouri relief act secret on August 6, because Congress had not yet recognized the state’s rump delegation.¹⁸

¹³ *JCC*, I, 338.

¹⁴ *JCC*, I, 356.

¹⁵ *JCC*, I, 456.

¹⁶ *JCC*, I, 313-314.

¹⁷ *JCC*, I, 315.

¹⁸ *JCC*, I, 318.

Missouri's lack of any official measure severing allegiance with the Union clearly rankled some congressmen. On August 16, Josiah Campbell of Mississippi tried to amend the bill admitting the state into the Confederacy. He wanted Missouri excluded from admission until she formally seceded. His amendment wished to remove the petition process for statehood from "the properly and legally constituted authorities" to "a convention of the people or a majority of the legal voters." Few congressmen agreed with Campbell's recommendations, however, and the measure was overwhelmingly defeated.¹⁹

Congress also made overtures Kentucky during the third provisional session. Davis signed an August 30 act promising the repelling of invaders from the state.²⁰ The next day, Davis sent a message to Congress proposing \$1 million in relief to the state. His exhortations came late in the session, and Congress did not act at this time, only ordering the bill published for further review.²¹ Both Missouri and Kentucky would eventually gain admission into the Confederacy, but Missouri's entry took months to finalize. The final votes for each state encountered minimal opposition during the fifth session of the Provisional Congress.

Rumors of prisoner abuses by northern captors troubled both the Congress and the president for the duration of the war. After generously praising the efforts of the Confederate army during his opening message to the third provisional session, Davis stressed his wishes that southern forces continue gentlemanly and civilized conduct in war. He did threaten reciprocity with Union prisoners of war, but only if Confederate

¹⁹ *JCC*, I, 363.

²⁰ *JCC*, I, 452.

²¹ *JCC*, I, 454-457.

soldiers held captive by the Union first suffered mistreatment.²² Congressmen also made warnings of possible reciprocity against Union captives. South Carolinian James Lawrence Orr's August 23 resolution threatened retaliation against Union prisoners for the capture of Confederate vessels *Sumter* and *Petrel*.²³ On August 28, Robert Barnwell Rhett wanted the injunction of secrecy removed from the alleged hangings of South Carolina captives held by Union armies. Both of these appeals offered evidence of minor conflict with the Davis administration, with these very public demands issued in open session despite the pleadings of Secretary of War Leroy Walker to keep all military matters secret.²⁴ On August 30, Davis relented to congressional pressure and signed an act into law authorizing retaliation against Union prisoners of war. Although he now had the legal authority to exact retribution from northern detainees, Davis would never sanction reprisals against Federal captives.²⁵

There were no further notable challenges to Davis's policy until the first regularly elected Congress convened on February 18, 1862, immediately following the final adjournment of the provisional legislature. Virginian Thomas Bocoock, unanimously chosen as the speaker of the House of Representatives, gave his opening remarks to the newly assembled body and wondered aloud if "our new system" could "legitimately afford the means to bring the war to successful conclusion?"²⁶ Regardless of the differences in politics, Bocoock encouraged members of the First Congress to put their

²² *JCC*, I, 273.

²³ *JCC*, I, 395.

²⁴ *JCC*, I, 428, 356.

²⁵ *JCC*, I, 451.

²⁶ *Southern Historical Society Papers*, XLIV, 13. Hereafter cited as *SHS*. The First Congress, unlike the Provisional Congress, allowed reporters to cover legislative proceedings, save those relegated to secret and executive sessions. The *Southern Historical Society Papers* compile the coverage of Richmond newspapers to provide relatively full and detailed accounts of congressional debates.

present and future conflicts with one another aside. Glory came only with victory, disgrace surely would accompany defeat, he argued.²⁷

Despite Boccock's exhortations, Henry S. Foote of Tennessee quickly disregarded the speaker's pleas and soon emerged as one of the most outspoken critics of the administration's war policy. On February 19, he made demands for a committee of inquiry to investigate recent military disasters in Virginia, North Carolina, Tennessee, and Kentucky, in hopes of preventing comparable setbacks in the future. John Crockett of Kentucky wanted Foote's resolution discussed in secret session, but Foote protested. "Secret sessions . . . even now," Foote argued, "had been productive of much harm." With Foote refusing further consideration in secret session, the House allowed Crockett to place Foote's proposal on the table.²⁸

The next day, Foote called for the abandonment of the Confederacy's military policy of primarily defensive tactics, insisting Davis and Confederate forces discard such an approach "forever."²⁹ Albert Gallatin Jenkins of Virginia replied that the tone of Foote's resolution implied censure of Davis. Foote responded by noting that Judge Harris of Mississippi, an influential figure in Davis's home state, also disapproved defensive policies. Only campaigns in the North would exact proper retribution for Yankee outrages and end the war, Foote continued. He further contended that the lack of assertiveness already contributed to failures in the West, such as the losses of Forts Donelson and Henry.³⁰ Jenkins retorted that only fools philosophized on military

²⁷ *SHS*, XLIV, 13-14.

²⁸ *SHS*, XLIV, 19-21.

²⁹ *SHS*, XLIV, 23.

³⁰ *SHS*, XLIV, 24-26.

matters.³¹ Given current conditions, Jenkins argued, calls for a more aggressive war policy were simply impracticable. Undeterred, Foote proceeded to attack the competence of Secretary of War Judah P. Benjamin and Secretary of the Navy Stephen Mallory, even alleging that Mallory did not know if Forts Henry and Donelson were in Kentucky or Tennessee.³² He challenged Benjamin to face Congress, “even though he were but a pigmy in debate.”³³

Debate over tactics resumed in the House the next day. Foote opened the discussion by stressing that although he questioned Davis’s policies and the very competence of secretaries Benjamin and Mallory, he had not censured the actions of either P.G.T. Beauregard or the Provisional Congress.³⁴ William Boyce of South Carolina continued the barrage of criticism against Davis. He grumbled, “We should have aimed at an offensive warfare.” For Boyce, a guarded approach towards engagement simply was inadequate. “Audacity! Audacity! Audacity! is the key to success,” he cried.³⁵ Napoleon and Frederick the Great did not wait and allow their enemies to dictate the terms of battle, he argued. Meanwhile, the armies of the Confederacy were skittish and immobile, in large part to his claim that “inactivity had been one of the curses of the South.”³⁶ Boyce then contended the North, on the other hand, showed a willingness to jettison incapable leaders and administrators. He closed his monologue by stating that even Albert Gallatin Jenkins, a noted ally of the Davis administration, previously complained about Davis’s lack of a plan for war.³⁷

³¹ *SHS*, XLIV, 26-27.

³² *SHS*, XLIV, 27.

³³ *SHS*, XLIV, 28.

³⁴ *SHS*, XLIV, 31.

³⁵ *SHS*, XLIV, 32.

³⁶ *SHS*, XLIV, 33.

³⁷ *SHS*, XLIV, 34.

Jenkins responded to Boyce's charges, insisting that Davis did indeed have a coherent course of action but simply had not laid out his plans for congressional perusal.³⁸ Boyce retorted that there *was* no plan of strategy. He went on to declare that the men who must and should formulate a policy were P.G.T. Beauregard and Robert Toombs. In addition, he pressed for congressional appointment of a commander in chief of the army, despite constitutional provisions mandating that the president possessed such powers.³⁹ Following William Machen of Kentucky's speech voicing his opposition of a new policy of offense and Foote's scoffing at allegations that he advocated usurpation, Robert Trippe of Georgia offered a compromise resolution calling for an offensive-defensive policy – one comparable to the strategy eventually employed by Davis.⁴⁰ Foote answered that he refused to accept such a policy if it endorsed secretaries Benjamin or Mallory. Trippe countered that the resolution endorsed the nation as whole, not individuals. Such explanations did not satisfy Foote, who maintained his refusal to support any measures endorsing the administration.⁴¹

Not all discussions of the war effort were so divisive during the First Congress's opening session. An overwhelming majority of Davis's military appointments during the session enjoyed swift passage. Excluding the lingering controversy surrounding Davis's list of the top five generals in the Confederacy, Congress raised few objections to the president's recommendations for appointment and promotion.⁴² Although the first dispatches from the engagement at Shiloh were often fragmentary and contradictory,

³⁸ *SHS*, XLIV, 34.

³⁹ *SHS*, XLIV, 34-35.

⁴⁰ *SHS*, XLIV, 35-36.

⁴¹ *SHS*, XLIV, 36.

⁴² For more on Joseph E. Johnston's objections to his appointment, see William J. Cooper, Jr., *Jefferson Davis, American* (New York: Knopf, 2000), 363-364; William C. Davis, *Jefferson Davis: The Man and His Hour* (New York: Harper Collins, 1992), 356-361. On March 28, the Senate objected to the appointments of T.R. Dunn and J.H. Munford as second lieutenants in the Provisional Army. *JCC*, II, 109.

even leading to an April 8 joint resolution praising the army's "glorious victory," finger pointing over news of the eventual defeat did not come – yet.⁴³ By session's end, few solons had the initial tenacity expressed by Foote or Boyce when it came to matters regarding the war effort. On April 21, the final day of the first session, Reuben Davis called a suspension of the rules for a resolution stipulating that Jefferson Davis order Joseph E. Johnston and John B. Magruder "to make an immediate attack on the enemy on the Peninsula" at Yorktown, Virginia. With most ready to return to their constituencies, the House defeated Davis's proposal by a 57-1 vote.⁴⁴

Notwithstanding the increasingly public criticism leveled at the president, Congress was resolute in its pursuit of victory. Forceful examples of this determination came with numerous patriotic resolutions swiftly passed through both houses, for the language clearly intended to boost the morale of the army and citizenry. Senator William Elliot Simms of Kentucky had a February 26 resolution demanding the Confederacy fight until the nation expended "the last man and the last dollar."⁴⁵ On March 3, the House unanimously passed Alabaman John Perkins Ralls's resolution, which insisted the Confederacy "*never* politically affiliate with a people who are guilty of an invasion of their soil and the butchery of their citizens."⁴⁶ Despite the obvious rancor that appeared during the initial session of the First Congress, the legislative branch retained its resolve to win the war and Davis maintained overwhelming support within the legislature.

By the time the second session of the First Congress gathered on August 18, New Orleans and Memphis had fallen into Union hands, and Confederate forces had retreated

⁴³ *SHS*, XLV, 83-91, 94, 95, 96-100, 104.

⁴⁴ *SHS*, XLV, 170-1. *JCC*, V, 291.

⁴⁵ *SHS*, XLIV, 54.

⁴⁶ *SHS*, XLIV, 81-82.

from Corinth, Mississippi. The southern foothold on the West was slipping. Despite these setbacks, hope remained. Federal General George McClellan and his Army of the Potomac were turned back on the Peninsula, following Lee's victory in the Seven Days' campaign. As soon as the House of Representatives gathered, Foote introduced a multitude of bills calling for retaliation against Union prisoners of war. In addition, he introduced a resolution calling for no secret sessions in the House unless a majority present endorsed it. He blasted congressional protocol, which dictated that all matters pertaining to defensive measures be determined in secret, saying it was a means "to resolve this august body into a dark political enclave." He "would call it nothing else" and went to proclaim it was pointless to hide matters in secret session, since Lincoln and his spies would uncover Confederate military policies anyway.⁴⁷ Most congressmen did not agree and killed his proposals the next day.⁴⁸ Additional measures to protect military secrecy came when the House also rejected Joseph a proposal requiring the secretary of war to make public all news and dispatches from battles.⁴⁹

Calls for a more aggressive presidential war policy renewed. On August 25, Foote introduced a resolution calling for an aggressive war of invasion immediately. He then amended the resolution on August 27, promising reciprocity with peaceful states in the Northwest.⁵⁰ Shortly after Foote's abortive effort to depose Mallory from the naval department, members of the House agreed to table his resolution on future conduct of the war. Foote was not alone with calls for aggressive warfare. Other calls for invasion came from Joseph Heiskell of Tennessee, who offered a resolution beseeching

⁴⁷ *SHS*, XLV, 176-177.

⁴⁸ *SHS*, XLV, 179-182.

⁴⁹ *SHS*, XLV, 188-189.

⁵⁰ *SHS*, XLV, 227-228, 256.

Confederate forces to take Union hostages. He claimed that the kidnap and ransom of northerners would ensure the safe treatment of Confederate prisoners of war. Heiskell could not enlist adequate support in the House, and he quickly withdrew the measure from consideration.⁵¹

When Confederate invasion of Union territory finally did come, some legislators expressed their opposition to Lee's campaign into Maryland. During a September 12 consideration of a House resolution praising Robert E. Lee for his actions at the Second Battle of Manassas, James Lyons of Virginia petitioned for alterations. He did not want any mention or encouragement of invasion in the decree. William Porcher Miles chastised Lyons, claiming that now was not the time for hesitation. Lyons, in turn, professed his support for a campaign into Maryland, a slave state that very well might have seceded from the Union had Lincoln not suspended the writ of habeas corpus there a year and half earlier. He did not endorse an invasion into Pennsylvania, however.⁵²

Aggressive warfare was exactly what the nation needed, Miles argued. "[I wish] every branch of government to understand that this Congress does not think the war has been hitherto waged upon a mode best calculated to bring it to a speedy close," he added.⁵³ Skeptical of the current mode of operations, Lyons asked Miles if the army could safely venture into the heart of the North. "Yes," Miles replied. If Davis would simply give Stonewall Jackson "half of our present army," he "would drive the entire 600,000 of the North before him."⁵⁴

⁵¹ *SHS*, XLVI, 95.

⁵² *SHS*, XLVI, 120-121.

⁵³ *SHS*, XLVI, 121.

⁵⁴ *SHS*, XLVI, 122.

Lyons's amendment lost 29-61, but this did not deter Robert Hardy Smith of Alabama from voicing his opposition of advances into enemy territory. He then speculated that the current campaign was merely a result of Davis's yielding to public clamor. Foote disagreed and professed his delight with a newly found aggressive policy. Ethelbert Barksdale scoffed at Smith's skepticism. He further opined that Congress should not serve as a council of war. While William Machen of Kentucky approved of the campaign, he differed from Barksdale's insistence that Congress remain silent on tactics. He even suggested Confederate forces capture and ransom the city of Cincinnati before suing for peace.⁵⁵

On September 16, the day before the battle at Antietam, Foote presented a joint resolution to the House requesting envoys negotiate with the Lincoln administration for terms of a "just and honorable peace," even though he confessed he had little confidence in Lincoln or his honor.⁵⁶ Even so, he was optimistic that the looming presence of Confederate forces would trigger a capitulation by Lincoln, possibly even resulting in the ouster of the hated Union president and "his Myrmidons."⁵⁷

If Lincoln fit the Homeric role of a greedy and domineering Agamemnon, then Foote and Jefferson Davis's actions over the next two days certainly draw comparisons to a blindly optimistic Priam oblivious to impending disaster. Foote extolled the Army of Northern Virginia as "completely victorious." He maintained that Lee or Stonewall Jackson's presence in the field would leave the Union no choice but surrender. Even though the House tabled his resolution, both executive and legislative branches were

⁵⁵ *SHS*, XLVI, 123-124. *JCC*, II, 371-373.

⁵⁶ *SHS*, XLVI, 160-161.

⁵⁷ *SHS*, XLVI, 162-163.

supremely confident that Lee could bring the Confederacy a swift victory.⁵⁸ The next day, well before receiving the final dispatches from Antietam, Davis ordered September 18 as a day of thanksgiving for military victories.⁵⁹ Lee's army had instead fought to incredibly costly draw and very could have been crushed by McClellan if the Union commander had been more aggressive in his tactics and pursuit. Hopes for a swift and peaceful resolution crumbled.

Shortly after Antietam, Lincoln issued the Emancipation Proclamation, which promised the liberation of all slaves still held behind Confederate lines on January 1, 1863. These words were anathema to millions of Confederates. On September 29, senators John Clark, Gustavus Henry, and James Phelan advocated that Confederate forces fight under the black flag for the duration of the war. Clark even proposed making every Confederate citizen a soldier. In his eyes, such a course was the only adequate means for exacting vengeance.⁶⁰ A majority of the Senate agreed with Thomas Semmes's suggested retaliations, which included hard labor for Union prisoners of war and execution for anyone serving with Negro troops. A sizeable minority supported James Phelan's suggestions, however. He urged for a war of extermination against all invaders of Confederate soil. Equally strident was Alabama representative William Chilton's resolution calling for the hanging of all Union officers captured after January 1, 1863.⁶¹ Although Lincoln's decree certainly angered Davis, neither he nor most congressmen could condone such Draconian practices.⁶²

⁵⁸ *SHS*, XLVI, 163-164.

⁵⁹ *SHS*, XLVI, 173-174.

⁶⁰ *SHS*, XLVII, 6-8.

⁶¹ *SHS*, XLVII, 33.

⁶² *SHS*, XLVII, 26-30.

Despite the intermittent criticism of the president's subordinates, little direct opposition to Davis or his initiatives resulted during the third session of the First Congress. The only disagreement of note came when Davis and Congress clashed over a bill providing artillery for South Carolina's coastal defense. The House sent the finalized bill to Davis on March 21, even though Reuben Davis argued that the bill was a discriminatory bill, providing "unnecessary interference" and a "bad precedent."⁶³ On April 1, Davis returned the vetoed bill "to increase the strength and efficiency of heavy artillery for sea coast defense." His accompanying message pointed his objections to the proposal, which centered primarily on the inequity of granting South Carolina federal artillery and not other states as well. Ever the constitutionalist, Davis did not want to establish a precedent for legislation that provided special privileges or denied equal rights to all states.⁶⁴ Undeterred, the Senate overrode a Davis veto for the first time on April 4. Senators passed the measure by an 18-5 vote and sent it to the House for consideration.⁶⁵

The House contemplated the artillery bill veto on April 7. William Porcher Miles opened discussions, claiming that he respected his president and did not wish to be antagonistic. Even so, Miles "was not willing, on a purely military question, to defer entirely to [Davis's] views over those of other high military authorities."⁶⁶ Reuben Davis noted the rift between Davis and P.G.T. Beauregard over the matter. He posited that Beauregard failed "in his application to the president respecting the regiment at Charleston, [and therefore] had appealed to Congress."⁶⁷ A vote for an overturn denoted complicity with Beauregard's scheming, he argued. An overwhelming majority of the

⁶³ *SHS*, XLIX, 4-5.

⁶⁴ *SHS*, XLIX, 72. *JCC*, III, 227-228.

⁶⁵ *SHS*, XLIX, 86.

⁶⁶ *SHS*, XLIX, 99-100.

⁶⁷ *SHS*, XLIX, 100.

House agreed with Reuben Davis's line of reasoning. The artillery bill lost by a 22 to 59 vote, and the House upheld the president's veto.⁶⁸

No further serious criticism of Davis's tactics materialized during the third session. But there was sporadic disapproval of the president's war policy shortly after Congress convened for a final, lame duck session on December 8, 1863. In his opening message, Davis expressed his wishes that Congress had assembled at an earlier date, given the recent military disasters at Vicksburg, Gettysburg, Port Hudson, and Missionary Ridge.⁶⁹ Although Union forces decisively crushed the Confederacy's western defenses during the intersession, Davis downplayed the collapse publicly. "Detachments of troops and active bodies of partisans kept up so effective a war on the Mississippi River as practically to destroy its value as an avenue of commerce," he argued.⁷⁰ He also gave a mild assessment of the loss at Gettysburg, claiming that it was only a temporary setback. He was not so forgiving in his evaluation of the surrender in the Cumberland Gap. If "misconduct by the troops" had not plagued the army, disaster would have been avoided.⁷¹ Despite the disastrous turn of events, Davis remained positive. In order to secure victory, the president urged the Congress for a law enrolling all draft-aged men in the army and then making exemptions and work details when necessary.⁷²

Reactions to Davis's December 8 message elicited mixed reactions by solons. The next day, Foote protested the president's comments on Chattanooga, contending that Davis claimed that the Army of Tennessee had a "want of valor." Instead, he blamed the

⁶⁸ *SHS*, XLIX, 101.

⁶⁹ *JCC*, III, 435. *JCC*, VI, 496.

⁷⁰ *JCC*, III, 435. *JCC*, VI, 496.

⁷¹ *JCC*, III, 435-436.

⁷² *JCC*, III, 446.

loss on Braxton Bragg, whom Davis kept in command despite grumblings by Bragg's subordinates.⁷³ Davis's visits to western commands brought forth no change in leadership, and "they had only been productive of disaster."⁷⁴ Foote then alleged that Davis had remarked that the Army of Tennessee's primary hindrance came not from inadequate leadership, but from a want of valor. This unfounded charge led to another audacious statement, for he then "charged the president with gross misconduct in retaining his favorites in office, with partialities and prejudices, which, if persisted in longer, will prove fatal to our cause."⁷⁵ On December 10, members of the Senate offered highly divergent measures in response to Davis's remarks. Albert Gallatin Brown of Mississippi presented a resolution that, if passed, would have placed the nation on a total war footing by placing all draft-aged men under arms. Many senators recoiled at Brown's proposal, just as they shrank back from Herschel Johnson's bill calling for a limit to cabinet officials' terms in office. The Senate laid both proposals on the table and ordered them printed for further review. There was no significant action subsequently taken on either measure, however.⁷⁶

On December 29, Foote's criticism of Davis's policies culminated with a plea for a military dictatorship. Foote did not endorse Davis as the man for such a role, however. During a long-winded attack on the president's policies, which included more expansive conscription methods and the elimination of officer elections, Foote shrilly commented that Davis's guiding principles on defense "would have the inevitable effect of utterly destroying state rights and state sovereignty, and of establishing a huge and

⁷³ *SHS*, L, 21-22.

⁷⁴ *SHS*, L, 23.

⁷⁵ *SHS*, L, 23.

⁷⁶ *SHS*, L, 24-25, 232. *JCC*, III, 566.

overwhelming military despotism, beneath which all the muniments of civil freedom will be crushed into utter extinction.”⁷⁷ For Foote, the only man worthy of military dictatorship was Lee, whom the Tennessee representative continued to champion for the remainder of the day’s proceedings.⁷⁸

Colleagues did not take Foote’s cries for a military government headed by Lee seriously, but they did pause from exhaustive disputes over the revision of draft exemption laws and contemplated resolutions calling for a redoubling of defenses. The House considered a joint resolution calling for a total and unyielding war effort on January 4, 1864. John Goode of Virginia argued for the necessity of the resolution, arguing it showed the world that Congress had renewed confidence in their cause. Such was necessary for the prevention of Yankee “subjugation and enslavement.”⁷⁹ On January 8, Senator Albert Gallatin Brown introduced a resolution demanding that the nation’s armies “prosecute the war with the utmost vigor.”⁸⁰ One week later, an impatient Senator Herschel Johnson made explicit demands for a more vigorous defense. On January 15, he proposed President Davis “call out at the proper time, for four months, the entire population of the South capable of bearing arms.” Most senators could not fathom such immoderate methods of defense, however, and they referred Johnson’s request to a committee.⁸¹

Congress did little to alter Davis’s war policies. The demands of Davis’s generals and the advances made by invading enemy forces had a far greater impact on the president’s strategy than did the occasional long-winded diatribe issued forth on the

⁷⁷ *SHS*, L, 144.

⁷⁸ *SHS*, L, 144-147.

⁷⁹ *SHS*, L, 178.

⁸⁰ *SHS*, L, 202.

⁸¹ *JCC*, III, 579.

House or Senate floor. The paucity of open criticism in the Provisional and First Congress indicates that most congressmen approved of their president's lines of attack, or that they believed there were no viable alternative plans of defense. Wartime congresses traditionally have difficulty distinguishing themselves on military matters, and the Confederate Congress was no different. With the life of the nation hanging in the balance, nearly all legislators considered any public denigration of the men or methods employed to secure the Confederacy's survival treasonous. Most gave Davis's critics little credence and a good number of them maintained their trust in the president.⁸²



As war progressed, Congress did not continue to grant almost instantaneous approval to Davis's military appointments. Though becoming more critical, Congress still generally gave the president what he wanted. Objections and delays still came, however. During the third provisional session, Congress did not grant blanket approval for Davis's proposals. Politicians such as Louis T. Wigfall, Howell and T.R.R. Cobb, and Stephen F. Hale received their commissions, but no one else on the listing did during the final days of the third session. The remainder of Davis's list was referred to the Committee of Military Affairs for further review.⁸³ On August 31, Colin McRae, with William Avery's encouragement, laid a resolution on the table, which would have allowed Davis to consolidate or divide skeleton regiments.⁸⁴ The only other appointments granted during the third session came from Davis's list of five full generals,

⁸² Buck Yearn, *The Confederate Congress*, vii-viii.

⁸³ *JCC*, I, 433-440.

⁸⁴ *JCC*, I, 463.

listed in order of seniority. Congress confirmed the order on the last day of the session, August 31. According to the measure passed, Samuel Cooper was the most senior officer in the Confederate army, followed in order by Albert Sidney Johnston, Robert E. Lee, Joseph E. Johnston, and P.G.T. Beauregard. Joseph E. Johnston fumed at his placement, contending that he was the most senior officer in the U.S. Army. Thus began his feud with the commander in chief.⁸⁵

Robert Barnwell Rhett voiced his discontent with the budding controversy with a November 25 resolution challenging the legality of Davis's appointments of major generals.⁸⁶ Four days later, the judicial committee determined that Davis could indeed make such appointments. Such proclamations still did not satisfy all members of Congress, however. Wiley Pope Harris issued a resolution demanding that Davis report to the Congress which law allowed him this right.⁸⁷ Although most congressmen may have accepted the findings of the judicial committee, there were enough disgruntled legislators present to successfully persuade the Congress not to act immediately on Davis's list of military appointments delivered that day. Instead of offering the swift and blanket approval typical of prior requests, Congress referred the listing to the Committee on Military Affairs. On December 2, another round of prospective military appointments also languished in committee with no further action taken.⁸⁸ Three days later, Davis sent forth yet another list of military appointments and requested a withdrawal of the previous directory of candidates because Congress had not yet acted upon it. Robert Barnwell

⁸⁵ *JCC*, I, 464. Cooper, *Jefferson Davis, American*, 363-364.

⁸⁶ *JCC*, I, 476.

⁸⁷ *JCC*, I, 493-494.

⁸⁸ *JCC*, I, 514-517.

Rhett, normally an anti-administration legislator, complied with Davis's request this time and even had Harris's objection to the Committee on the Judiciary tabled.⁸⁹

Although Davis's choices for generals stood, he would never again enjoy the speedy approval of military appointments that he received during the first four sessions of the Provisional Congress.⁹⁰ The mounting animosity between Davis and such commanders as Johnston and Beauregard certainly influenced the actions of solons who championed the officers for reasons both personal and political. A growing anxiety over the length of the war also influenced other congressmen. Although hopes remained high that the war would soon end, Union forces showed no signs of making a swift and sudden retreat. Naturally, some congressmen became increasingly cautious in their endorsement of potential appointees in the armed forces. If the president's previous recommendations for military leadership could not vanquish the northern invaders, would the newest batch of candidates prove any more capable?

Several key conflicts over military appointments would occur during the second session of the First Congress. Several newly arrived members of the First Congress grumbled about the legality of army and navy appointments made by Davis and the Provisional Congress. Once Davis received word that some legislators wanted military officers already in service subject to a new confirmation process, he sent a message to the Senate stressing that such a process was too costly and legally unnecessary. No serious challenges to Davis's military appointments made during the first year of the war

⁸⁹ *JCC*, I, 524-526.

⁹⁰ For further evidence of postponements and tabling of nominees in the Provisional Congress's fifth session, see *JCC*, I, 567-568, 627-628, 840-844. One example of a newfound assertiveness by the Committee of Military Affairs and Congress as a whole on matters of appointment came on February 15, 1862. The Committee of Military Affairs rejected D.H. Todd's nomination as a lieutenant in the infantry because he was "Lincoln's brother-in-law." This account can be found in *JCC*, I, 840. Another example of a controversial appointment was John J. Crittenden, whose nomination as major general is more fully accounted in Chapter One. Crittenden passed with only a only a 25-19 votes. *JCC*, I, 846.

subsequently materialized.⁹¹ Yet Congress could not sidestep serious disagreements about future appointments or the process of confirmation and nomination. Senator William Lowndes Yancey brought forth a bill on September 22, requesting that Davis make proportional appointments of brigadier generals from each state. Although the Senate Military Committee recommended against its passage, Yancey pressed forward, noting a disproportionate number of generals from Virginia. He argued Davis's preference for officers from the Old Dominion produced great dissatisfaction amongst his Alabama constituents and argued other states surely felt the same. Benjamin Hill of Georgia disagreed, citing Yancey's bill violated the Constitution. Congress could only advise the President, he argued. Besides, Virginia produced Lee and Stonewall Jackson. Hill freely admitted that Georgia had no equals. The majority of those in the Senate undoubtedly agreed and quickly defeated Yancey's proposal.⁹²

Controversies over individual nominees also resulted. President Davis recommended his nephew, Joseph R. Davis, for the rank of brigadier general. The Senate initially defeated the nomination by an 11 to 6 vote on October 3.⁹³ When the Senate reconsidered the proposal on October 8, both James Lawrence Orr and William Yancey called a renewal of open proceedings or adjournment, hoping to kill deliberations on the matter. This time, however, a majority of Senators present approved the nomination, passing it a 13 to 6 count.⁹⁴ The Senate also rejected John Pemberton's initial nomination as lieutenant general. While his very public clashes with Georgia and South Carolina officials in the spring and summer of 1862 hurt his prospects for advancement, his

⁹¹ *JCC*, II, 278.

⁹² *SHS*, XLVI, 202-205. *JCC*, II, 315-316.

⁹³ *JCC*, II, 414-415.

⁹⁴ *JCC*, II, 449-450.

Pennsylvania roots certainly did not help. Even so, the Senate did reconsider his nomination and granted the promotion on October 13, the session's final day.⁹⁵

General Braxton Bragg was one of Davis's most controversial military appointments, and some congressmen made abortive efforts for his reassignment or dismissal. By late summer of 1862, rumors circulated throughout Richmond and the rest of nation alleging Bragg authorized the executions of soldiers under his command for misconduct. On September 8, James Lawrence Orr launched an inquiry of the matter on the Senate floor. Despite Henry Burnett's efforts to confine the matter to secret session, Orr succeeded in keeping the issue in the open forum.⁹⁶ On September 12, John Clark of Missouri defended the president's silence on the matter, noting that if Davis acted on every charge or rumor pertaining to Confederate soldiers, "he would very soon have no officers at all."⁹⁷ Louis T. Wigfall scoffed at fears of a burgeoning military despotism and insisted that the Senate could not legally regulate conduct of armies in the field. Robert M.T. Hunter reiterated Wigfall's sentiments, stressing that Congress could request information from the president, but it could not remove generals from the ranks. He then expressed his regrets that the debate was not held in secret.⁹⁸

Despite these clearly defined restrictions, Orr insisted on renewing debate on September 13, arguing, "usurpation always had small beginnings."⁹⁹ In response, Wigfall maintained that soldiers were "decitizenized" and the Congress was best served by leaving the military code of justice alone.¹⁰⁰ On September 15, Jefferson Davis finally

⁹⁵ *JCC*, II, 487.

⁹⁶ *SHS*, XLVI, 61.

⁹⁷ *SHS*, XLVI, 116-117.

⁹⁸ *SHS*, XLVI, 117-119.

⁹⁹ *SHS*, XLVI, 129.

¹⁰⁰ *SHS*, XLVI, 130.

broke his silence on the issue. He insisted he had “received no authentic information in relation to any such transaction . . .”¹⁰¹

Bragg earned a reprieve from congressional scrutiny, albeit a very brief one. Following his failures in the Kentucky campaign, he would once again raise the ire of both houses. Foote confessed he opposed the operation in Kentucky and questioned Bragg’s competence until Joseph E. Johnston wrote him, explaining the necessity of the operation. With his doubts vanquished, the Tennessee congressmen endorsed the measure. Other members of the House voiced their opposition to Bragg’s tactics or the campaign itself. George Hodge of Kentucky refused to cast a vote because of the heavy losses suffered during the second day’s fighting. James Lyons of Virginia opposed the resolution because he opposed the army’s advancement into Kentucky.¹⁰² That same day, Senator Henry Burnett of Kentucky issued a resolution mandating that Bragg provide copies of all of his battle reports from the abortive campaign.¹⁰³ This discussion dissolved with no repercussions. In fact, in February 1863, Congress passed a resolution of thanks for Bragg’s efforts at Murfreesboro by a 78 to 4 vote.¹⁰⁴

Although Davis’s critics delayed or blocked the occasional military nominee, there was no structure to the opposition. Objections typically from an isolated few who thirsted for greater input into the selection or removal of officers, particularly controversial generals. While some congressmen may have resented their subservient role to Davis during a time of war, most willingly deferred to their more experienced commander in chief.

¹⁰¹ *JCC*, II, 283.

¹⁰² *SHS*, XLVIII, 210-211.

¹⁰³ *JCC*, III, 306.

¹⁰⁴ *SHS*, XLVIII, 217-218.



The unfocused nature of attacks against Davis's war policies and his choices for military appointments also typified many of the attacks against the men who headed the Navy and the War Department. Although Judah P. Benjamin became an increasingly unpopular figure towards the end of his tenure as secretary of war, Congress never coalesced in its criticisms of Benjamin and had little influence in securing his ouster from office. Likewise, much of the opposition posed against naval secretary Stephen Mallory was disparate before Congress eventually agreed to form a joint commission and investigated Mallory for misconduct in office. After a lengthy inquiry, Congress eventually cleared Mallory of any wrongdoing. Although criticism of both men often was vituperative, it was usually unfocused and ineffectual. Most in Congress failed to recognize justifiable cause for removing either man from office, ignoring the calls made by a strident minority.

Judah P. Benjamin, who served as the Confederacy's attorney general, secretary of war, and secretary of state, became the one of the most controversial and reviled members of Davis's cabinet. During the formative months of the Confederacy, however, Congress swiftly approved Benjamin's nomination as the first attorney general, a post he held for seven months. Following the retirement of the first secretary of war, Leroy Pope Walker of Alabama, Benjamin then became interim head of the War Department. The Senate granted him unanimous approval when Davis nominated him as the new secretary

of war on November 21.¹⁰⁵ Although Benjamin's Jewish heritage and playfully aloof personality made him a decidedly unpopular figure in most of Richmond's social circles, the Congress initially regarded the Louisianan as a more capable administrator. While many in Montgomery and Richmond may have disliked Benjamin on a personal basis, few congressmen openly criticized him during the first year of the war. The former U.S. senator was one of Davis's closest advisors and had already served the president as an informal military consultant for most of the year. Davis was still highly popular amongst most congressmen and their constituents, and Congress trusted Davis's judgment.

But the political goodwill between the new secretary of war and Congress was short-lived. Military disasters occurred at Fort Henry, Roanoke Island, and Fort Donelson within a week and a half in February 1862, and Benjamin became an increasingly popular object of criticism for many in Congress. Shortly thereafter, a venomous but highly unfocused attack on Benjamin began.

The inaugurations of Davis and Stephens as the regularly elected president and vice-president came on February 22, 1862. Although most congressmen expected a light workday in lieu of the inaugural festivities, Henry S. Foote fully intended for the House to scrutinize the president's military policies. He called for an investigative committee, with a member from each state, which would analyze all available data on defensive measures undertaken by Secretary of War Benjamin. Irritated by Foote's antics, William Smith of Virginia delayed further action and had the proposal laid on the table.¹⁰⁶ Foote again made his annoyance with the administration known on February 25. During discussions on a resolution requesting that the House grant General Joseph E. Johnston as

¹⁰⁵ *JCC*, I, 474.

¹⁰⁶ *SHS*, XLIV, 40-41.

seat on the floor, Foote proffered an amendment calling for a rule akin to one in British Parliament. The proposed law mandated that a cabinet member who received a vote of condemnation or no confidence would resign from his post. Given Foote's comments on the floor only days earlier, he clearly intended for Benjamin's ouster. When William Smith asked Foote if President Davis also stood at the mercy of the minority, Foote shot back that the king or queen was never voted out.¹⁰⁷ Antiquated British decrees evidently did not satisfy Foote. On February 26, he called for the implementation of an ancient Roman custom that removed military generals after misfortune and disaster. Roger Pryor of Virginia reminded Foote that the Confederate Constitution already gave Davis, as commander in chief, that very right. Once again, Foote's recommendation was tabled.¹⁰⁸

Even if Foote's antics are disregarded, actions in Congress showed that popular support for Judah P. Benjamin as secretary of war was clearly slipping. On February 26, Clement C. Clay offered a curiously timed supplemental War Department bill. Clay's measure stated that any officer appointed secretary of war would lose the rank already held, but would only relinquish his current military salary. While Clay never openly called for Benjamin's ouster from the War Department, the timing and tone of the bill certainly was suspect.¹⁰⁹ Equally questionable was Charles Conrad's motives when he introduced a February 27 resolution in the House of Representatives calling for an additional Department of War. He expressed his hopes that the new department would separate administrative and field operations, but he withdrew the measure form

¹⁰⁷ *SHS*, XLIV, 50-51.

¹⁰⁸ *SHS*, XLIV, 59.

¹⁰⁹ *SHS*, XLIV, 53.

consideration when William Porcher Miles presented his bill calling for a new commander in chief of the army.¹¹⁰

Foote, Clay, and Conrad all wanted Benjamin out, but so far there was no coordinated effort to remove him. Up to now, these men had only presented divergent plans for his removal, and their measures only garnered minimal support in Congress. Even so, public criticism of Benjamin mounted and cries for his ouster from the War Department grew thunderous. Although Davis realized the political necessity for removing the Louisianan from his post, he liked Benjamin personally and, even more importantly, trusted his counsel. The president decided to reshuffle his cabinet in order to retain Benjamin's presence in his official family. On March 18, Davis submitted a new cabinet list to the Senate, which named George Randolph as secretary of war and Judah P. Benjamin as secretary of state. Senator James Lawrence Orr of South Carolina objected to Benjamin's placement in the State Department, but Davis's recommendations pleased the rest of the Senate, and it confirmed the new appointments. Since Confederate law mandated that Davis submit a list of his entire cabinet anytime that changes were made, Stephen Mallory's post as secretary of the navy came up for renewal. Orr tried to place Mallory's nomination on the table, but again his efforts to block a Davis appointment failed. Davis's changes satisfied an overwhelming majority of congressmen; even Foote expressed his approval of the new cabinet.¹¹¹

Though Davis enjoyed the support of a congressional majority for most military issues, such as the suspension of habeas corpus and the first conscription law in American history, attacks against the president and his subordinates continued throughout

¹¹⁰ *SHS*, XLIV, 67-68.

¹¹¹ *JCC*, II, 73-74. *SHS*, XLIV, 187.

the First Congress's initial session. A March 22 joint resolution on humanitarian relief for Confederate prisoners of war triggered debate when Foote offered an amendment limiting the secretary of war's authority. Despite the disapproval of many present, Foote insisted the amendment remain, as he claimed that he merely wanted to curb George Randolph from accumulating "unrestricted power." After flatly rejecting his amendment, Congress passed the resolution.¹¹² With Benjamin gone, few in Congress wished to follow Foote's continued attacks on the war department. Although some remained leery of subsequent heads of the War Department, the First Congress offered little open criticism of George Randolph or James Seddon.¹¹³

Attacks against naval secretary Stephen Mallory were prolonged and more coordinated. During the first year of the Confederacy's existence, however, Congress refrained from attacking Mallory's performance. After a somewhat shaky confirmation process (the Floridian was the only member of Davis's first cabinet who did not receive a unanimous confirmation), both he and Davis received scant congressional opposition as they struggled with the buildup of the nation's naval fleet and coastal defense. These harmonious relations would prove short-lived. The Union's capture of New Orleans in April 1862 irreparably shattered many congressmen's confidence in Mallory, and attacks against the beleaguered official increased in frequency and vindictiveness. On August 20, 1862, Charles Conrad of Louisiana introduced a resolution calling for the abolition of the office of secretary of the navy. While the Louisianan's measure almost undoubtedly was motivated by the recent fall of New Orleans, Mallory believed Conrad's hostility

¹¹² *SHS*, XLIV, 193-195.

¹¹³ *SHS*, XLV, 19. For more on Judah P. Benjamin, see Eli N. Evans, *Judah P. Benjamin, The Jewish Confederate* (New York: The Free Press, 1988). Robert D. Meade, *Judah P. Benjamin, Confederate Statesman* (New York: Oxford University Press, 1943. reprint, Baton Rouge: LSU Press, 2001).

resulted from personal rather than public concerns. Conrad had sizeable holdings on the North Carolina coast, which he lost to the Federals in the course of General Ambrose Burnside's expedition. Even so, the House decided to send the bill to the Committee on Military Affairs.¹¹⁴

The next day, Henry S. Foote renewed the attack on Mallory during discussions on a series of resolutions of thanks for the Confederate victories at Seven Pines and Chickahominy. Although it is doubtful that the secretary of the navy had any influence whatsoever on these army engagements, such details did not prevent Foote from offering an amendment to the resolution of thanks calling for Mallory's ouster from the cabinet. Given the contrary nature of Foote's amendment, the House defeated it by a 23 to 44 vote.¹¹⁵

Undeterred, Foote attempted a revival of his failed effort to adopt British Parliamentary customs in the Confederate Congress. Impatient that Davis would not fire Mallory for the fall of New Orleans, the irascible Tennessean decided to take matters in his own hands. On August 27, he introduced a resolution stating, "that the honorable S.R. Mallory, secretary of the navy, does not possess the confidence of Congress or the country."¹¹⁶ While Foote's proposal did not pass, the House was unsatisfied with the Department of the Navy's performance. Only when Ethelbert Barksdale offered to conduct a full investigation of the naval department did the House agree to lay Foote's resolution on the table. Even so, enmity towards Mallory for his perceived lack of

¹¹⁴ *SHS*, XLV, 187. Ezra Warner and Buck Yearn, *Biographical Register of the Confederate Congressmen* (Baton Rouge: LSU Press, 1974), 61.

¹¹⁵ *SHS*, XLV, 197.

¹¹⁶ *SHS*, XLV, 257.

preparation of New Orleans' defenses was high; the agreement to kill Foote's resolution came by a 47-41 vote.¹¹⁷

George Washington Jones of Tennessee and Hines Holt of Georgia thought continuing the investigation of Mallory would establish a dangerous precedent. Hoping to end the matter, they presented a resolution asserting "that if members do not cease their condemnations of government officials and go to work upon the measures of reform demanded by the country, history would record that this was the most inefficient branch of government existing in this revolution."¹¹⁸ Such exhortations did not deter the Senate from tackling the controversy on August 28. Henry Burnett of Kentucky and Thomas Semmes both wanted to bring Mallory up on impeachment charges. Louis T. Wigfall, who was still friendly with Davis at the time, reminded his colleagues that only the House could impeach the naval secretary. The Senate, on the other hand, could only preside over the proceedings. Growing impatient with the matter and anxious to save time and money, Wigfall issued a challenge to his colleagues. If anyone had proof of any improprieties by Mallory, he demanded that they come forward now and lay out the facts. Albert Gallatin Brown agreed with Wigfall's assertions, commenting that this episode was merely the result of overwhelming public clamor for action. The president was not an idiot, he cried. Had there been any truth to the rumors, Davis already would have dismissed Mallory.¹¹⁹ Robert Woodward Barnwell agreed. He argued that a potential impeachment trial or public inquiry of the Navy would "expose to our enemies schemes in the past and future, which should be kept from their knowledge."¹²⁰

¹¹⁷ *SHS*, XLV, 257-259.

¹¹⁸ *SHS*, XLV, 259.

¹¹⁹ *SHS*, XLV, 261-262.

¹²⁰ *SHS*, XLV, 263.

Mallory escaped impeachment when both houses agreed to form a joint committee investigating Mallory's conduct. Although both the House and Senate delegations had members who were fierce critics of Mallory, others were moderates or ardent supporters of the besieged secretary.¹²¹ In the end, cooler heads prevailed, if only for the duration of the session. From August 29 until October 13, the final day of the second session, Congress issued no further calls for punitive action against him.

Shortly after convening for the third session, however, senators continued their attack on Mallory. On January 20, William Yancey introduced a bill "to regulate the action of the Secretary of the Navy upon the decisions of naval general courts martial."¹²² He argued Mallory attempted to try naval surgeon A.S. Garnett twice for the same offense, thus necessitating the measure. Augustus Maxwell of Florida bristled at Yancey's charges and accused the Alabama senator of insufficient research on the matter. He opined that Yancey merely wished to smear Mallory in public. Reuben Brown, Benjamin Hill, and James Lawrence Orr pushed for the bill's referral to committee and succeeded.¹²³ Maxwell would not remain silent on the issue, however. He then demanded the presentation of naval court martial reports in question before the Senate. Before withdrawing his resolution, Maxwell argued that Yancey had publicly assailed Mallory's reputation; he wanted verifiable evidence presented on the issue before congressmen made any further accusations.¹²⁴

¹²¹ Augustus Maxwell, Clement Clay, Thomas Semmes, James Phelan, and Robert M.T. Hunter formed the Senate delegation, while Henry Foote, Ethelbert Barksdale, James Lyons, Lucius Jacques Dupre, and William Boyce comprised the House's committee. JCC, II, 245-246. SHS, XLV, 275-276.

¹²² SHS, XLVII, 154.

¹²³ SHS, XLVII, 155-158.

¹²⁴ SHS, XLVII, 158-159.

Criticism of the naval secretary did not abate. Solons attacked Mallory throughout the session, making him a principal scapegoat for New Orleans's capture by Union forces. Henry Foote used the occasion for one of his typically vituperative remarks on February 3, when he wished aloud that Davis's cabinet be "purified of those whose very breath was contamination and death."¹²⁵ On March 9, Senator Clement C. Clay issued a resolution calling for the investigation of "the management of the Navy under its present head." While Mallory was personally unpopular with many in the upper house, a majority of senators did not think an additional inquiry into his conduct was necessary. After all, a joint committee in the previous session assigned to investigate Mallory could not yet find substantial evidence justifying action against him.¹²⁶

Despite the intermittent squabbling that pervaded the First Congress's final session, a reconciliation of sorts occurred. Naval secretary Stephen Mallory was finally exonerated from allegations of incompetence and dereliction. On February 16, Congress passed a bill for a voluntary navy, which allowed the secretary of the navy commissioning powers over vessels both inside and out of Confederate waters.¹²⁷ The passage of the proposed law for a volunteer navy portended findings from an eighteen-month investigation into the secretary's conduct. On February 17, the joint committee looking into Mallory's actions in the naval department found "no sufficient cause for shame or discouragement in the operations of our navy." Instead, it cited the tightening Union blockade and a lack of resources. Even more surprising was the absence of a minority report from committee members like Henry Foote or Louisianans Thomas

¹²⁵ *SHS*, XLVIII, 44.

¹²⁶ *SHS*, XLVIII, 272.

¹²⁷ *SHS*, L, 449.

Semmes or Lucius Jacques Dupre, who had previously lambasted Mallory.¹²⁸ Although there are no surviving committee minutes, excluding the final report submitted to both Houses, the apparent paucity of potentially damning evidence must account for the unforeseen silence from Foote, a notorious malcontent.



Despite the personal misgivings harbored by some congressmen towards Davis, few doubted his war policies. Little organized opposition existed in Congress. The legislative branch's approval of his cabinet ministers displayed Congress's confidence in the men Davis chose to administer his war plans; the endorsement of an overwhelming majority of the president's military appointments showed congressional faith in the men selected to fight and die for the cause. Although a vocal minority protested the growing war powers of the chief executive, most congressmen were willing to concede legislative powers in exchange for their best chances of survival. Consequently, the Provisional and First Congresses cooperated with most of Davis's war policy, enacting conscription legislation, suspending the writ of habeas corpus when legislators deemed it necessary, and usually agreeing with his military appointments. Few seriously contemplated Henry S. Foote's cries for "the people to rise, sword in hand, to put down the domestic tyrant who thus sought to invade their rights." With the fate of a nation being uncertain, most congressmen and citizens remained loyal to their commander in chief.¹²⁹

¹²⁸ *SHS*, L, 452-453. *JCC*, VI, 851.

¹²⁹ William J. Cooper, Jr., *Jefferson Davis, American* (New York: Knopf, 2000), 464-465.

CONCLUSION

The noted Confederate diarist Mary Chesnut had no love for the Confederate Congress. She asserted that congressmen conspired to ruin Jefferson Davis's policies, and even feared that some wished to depose him. "We are so busy fighting each other," she lamented. "Confederate Congress exhausts itself, vituperating Jeff Davis. To hamper, harass, and thwart seems their entire duty."¹

Mary Chesnut's fears were largely unfounded. While congressional debates about Davis and his guiding principles became venomous on occasion, Jefferson Davis's opposition in the Provisional and First Confederate Congresses was inchoate and fragmented. Although the president and his supporters encountered resistance over military and domestic policies, Davis's critics never coalesced. For every Henry S. Foote or Louis T. Wigfall, who ardently contested many of Davis's centralization efforts simply because they disliked the president, there were considerably more politicians like Edward Sparrow or Clement C. Clay, whose confrontations with the president focused on single questions. Excluding the intermittent objection to a questionable economic policy or draft exemption, most congressmen agreed with their president's policies.

The *Journal of the Confederate Congress* and the *Southern Historical Society Papers* show that the Provisional and First Congresses complied with most of Davis's demands. While he may not have always gotten exactly what he wanted, such as total control of all draft-aged men, he did receive congressional endorsement for the first series of draft laws in American history, which eventually placed tens of thousands of men in the ranks. Although his requests for conscription legislation and the suspension of habeas

¹ C. Vann Woodward, ed., *Mary Chesnut's Civil War* (New Haven: Yale University, 1981), 301.

corpus offended the sensibilities of some states' rightists and civil libertarians, most in Congress gave top priority to general defense and usually acceded to his demands. The same concerns for national survival also led many in Congress to comply with most of the economic requests posed by Davis and Secretary of the Treasury Christopher Memminger, however questionable they may have found these proposals. Unfortunately for the Confederate cause, most congressmen were even less astute in matters of finance than the executive branch was, and the southern economy was in shambles by 1864.² Even so, an overwhelming majority in Congress retained their faith in their commander in chief, especially when they considered Davis's choices for military office and strategy. With the nation's survival contingent on success in the field, most chose to defer to their president, who was far more experienced in military administration.

There was no concerted thrust to block Davis's measures. The Confederacy's absence of political parties precluded an organized oppositional bloc for the duration of its existence. Although disgruntled individuals made sporadic efforts to obstruct the president's policies, most put their politics aside and labored for national survival. Enmity typically occurred among small factions. Instead, the Provisional and First Congresses rallied behind their president, establishing the domestic and military framework that endured until war's end.

² The vast majority of congressmen were attorneys, not experts in public finance. 213 out of the 267 men who served in the Confederate Congresses were practicing attorneys or had studied law. Consequently, it should not be surprising that the nuances of economics eluded most who served. Ezra J. Warner and Buck Yearns, *Biographical Register of the Confederate Congress* (Baton Rouge: LSU Press, 1975), xx.

BIBLIOGRAPHY

Primary Sources

C. Vann Woodward, ed., *Mary Chesnut's Civil War* (New Haven: Yale University, 1981).

Frank Vandiver, ed., *The Civil War Diary of Josiah Gorgas* (Tuscaloosa: University of Alabama Press, 1947).

James D. Richardson, ed., *A Compilation of the Messages and Papers of the Confederacy*, (2 vols., Nashville: United States Publishing Company, 1906).

Ulrich B. Phillips, ed., *Correspondence of Robert Toombs, Alexander Stephens, and Howell Cobb, 1911 Annual Report of the American Historical Association, Vol. II* (Washington: American Historical Association, 1913).

Jefferson Davis, *Rise and Fall of the Confederate Government*, I (2 vols. New York: D. Appleton, 1881).

Journal of the Congress of the Confederate States of America, 1861-1865 (5 vols; Washington, D.C.: Government Printing Office, 1904).

Sarah Woolfolk Wiggins, ed., *The Journals of Josiah Gorgas* (Tuscaloosa: University of Alabama Press, 1995).

James Matthews, ed., *Public Laws of the Confederate States of America, Passed at the Second Session of the First Congress, 1862* (reprint, Holmes Beach, Florida: William W. Gaunt and Sons, 1970).

Richmond Dispatch

Southern Historical Society Papers

War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (70 vols. In 128; Washington, D.C., 1880-1901).

Secondary Sources

- Thomas B. Alexander and Richard E. Beringer, *The Anatomy of the Confederate Congress* (Nashville: Vanderbilt University Press, 1972).
- J. Cutler Andrews, *The South Reports the Civil War* (Princeton, NJ: Princeton University Press, 1970).
- Douglas Ball, *Financial Failure and the Confederate Defeat* (Urbana and Chicago: University of Illinois Press, 1991).
- Richard Franklin Bensel, *Yankee Leviathan* (Cambridge: Cambridge University Press, 1990).
- Robert C. Black, III., *The Railroads of the Confederacy* (1952, reprint: Chapel Hill: UNC Press, 1998).
- Stuart Bruchey, *Cotton and the Growth of the American Economy: 1790-1860* (New York: Harcourt, Brace and World, 1967).
- Henry D. Capers, *The Life and Times of C.G. Memminger* (Richmond: Everett Waddey, 1893).
- Muriel E. Chamberlain, *British Foreign Policy in the Age of Palmerston* (London: Longman, 1980).
- William J. Cooper, Jr., *Jefferson Davis, American* (New York: Knopf, 2000).
- E. Merton Coulter, *The Confederate States of America 1861-1865* (Baton Rouge: LSU Press, 1950).
- D.P. Crook, *The North, the South, and the Powers, 1861-1865* (New York: John Wiley and Sons, 1974).
- William C. Davis, *Jefferson Davis: The Man and His Hour* (New York: Harper Collins, 1991).
- William C. Davis, *Rhett :The Turbulent Life and Times of a Fire-eater* (Columbia: University of South Carolina Press, 2001).
- William C. Davis, *Look Away: A History of the Confederate States of America* (New York: The Free Press, 2002).
- David Donald, *Lincoln* (New York: Simon and Schuster, 1995).

- Wayne K. Durrill, *War of Another Kind: A Southern Community in the Great Rebellion* (New York: Oxford University Press, 1990).
- William E. Echard, *Napoleon III and the Concert of Europe* (Baton Rouge: LSU Press, 1980).
- Paul Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge: LSU Press, 1977).
- Eli N. Evans, *Judah P. Benjamin, The Jewish Confederate* (New York: The Free Press, 1988).
- Judith Fenner Gentry, "A Confederate Success in Europe: The Erlanger Loan", *Journal of Southern History* 36 (May 1970).
- Herman Hattaway and Richard E. Beringer, *Jefferson Davis, Confederate President* (Lawrence: University of Kansas Press, 2002).
- David S. Heidler and Jeanne T. Heidler, ed., *Encyclopedia of the American Civil War* (New York: W.W. Norton, 2000).
- Howard Jones, *Union in Peril. The Crisis over British Intervention in the Civil War* (Chapel Hill: University of North Carolina Press, 1992).
- Kenneth Martis, *The Historical Atlas of the Congresses of the Confederate States of America: 1861-1865* (New York: Simon and Schuster, 1994).
- James McPherson, *Battle Cry of Freedom* (New York: Ballantine, 1988).
- Robert D. Meade, *Judah P. Benjamin, Confederate Statesman* (New York: Oxford University Press, 1943. reprint, Baton Rouge: LSU Press, 2001).
- Albert Burton Moore, *Conscription and Conflict in the Confederacy* (1924. Reprint, Columbia: South Carolina University Press, 1996).
- Jerrold Northrop Moore, *Confederate Commissary General: Lucius Bellinger Northrop and the Subsistence Bureau of the Southern Army* (Shippensburg, PA: White Mane Publishers, 1996).
- Mark E. Neely, Jr., *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism* (Charlottesville: University Press of Virginia, 1999).
- Frank Lawrence Owsley, *State Rights in the Confederacy* (Chicago: University of Chicago Press, 1925).

Frank Owsley, *King Cotton Diplomacy: Foreign Relations of the Confederate States of America* (Chicago: University of Chicago Press, 1959).

George Rable, *Civil Wars: Women and the Crisis of Southern Nationalism* (Urbana and Chicago: University of Illinois Press, 1991).

George Rable, *The Confederate Republic* (Chapel Hill: UNC Press, 1994).

James Z. Rabun, "Alexander H. Stephens and Jefferson Davis," *The American Historical Review*, Vol. 58, No. 2 (Jan. 1953).

Randy L. Reid, *Howell Cobb of Georgia: a Biography* (3 vols., Ph. D. dissertation, LSU, 1995).

Thomas Edwin Schott, *Alexander H. Stephens of Georgia* (Baton Rouge: Louisiana State University Press, 1996).

Aaron Sheehan-Dean, "Everyman's War: Confederate Enlistment in Civil War Virginia", *Civil War History*, Vol. 50, Number 1.

John Eddins Simpson, *Howell Cobb: The Politics of Ambition* (Chicago: Adams Press, 1973).

Georgia Lee Tatum, *Disloyalty in the Confederacy* (Chapel Hill: University of North Carolina Press, 1934; Lincoln: University of Nebraska Press, 2000).

Emory Thomas, *The Confederate State of Richmond* (Austin: University of Texas Press, 1971).

Emory Thomas, *The Confederate Nation* (New York: Harper Row, 1979).

William Y. Thompson, *Robert Toombs of Georgia* (Baton Rouge: LSU Press, 1966).

Richard Cecil Todd, *Confederate Finance* (Athens: University of Georgia Press, 1954).

Harrison A. Trexler, "The Davis Administration and the Richmond Press, 1861-1865" *The Journal of Southern History*, Vol. 16, No. 2 (May 1950).

George Edgar Turner, *Victory Rode the Rails: The Strategic Place of the Railroads in the Civil War* (Indianapolis: Bobbs-Merrill, 1953).

Frank Vandiver, ed., *The Civil War Diary of Josiah Gorgas* (Tuscaloosa: University of Alabama Press, 1947).

Frank Vandiver, *Ploughshares into Swords: Josiah Gorgas and Confederate Ordnance* (1952, reprint. College Station: Texas A&M Press, 1994).

Ezra J. Warner and W. Buck Years, *Biographical Register of the Confederate Congress* (Baton Rouge: LSU Press, 1975).

Bell Wiley, *The Life of Johnny Reb* (1948; Baton Rouge: LSU Press, 1978).

David Williams, *Rich Man's War: Class, Caste, and Confederate Defeat in the Lower Chattahoochee Valley* (Athens: University of Georgia Press, 1998).

Beckles Willson, *John Slidell and the Confederates in Paris, 1862-1865* (New York: AMS Press, 1970).

Buck Years, *The Confederate Congress* (Athens: University of Georgia Press, 1960).

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