

HONOR TO THE DEAD OF DIXIE?
EXAMINING THE IMPETUS AND ENDURING DEVOTION TO THE CONFEDERATE
STATES OF AMERICA AND THE EMBLEMS THAT COMMEMORATE THE FAILED
EXPERIMENT OF GOVERNANCE IN NORTH AMERICA

A Thesis

Presented to

the Faculty of the Caudill College of Arts, Humanities and Social Sciences

Morehead State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

by

Bruce Ray Greer

December 13, 2020

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During the period of determining the topic of this thesis, a resurgence of sympathetic remembrances to the Confederate States of America was being experienced in the United States. A significant influence on the revival of devotion to the Confederacy had been inspired by determining the appropriateness of displaying or retaining memorials dedicated to the failed government. This activity has stimulated passionate sentiments concerning these commemorations located on public and private properties. Considering this situation, the thesis will research the impetus of southern secession and the ongoing dedication to the Confederacy. This will be accomplished by investigating the social and political impacts that instigated the Confederacy and the subsequent development of the Lost Cause movement that shaped a sympathetic significance of the South from antebellum to the present.

The argument will be constructed by investigating three chief topics. Firstly, a presentation of the events that influenced the founding generation of the United States in determining the social contract and the creation of American Federalism, which attempted to

settle what the founders believed should be the proper placement of sovereignty between the state and national governments. Next, an investigation into selected events concerning sovereignty from 1789 through 1860, as well as considering the thoughts of two chief officials of the governments of the United States and the Confederate States. Representing the United States is William H. Seward. The future United States Secretary of State predicted in 1858 that southern secession was inevitable due to an “irrepressible conflict” between the North and South on the issue of free and slave labor. For the Confederate States, the opinions of Alexander H. Stephens will be considered. The former vice president of the Confederacy determined that it was “opposing principles” that inspired secession due to the federal government’s violation of American Federalism. Finally, an examination of the origins and emergence of the Lost Cause movement and its influence on past and present generations will be attempted.

The thesis will argue that the secession of the southern states was divided into two distinct descriptions. The *cause* of secession was the idea of protecting state sovereignty perpetuated by the leaders of the slave states. The *reason* for secession was the slave states overwhelming dependence on the social and economic traditions of the South, which was the institution of slavery. Only after the defeat of the Confederacy did the southern leaders overwhelmingly claim that sovereignty violations were the singular issue of secession. From its inception the Lost Cause movement promoted a romantic reminiscence of the southern antebellum era with the construction of southern “honor” placed upon the officials and soldiers of the Confederacy. Although presented as monuments dedicated to the honorable and heroic generation of Confederates, the true purpose of the memorials was devoted to commemorating white supremacy and the intimidation of African Americans by the members and descendants of the defeated South.

Regarding the present and future fate of the memorials dedicated to the Confederacy, the improper removal of the reminiscences retains the risk of violating the United States Constitution. The constitutional protections of speech and expression cannot be sacrificed due to a particular message being uncomfortable or disagreeable. There must be, however, considerations and compromises achieved when certain personal liberties encroach upon another's constitutional guarantees. This thesis determines that the memorials located on an individual's personal property are to be considered forms of free speech and expression and are constitutionally protected, as long as municipal ordinances are not violated. On the issue of public property, the memorials must be retained until democratically accepted or removed by municipal voter referendum.

Accepted by: _____, Chair
Dr. James R. Masterson

Dr. David H. Little

Dr. Douglas S. Mock

To Sheree,
My wife, best friend, and biggest cheerleader.

Conquered, we are not degraded,
Southern laurels have not faded;
Mourn, but not in shame, for Dixie!
Deck your Heroes' graves with garlands,
Till the echo comes from far lands,
Honor to the dead of Dixie!

---Albert Pike
1900

PREFACE

The motivation for the topic of this thesis was initially conceived in a high school government class at East Alton-Wood River High School in the fall semester of 1981. The instructor, Darrell D. Franklin, had opened a discussion by asking the class what they believed were the origins of the American Civil War. The class overwhelmingly responded that the issue of slavery was the cause of the conflict. Following the student's determinations, Mr. Franklin informed the class that it was not the issue of slavery that prompted the southern states to secede from the Union and subsequently bring about the war. The issue that split the United States was the struggle to determine the issue of American Federalism through the question of placing the proper placement of sovereignty between the state and federal governments embodied in the U.S. Constitution. All other subjects, such as abolition, tariffs, free/slave labor and internal improvements were simply by-products of the violation of the social compact and American Federalism upon the states that created the Confederate States of America.

This revelation into the origins of the Confederacy was quite a shock to all of us high school seniors. It had been cemented into our minds from elementary school that Abraham Lincoln, the adopted son of Illinois, had won the Civil War by being the Great Emancipator. Lincoln refused to let the Union be torn apart over the issue of slavery and had fought the rebellious states to free their human chattel property. Thus, Lincoln was triumphant in not only emancipating the slaves, but also in bringing the rebellious former slave holding states back into the nation that was founded on the idea of liberty and freedom. For a high school teacher to tell his class that slavery was not the cause of the Civil War was tantamount to blasphemy against the man who was revered in the state as being one of the greatest presidents in the history of the United States.

Mr. Franklin's explanation concerning the origins of the Civil War forced me to reexamine my previous opinions on the causes of the Civil War and to investigate the motivation of the persons and events that initiated the Confederacy. For the next twenty-nine years, unfortunately, this reexamination did not take the form of scholarly study. My amateur research was limited to non-academic sources and the motion picture industry, until three events occurred that completely changed my direction. The first was being gifted James M. McPherson's *Battle Cry of Freedom* in 1990 by my parents. This work by McPherson was crucial in not only bringing to my attention the events that led to the secession of the future Confederate states, but the author additionally researched the activities in both governments during the war, and not simply reported the actions on the battlefield that nearly all of the non-scholarly works had covered on my previous study. The second motivation was my re-initiation into my collegiate work in 2010. Through the direction of Dr. Aaron N. Coleman at Kentucky Christian University,¹ Dr. Alana C. Scott, Dr. Michael W. Hail and Dr. Gregory A. McBrayer at Morehead State University,² I was instructed to look to primary and scholarly secondary sources to search for the information required for credible and academic work. I was no longer an arm-chair historian and political scientist regurgitating the History Channel, historical movies, and Time-Life publications. I was compelled to search for the ideas of the persons involved in the events, as well as through the work of academically respected historians and political scientists.

The third motivation for the topic of this thesis came in observing the response in the United States to the existence of flags, monuments, and memorials dedicated to the Confederacy in the aftermath of the murder of nine, and wounding of four, members of the Emanuel AME

¹ Dr. Coleman is currently the department chair of history and political science at the University of the Cumberlands, Williamsburg, Kentucky.

² Dr. McBrayer is currently an assistant professor of political science and director of the core curriculum at Ashland University, Ashland, Ohio.

Church in Charleston, South Carolina in June 2015. As sympathies on both sides of the issue propelled into demonstrations, at times violent in nature, I began to ponder the issue of retaining or removing these memorials. The situation concerning the Confederate monuments was a subject that presented significant personal conflicts. My mother was born and raised in Hickman County, Kentucky and my family that resides in the western region of the state are staunchly devoted to memorializing the southern antebellum and Civil War eras. I am the direct descendent of wealthy slave owners and men who fought for the Confederacy. My great-great grandfather was wounded in a small engagement in northwest Tennessee a few months prior to the Battle of Shiloh. I am also the beneficiary of information attained through the teachings of my uncles that our family was devastated by the Union with the destruction of our ancestral homes and the thefts of our family's wealth and property. When I visited my Kentucky family as a child, my cousins and I would avenge the oppression perpetuated by the Yankees by refighting the Civil War as little Confederates attempting to win back our family's pride and property.

On my father's side of my family, where I grew up in Illinois, my ancestors fought to preserve the Union. Out of the four that were sent to the conflict, two succumbed to their wounds and are buried in northeast Louisiana. I was just as proud of my Yankee ancestors as I was of my rebel forefathers. When not refighting the war with my Kentucky cousins, I was taught that the sixteenth president was the savior of the nation by preserving the Union and eradicating the evils of chattel slavery. Holding to this additional teaching, I began to search for additional information on Lincoln and came to admire the prairie lawyer, which I did not dare tell my family in Kentucky.

My considerations concerning the existence of Confederate memorials turned to investigation into the matter. I concluded that this topic deserved further serious research as the

subject was unequivocally connected to discovering the motivations that Mr. Franklin believed was the impetus of the Confederacy. The results of my research, however, are not in complete agreement with my high school government instructor, my southern family's devotion to the antebellum South, as well as my previous unwavering devotion to Lincoln. My results became a bit difficult for me to present, as I admired Mr. Franklin a great deal, which included his ability to instruct and inspire his students to confront uncomfortable issues. Mr. Franklin's inspiration would force me to confront my personal bias towards the Confederacy and the sixteenth president of the United States. I could see that researching the topic of this thesis was going to be instrumental in reevaluating the impetus of the Confederacy and the monuments dedicated to memorializing the failed government in North America.

This thesis could not have been realized without the benefit of my relationships with Dr. Coleman and Dr. McBrayer. Dr. Coleman has become my mentor in American history. He showed me that to understand the United States Constitution, it is imperative to comprehend the significance of the ancient English constitution, and the persons who assisted in creating, perpetuating, and protecting the rights and liberties of Englishmen. He also brought to me a substantial appreciation of the founding generation of the United States in their sacrifices and struggles to create a sustainable republic. Dr. Coleman also challenged my views on subjects that I have held significant, such as my affection for Lincoln. I must declare that he had not completely altered my admiration of Lincoln, however, Dr. Coleman did challenge my thoughts by considering the questionable constitutional actions of the sixteenth president during the first few months of his administration. Through all his work with me, Dr. Coleman is not only my mentor, he is a true friend.

Dr. McBrayer has been my professor, academic advisor, research advisor, teaching advisor, confidant, sounding board, and mentor in political science. Dr. McBrayer has introduced me to political philosophers from antiquity through the post-modern era. He brought to me the importance of digesting the works of Plato, a greater understanding of Socrates, an appreciation for Xenophon, the value of studying Islamic political philosophers such as al-Farabi, the overwhelming significance of Rousseau, the difficulties in reading Nietzsche, as well as many other political philosophers that have written works that present the need for government, the way government is predicted, explained, functions, and comprehended. Dr. McBrayer has stretched, and at times nearly snapped, my mental muscles to become an academic. He has shown me how to conduct a university classroom, listened to my difficulties, and pushed me to become a better student as well as an effective instructor. I will be forever grateful for the opportunity to work under and create the relationship that I continue to enjoy with Dr. McBrayer.

I also want to thank my thesis advisor Dr. Michael Hail. Dr. Hail has been an incredible source of understanding and patience through the difficult process of achieving my goals for this work. I have had the privilege of being a student in many of the classes required for my attempt at achieving my MA in Government as well as a Master of Public Administration. I appreciate the potential he saw in me when he suggested that I had the ability to achieve two master's degrees simultaneously. He went to my defense many times when I was suffering with health issues during my work and I could never fully thank Dr. Hail for his time dedicated to me. His efforts with me will be forever appreciated and I look forward to continuing my relationship with Dr. Hail in my teaching and research endeavors.

Finally, I want to thank my thesis chair Dr. James Masterson. He has been an indispensable source of encouragement and advice for me. Dr. Masterson has had to deal with my difficulties through health issues that have forced several instances of experiencing a hiatus from my work, advice on the diligence required to complete the thesis, and understanding the numerous complications that I have experienced in my graduate work. It would be impossible to show the appreciation I have for Dr. Masterson's toil in assisting me in completing my work.

My hope is that this thesis is a positive reflection on the afore mentioned men's work in my academic life thus far.

ABBREVIATIONS

CS – Confederate States of America
US – United States of America
GAR – Grand Army of the Republic
SCV – Sons of Confederate Veterans
UCV – United Confederate Veterans
UDC – United Daughters of the Confederacy
SPLC – Southern Poverty Law Center

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INTRODUCTION

The constitution of the legislative is the first and fundamental act of society, whereby provision is made for the continuation of their union, under the direction of persons, and bonds of laws, made by persons authorized thereunto, by the consent and appointment of the people, without which no one man, or number of men, amongst them, can have authority of making laws that shall be binding to the rest.³

---John Locke
1690

They who think that it is accidental, unnecessary, the work of interested or fanatical agitators, and therefore ephemeral, mistake the case altogether. It is an irrepressible conflict between opposing and enduring forces, and it means that the United States must and will, sooner or later, become either entirely a slaveholding nation, or entirely a free-labor nation.⁴

---William H. Seward
1858.

It is a postulate, with many writers of this day, that the late War was the result of two opposing ideas, or principles, upon the subject of African Slavery. Between these, according to their theory, sprung the "irrepressible conflict," in principle, which ended in the terrible conflict of arms. Those who assume this postulate, and so theorize upon it, are but superficial observers. That the War had its origin in opposing principles, which, in their action upon the conduct of men, produced the ultimate collision of arms, may be assumed as an unquestionable fact.⁵

---Alexander H. Stephens
1868.

Sad to see the history and culture of our great country being ripped apart with the removal of our beautiful statues and monuments.⁶

---Donald J. Trump
2017

³ John Locke and David Wootton, ed., *John Locke, Political Writings* (Indianapolis: Hackett Publishing Company, Inc., 2003), 370, 19:§212.

⁴ William H. Seward and George E. Baker, ed., "The Irrepressible Conflict," *The Works of William H. Seward*, vol. iv (Boston: Houghton, Mifflin, & Company, 1884), 292.

⁵ Alexander H. Stephens, *A Constitutional View Of The Late War Between the States; Causes, Character, Conduct, And Results*, vol. i (Philadelphia: Zeigler, McCurdy, & Company, 1868), 9-10.

⁶ Donald Trump, twitter post, August 17, 2017, 8:07 AM.
<https://twitter.com/realdonaldtrump/status/898169407213645824>.

In the three weeks leading to the twenty-first presidential inauguration, Washington D.C. had enjoyed unseasonably warm and dry weather. On the day preceding the inauguration ceremonies, however, the morning began blustery with falling temperatures throughout the day. In the afternoon, a cold rain fell on the city soaking the newly placed decorations celebrating the installation of the sixteenth President of the US. Just three months prior to Abraham Lincoln swearing "...to protect and defend the Constitution of the United States," secession conventions in seven states had ratified resolutions to break their governmental associations with the US, and in the following three months, four additional states would leave the Union, thus instigating the creation of the CS.⁷ In considering the weather conditions of Lincoln's inauguration, the late Federal Judge Sherrill Halbert suggested that the bitter wind and rain in Washington was a meteorological judgment upon the political climate of the nation.⁸

In reflecting on the contemporary events occurring in the US, the nation is experiencing a resurgence of positive opinions regarding the perceived causes in creating the CS as well as the existing memorials dedicated to the Confederacy.⁹ In light of this activity, this thesis will

⁷ Article 2, section 1, U.S. Constitution.; Note: From December 20, 1860 to June 8, 1861, eleven states in the South had formally seceded from the Union through secession conventions. Although the Confederacy enjoyed congressional representation at certain times from the states of Kentucky and Missouri, neither of the states formally seceded from the Union yet held Confederate provisional governments within their borders. See, Lowell H. Harrison, *The Civil War in Kentucky* (Lexington: The University Press of Kentucky, 1975), as well as James C. Klotter and Freda C. Klotter, *A Concise History of Kentucky* (Lexington: The University Press of Kentucky, 2008). William R. Geise, "Missouri's Confederate Capital in Marshall, Texas," *The Southwestern Historical Quarterly* 66, no. 2 (Oct., 1962), and Ralph A. Wooster, *The Secession Conventions Of The South* (Princeton: Princeton University Press, 1962), 207-255.

⁸ Sherrill Halbert, "The Suspension of the Writ of Habeas Corpus by President Lincoln," *The American Journal of Legal History* 2, no. 2 (April, 1958), 95. "Monday, March [4], 1861...the weather itself was in keeping with the existing political crisis...it was a raw, blustery and disagreeable day..."; Phillip Shaw Paludan, *The Presidency of Abraham Lincoln* (Lawrence, KS.: University Press of Kansas, 1994), 21.

⁹ "Weekend Read: The State of the Confederacy in 2017," April 28, 2017, *The Southern Poverty Law Center*, <https://www.splcenter.org/news/2017/04/28/weekend-read-state-confederacy-2017>.

research and present an opinion into the political and social motivations that has led to the perpetuation of an enduring devotion to the failed experiment of governance in North America, as well as addressing the existence of the memorials dedicated to the Confederacy. The structure of the thesis in addressing the argument of the topic will be conducted by dividing the research into three categories. Firstly, an investigation into the instigation and interpretations of the political theory of the social compact and the creation of American Federalism contained in the US Constitution will be presented. The two subjects of the social compact and American Federalism are necessary for consideration in appreciating the long history of the struggle of interpreting the true meaning of the constitutionality of governmental sovereignty in the US and the question concerning the right of secession from the colonization of North America through the secession crisis of 1860-1861.

Next, the events that led to secession and an examination into two conflicting theories regarding the motivations of southern secession will be directed through the thoughts and writings of two high ranking officials in the governments of the US and CS. The first opinion will be the irrepressible conflict theory presented by William H. Seward. Seward held that the North and South, as well as the Republican and Democratic Parties, were on a collision course over their contradictory opinions concerning the issue of free and slave labor in the US. An inquiry into this theory will be additionally considered while bearing in mind Seward's thoughts during his membership in the Jeffersonian Republican Party, his tenure as a Whig Governor of New York, then as a Whig turned Republican US Senator and finally as Secretary of State in the

“At least one Georgia lawmaker has since introduced a resolution to recognize Confederate History Month and Confederate Memorial Day. Georgia Rep. Tommy Benton defended his proposal by invoking the election of Donald Trump. ‘We just elected a president that said he was tired of political correctness,’ said Benton. ‘And so that was the reason that we were looking to introduce the resolution.’”

Lincoln administration. The second theory will be a contemplation of the opinions of Georgian Alexander H. Stephens from his days as a Jeffersonian Republican then Whig state legislator, a Whig turned Democrat member of the US House of Representatives, single term as the only vice president of the Confederacy, return to the US House of Representatives and finally the governorship of Georgia. The opinions of Stephens concerning secession are considered in three instances: his speech before the Georgia legislature following the election of 1860, an address before the Georgia secession convention and finally Stephens 1868 work where he proclaims that the opposing principles between the North and South became the foundation for the instigation of the CS. Stephens' theory claimed that the government of the US had violated the constitutional rights of the South in terms of protecting the social compact and the violation of American Federalism that clearly explained the proper placement of sovereignty between the federal and state governments. Stephens held that the US Constitution guaranteed that the states had prevailing sovereignty over the authority of the federal government.

The third part will be dedicated to researching the subject of the Lost Cause movement and its lasting impact on the political and social climates in the US. The research will be assisted by examining two works published by Edward A. Pollard in 1866 and 1868 that spearheaded the Lost Cause movement. The thesis will continue by examining the persons and organizations that assisted in perpetuating the cause for devotion to the southern antebellum period, as well as the Confederacy, through their influences in publications and significant political, social and educational activities. The research will additionally include the subject of investigating the existence of the memorials to the Confederacy and their impacts on modern America. The result of this work will present that the Lost Cause movement had successfully inspired a quixotic movement of reminiscence of the ante-bellum South and the Confederacy, as well as a fervent

creation of southern honor placed upon the soldiers and officials of the CS throughout the US. Following the demise of the CS and the Reconstruction Era, civic and private organizations in the South influenced the redesign of state flags, instituted memorial days exclusively dedicated to Confederate soldiers, erected monuments and memorials devoted to the Confederacy on public as well as private lands and purposefully waged a political and social war upon the former slaves and their descendants that has continued for over one hundred forty-five years. The research of this thesis will conclude with considering the proper fate of the remembrances dedicated to the Confederacy. Prior to presenting the research, an introduction into the subjects of the social contract, American Federalism, the irrepressible conflict theory, the opposing principles concept and the Lost Cause movement is required.

The Social Contract

In contributing to a 2017 journal regarding the social contract, political philosophy professors Fred D'Agostino, Gerald Gaus, along with the president of Florida State University John Thrasher, presented that the need for a social contract was:

...to show that members of some society have reason to endorse and comply with the fundamental social rules, laws, institutions, and/or principles of that society. Put simply, it is concerned with public justification, i.e., 'of determining whether or not a given regime is legitimate and therefore worthy of loyalty.'¹⁰

In considering this description, the three authors claim that the social contract is to be understood as persons agreeing to comply with laws and social values of their chosen government with the understanding that the people will provide loyalty to the government in return. In examining an explanation by political philosophy professor Celeste Friend, the social contract is "...the view

¹⁰ Fred D'Agostino, Gerald Gaus and John Thrasher, "Contemporary Approaches to the Social Contract," Edward N. Zalta, ed. *The Stanford Encyclopedia of Philosophy* (Summer 2017 Edition). <https://plato.stanford.edu/archives/sum2017/entries/contractarianism-contemporary/>>. The quote within this citation is from D'Agostino's book, *Free Public Reason: Making It Up As We Go Along* (New York: Oxford University Press, 1996), 23.

that [a] persons' moral and/or political obligations are dependent upon a contract or agreement among them to form the society in which they live.”¹¹ This contribution by Friend, along with the assertions of D’Agostino, Gaus, and Thrasher, assists the modern reader in determining how the social contract was created and functioned in the works of such political philosophers as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau.¹² These three political philosophers, arguably more appreciated in the writings of Locke, were of great significance in explaining the influence of the social contract and the constitutional right of secession on the founders of the US, which in turn influenced the founders of the CS.¹³

As to the origins of applying the ideas of the social contract, D’Agostino and his fellow contributors believed that it originated with Epicurus,¹⁴ however, Friend holds that the original social contract between the ruler and the ruled established in Western political thought was

¹¹ Celeste Friend, "Social Contract Theory," *The Internet Encyclopedia of Philosophy*, <http://www.iep.utm.edu/soc-cont/>.

¹² Friend, "Social Contract Theory," <http://www.iep.utm.edu/soc-cont/>. “Social contract theory is rightly associated with modern moral and political theory and is given its first full exposition and defense by Thomas Hobbes. After Hobbes, John Locke and Jean-Jacques Rousseau are the best known proponents of this enormously influential theory, which has been one of the most dominant theories within moral and political theory throughout the history of the modern West.”; D’Agostino, Gaus, and Thrasher, “Contemporary Approaches,” <https://plato.stanford.edu/archives/sum2017/entries/contractarianism-contemporary/>. “In its recognizably modern form, however, the idea is revived by Thomas Hobbes; it was developed in different ways by John Locke, Jean-Jacques Rousseau, and Immanuel Kant.”

¹³ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1992), 27. “In pamphlet after pamphlet the American writers cited Locke on natural rights and on the social and governmental contract...”

¹⁴ D’Agostino, Gaus, and Thrasher, “Contemporary Approaches,” <https://plato.stanford.edu/archives/sum2017/entries/contractarianism-contemporary/>. The article cites John Thrasher’s journal article on Epicurus as its source in this opinion. See, John J. Thrasher, “Reconciling Justice and Pleasure in Epicurean Contractarianism,” *Ethical Theory and Moral Practice* 16, no. 2 (April, 2013), 421. “Epicurean contract theory represents a unique and important tradition in both the history of the social contract and western political thought generally. Although not well known among political and moral theorists, it is significantly different from what Jean Hampton has called the two, Kantian and Hobbesian, faces of contract theory (Hampton 1991). Epicurean contract theory is unique in its attempt to reconcile the individual's pursuit of pleasure and tranquility with the public need for justice and peace.”

instigated by Plato in his recollections of Socrates and his [Socrates'] refusal to take advantage of the availability of fleeing Athens upon the philosopher's conviction of capital crimes against the state. The Greek philosopher instead chose to obey the Athenian court's decision to execute him for the crimes of impiety and corrupting the youth of Athens.¹⁵ In expanding on the decision of Socrates in this matter, an additional student of the philosopher amplified what he believed to be Socrates' unbending devotion to the social contract between himself and Athens. Xenophon writes of his teacher:

“And when he [Socrates] was a defendant against the indictment brought by Meletus – although the others are accustomed in the law courts to converse with the jurors in such a way as to gratify them and to flatter them and to beg them contrary to the laws, and although many are often let go by the jurors due to these sorts of things – he [Socrates] for his part wanted to do none of the customary things in the law court contrary to the laws; but, although he would have easily secured his release by the jurors if he had done any of these things even to a limited extent, he chose rather to die abiding by the laws than to live transgressing them.”¹⁶

In interpreting Xenophon's description, Socrates believed that as a dutiful citizen of Athens, he and the other residents of the city had an obligation to abide by the laws and to accept the decisions of the court, whether the verdicts were believed to be just or unjust. Socrates firmly believed that the Athenians would act justly.¹⁷

Plato additionally writes of an instance where Socrates counseled his companion Crito on this issue when the latter was attempting to convince the former to escape due to the supposed unjust ruling of the Athenian court. “...it is never correct to do injustice, or to do injustice in

¹⁵ Friend, "Social Contract Theory," <http://www.iep.utm.edu/soc-cont/>; David G. Ritchie, "Contributions to the History of the Social Contract Theory," *Political Science Quarterly* 6, no. 4 (December, 1891), 657.

¹⁶ Xenophon and Amy L. Bonnette, ed., *Memorabilia*, (Ithaca: Cornell University Press, 1994), book iv, 4:§4.

¹⁷ Plato, Aristophanes, Thomas G. West and Grace Starry West, eds., *Apology of Socrates, Four Texts On Socrates* (Ithaca: Cornell University Press, 1998), §35d. "For I believe, men of Athens, as none of my accusers does. And I turn it over to you and to the god to judge me in whatever way it is going to be best both for me and for you."

return, or for someone to whom evil is done to defend himself by doing evil in return.”¹⁸ The late Scottish philosophy professor David G. Ritchie confirms the notion that Socrates lays the foundation of the social contract in his conversation with Crito. Ritchie holds that Socrates believed that the people of Athens must respect the laws and verdicts of the courts.¹⁹

Thus, this thesis concludes that the words and actions of Socrates, through the auspices of Plato and Xenophon, have laid the foundation for the social contract. This contract between the rulers and the ruled, however, would require further explanation and application nearly two thousand years later by the first political scientist who resided on an island kingdom located off the western coast of continental Europe. The process of discovering the constitutionality of the proper role of sovereignty over the people, however, would be appreciated in several competing explanations. For the founding generation of the US, the political philosophers that wrote on the political origins of man in the “state of nature,” and their struggle to leave this state by constituting a social contract between the ruler and the ruled, was going to be of great importance when declaring “When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another...”²⁰

The first notable political philosopher to present the importance of the social contract theory of governance was Thomas Hobbes. Hobbes, the first political scientist, alleged that to understand the origins of the proper relationship between the ruler and the ruled, the earliest political conditions of man had to be defined. In preceding his explanation into the need for the social contract, Hobbes attempted to describe man’s social and political origins. In a work

¹⁸ Plato, Aristophanes, West and West, eds., *Crito*, §49d.

¹⁹ Ritchie, 657. “Socrates, in Plato's *Crito*, refuses to listen to his friends who urge him to escape from prison: he argues that the Athenian citizen, through having enjoyed the privileges of protection from Athenian law, has made a practical agreement (a "tacit contract," we might call it) to obey the laws of Athens, even when he considers them unjust.”

²⁰ Declaration of Independence, United States, 4 July, 1776.

published in 1647, Hobbes determined that man originally existed “without civil society,” which he describes as mankind being in a state of nature. Hobbes pronounced that the state of nature was a human condition “...before men bound themselves by any agreements with each other, every man was permitted to do anything to anybody, and to possess, use and enjoy whatever he wanted and could get.”²¹ Professor Ritchie observed an interesting connection between the Greek political philosophers and Hobbes in considering the state of nature with the thoughts of Glaucon in the second book of Plato’s *Republic*.

“Glaucon, representing the opinion of the new enlightenment, gives an account of the origin of civil society which is identical with part of the theory of Hobbes. All men, according to Glaucon, naturally try to get as much as they can for themselves – ‘to encroach,’ in the phrase of Hobbes. To escape the evils that arise from this mutual aggression, they make a compact to abstain from injuring each other, and this compact constitutes what we call ‘justice,’ or law.”²²

Hobbes additionally held that prior to men creating agreements among themselves, a “state of war” existed between all the inhabitants of the world. In what is arguably Hobbes’ most celebrated work *Leviathan*, he darkly describes the state of war as being a time of “... no arts, no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short.”²³ Hobbes held that man was required to create alliances, as social contracts, in order to bind themselves together to confront the state of war, which would ensure the safety of persons to escape the violent state of nature. Although it is widely held that Hobbes’ concocted the state of nature as being a fictional existence, the description of this circumstance was instrumental in presenting to the world that the need for

²¹ Thomas Hobbes, Richard Tuck and Michael Silverthorne, eds., *Hobbes: On The Citizen* (New York: Cambridge University Press, 2011), 28, chapter 1, §9.

²² Ritchie, 656-657. Ritchie also includes in a footnote in this passage that “The views of Thrasymachus the Sophist, in the first book, are identical with the other part of Hobbes's theory, namely, the conception of right as based on the command of the sovereign.”

²³ Thomas Hobbes and Edwin Curley, ed., *Hobbes Leviathan: With Selected Variants From The Latin Edition of 1668* (Indianapolis: Hackett Publishing Company Inc., 1994), 76, chapter 13, §9.

people to be ruled by a social contract agreed upon by the governed had been required of mankind from its original existence.²⁴

Apart from the thoughts of Hobbes on the state of nature and the social contract, there existed a serious complication between the founding generation of the US and Hobbes. The problem was that he [Hobbes] felt that an absolute monarch was the sole qualified sovereignty to bring mankind out of the state of nature.²⁵ Furthermore, Hobbes had been a controversial individual before, during, and after the short-lived English Commonwealths, as well as after the restoration of the monarchy with Charles II in 1660. The unfortunate moniker of Hobbes being an absolute monarchist tended to damper his position as a positive influence on the ideas of government during the years of the Commonwealths in England as well as with the founders of the US. For example, in a series of correspondences between a father and son in 1777, the latter had requested from the former on what books he should read from his father's library during his absence. John Adams informed his ten-year-old son John Quincy that he should avoid the political writings of Hobbes and his "mischievous Philosophy," and to simply read his [Hobbes'] translation of Thucydides.²⁶

²⁴ James Feiser, "The Social Contract," *University of Tennessee-Martin*, <https://www.utm.edu/staff/jfieser/class/300/socialcont.htm>. "Hobbes looks to the distant past and asks us to imagine what life might have been like before there were any governing bodies. The condition that Hobbes describes is as brutal as any science fiction story. He calls this primitive condition the state of nature. He is not describing an actual time in human history, but, rather, hopes only to highlight the limits of our human nature and the effects of our unsocial inclinations on our interactions with others."

²⁵ Hobbes and Curley, ed., 118-127, Chapter 19.

²⁶ John Adams, "John Adams to John Quincy Adams, 11 August 1777," *The Adams Papers, Adams Family Correspondence, vol. 2, June 1776–March 1778*, ed. L. H. Butterfield (Cambridge, MA.: Harvard University Press, 1963), 308. "You will find in your Fathers Library, the Works of Mr. Hobbes, in which among a great deal of mischievous Philosophy, you will find a learned and exact Translation of Thucidides, which will be usefull to you."

In the pursuit of discovering the political philosopher who had the most significant influence on the founding generation to confirm the right to disassociate themselves from the rule of an oppressive government through the violation of the social contract, it would arguably be the English political philosopher John Locke.²⁷ Locke began his noteworthy political writings over eighty years prior to his [Locke's] influence on Thomas Jefferson's writing of the Declaration of Independence with Locke's work, *Two Treatises on Government*.²⁸ The first of Locke's *Two Treatises* confront Robert Filmer's explanation of the "Divine Right of Kings" to rule in his [Filmer's] work *Patriarcha*. Filmer writes of the preservation of the correctness of a monarchy to rule as a father over his children due to their blood line originating with Adam, through their obedience to, and from the will of God. Following his disagreement with Filmer in the *First Treatise*, Locke presents the purpose of writing the *Second Treatise*.²⁹

²⁷ Forrest McDonald, *States' Rights And The Union: Imperium in Imperio 1776-1876*, (Lawrence, KS.: University Press of Kansas, 2000), 7. "In defending their decision to declare independence from Britain in 1776, American revolutionaries ceased to regard as relevant questions of sovereignty, as well as arguments based upon colonial charters and historic rights of Englishmen. Instead, they relied upon the readily available body of doctrine most suitable to the purpose, namely the natural rights and compact theories associated with John Locke."; Note: It should be related that the importance of Locke and McDonald's interpretations of the social contract are in complete disagreement with John Phillip Reid. Reid writes that "His [Locke] theory of the social contract and its influence on the political philosophy of American whigs has too long been overemphasized." Reid believes that "The social contract was a legal fiction explaining the conditions under which individuals left the state of nature and created societies." See Reid's work *Constitutional History of the American Revolution*, abridged edition (Madison, WI.: The University of Wisconsin Press, 1995), 33 & 17. It should be further noted that Reid's work will be applied in this thesis in benefiting from his influential work on the English and American constitutions. It simply appears that McDonald and Reid disagree on the importance of Locke and the social contract. This thesis believes that McDonald is correct in his observation of the importance of Locke on the founding generation of the US.

²⁸ McDonald, 7. "...but it was Locke's work that inspired the Declaration of Independence, as a comparison of the language of the document with Locke's *Second Treatise of Civil Government* abundantly testifies."

²⁹ Locke and Wootton, ed., 262, 1: §2. "... to set down what I believe to be political power. That the power of a magistrate over a subject may be distinguished from [Filmer's opinion] that of a

For Locke, the role of government is not to rule over its constituents as a father who had been fortunate enough to be born into a royal bloodline, but through an agreement reached by the consent of the people to elevate a person, or persons, to protect the life, liberty, and property of the members of the political society.³⁰ Locke seized upon the idea of the state of nature from Hobbes and appropriated a different course of description. For Hobbes, the social contract was needed in the state of nature because men were perpetually in a state of war. Locke, however, believed as Aristotle, that man was inherently a social creature and desired to associate with other souls.³¹ For Locke, the social contract was not required to *settle* a state of war between mankind, but to *prevent* a state of war.³²

Over fifty years following the death of Locke, Jean-Jacques Rousseau published arguably his most thorough work on political philosophy, *The Social Contract*. Political philosophy professor Christopher Bertram observed that Rousseau's purpose in composing this work was "...to answer what he [Rousseau] takes to be the fundamental question of politics, the

father over his children, a master over his servant, a husband over his wife, and a lord over his slave."

³⁰ *Ibid.*, 331, 11:§134-135.

³¹ Aristotle and Carnes Lord, ed., *Aristotle: The Politics* (Chicago: University of Chicago Press, 1985), 37, (1253a7).

³² Robert A. Goldwin, "John Locke," *History of Political Philosophy*, third edition, Leo Strauss and Joseph Cropsey, eds. (Chicago: The University of Chicago Press, 1987), 478. "Our first impression of Locke's state of nature, then, is of men living together amicably, in the first stages of mankind, before the advent of civil society, enjoying natural freedom and equality in an atmosphere of peace and good will, under the beneficent rule of the law of nature." 480-481. "The state of war can exist within civil society only when the force of the common judge is rendered ineffectual." "Speaking precisely, the state of war cannot exist were civil authority is presently and effectively enforcing the law of society."

reconciliation of the freedom of the individual with the authority of the state.”³³ Bertram further observed the following:

“[In] *The Social Contract*...Rousseau claims, each person will enjoy the protection of the common force whilst remaining as free as they were in the state of nature. The key to this reconciliation is the idea of the general will: that is, the collective will of the citizen body taken as a whole. The general will is the source of law and is willed by each and every citizen. In obeying the law each citizen is thus subject to his or her own will, and consequently, according to Rousseau, remains free.”³⁴

The observations of Bertram seem to present that Rousseau was in agreement with Hobbes and Locke with the result of the need for the social contract to be established between those who will be ruled, and those who will rule, to protect the safety and the property of the citizens. Bertram also presents that Rousseau agrees with Hobbes and Locke that man has free will, and through his choices, enter into agreements with their consent and not through coercion. As man enters into agreements through his consent to attempt to exit the harsh realities of the state of nature, so is man out of the state of nature free to establish additional contracts with the government through their consent. Thus, governing by arbitrary rule is in direct violation of the social contract and should not be accepted by the people regarding the governance of their society.³⁵

³³ Christopher Bertram and Edward N. Zalta, ed., “Jean Jacques Rousseau,” *The Stanford Encyclopedia of Philosophy* (Summer, 2017 Edition), <https://plato.stanford.edu/archives/sum2017/entries/rousseau/>.

³⁴ Bertram and Zata, ed., “Jean Jacques Rousseau.”

³⁵ *Ibid.*, “One of the key distinctions in *The Social Contract* is between sovereign and government. The sovereign, composed of the people as a whole, promulgates laws as an expression of its general will. The government is a more limited body that administers the state within the bounds set by the laws, and which issues decrees applying the laws in particular cases.” “Two important issues arise in relation to Rousseau’s account of relations between sovereign and government. The first of these concerns his political pessimism, even in the case of the best-designed and most perfect republic. Just as any group has a collective will as opposed to the individual private will of its members, so does the government... The second issue concerns how democratic Rousseau envisaged his republic to be. He sometimes suggests a picture in which the people would be subject to elite domination by the government, since the magistrates would reserve the business of agenda-setting for the assembly to themselves.”

In considering the three political philosophers selected to present the nature of the social contract that influenced the founding generation, the source of the principal inspirations on the founders of the US came from Locke and his work *Two Treatise on Government*. As the thesis traces the activities in the US with the conflicting social and political ideas between the North and South, Locke and his writings on how government should operate, as well as the instances where government is to be terminated and recreated, will be promoted by sympathizers of secession by denouncing the arbitrary rule of England, the unconstitutional behavior of the US, and the subsequent requirements of creating the Confederacy.³⁶

American Federalism

From the first rumblings of discontent concerning sovereignty in the seventeenth century through the arguments of the roles of the federal and state governments in the present twenty-first century, the style of federalism created by the second government of the US has been argued as being the one of the most unique forms of government in the world.³⁷ The late political scientist Daniel J. Elazar held that American Federalism was exceptional to the general political

³⁶ Stephens, *A Constitutional View*, 262. “In England, in all disputes between the king and people, recurrence is had to the enumerated rights of the people, to determine. Are the rights in dispute secured? Are they included in Magna Charta, Bill of Rights, etc.? If not, they are, generally speaking, within the king's prerogative. In disputes between the Congress and the people, the reverse of the proposition holds. Is the disputed right enumerated? If not, Congress cannot meddle With it.” 312. “The Constitution does not provide for events which must be preceded by its own destruction. SECESSION, therefore, since it must bring these consequences with it, is REVOLUTIONARY, and NULLIFICATION is equally REVOLUTIONARY. What is revolution? Why, sir, that is revolution which overturns, or controls, or successfully resists the existing public authority; that which arrests the exercise of the supreme power; that which introduces a new Paramount authority into the rule of the State.”

³⁷ James Bryce, *The American Commonwealth*, vol. i (Indianapolis: Liberty Fund Inc., 1995), 15. “Its [American federal republic's] central or national government is not a mere league, for it does not wholly depend on the component communities which we call the states. It is itself a commonwealth as well as a union of commonwealths, because it claims directly the obedience of every citizen, and acts independently upon him through its courts and executive officers.”; Note: The first government of the United States was under the Articles of Confederation. The second government of the United States was established under the U.S. Constitution.

definition of what federalism was. He additionally held that the Latin translation of the word *federal* is the focal point of understanding the true nature of American Federalism.³⁸ Elazar also determined that this type of federalism ran deeper in the hearts of Americans than simply as a contract between the national and state governments. He believed that it is best described in an American colloquialism of being “pardner[s]” with each other.³⁹ His notion of an “interdependent interdependence” is also key in understanding American Federalism. A description of Elazar’s idea of interdependent interdependence held two distinct subjects:

“[T]he states are, at one and the same time, well-integrated parts of the overall American civil society and also separate civil societies in their own right with their own political systems, and (2) the states have preserved their integrity not through a sharp separation of their political systems from the national system but within an intricate framework of cooperative relationships that preserve their structural integrity while tying all planes of government together functionally in the common task of serving the American people.”⁴⁰

Thus, American Federalism is based on the idea that the national and state governments hold indistinguishable political ties and aspirations with each other, but the states have a special independence that is preserved within American Federalism. The national and state governments are like-minded partners in the goal for an effective government of the American people. This is not to say, however, that this relationship between the two government has always been amicable and easy to determine. The search for discovering the “like-mindedness” of the “pardners” in

³⁸ Daniel J. Elazar, *American Federalism: A View From The States* (New York: Harper and Row Publishers, 1984), xi. “The very term federal comes from the Latin word for covenant, indicating that federalism is best conceived as the end product of a compact or covenant uniting separate parties for common endeavors...”

³⁹ Elazar, *American Federalism*, 10. “in other words, a partnership...That archetypal American folk figure’s ‘pardner’ conveys just the sense of independent interdependence that characterizes American federalism.”

⁴⁰ *Ibid.*, 1-2.

considering the proper placement of sovereignty between the two governments has been a difficult mission.⁴¹

Two of the greatest difficulties of maintaining American Federalism occurred within the first few years of the establishment of the government under the US Constitution with the formation of political parties and an increase in regional incompatibilities in the US. Regarding the former, the US Constitution prior to the adoption of the Twelfth Amendment in 1804 did not imply or encompass any texts concerning the establishment or consideration of any political parties. The writers and defenders of the Constitution were fearful of any factious behavior that political parties were capable of performing but were certainly not naive to the possibilities of their formation.

“If these states should either be wholly disunited, or only united in partial confederacies, a man must be far gone in Utopian speculations, who can seriously doubt that the subdivisions into which they might be thrown, would have frequent and violent contests with each other. To presume a want of motives for such contests, as an argument against their existence, would be to forget that men are ambitious, vindictive, and rapacious.”⁴²

⁴¹ Daniel J. Elazar, “Federalism,” Joseph R. Marbach, Troy E Smith and Ellis Katz, eds., *Federalism in America: An Encyclopedia*, Center For the Study of Federalism, <http://encyclopedia.federalism.org/index.php/Federalism>. “However, when the American system—the prototype of modern federal systems—emerged in the late eighteenth century, its architects developed a conception of federalism much like that of ancient Israel. From the first, American federalism functioned to serve a people with a single national identity and was constituted with a strong national government to serve that people on a national basis, though, as late as 1789, *The Federalist* could describe the new American Constitution as ‘partly national and partly federal’ in deference to the then-accepted views. The successful efforts of the supporters of the Constitution to appropriate the term ‘federalist’ for their own use...restored to common usage the older conception of federalism as a noncentralized national union bound by municipal law, with a general government superior to the governments of the constituent states.”

⁴² Alexander Hamilton, “Federalist 6,” Alexander Hamilton, John Jay, James Madison, George W. Carey and James McClellan, eds., *The Federalist*, Gideon edition, (Indianapolis: Liberty Fund Inc., 2001), 71. Note: Hamilton was talking about the group of “Anti-federalists” who were writing editorials to block the passage of the US Constitution in the state conventions. The Antifederalists were the first group to form in opposition of a strong national government. Although not a true political party, the Antifederalists are arguably the first “faction” against the new government under the US Constitution. See, Herbert J Storing, *What the Antifederalists*

As to the subject of regional conflicts, the contributors to the US Constitution were well aware of the burgeoning divisions forming between the North and South when the acceptance of chattel slavery was included in the document. Although the writers of the US Constitution were cognizant of not mentioning slavery directly, the new government was not only accepting of slavery, but also used the institution to determine the calculation of state populations for representation in the US House of Representatives with the “three-fifths clause.”⁴³

In achieving a proper presentation of American Federalism, it must be understood that the US was established as a republic rather than as a pure democracy. James Madison made this abundantly clear when he wrote in 1787:

“A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union. The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.”⁴⁴

As Madison presented to the people of New York in 1787 his defense and plea for the ratification of the US Constitution, the republic that was being established under the document held the innovative idea of American Federalism. Although not specifically called American

Were For: The Political Thought of the Opponents of the Constitution (Chicago: the University of Chicago Press, 1981).

⁴³ Article I, section 2, clause 3, U.S. Constitution. “Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons... The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made.”

⁴⁴ James Madison, “Federalist 10,” *The Federalist*, gideon edition, 91.

Federalism, the Constitution held in its text the procedures of determining sovereignty issues between the state and federal governments.

With the replacement of the first government of the US formed by the Articles of Confederation, the new government created by the US Constitution became responsible for binding the political cords between the national and state governments by settling sovereignty issues in enacting American Federalism.⁴⁵ The relationship between the two governments established in the first seven years following the achievement of independence can be best described in the first national government under the Articles as being a source of guaranteeing the requirements of establishing a proper governance over the citizens that protects their:

“...common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.”⁴⁶

The Articles, unfortunately, could not successfully achieve these goals and was replaced by the US Constitution that could utilize American Federalism to determine the proper course of sovereignty between the federal and state governments and achieve the afore mentioned goals of successfully governing the people of the US.

Through the course of American history, events would be experienced that would confront the opinions of the proper placement of sovereignty embodied in the US Constitution.

⁴⁵ George Charles Roach III, “American Federalism: Origins,” Thursday, December 01, 1966, *Foundation For Economic Education*, <https://fee.org/articles/american-federalism-origins/>. “In its narrower sense, federalism refers to the division of authority and function between and among the national government and the various state governments. But it has come to possess a wider meaning in American political history. The idea of constitutional limitations of power, of both horizontal and vertical divisions of power, of the representative nature of republican institutions, and of a national government strong enough to perform certain necessary tasks and yet not so strong as to become a threat to liberty, is perhaps better epitomized in its unique American historical setting by the word federalism than by any other single term.”

⁴⁶ Bruce Frohnen, ed., “Articles of Confederation,” *The American Republic: Primary Sources* (Indianapolis: Liberty Fund Inc., 2002), 276.

It should be further noted that from the adoption of the US Constitution up to the secession winter of 1860-1861, nearly every citizen of the US held their allegiance to American Federalism on a near equivalence to their religion. Upon reflecting on the actions of the federal government towards the states prior the secession, Alexander Stephens strongly held that the sovereignty issues ensured in American Federalism was "...the ark of the covenant of our fathers...the fate of American Constitutional liberty, the light and hope of all mankind..."⁴⁷ For Stephens, American Federalism embodied in the US Constitution was as important a gift to the American people as the Ark of the Covenant was to the Israelites. This religious fervor connected with Americans and their politics should not be surprising. Beginning in the colonial era, Americans have historically felt that "political freedom" was a gift from Jesus Christ.⁴⁸

When American Federalism is mentioned in the text of this thesis, the following three principles must be understood. Firstly, American Federalism is the reflection of the partnership between the national and federal governments. Next, The US was founded as a democratic republic and not as a pure democracy. The founders wanted to avoid a pure democracy in any way possible and the US Constitution protected the nation from this type of democracy with the establishment of American Federalism. Lastly, although the US Constitution had a bit of a turbulent passage, the American people began to cling to the document and the issues of sovereignty produced by American Federalism as being on the same plane as their religion.

⁴⁷ Alexander H. Stephens and Myrta Lockett Avary, ed., *Recollections of Alexander H. Stephens: His Diary Kept when a Prisoner at Fort Warren, Boston Harbour, 1865 Giving Incidents and Reflections of His Prison Life and Some Letters and Reminiscences* (New York: Doubleday, Page & Company, 1910), 342.

⁴⁸ Samuel Miller, "A Sermon on the Anniversary of the Independence of America, New York, 1793," Ellis Sandoz, ed., *Political Sermons of the American Founding Era: 1789-1805*, vol. 2 (Indianapolis: Liberty Fund Inc., 1998), 96. "The prevalence of real Christianity, tends to promote the principles and the love of political freedom, by the doctrines which it teaches, concerning the human character, and the unalienable rights of mankind; and by the virtues which it inculcates, and leads its votaries to practice."

Nothing brings out the most terrible of passions in Americans than when their politics and their religion are brought to examination and determination. The French aristocrat and author of *Democracy in America* Alexis de Tocqueville understood this completely in his experiences in the US in the mid nineteenth century.⁴⁹

Irrepressible Conflict and Opposing Principles

In October 1858, US Senator William H. Seward delivered a speech in Rochester, N.Y. in which he proclaimed the dichotomy of political positions between the newly formed Republican Party and the long-established Democratic Party. The contrast of philosophies articulated by the New York Republican were the two party's stances regarding the subject of labor in the US. Simply put, the Democrats were in favor of slave labor and the Republicans supported free labor.⁵⁰ To Seward, these two competing ideas concerning labor were of paramount importance in determining the future and the continuation of the union of states.⁵¹

⁴⁹ James T. Schleifer, "Tocqueville, Religion, and Democracy in America: Some Essential Questions," *American Political Thought* 3, no. 2 (Fall, 2014), 259. "*Democracy in America* cites and criticizes two different examples of the religious power moving beyond its sphere and intruding in the political and social realm: Puritanism and Islam. In the 1835 half, despite his admiration for the religious fervor and democratic ideas of the Puritans, Tocqueville found many of their efforts to legislate behavior offensive; such things, he wrote, 'shame the human spirit' (Tocqueville 2010, 1:62–64). In 1840, he was even more severe, condemning Islam for setting forth not only religious doctrine but also specific social and political arrangements and even scientific theories. That intrusive nature, he stated bluntly, disqualified Islam for any role in modern democratic society. (3:746–47). Note: The edition mentioned in the previous quote is taken from, Alexis de Tocqueville, *Democracy in America*. Eduardo Nolla, ed., James Schleifer, trans., 4 vols. (Indianapolis: Liberty Fund, 2010).

⁵⁰ Seward and Baker, ed., "The Irrepressible Conflict," 289. "Our country is a theatre, which exhibits, in full operation, two radically different political systems; the one resting on the basis of servile or slave labor [Democrats], the other on the basis of voluntary labor of freemen [Republicans]."

⁵¹ *Ibid.*, 291. "It was the antagonistic political tendencies of the two systems which the first Napoleon was contemplating when he predicted that Europe would ultimately be either all Cossack or all republican. Never did human sagacity utter a more pregnant truth. The two systems are at once perceived to be incongruous. But they are more than incongruous — they are incompatible. They never have permanently existed together in one country, and they never can.

When the Republicans shaped their platform in June 1856, the newly formed political party held that the only acceptable form of labor for the new and future territories was established during the first government of the US under the Articles of Confederation with the Northwest Ordinance of 1787.⁵² While delegates were meeting in Philadelphia to examine the weaknesses of the national government under the first constitution of the US, the Confederation Congress passed the Northwest Ordinance in July, 1787. Included in the measure to organize new territories in the region, the document held the provision that, “There shall be neither slavery nor involuntary servitude in the said territory...”⁵³ This is important to note when considering that when Seward spoke to the attendees of the political rally in Rochester, he was not only addressing the assembled Republicans. The New Yorker was also speaking to the nation’s Democrats who held firmly to the expansion of slave labor in the territories and future states.⁵⁴

It would be easy to demonstrate this impossibility, from the irreconcilable contrast between their great principles and characteristics.”

⁵² “Republican Party Platform of 1856,” The American Presidency Project, *University of California Santa Barbara*, <https://www.presidency.ucsb.edu/documents/republican-party-platform-1856>. “Resolved: That, with our Republican fathers, we hold it to be a self-evident truth, that all men are endowed with the inalienable right to life, liberty, and the pursuit of happiness, and that the primary object and ulterior design of our Federal Government were to secure these rights to all persons under its exclusive jurisdiction; that, as our Republican fathers, when they had abolished Slavery in all our National Territory, ordained that no person shall be deprived of life, liberty, or property, without due process of law, it becomes our duty to maintain this provision of the Constitution against all attempts to violate it for the purpose of establishing Slavery in the Territories of the United States by positive legislation, prohibiting its existence or extension therein.”

⁵³ “Northwest Ordinance 1787,” Frohnen, ed., *American Republic*, 315.

⁵⁴ “Democratic Platform of 1856,” The American Presidency Project, <https://www.presidency.ucsb.edu/documents/1856-democratic-party-platform>. “That we reiterate with renewed energy of purpose the well considered declarations of former Conventions upon the sectional issue of Domestic slavery, and concerning the reserved rights of the States. That the Democratic party will resist all attempts at renewing, in Congress or out of it, the agitation of the slavery question under whatever shape or color the attempt may be made.”

Although Seward recognized that the US originated as a confederacy of individual and sovereign states that were capable of existing with the division of free and slave labor, he additionally believed that the country had grown to the point that if the nation continued with the two dichotomies of labor, it would be impossible for the US to exist without “a collision” of the free and slave states.⁵⁵ The prediction that Seward makes regarding the continuation of the two systems of labor in the US was not just the instigating factor of a path that was leading to an irrepressible conflict, but it was also the demise of liberty in the nation.

“I shall never be a denizen of a state where men and women are reared as cattle, and bought and sold as merchandise. When that evil day shall come, and all further effort at resistance shall be impossible, then, if there shall be no better hope for redemption than I can now foresee, I shall say with [Benjamin] Franklin, while looking abroad over the whole earth for a new and more congenial home, ‘Where liberty dwells, there is my country.’”⁵⁶

It should be mentioned that Seward’s observation in October 1858 concerning the nation’s path toward confrontation over the issue of free and slave labor was not without precedent. There was a notable instance of agreement with the New York Republican four months prior in a speech delivered by a former Whig leader who had recently converted to the Republicans. The speech delivered by the Illinoisan would be in response to one of the most significant events in the history of politics in the US.

When the Illinois Republican state convention met in June 1858, the Illinoisans executed a measure that had never been performed in American politics; the convention nominated a

⁵⁵ Seward and Baker, ed., “The Irrepressible Conflict,” 292. “Hitherto, the two systems have existed in different states, but side by side within the American Union. This has happened because the Union is a confederation of states. But in another aspect the United States constitute only one nation. Increase of population, which is filling the states out to their very borders, together with a new and extended network of railroads and other avenues, and an internal commerce which daily becomes more intimate, is rapidly bringing the states into a higher and more perfect social unity or consolidation. Thus, these antagonistic systems are continually coming into closer contact, and collision results.”

⁵⁶ *Ibid.*, 295.

candidate for the US Senate. The late historian Don E. Fehrenbacher describes the incident in the Illinois convention and its path to the eventual passage of the Seventeenth Amendment in 1913.

“The nomination of a senatorial candidate by a state convention had no precedent in American politics. Even in the casual form of a resolution from the floor, the action represented an intrusion upon the vested authority of the legislature and a step toward the popular election of senators.”⁵⁷

The Republican candidate, former four-term member of the Illinois Assembly and one term delegate in the US House of Representatives, accepted the nomination in a speech following the convention’s proceedings on June 16, 1858. As Seward would proclaim the following October that the nation was on a collision course between the free and slave states, Abraham Lincoln chose to begin his speech with the paraphrased words of Jesus Christ to explain the dire situation in the nation as, “A house divided against itself cannot stand.”⁵⁸ For the Republicans, the existence of the two contrasting forms of labor was pushing the nation towards a dangerous path of conflict by allowing the expansion of slavery into the territories.⁵⁹

⁵⁷ Don E. Fehrenbacher, “The Origins and Purpose of the Lincoln’s ‘House-Divided’ Speech,” *The Mississippi Valley Historical Review* 46, no. 4 (March, 1960), 615-616.; 17th Amendment, U.S. Constitution. “The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof... When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.”

⁵⁸ “A House Divided Speech: Springfield, Illinois, June 16, 1858,” Abraham Lincoln and Roy P. Basler, ed. *Collected Works of Abraham Lincoln*, vol. 7 (New Brunswick, NJ.: Rutgers University Press, 1953), 462.; Lincoln’s paraphrased quote from Jesus can be found in *The Holy Bible*, King James Version, Matthew 12:25. “And Jesus knew their thoughts, and said unto them, Every kingdom divided against itself is brought to desolation; and every city or house divided against itself shall not stand.”

⁵⁹ “Republican Party Platform of 1860,” The American Presidency Project. “That the new dogma that the Constitution, of its own force, carries slavery into any or all of the territories of the United States, is a dangerous political heresy, at variance with the explicit provisions of that

In the years following the fall of the Confederate government, many former soldiers and officials were writing memoirs recalling their experiences in the Confederacy. Several publishing houses had approached the former vice president of the CS to pen his involvement in the government with little success.⁶⁰ Alexander Stephens finally acquiesced and published the first volume of *A Constitutional View Of The Late War Between the States* in 1868. This work of Stephens' was in stark contrast to other published remembrances of the former members of the CS. Stephens' *A Constitutional View* had little to do with the Georgians experiences during his tenure in the Confederate government. The overall activities of the war were of little importance to the former vice president of the CS to examine, except in cases where the activities of conducting the war had "...affected Constitutional principles."⁶¹ In terms of the day-to-day operations of the Confederate government, unlike the former president of the CS, Stephens had limited first-hand knowledge of the events that occurred in Richmond. The Confederate vice president was rarely at the capital of the Confederacy as he spent most of his time during the war at his home in Georgia.⁶²

Juxtaposing Stephen's ambivalence to the daily activities of the Confederate government in *A Constitutional View*, the importance of Stephens and his participation in the instigation of the CS cannot be undervalued. Political Science Professor Herbert McCloskey believes, "Alexander H. Stephens was, next to Calhoun, the leading political thinker produced by the

instrument itself, with contemporaneous exposition, and with legislative and judicial precedent; is revolutionary in its tendency, and subversive of the peace and harmony of the country."

⁶⁰ Thomas E. Schott, *Alexander H. Stephens of Georgia: A Biography* (Baton Rouge: Louisiana State University Press, 1988), 470.

⁶¹ Stephens, *A Constitutional View*, 13.

⁶² James Z. Rabun, "Alexander H. Stephens and Jefferson Davis," *The American Historical Review* 58, no. 2 (January, 1953), 295-296.

South in the period of conflict.”⁶³ Professor McCloskey further assesses that *A Constitutional View* was a significant treatise on the “...the historical and legal evidence in behalf of states-rights.”⁶⁴ Even Lincoln recognized the Georgian’s abilities when the two served in the US House Representatives as fellow Whigs in the Thirtieth Congress.

“I just take up my pen to say, that Mr. Stephens of Georgia, a little slim pale faced consumptive man, with a voice like [Stephen T.] Logan's, has just concluded the very best speech, of an hour's length, I ever heard. My old, withered, dry eyes are full of tears yet. If he writes it out anything like he delivered it, our people shall see a good many copies of it.”⁶⁵

In considering the positive views Lincoln regarding Stephens in 1848, the president of the CS did not hold the same opinions of the vice president of the Confederacy. The late historian James Z. Rabun observed the contentious relationship between Stephens and Jefferson Davis began with their opposing opinions of Stephen Douglas’ “popular sovereignty” ideas during the Kansas-Nebraska debates as well as Stephens’ estimation of Davis’ Democratic Party.⁶⁶

To Stephens, the importance of writing on the Confederacy was to present a political discourse on the purposes for the southern states to secede from the Union. Stephens writes that the belief of an inevitable war between North and South, as was perpetuated in the irrepressible conflict theory taken from Seward’s Rochester speech in 1858, was grossly incorrect.⁶⁷ The true motivation for the South to secede from the Union was the opposing principles between the

⁶³ Herbert McClosky, “State Sovereignty: Alexander H. Stephens' Defense of Particularist Federalism.” *The Review of Politics* 11, no. 2 (April, 1949), 170.

⁶⁴ McClosky, 171.

⁶⁵ “To William H. Herndon, February 3, 1848,” Lincoln and Basler, ed., vol. 1, 449.

⁶⁶ Rabun, 290. “In the bitterly furious quarrels that sundered the Democratic party between 1857 and 1860, Davis and Stephens took opposite sides-Stephens defending Stephen A. Douglas and “popular sovereignty,” Davis heatedly attacking both. Yet in no part of this controversy did the Georgian and the Mississippian come into contact; nor did they brush shoulders in the crisis that led up to and followed the election of Abraham Lincoln.” “For in his early career Stephens was a wholehearted Whig, and he made little secret of his opinion that all Democrats were fools or knaves.”

⁶⁷ Stephens, *A Constitutional View*, 9-10.

North and South interpreting the Constitutional guarantee of the supremacy of governmental sovereignty between the state and national governments embodied in American Federalism.

“The contest was between those who held it to be strictly Federal in its character, and those who maintained that it was thoroughly National. It was a strife between the principles of Federation, on the one side, and Centralism, or Consolidation, on the other.”⁶⁸ Thomas E. Schott, a

biographer of Stephens, further interprets the argument of the Georgian in *A Constitutional View* as being the following:

“Sovereignty...was indivisible; the nation had no general powers. The Constitution had not changed the nature of the Union; it had simply improved the Articles of Confederation by conferring incidental powers on the federal government. Going beyond the Kentucky and Virginia resolutions, which had proclaimed *all* states judges of the Constitution, Stephens rested his case in the primal sovereignty of each individual state.”⁶⁹

Civil War historian William C. Davis agrees with Schott and further states that Stephens’ motivation for penning the work was:

“An opportunity to present a vindication of his political beliefs and course throughout his career, a point-by-point statement of the validity of limited republican government as he had envisioned it, and a justification for secession itself. The old arguments about state sovereignty and the nature of the Union would be there...with a lot of supporting evidence and limited recognition of the existence of any ideas to the contrary.”⁷⁰

As to the structure of *A Constitutional View*, Stephens wrote his work in a unique style that he claimed was “...without precedent in this age and country.”⁷¹ By modeling his writing style to Plato and Cicero, Stephens chose to present his ideas written in a series of colloquies involving fictional characters who were based on real persons from the North that Stephens

⁶⁸ *Ibid.*, 10.

⁶⁹ Schott, 471.

⁷⁰ William C. Davis, *The Union That Shaped The Confederacy: Robert Toombs and Alexander H. Stephens* (Lawrence, KS.: University Press of Kansas, 2001), 242.

⁷¹ Stephens, *A Constitutional View*, 13.

claimed to have spoken with on the issues of the day.⁷² The colloquies are presented to inform the reader that protecting slavery was not the instigating factor behind the creation of the Confederacy. Stephens held that the true impetus of the CS was the inevitable response of the southern states to address and separate themselves from the arbitrary and oppressive acts by the US government.⁷³

The Lost Cause

The movement of the sympathetic remembrance of the Confederacy in the US was instigated by the Lost Cause doctrine that began in 1866 with Edward A. Pollard's work *The Lost Cause: A New Southern History of the War of the Confederates* and reinforced in 1868 with his follow up book *The Lost Cause Regained*. Pollard's viewpoints were perpetuated with additional defenses of the Confederacy by former soldiers and members of the defunct government, along with Confederate fraternal and commemorative organizations such as the UCV and the UDC.⁷⁴ These organizations had been instrumental in the late nineteenth century in

⁷² *Ibid.*, 14. "For these Colloquies are but an elaboration of conversations actually had at his [Stephens'] residence, as they purport, in substance, to be."; "It so happened, in the spring, and early part of the summer, of 1867, while the writer was at his home, devoting his mind, in that quiet retreat, to the general subjects herein discussed, with a view to the preparation of a work of some sort, upon them, for publication, that he was visited, at different times, by great numbers of his old friends, from the Northern States, representing almost every shade of opinion upon the present state of public affairs. During these visits, conversations were had, and very thoroughly indulged in, with perfect good temper, on all sides, upon all these subjects."

⁷³ *ibid.*, 261. "We are threatened with the loss of our liberties by the possible abuse of power, notwithstanding the maxim, that those who give may take away. It is the *people* that give power, and *can take it back*. What shall restrain them? They are the masters who give it, and of whom their servants hold it." Note: the previous quote is provided by Stephens from John Marshall in John Elliot, ed., *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia, in 1787*, vol. iii, second edition, (Washington D.C.: Congressional Printing Office, 1836), 233.

⁷⁴ John A. Simpson, "The Cult of the 'Lost Cause,'" *Tennessee Historical Quarterly* 34, no. 4 (Winter, 1975), 350. "These written and spoken arguments for Confederate vindication so successfully magnified the characters of Jefferson Davis and the Confederate soldier that a wake

raising the necessary funds to decorate graves of Confederate soldiers and construct memorials and monuments dedicated to the living, as well as the fallen, officials and veterans of the Confederacy. These activities were earnestly conducted following the end of Reconstruction during the era of Jim Crow, through the Civil Rights movement, and into the decades of the late twentieth and early twenty-first centuries.⁷⁵

Although the Lost Cause movement was openly active through the early twenty-first century, the election of Barack Obama in 2008 brought a surge of sympathetic feelings toward the defeated Confederacy. Additionally, racist activities of groups distraught over the election of an African American president had advanced in the country.⁷⁶ This commotion has continued to influence a number of citizens in the US to revisit the Lost Cause creed that has continued into the administration of President Donald Trump. The recent resurgence of allegiance to the Lost Cause and its reflections of the Antebellum and Confederate South has converted many in the US to equate the Confederacy along-side the members of the founding generation as being on

of organized memorial activities swept through the South, uniting the people in a spirit of togetherness unexcelled except for the early days of the Confederacy.”

⁷⁵ Stephan Thernstrom and Abigail Thernstrom, *America In Black And White, One Nation, Indivisible: Race in Modern America* (New York: Simon and Schuster, 1997), 29-32.

⁷⁶ Ta-Nehish Coats, “Fear of A Black President,” September 2012 Issue, *The Atlantic*, <https://www.theatlantic.com/magazine/archive/2012/09/fear-of-a-black-president/309064/>. “Before Barack Obama, the ‘black president’ lived in the African American imagination as a kind of cosmic joke, a phantom of all that could never be. White folks, whatever their talk of freedom and liberty, would not allow a black president. They could not tolerate Emmett’s boyish gaze. Dr. King turned the other cheek, and they blew it off. White folks shot Lincoln over “nigger equality,” ran Ida Wells out of Memphis, beat Freedom Riders over bus seats, slaughtered Medgar in his driveway like a dog. The comedian Dave Chappelle joked that the first black president would need a “Vice President Santiago”—because the only thing that would ensure his life in the White House was a Hispanic president-in-waiting. A black president signing a bill into law might as well sign his own death certificate.”

equal political and historical status in terms of declaring independence, ensuring freedom, perpetuating the idea of state sovereignty, and protecting liberty for the citizens of the country.⁷⁷ Although not in total agreement with the idea that attempting southern independence was akin to attaining American independence, Pollard did hold to the notion that the act of secession was solidified before the founding of the US.⁷⁸

A consequence of the influence regarding the resurrection of the Lost Cause has inspired the proliferation of defending the existence of banners, statues and memorials dedicated to the Confederacy. The addition of the conflicting opinions of retaining or removing these remembrances on public as well as private properties has raised spirited feelings in the nation.⁷⁹ As the debates have increased, a propagation of protests, violent as well as non-violent, has fueled racial confrontations that have instigated significant acceleration of the actions of civil

⁷⁷ Scott Simon and Annette Gordon-Reed, “The Differences Between the Founding Fathers and Confederate Leaders,” August 19, 2017, “Weekend Edition Saturday,” transcript, *National Public Radio*, <http://www.npr.org/2017/08/19/544641084/the-differences-between-the-founding-fathers-and-confederate-leaders>.

⁷⁸ Edward Alfred Pollard, *The Lost Cause, A New Southern History of the War of the Confederates: Comprising a Full and Authentic Account of the Rise and Progress of the Late Southern Confederacy – the Campaigns, Battles, Incidents, and Adventures of the Most Gigantic Struggle of the World's History* (New York: E. B. Treat & Co., 1866.), 40. “The reader of American history must guard his mind against the error that the Union was, in any sense, a constitutional revolution, or a proclamation of a new civil polity. The civil institutions of the States were already perfect and satisfactory. The Union was nothing more than a convenience of the States, and had no mission apart from them. It had no value as an additional guaranty of personal liberty, nor yet for its prohibitions of invasion of individual rights. These had been declared with equal clearness and vigour five centuries before in the Great Charter at Runnymede, had been engrafted upon the Colonial Governments, and were the recognized monuments of American liberty.”

⁷⁹ Ben Bowls, “While Some Southern Cities Cleanse Themselves of their Confederate Past, Others Build on It,” June 23, 2017, *The Jackson Press*, <http://thejacksonpress.org/?p=68377>. “While some cities in the South condemn themselves to reliving the past by obliterating reminders of it, others remain proud of their heritage. One such city is Hanceville, Ala., whose mayor – Kenneth Nail – recently contacted New Orleans Mayor Mitch Landrieu to inform him that the citizens of Hanceville will be happy to take unwanted Confederate statuary off their hands.”

rights activists as well as white supremacist groups.⁸⁰ In the light of this activity, it seems appropriate to investigate the political impetus of the Confederacy established by the secession of the southern states that instigated the bloodiest conflict in American history and the enduring devotion to the failed experiment of governance in the US.

⁸⁰ Hari Sreenivasan and William Brangham, “The Shifting History of Confederate Monuments,” transcript, *PBS News Hour*, <https://www.pbs.org/newshour/show/shifting-history-confederate-monuments>.

PART I

THE SOCIAL CONTRACT / CREATING AMERICAN FEDERALISM

This is a Social Compact, a mutual covenant made for common Utility, i.e. for the easier acquisition of the Necessaries, Conveniences Comforts and Pleasures of Life. This is Law, Order, and Government, for Law implies Government, order implies Government. The simple uneasiness arising to one from a breach of this order, or the painful fear of disgusting or offending or even grieving the other, would be a Sanction of Rewards and punishment to this Law. This alone is enough to constitute Government.⁸¹

---John Adams to Thomas Adams
1803

When the southern states called for secession conventions following the presidential election in 1860, their beliefs on the right of secession guaranteed in the social contract were not innovative. The delegates to these conventions were well versed in the idea that the right to separate themselves from an oppressive government was solidified by the writings of prior and contemporary political philosophers as well as members of the founding generation of the US. Chapter one will investigate the origins and applications of the ancient English constitution and its relation to governmental sovereignty in England and colonial America. Chapter two will research the actions of the George III and the English Parliament regarding the unconstitutional acts perpetuated on the colonies that would inspire retaliation against Great Britain. This section will end in chapter three by presenting the events that attempted to retain the social contract in the first government of the US and then to the second and final government that established American Federalism in the Constitution.

⁸¹ “John Adams to Thomas Boylston Adams, February 1803,” *Founders Online*, National Archives, <https://founders.archives.gov/?q=Social%20Compact&s=1111311111&sa=&r=7&sr=>.

Chapter 1
“Without the assent of the said freeman”⁸²

And that also there shall be a Council, established here in England, which shall, in like manner, consist of thirteen Persons, to be for that Purpose, appointed by Us, our Heirs and Successors, which shall be called our Council of Virginia; And shall, from time to time, have the superior Managing and Direction, only of and for all Matters that shall or may concern the Government, as well of the said several Colonies.⁸³

---The First Charter of Virginia
1606

Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience.⁸⁴

---Mayflower Compact
1620

In May of 1607, three ships holding one hundred and four passengers arrived in North America at what is now the Chesapeake Bay. The ships traversed the mouth of a tributary in the Chesapeake that would eventually be named in honor of King James I of England.⁸⁵ The adventurers aboard the ships were seeking a suitable place to establish a settlement funded by the investors of the Virginia Company. Just over thirteen years later, the originators of the familiar story of the first Thanksgiving also navigated the Atlantic Ocean in search of the burgeoning settlement of Jamestown. Just as the sponsors of the 1607 expedition, the Puritans had likewise

⁸² “Magna Charta,” Frohnen, ed. *The American Republic*, 144.

⁸³ “The First Charter of Virginia,” *The Avalon Project*, The Lillian Goldman Law Library, Yale Law School, http://avalon.law.yale.edu/17th_century/va01.asp.

⁸⁴ “Mayflower Compact,” *The Avalon Project*, http://avalon.law.yale.edu/17th_century/mayflower.asp.

⁸⁵ Roger Lockyer, *Tudor and Stewart Britain*, third edition (Edinburgh Gate, U.K.: Pearson Education LTD., 2004), 502.

signed an agreement with the Virginia Company to establish a colony in the New World.⁸⁶

These newly arriving colonists were not simply the well-known Pilgrims who were offered the opportunity to establish an English colony that would guarantee their freedom to worship as they pleased, but were obligated to fulfill their commitments of their business agreement with the Virginia Company.⁸⁷ The Puritans, however, had missed their intended portage in Virginia due to a storm and the *Mayflower* arrived in North America just over six hundred miles north of their projected destination and were forced to establish their settlement at Plymouth, Massachusetts.⁸⁸ Thus, the first two successful English colonies in North America would represent the two distinct regions of oppositional beliefs in terms of the economic, political and social ideologies in the US. The significance of the conflicts of opinions between the North and South would be a source of disputation from the founding of the colonies to the present-day.

The Ancient Constitution of England

In observing the path of the American colonies in responding to the unconstitutional actions of the English monarchy and legislature in their arbitrary acts placed on the Englishmen of North America, an understanding of the English ancient constitution is essential. English historian Glenn Burgess wrote that it is a bit misleading to view the ancient constitution as a system of laws and governance exclusively developed to remain static from English antiquity and beyond. Burgess determined that this observation,

⁸⁶ Bernard Bailyn, *The Barbarous Years, The Peopling of British North America: The Conflict of Civilizations, 1600-1675* (New York: Random House Inc., 2012), 327.

⁸⁷ Bailyn, *The Barbarous Years*, 326. "But they [Puritans] knew most about Virginia, which they had been told, had a more livable climate than Guyana and was safe from the Spanish and French. But there, in that English territory, they might once again be persecuted for their religion. That point was cleared up, however, when a patent for a private plantation in Virginia became possible and when the Crown assured them that they would be left in peace there to worship as they please."; Lockyer, 504-505.

⁸⁸ Minnie G. Cook, "The Susan Constant and the Mayflower," *The William and Mary Quarterly* 17, no. 4 (October, 1937), 469."

“Tends to suggest a fixed constitution that had existed sometime in the past, and to conjure up the image of a Golden Age of liberty and constitutional perfection to be found in days of old. But this is not really what was meant by the term. ‘The ancient constitution’ was not a constitution of the past; it was the present constitution, the constitution of the seventeenth century. This is to say no more than that the ancient constitution was a collection of laws and institutions that had evolved in a continuous process whose beginnings were lost to human memory (including, that is, written records which were a form of collective memory). In short, an ancient constitution was a modern constitution that had ancient foundations.”⁸⁹

By applying Burgess’ description of the ancient English constitution, it appears that this type of constitution is an evolving idea that retains the ability to consider the changing events of the people it directs and could be amended by bearing in mind the shifting of the customs and traditions of the governed. In the case of England, the legal process of the constitution governs the subjects of the realm by employing the *common law* as opposed to the Roman style of a *codified law*. The common law considers the customs and traditions of the constituents and reflects on the precedents of prior legal decisions when confronting the possibility of strengthening or altering the law, as well as determining the guilt or innocence of the accused. The process of the codified law, however, does not rely on precedent or the customs of the time in reexamining the laws or to determine the guilt, innocence, acquittal, or punishment of an individual. The codified law is simpler than the common law to apply, however, the Roman style is absent of the ability to consider the current customs and traditions that the common law possesses. To the English, the common law was of paramount importance when considering the rights and liberties of the individual.⁹⁰

⁸⁹ Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603–1642* (London, UK.: Macmillan Publishers Ltd., 1992), 19.

⁹⁰ Jack P. Greene, *The Constitutional Origins of the American Revolution*, (New York: Cambridge University Press, 2011), 7; John Phillip Reid, *Constitutional History Of The American Revolution*, abridged edition (Madison WI.: University of Wisconsin Press, 1995), ix-x; Suzanne Sherry, “The Founders’ Unwritten Constitution.” *The University of Chicago Law Review* 54, no. 4 (Autumn, 1987), 1128. “...this fundamental law, or constitution, consisted of a

As it is important to present the magnitude of the ancient constitution on the subjects of England, it is equally vital to investigate the significance of the constitutional placement of governmental sovereignty on the colonists in North America. When the ancient constitution was disrupted by the events following the Glorious Revolution of 1688, the lives of the Englishmen on both sides of the Atlantic were altered.⁹¹ There can be no misunderstanding that obedience to the ancient constitution was fundamental to the notion of legal supremacy for the English colonists and the destruction of the traditional notions of constitutional governance after 1688 proved to be the central cause for the movement of declaring independence from Great Britain in the summer of 1776.⁹²

In presenting the colonist's perception of the ancient constitution and its relation to issues of sovereignty, two points of clarification must be considered. Firstly, it is important to understand that the ancient constitution was unwritten. Although unwritten, the ancient constitution was at times altered by written documents that reflected a contemporary social or political movement in England. In William Dowe's biography of Lord William Pitt 1st Earl of

mixture of custom, natural law, religious law, enacted law, and reason..."; Raymond Wacks, *Law: A Very Short Introduction* (New York: Oxford University Press Inc., 2008), 1, 11-13.; Alexander Addison, "Analysis of the Report of the Committee of the Virginia Assembly, Philadelphia, 1800," Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writing During The Founding Era: 1760-1805*, vol. ii (Indianapolis: Liberty Fund, Inc., 1983), 1078. "The unwritten [law of England] is called the common law, because founded on an implied consent, from long acquiescence in its authority and use. The authority of both [English common and statute law] is thus equally the will of the community."

⁹¹ Aaron N. Coleman, *The American Revolution, State Sovereignty, and the American Constitutional Settlement, 1765-1800*, (Lanham, MD.: Lexington Books, 2016), 22. "As the colonies grew familiar with actual representation, divided government, and written charters, England was becoming an increasingly centralized state where Parliament's will triumphed over ancient liberties, and all power and authority was drawn into it."

⁹² Coleman, 17. "Ironically, the English constitutional settlement of 1688, which placed sovereignty in the hands of an omnipotent Parliament, was the singular issue that tore the colonies from the mother country."

Chatham, he quotes Lord Pitt with declaring that there were three written documents that created and supported the unwritten constitution.

“If I had a doubt upon the matter, I should follow the example set us by the most Reverend Bench, with whom I believe it is a maxim, when any doubt in point of faith arises, to appeal at once to the source and evidence of our religion — I mean the Holy Bible. The constitution has its political bible, by which, if it be fairly consulted, every political question may, and ought to be, determined. Magna Charta [1215], the Bill of Rights [1689], and the petition of Rights [Petition of Right, 1628], form that code which I call the Bible of the English Constitution.”⁹³

Pitt notes that the first book of the constitutional bible begins with Magna Charta, where virtually all subjects of the English realm held as being the genesis of the freedoms and liberties of all Englishmen.⁹⁴ The crown was obligated to adhere to the laws to protect the rights and liberties of the English following the capitulation of King John to the English barons at Runnymede in 1215.⁹⁵ The second book in the constitutional bible, listed in chronological order, is the Petition of Right in 1628. Written to confront the unconstitutional behavior of Charles I, the Petition of Right attempted to stifle the arbitrary acts that the king had placed on his subjects. This document addresses items that would be of vital importance to the members of the Constitutional

⁹³ William Dowe, *Junius, Lord Chatham; A Biography, Setting Forth The Condition of English Politics Preceding and Contemporary With The Revolutionary Junian Period, and Showing That The Greatest Orator and Statesman Was Also The Greatest Epistolary Writer of His Age* (New York: Miller, Orton, & Company, 1857), 121. Note: Dowe is quoting from the work of William S. Taylor and John H. Pringle, eds., “The Marquis of Rockingham to the Countess of Chatham, Grosvenor Square, Wednesday morning, 12 o'clock, January 24, 1770,” *The Correspondence of William Pitt, Earl of Chatham*, vol., iii (London: John Murray, Albemarle, 1838), footnote †, 402.

⁹⁴ Ellis Sandoz, ed., *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law* (Indianapolis: Liberty Fund Inc., 1993), 7. “The devotion to liberty under law that is a hallmark of Anglo-American civilization and free government is nowhere symbolized with greater authority than in Magna Carta and the ancient constitution of which it is the noblest monument.”

⁹⁵ Greene, 14; Reid, 105. Silas Downer, “A Discourse At The Dedication Of The Tree Of Liberty,” Hyneman and Letz, eds., 83. “The great charter of liberties, commonly called Magna Charta, doth not give the privileges therein mentioned, nor doth our Charters, but must be considered as only declaratory of our rights, and in affirmance of them. The formation of legislatures was the first object of attention in the colonies.”

Convention of 1787 in Philadelphia and the following sessions of the newly formed US Congress with items such as protecting *habeas corpus*, not taxing the citizenry without proper representation in Congress, as well as the prohibiting of soldiers being quartered in citizens homes in times of peace.⁹⁶ The final book is the document that would change the ancient constitution in the most radical of ways, namely the considerable powers granted to a representative body over the monarchy.⁹⁷

Secondly, From Pitt's observation, and as was mentioned previously in the Introduction concerning Americans and their obedience to American Federalism, it must be appreciated that the subjects of England held the significance of their documentary influences of their unwritten constitution to be second only to the importance of holy scripture when comparing the aforementioned three documents to be a "bible" for their legal and political existence. England stood for protecting the liberties and freedoms of the people by creating and maintaining a strong, yet with the ability of augmentation, unwritten constitution that the monarchy and parliament were

⁹⁶ "Petition of Right, V," Frohnen, ed., *American Republic*, 151-152. "...and when for their deliverance they were brought before your justices, by your Majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command." X, "...no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of Parliament..." VI, "And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people."; Article I, section 9, clause 2, U.S. Constitution. "The privilege of the Writ of *Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Article I, section 8, clause 1, "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States..." Amendment 3, "No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

⁹⁷ "English Bill of Rights," Frohnen, ed., *American Republic*, 162-163, "That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal." "That the pretended power of dispensing with laws, or the execution of laws by regal authority, as it hath assumed and exercised of late, is illegal."

obligated to obey. As time advanced from 1215 to 1689, the customs and traditions of England had progressed and changed to the point that a legislative body had become politically superior to the monarchy. In many ways, it is difficult to understand in the twenty-first century why the colonists were adamant opposed to a representative body making decisions on their behalf in the late seventeenth and eighteenth centuries. For the colonists, however, the question of the perpetuation of a strong representative body was simple; the first colonies were initially established by the monarchy through joint-stock corporations and that the colonies held no physical representation in Parliament.⁹⁸ This would be unacceptable to the colonists and would lead to rebellion and ultimately independence from Great Britain.

Constitutional Problems in England

Just over four years prior to the settlement of Jamestown, rumblings concerning the constitutional role of the English monarchy were stirring. The colonies were experiencing difficulties determining the proper application of governance regarding the powers placed upon the monarchy and the continuing influences of the English Parliament. The constitutional troubles increased with the death of the last Tudor monarch, Elizabeth I. The “virgin queen” left no heirs, and the closest relative that was eligible to assume the throne was the deceased queen’s third cousin, Charles James Stuart, King James VI of Scotland.⁹⁹

The concern of the subjects under the new monarch, now King James I of England, was that he [James] had never ventured into the borders of England prior to his ascension to the English throne. James was not accustomed to the significance of the English constitution and the

⁹⁸ These two subjects of the colonist’s view on Parliamentary supremacy will be further examined in Chapter 2.

⁹⁹ Lockyer, 252. Upon the death of Elizabeth in the early hours of March 24, 1603, “...a messenger rode north as fast as relays of horses could carry him, James VI of Scotland was proclaimed James I of England.

system of English laws established and practiced under the authority of the common law.¹⁰⁰

James was accustomed to the establishment and applications of the laws of Scotland, which was governed by the civil law, which is more statutory and additionally provided the monarchy with a bit more room in overall governmental power over the Scottish Parliament.¹⁰¹ England had been applying the common law that protected the rights of Englishmen from “time immemorial,” which relied on precedent of prior legal decisions for creating and enforcing the laws.¹⁰²

In addition, James was accustomed to the Divine Right of Kings philosophy of rule that he had enjoyed in Scotland. In contributing to the concern of the English subjects of the new monarch, James had published *The Trew Law of Free Monarchies*, a work dedicated to his explanation and faithfulness to the Divine Right of Kings just five years prior to assuming the English throne.¹⁰³ James was certain that God was applying His divine will on the people and their government with the initiation of monarchies, no matter how good or bad their rule was on their subjects. Furthermore, James felt that subjects of the kingdom held no right to attempt remove a tyrannical king; the people should simply pray their way out of their situation.

¹⁰⁰ Mare L. Schwarz, “James I and the Historians: Toward a Reconsideration,” *Journal of British Studies* 13, no. 2 (May, 1974), 115.

¹⁰¹ Lockyer, 275. “James was a stranger to common law, for in Scotland the civil law – derived from that of imperial Rome – had gained acceptance during the sixteenth century. Civil or Roman law was assumed to be more concerned with the rights of the ruler than the liberties of the subject...”; Wacks, 5-7.

¹⁰² Reid, 33. Reid describes “time immemorial” as: “The original contract made in the hidden mists of an immemorial past between the earliest kings of England and the English people, a contract Americans thought still binding in eighteenth-century Great Britain as well as in North America.”; Wacks, 1. “The doctrine of precedent, hallmark of the common law, dictates that what has gone before is what now should be, thereby affording a measure of certainty and predictability in a precarious world.”; Anonymous, “Touching the Fundamentall Lawes,” February, 1643, Joyce Lee Malcolm, ed. *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts*, vol. I (Indianapolis: Liberty Fund Inc., 1999), 266. “The Fundamentall laws of England are nothing but the Common laws of Equity and Nature reduced into a particular way of policy, which policy is the ground of our title to them, and interest in them.”

¹⁰³ Lockyer, 275-276.

“I grant indeed that a wicked king is sent by God for a curse to his people, and a plague for their sins. But that it is lawful to them to shake off that curse at their own hand, which God has laid on them, that I deny...It is certain...that patience, earnest prayers to God, and amendment of their lives, are the only lawful means to move God to relieve them of that heavy curse...”¹⁰⁴

As the reign of James I continued, the constitutional issues that many in England had feared would be violated, such as the possibility of attempting to pass laws or lay taxes without the aid of Parliament, had found their way into the thoughts of many of the MPs.¹⁰⁵ Parliament had already experienced attempts by the Tudors to avoid dealing with the legislative body in issues such as taxation, however, these attempts were more often unsuccessful and were settled by working with the House of Commons in presenting that the request of raising revenue was strictly a matter of national security.¹⁰⁶ For the English constitutionalists, their fears of the possibility of arbitrary rule by James were unfounded. James I proved to be a true constitutional sovereign.¹⁰⁷ For the remaining monarchs in the Stuart line, however, constitutionalism and working with Parliament would not be as important to them as it was to their progenitor.

Colonial Governments in North America

¹⁰⁴Newton Key and Robert Bucholz, eds., “James VI and I, Trew Law of Free Monarchies (1598),” *Sources and Debates in English History, 1485-1714*, 2nd edition (West Sussex, U.K.: Blackwell Publishing Ltd., 2009), 138-139.

¹⁰⁵ Barry Coward, *The Stuart Age: A History of England, 1603-1714* (New York: Longman Inc., 1980), 114-115. “...many English MPs were determined that the English parliament should not suffer the fate of other European representative institutions whose powers were being taken away by absolute monarchs.”; Lockyer, 276.

¹⁰⁶J. D. Alsop, “The Theory and Practice of Tudor Taxation,” *The English Historical Review* 97, no. 382 (January, 1982), 10. “Thus the [Tudor] crown was viewed as the saviour and sole defender of the nation, and everything which contributed to the preservation of the crown served to defend the realm.”

¹⁰⁷Coward, 81.; Lockyer, 276. “James may have been inclined to absolutism in theory, but in practice he remained a strictly constitutional sovereign. As he told [Sir Robert Cecil of] Salisbury in 1610, although he [James] was King by hereditary right and not dependent in any way upon public approval, yet ‘the law did set the crown upon his head, and he is a King by the common law of the land.’”

When the reign of James I concluded upon his death in March 1625, the two English colonies in North America, which had struggled early on in their existence, were working diligently towards a path of prosperity for themselves as well as for their investors with the export of agricultural products and precious raw materials to England. From Virginia, tobacco was the most profitable commodity to reach the mother country, although James detested the “ingestible weed.”¹⁰⁸ Yet, even the value of the tobacco could not pay the rich dividends anticipated by its shareholders. In contrast, the Massachusetts Bay Colony became more productive and prosperous “...by sending corn, timber and furs to England they made sufficient profits to buy out the home-based shareholders. They thereby created the first autonomous English community in America.”¹⁰⁹ This accomplishment by the Puritans is significant to note, as with their ability to become an economic self-sufficient colony, and their continuing political adherence to the Mayflower Compact, the colony of Massachusetts was achieving economic and political milestones that their southern sister colony apparently could not achieve. Yet, it would be the colony of Virginia that would be the first to experience the benefits of reaching significant self-governance guaranteed by royal decree.

Virginia, a colony which struggled a bit longer than Massachusetts to attain economic viability, enjoyed a significant course of events that supported the original English colony to realize a self-sufficient government in the summer of 1619. The settlement of Jamestown and the expanding Virginia colony, unfortunately, had not achieved the profitable expectations of the investors of the Virginia Company. James had quickly lost interest in the struggling colony and issued a replacement charter that gave full proprietorship to the company and its investors in

¹⁰⁸ Coward, 105.; Lockyer, 504.

¹⁰⁹ Lockyer, 505.

1609.¹¹⁰ The only notable profitable crop was tobacco, and the profits from that crop could not meet the original economic expectations, as the investors of the Virginia Company overestimated the appetite for tobacco in England.¹¹¹

In response to the economic difficulties, the chief official of the Virginia Company was removed, and his successor was Sir Edwin Sandys, the former treasurer of the company. Although Sandys failed in making the colony more profitable for its shareholders, his tenure as administrator of the Virginia Company oversaw the development of the first English representative government in North America.¹¹² With the approval of Sandys, the colonists in Virginia elected a general assembly in 1619 and 1620. When James received complaints from investors that Sandys' leadership regarding Virginia was more concerned with *governing* themselves, instead of *paying* for themselves, the king revoked the charter and assumed complete control of Virginia in 1624. A royal governor was appointed and set sail for Virginia.

“...but he [the royal governor] had orders to continue summoning the representative assembly, and it was also made clear that since the settlers were the King's subjects they were to enjoy the laws and liberties that would have belonged to them at home.”¹¹³

The significance of the last part of James' statement, that the colonists were on the same social and political level as the subjects residing in England, was going to be the catalyst to the notion that the colonists should be *actually* represented in Parliament instead of being *virtually* represented.

¹¹⁰ *Ibid.*, 502.

¹¹¹ Bailyn, *Barbarous Years*, 81.; Coward, 24. “Respectable opinion in England could not tolerate the foundation of a colony which relied on such a morally dubious crop as tobacco, which in the early seventeenth century had the status and the radical subversive associations of cannabis in the late twentieth century.”

¹¹² Lockyer, 504.; “About the General Assembly,” Virginia General Assembly, <http://virginiageneralassembly.gov/virginiaLegislature.php?secid=20&activesec=2#!hb=1&mainContentTabs=4&content>.

¹¹³ Lockyer, 504.

As the seventeenth century progressed, twelve of the thirteen colonies were established in North America.¹¹⁴ Eventually, those colonies that were not established by England were folded into the existing colonies to form the thirteen English colonies in North America. The colonies continued the practice of establishing representative bodies, under the authority of charters and covenants, with royal governors presiding over the governments of each individual colony. Subsequently, the rights enjoyed by all Englishmen under the ancient constitution, and the social contract that created government by consent between the ruler and the ruled, was firmly established on both sides of the Atlantic Ocean.¹¹⁵ There would be significant events during the middle and later years of the seventeenth century in England that would affect the role of constitutional governance, such as substantial religious disagreements that would lead to civil war, regicide, absence of a monarchy, restitution of a monarchy, and additional religious problems that would force a monarch to flee England which would result in the placement of a pair of monarchs by a newly empowered Parliament.¹¹⁶ As these events occurred across the Atlantic, the colonists in North America continued to hold to the customs and traditions of the rights of Englishmen created and guaranteed under the ancient constitution prior to the Glorious Revolution and struggled to adhere to the constitutional changes created in 1688.¹¹⁷

The Glorious Revolution and the Ancient Constitution

There is little that affected England, as well as her colonies in North America, in their idea of the proper constitutional placement of sovereignty superior to the subsequent results of the Glorious Revolution. Following the results of the English Civil War that initiated the short-

¹¹⁴ Note: The colony of Georgia would not be established until 1732.

¹¹⁵ Malcolm, vol. 2, xxx.

¹¹⁶ James R. Hertzler, "Who Dubbed it 'Glorious Revolution?'" *Albion: A Quarterly Journal Concerned with British Studies* 19, no. 4 (Winter, 1987), 579, 581-583.

¹¹⁷ Coleman, 17-18.

lived English Commonwealths, the English Parliament enjoyed a significant increase of political acceptance and power.¹¹⁸ When the Commonwealths collapsed, the trail to the Glorious Revolution had been cleared. Following the events that propelled the Glorious Revolution in retaining the powers that Parliament had achieved during the Commonwealth years, the English constitution would be altered to essentially put much of governmental sovereignty into the hands of Parliament over the monarchy. Prior to their ascension to the throne, the former Dutch royal William III, Prince of Orange and Mary II of England were required by Parliament to accept and abide by the “Declaration of Rights.”¹¹⁹ The document would be formally known as “An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown.” When William and Mary accepted the terms and conditions of the document on February 13, 1689, the document would take on a new name, the English Bill of Rights.

In investigating the persuasive text of the English Bill of Rights on the ancient constitution, it must be noted that religion held significant influence. Prior to listing the rights guaranteed to the subjects of England, the text notes that the attack on the religion of England that was endured under the previous Stuart kings had been rectified.

“Whereas the late King James II., by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom:... By issuing and causing to be

¹¹⁸ John Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (Cambridge, MA.: Harvard University Press, 1990), 246. “The good of the whole, it was generally agreed, lay in the hands of the legislature: ‘the Legislature of every Country are the best Judges, what is, or what is not for the Benefit of the Whole.’” Note: Internal quotes from this passage are from: Thomas Wilson, *Distilled Spiritous Liquors the Bane of the Nation* (London: J. Roberts. 1736), vi.; James McClellan, *Liberty, Order, And Justice: An Introduction to the Constitutional Principles of American Government*, third edition (Indianapolis: Liberty Fund Inc., 2000), 30. “Glorious Revolution of 1688–89 was an important turning point in English constitutional history. It is a result of this bloodless revolt against the monarchy, Parliament became the real sovereign of Great Britain, and parliamentary supremacy became a permanent fixture of the English Constitution.”

¹¹⁹ Coward, 305.; Lockyer, 438.

executed a commission under the Great Seal for erecting a court, called the Court of Commissioners for Ecclesiastical Causes... By causing several good subjects, being Protestants, to be disarmed, at the same time when Papists were both armed and employed contrary to law...”¹²⁰

There was an additional problem with England being ruled by a Scotsman, other than his ignorance of the liberties and freedoms protected by the ancient constitution; the Stuarts were Presbyterians and James I was in agreement with the Elizabethan Settlement that favored Catholic toleration.¹²¹ The problem for James was the Church of England held the sole ecclesiastical authority in England since the Act of Supremacy in 1558 and the subsequent Act of Uniformity in 1559.¹²² There was, however, a small measure of religious tolerance in England, but the official religion of the realm was the Church of England. Hence, when Presbyterian James VI of Scotland became James I of England, he also took on the role of being the leader of the Church of England.¹²³ The late historian Charles F. Mullett wrote of the importance of politics and religion in England being, “From the day Augustine set foot in Kent the relations of religion and politics have not ceased to complicate the evolution of the English nation, nor have they ceased to fascinate as well as to puzzle statesmen, theologians, and historians.”¹²⁴ When the Stuart monarchies concluded with James II, the religious difficulties of England overwhelmingly

¹²⁰ “The English Bill of Rights,” Frohnen, ed., *American Republic*, 161-162.

¹²¹ Lockyer, 262-263. “The accession of a new [English] sovereign had been, for the previous three reigns, the occasion for a redefinition of religious policy, and in 1603 the puritans were hoping that James, whose Scottish background was Presbyterian, would show sympathy with their demands for modification of the Elizabethan Settlement.”

¹²² Rosemary Sgroi, “The Elizabethan Settlement,” *The History of Parliament: British Political, Social & Local History*, <https://www.historyofparliamentonline.org/periods/tudors/elizabethan-settlement>.

¹²³ Charles F. Mullett, “Some Aspects of Religion and Politics in England, 1660-1767,” *The Southwestern Social Science Quarterly* 18, no. 1 (June, 1937), 46-47

¹²⁴ Mullett, 44.

influenced constitutional alterations and the leaders of the Church of England proclaimed God's handiwork concerning the ouster of the Stuarts.¹²⁵

The Ancient Constitution and Colonial Sovereignty

It is important to note that from the time of the final establishment of the thirteen English colonies to the Second Continental Congress instructing each future state to write their own constitutions prior to declaring independence, the only recognized constitutional governments were the individual elected colonial assemblies.¹²⁶ The results of the creation of the powers of Parliament established following the adoption of the English Bill of Rights, however, created substantial issues regarding sovereignty over the colonies. With the function of English sovereignty shifting from the traditional constitutional monarchy, that enjoyed limited advice and assistance from Parliament, to parliamentary supremacy, the change of sovereignty would not be well received by the colonial Englishmen in North America.

The first written constitutions in the US were the royal colonial charters and compacts established by the monarchy for the economic and governmental obligations of each individual colony.¹²⁷ The king would appoint royal governors to oversee each individual colony and their legislatures. This arrangement inspired the idea of King-in-Colonial-Assembly.¹²⁸ The process

¹²⁵ Hertzler, 581. "There had long been a tradition in the English preaching ministry of an almost liturgical remembering of the great crises that the nation had passed through, times when God was seen to have acted decisively for the good of the country."

¹²⁶ Coleman, 17. "For most of this period, the colonies were largely self-governing and never had to grapple with the question of where sovereignty rested within the imperial structure."; Greene, i, 4-5. "In their [colonist's] view, colonial governance, no less than metropolitan governance, should guarantee that men of their standing would not be governed without being consulted or in ways that were patently against their interests."

¹²⁷ William C. Morey, "The First State Constitutions," *The Annals of the American Academy of Political and Social Science* 4 (September, 1893), 2; Greene, ix.

¹²⁸ Coleman, 17.

was akin to the concept of King-in-Parliament in England,¹²⁹ where the king was ever-present in the colonial legislatures in the person of the royal governor and the king was ever-present in Parliament when considering legislative matters.¹³⁰ When Parliament began to achieve stronger political powers, there was a period of time where the colonists attempted to accept that a divided sovereignty between the colonial assemblies and Parliament could effectively govern in the colonies. This period, however, was short lived as the colonists recognized that a powerful Parliament was overwhelmingly ignorant of the social and political lives of the colonists and the local colonial assemblies were much better equipped to address their own issues.¹³¹

Although the colonists considered themselves loyal subjects of the king, the issue of their governmental sovereignty predominately lay within their own individual colonies. A Virginian was subject to the sovereignty of the colony of Virginia. The colony of Massachusetts was sovereign over each Massachusettsan. The singular national connection with the colonies politically was the ancient constitution. A written document overseeing all the British colonies

¹²⁹ McClellan, 30. “The system adopted [after the Glorious Revolution of 1688] was, in effect, a limited or constitutional monarchy. England would thereafter be governed by Parliament and its leaders, or what the English call ‘the King-in-Parliament’ in recognition of the monarch’s titular sovereignty.”

¹³⁰ Frederick Pollock, “Sovereignty in English Law,” *Harvard Law Review*, 8, no. 5 (December 26, 1894), 243. “The one fundamental dogma of English constitutional law is the absolute legislative sovereignty or despotism of the King in Parliament.’ That is to say, Parliament is the one authority capable of making, declaring and amending the law of England without reference to any other authority and without any legal limit to its own power. Ever since there has been an English monarchy it has been understood that the King had powers of legislation, and that they ought not to be exercised without advice.” Note: the inner quote in the previous passage was taken from A.V. Dicey, *The Law of the Constitution*, 4th ed., 1893, 136.

¹³¹ Coleman, 17 & 19-20.; Stephen Hopkins, “The Rights of Colonies Examined,” 1764, Hyneman and Lutz, 49-50. “The colonies are at so great a distance from England that the members of Parliament can generally have but little knowledge of their business, connections, and interest but what is gained from people who have been there; the most of these have so slight a knowledge themselves that the informations they can give are very little to be depended on, though they may pretend to determine with confidence on matters far above their reach.”

in North America did not exist. Thus, each sojourner from one colony to another were subject to the laws of the colony they were visiting, as it was possible that a specific law in Massachusetts could be adopted and enforced differently in Virginia. Therefore, it is clear the colonists considered themselves and their governments virtually autonomous from the other colonies.¹³² Each individual colonial government had effectively managed all legal and social issues within their own borders successfully dating to the establishment of the first colonial assembly in North America. This success can be measured by understanding that each internal decision by the colonial governments were decided under the authority of the ancient constitution, just as their fellow Englishmen across the Atlantic were enjoying through the rule of the monarchy and a representative parliament.¹³³

The dominate negative issue for the colonists concerning the newly placed powers of Parliament in 1688 was their [Parliament's] application of taxing measures upon the colonies commencing in 1763. The issue of determining the final legal definition of governmental sovereignty was going to be of great importance to the people of England as well as to the colonists in North America. In terms of investigating the definition of sovereignty following the Glorious Revolution, historian Forrest McDonald sought to interpret the thoughts of Sir William Blackstone on the subject.

“That prescribing ‘supreme power’ was the sovereign. ‘Sovereignty and legislature are indeed convertible terms,’ Blackstone declared; ‘there is and must be’ in every state ‘a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside.’ In the abstract, sovereign power was not boundless, for man-made laws had to be compatible with natural law – God’s law, discoverable through reason – and thus ‘no human laws are of any validity, if contrary to this.’”¹³⁴

¹³² Bailyn, *Ideological Origins*, 84-85.

¹³³ Sherry, 1129.

¹³⁴ McDonald, 1. Note: all internal quotes are from Blackstone.

McDonald further quotes Blackstone that, “[I]f the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution, that is vested with authority to control it.”¹³⁵ This description of Parliament by Blackstone harkens to the account of James I of the impotence of the people to replace a “wicked” monarch.

Historian Aaron N. Coleman observed in his work, *The American Revolution, State Sovereignty, and the American Constitutional Settlement, 1765-1800*, that after the results of the constitutional settlement in 1688, the colonists were placed in a constitutional dilemma.

“Drawing upon their own colonial experiences with divided government, colonial Americans made a constitutional and ideological argument for a decentralized imperial constitution with sovereignty divided between Parliament and the colonies. Their choice of this second of the two options brought controversy, conflict, and ultimately, independence. By 1776, Parliament’s increasingly aggressive attempts to assert sovereignty over the colonies led to the colonial abandonment of divided sovereignty and instead to the argument that sovereignty rested with King-in-Colonial-Assembly.”¹³⁶

Furthermore, the colonists held that the augmentation of the ancient constitution that created an overwhelming powerful Parliament had actually circumvented the purpose of the constitution. All Englishmen understood that the ancient constitution was created and developed over time as a social contract that created a bastion of protection for the people from an oppressive government ruling in an arbitrary manner.¹³⁷ Legal historian John Philip Reid observed that the colonists held firmly to the notion that the ancient constitution protected their,

“...customary, prescriptive, contractarian rights against the onslaught of government’s assertions of arbitrary power,” which could be “...the caprice of a single ruler, an

¹³⁵ *Ibid.*, 1.

¹³⁶ Coleman, 17.

¹³⁷ Reid, 51, “...the [English] constitution of customary rights as argued for in the eighteenth century had limits on supremacy,” 56; Sherry, 1128-1129. “The spirit of the English tradition of constitutionalism was best exemplified for the Americans in the theories of Coke and Bolingbroke. These theories rested on three distinct premises: first, that some form of higher law-the British constitution-existed and operated to make void Acts of Parliament inconsistent with that fundamental law...”

oligarchy, or that of the fickle, unpredictable democratic majority, sometimes called the ‘mob.’”¹³⁸

When observing the newly transformed constitutional system of governance that instigated an ever-growing powerful Parliament over the colonies, it is apparent through the history of the US, the divisiveness concerning the issue of sovereignty between the state and national governments were of great concern. The seedbed of the argument regarding the proper placement of sovereignty that split the US in 1860-61 were sewn following the augmentation of the ancient constitution in 1688.

Stretching the Cords of Affection

Following the Glorious Revolution, England evolved from a small island country with a few colonial possessions into attaining one of the most powerful economies and militaries in the world. This expansion of England’s power and influence on the globe would prompt Sir George Macartney to observe the newly formed British Empire following its victory in the Seven Years War was, “...this vast empire on which the sun never sets and whose bounds nature has not yet ascertained.”¹³⁹ Macartney’s observation was solidified by considering three instances confirming the immenseness of the British Empire. Firstly, England and Scotland were transformed into the United Kingdom of Great Britain with the Acts of Union in 1707. Additionally, Great Britain was busy fostering a “blue water navy” to increase world colonization, as well as for defensive and offensive military purposes.¹⁴⁰ Thirdly, The British were confronted with the activity of the French and Spanish in North America with their attempt

¹³⁸ Reid, ix.

¹³⁹ Kevin Kenny, *Ireland and the British Empire* (Oxford: Oxford University Press, 2004), 72. Note: The quote was taken by Kenny from, Sir George Macartney, *An Account of Ireland in 1773 by a late Chief Secretary of that Kingdom* (London, 1773), 55.

¹⁴⁰ Daniel A. Baugh, “Great Britain's 'Blue-Water' Policy, 1689-1815,” *The International History Review* 10, no. 1 (February, 1988), 38.

to expand their own colonization east of the Mississippi River to the lands along the western side of the Appalachian Mountains, as well as south and west of the colony of Georgia.

Consequently, Great Britain would be forced to confront the nations of France, Spain and their allies in what has been arguably observed as being the first world war.¹⁴¹

Although the British forces were victorious in the Seven Years War, the expense of victory would prompt the British Parliament to look to the colonies to aide in tackling the relief of the expenses in defending them [colonies] during the war. The acts of Parliament to address this situation would not be well received by the colonists. They held that the behavior of Parliament, and the kings acquiesce to the British representative body, had led to arbitrary acts that were in violation of the social contract embodied in the English ancient constitution. This unconstitutional behavior resulted with the individual colonies establishing their first national representative assembly. A late nineteenth century history textbook in Georgia observed that the national assembly was formed to “... take into consideration the state of all the colonies, and to consult for the general welfare.”¹⁴² The second called national assembly of the colonies would ultimately sever the bonds of sovereignty and establish an independent confederation of states in North America. The formation of this confederacy would hold tightly to the idea of a binding social contract between the states that would instigate the first soundings of American Federalism.

¹⁴¹ Colin G. Calloway, *The Scratch of a Pen: 1763 and the Transformation of North America* (Oxford: Oxford University Press, 2006), 3-4, 12.

¹⁴² Alexander Stephens, *A Compendium of the History of the United States from the Earliest Settlements to 1872* (New York: E. J. Hale & Sons, 1874), 162. Note: At the time Stephens wrote this textbook, he was accepted at the University of Georgia as a “Professor Elect” of History and Political Science.

Chapter 2

*“To make any loans to the king against his will”*¹⁴³

Whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any further obedience, and are left to the common refuge which God hath provided for all men against force and violence.¹⁴⁴

---John Locke
1690

In the autumn of 1754, a British force defeated a small company of French soldiers in the wilderness of what is now southwestern Pennsylvania. Following the victory, the British marched farther west to establish a military presence to confront the French and Native American forces attempting to secure French colonization west of the Appalachian Mountains. The young and inexperienced British commander ordered the construction of a fortification that was so dismally built and located, that the French and their native allies were able to fire unexposed into the fortification. Twenty-two years before the British colonies in North America declared independence from Great Britain, the French captured the contingent of British regulars and Virginia militiamen under the command of Major George Washington at Fort Necessity. Following the terms of surrender, Major Washington was compelled to march his command out of the fort in humiliation. Washington's actions on the western frontier in 1754 assisted in bringing British North America into the world conflict known as the Seven Years War, which in the colonies, was popularly known as the French and Indian War.¹⁴⁵

¹⁴³ “Petition or Right,” Frohnen, ed., *The American Republic*, 150.

¹⁴⁴ Locke and Wootton, ed., 374, 19:§222.

¹⁴⁵ John E. Ferling, *The First of Men: A Life of George Washington* (Knoxville, TN.: The University of Tennessee Press, 1989), 25-29.; Lawrence Henry Gipson, “The American Revolution as an Aftermath of the Great War for the Empire, 1754-1763,” *Political Science Quarterly* 65, no.1 (March, 1950), 86. “[The French and Indian War] has been employed by most Americans ever since the early days of our Republic and therefore has the sanction of long usage

Results of Seven Years War

The groundwork for American independence was laid in response to several events subsequent to the British victory in the Seven Years War and the remapping of North America.¹⁴⁶ Following the world conflict, the colonists held hopes of attaining significant political, social and economic prosperity. The colonists were destined to suffer great disappointment in these three areas. Historian Colin G. Calloway described the experience of the colonists following the French and Indian War as, “The [British] government in 1763 began to impose order, controls, and limits on its colonies at the very time when colonists hoped for increased freedom, opportunities, and expansion.”¹⁴⁷ The lives of the British colonists in North America were destined to be altered in 1763 and would continue for the following thirteen years.

The instigation of the troubles was prompted by the conditions of the 1763 Treaty of Paris. Resulting from their defeat, France was forced to abandon their holdings in North America west of the English colonies to the Mississippi River. The French would take many years to comply with this stipulation, however, this condition of the treaty was prodigious news to the colonists as many had looked to the western frontier as a source of financial boon for pioneers, land speculators and investors for further exploration, settlement, and development.¹⁴⁸

as well as the sanction of American national tradition assigning, as does the latter, to the Revolutionary War a position of such commanding importance as to make all other events in American history, preceding as well as following it, quite subordinate to it.”

¹⁴⁶ See Map I:1

¹⁴⁷ Calloway, 11.

¹⁴⁸ *Ibid.*, 60-62. “The movement of people looking for land gave those with lands to sell a rich opportunity. British victory removed the ‘French and Indian menace’ that Anglo-Americans had long-regarded as their only barrier to settlement in the West. Beginning in 1745, ‘the gentry-dominated Executive Council of Virginia gave gentry-owned land companies preliminary grants to millions of acres west of the Appalachians,’ but the war had prevented the companies from acquiring and selling the land.” Note: The internal quote in this passage is provided by Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999), 7-8.; Robert Middlekauff, *The*

With the French being forced to abandon their colonial efforts in this region, it appeared that the colonists were on the threshold of enjoying many years of prosperity and peace due to their victory over France and her allies. This euphoria was short lived, however, when King George III enacted the Royal Proclamation of 1763, which forbade any westward expansion of the British colonies past the Appalachian Mountains.¹⁴⁹ This edict from George III was not intended to inflame the colonist's in their desire for westward expansion, but was aimed at rewarding the Native Americans who fought alongside the British during the Seven Years War with the prior promise of returning or affirming their ancestral lands.¹⁵⁰ To the colonists, the king's purpose for the proclamation was not of importance, but the encroachment upon their liberties ensured in the ancient constitution through their representation in the colonial governments was of enormous significance. The colonies had understood that the Treaty of Paris essentially extended their western boundaries past the Appalachian Mountains to the Mississippi River.¹⁵¹ The colonists further believed that the decisions of how to settle their new lands would be left to their own individual elected colonial assemblies. This idea had been apparent as many of the colonial assemblies had already been allowing its citizens to venture west of their borders to

Glorious Cause: The American Revolution, 1763-1789 (New York: Oxford University Press, Inc., 2005), 154. "Other business interests, among them the Illinois Company, one of whose promoters was Benjamin Franklin, urged that large grants of land be made to them and that at least two colonies be carved out of the West to assure orderly settlement and the protection of profits."

¹⁴⁹ Calloway, 92.

¹⁵⁰ Eugene Del Papa, "The Royal Proclamation of 1763: Its Effect upon Virginia Land Companies," *The Virginia Magazine of History and Biography* 83, no. 4 (October, 1975), 406. "One of the major sources of discontent among the Indian tribes of colonial North America was the illegal encroachment of English settlers upon their land. In an endeavor to eradicate this problem, George III issued a royal proclamation in 1763 which expressly forbade his subjects in the colonies from settling west of a line drawn along the crest of the Appalachian Mountain range from Nova Scotia in the North to Georgia in the South."

¹⁵¹ Holman Hamilton, ed., *Three American Frontiers: Writings of Thomas D. Clark* (Lexington, KY.: University Press of Kentucky, 1968), 9-10 & 12.

reestablish the fur trade that the ousted French had been conducting for many years.¹⁵² For the colonists, they held the right of westward exploration and expansion, and a good deal of the colonial pioneers simply ignored the king's proclamation and packed their belongings and headed west to the frontier.

Many of the colonial investors that were looking westward for land speculation, such as George Washington, were not as concerned as the majority of the colonials had been over George III's edict. Washington counted on the fact that the royal proclamation was nothing more than a short-term appeasement for the Native American tribes and would be eventually rescinded.¹⁵³ There was simply too much land and wealth for the English Empire across the Appalachians to cede the lands to the indigenous tribes. In just five years, Washington would be proven correct with the establishment of the First Treaty of Fort Stanwix that created the Indian Boundary Line of 1768,¹⁵⁴ which was "...located further westward than the Proclamation Line of 1763 and superseding it, opened up for settlement large areas of the formerly proscribed trans-Appalachian region."¹⁵⁵ This new royal act, however, did not diminish the colonist's belief that they alone held the power of expanding their colonies through passing legislation in their own assemblies. The King-in-Colonial Assembly was being stretched by George III through ignoring the colonial assemblies and arbitrarily placing edicts upon the colonies. Although loyal Englishmen, the colonists held that their sovereignty was being overrun by King George's capricious decisions.

In as much as the colonists were as disobedient to the Proclamation of 1763 as the French were to the 1763 Treaty of Paris concerning the lands west of the Appalachians, George III had

¹⁵² Middlekauff, 154.

¹⁵³ Del Papa, 406.

¹⁵⁴ See Map I:2.

¹⁵⁵ Del Papa, 407.

inadvertently brought the first of many unpopular acts upon the colonies.¹⁵⁶ The following years would bring upheaval fueled by clashes between the colonies and the mother country over the constitutionality of sovereignty. Namely, the activity of applying oppressive arbitrary power from a source where the colonists believed held no constitutional placement of sovereignty over the Englishmen of North America: the English Parliament.

Financial Consequences of Victory

While Great Britain was triumphant in the Seven Years War, the conquest was achieved at an immense monetary cost, notably with the fighting that occurred in North America.¹⁵⁷ Essentially, Great Britain fought the war on credit, and subsequently, the country was experiencing considerable debt and the royal treasury was nearly empty.¹⁵⁸ Parliament was in the precarious position of paying for the subsequent peace that additionally held the

¹⁵⁶ Gipson, 94. “The Proclamation has been represented not only as a blunder, the result largely of carelessness and ignorance on the part of those responsible for it, but also as a cynical attempt by the British ministry to embody mercantilistic principles in an American land policy that in itself ran counter to the charter limits of many of the colonies and the interests in general of the colonials. Nevertheless, this view of the Proclamation fails to take into account the fact that it was the offspring of the war and that the trans-Appalachian aspects of it were an almost inevitable result of promises made [by the British] during the progress of hostilities. For both in the Treaty of Easton in 1758 with the Ohio Valley Indians, a treaty ratified by the [British] Crown, and in the asseverations of such military leaders as Colonel Bouquet, these Indians were assured that they would be secure in their trans-Appalachian lands as a reward for deserting their allies, the French.”

¹⁵⁷ Peter David Garner Thomas, *George III: King and Politicians 1760-1770*, (Manchester, UK: Manchester University Press, 2002), 105. “The Parliamentary debates of 1764 reflected an assumption of the right to tax America, and a unanimity of opinion that the colonies ought to contribute to the cost of the American army.”; Gipson., 87.; Larry Neal, “Interpreting Power and Profit in Economic History: A Case Study of the Seven Years War,” *The Journal of Economic History* 37, no. 1, (March, 1977), 32. “The Seven Years War set new heights for both total and annual war expenditures. The financial counterpart of this pressure is the increased share of public expenditure which had to be covered by the creation of debt close to 40 percent compared to the average 30 percent for previous major wars.”

¹⁵⁸ Gipson, 97-98.; Coleman, 23.; Middlekauff, 61. “As of January 5, 1863, according to [British] Exchequer accounts, the funded debt amounted to £122,603,336 – an enormous sum. Moreover, it carried an annual interest of £4,409,797. A year later the debt was almost £7,000,000 larger, and by January 1766, six months after Grenville left office, it had increased another £7,000,000.”

responsibility of protecting all of the British holdings in the world. The requirement of an additional source for Great Britain to pay for the war was essential, and Parliament saw that the American colonies were responsible, as well as rife with opportunities, of assisting in refilling the mother country's coffers.¹⁵⁹

It should be noted that the taxing policies intended to subsidize the Seven Years War were first experienced in the mother country prior to Parliament looking to the colonies for relief. Several taxing measures were passed in Parliament that directly taxed landowners. These types of taxes that would eventually be laid on the colonies had already been experienced in England.

“The poor did not feel the taxes on all these items, but the gentry and some of the middling sort did, and on the houses, deeds, offices, brandy, and spirits, most of which paid 25 percent of their value. If a man owned a house, he not only paid a tax on it, but on every window in it; if he decided to take the air in his carriage, perhaps fleeing the tax collector, he rode with the depressing knowledge that the carriage too was taxed.”¹⁶⁰

Furthermore, although not all taxes laid on the English landowners were felt directly on the common Englishman, there were several taxing measures that did affect commonly consumed articles. Items such as beer, tobacco, sugar, paper, linen and newspapers were taxed, and this taxation directly involved the lives of nearly every person residing in England.¹⁶¹ Although the colonists were aware that the people of England were experiencing financial hardships to pay for the war, the Englishmen were taxed constitutionally by their consent in a body compiled of duly

¹⁵⁹ Gipson, 96. “The British ministry, thus confronted with guaranteeing the necessary security for the North America, which it was estimated would involve the annual expenditure of from three to four hundred pounds for the maintenance of ten thousand troops – according to various estimates made by General Amherst and others in 1764 and to be found among the Shelburne Papers was impelled to raise the question: Should not the colonials be expected to assume some definite part of the cost of this.”

¹⁶⁰ Middlekauff, 61. Note: Middlekauff gives credit to this quote in footnote 15 to Lawrence Henry Gipson, *The British Empire Before the American Revolution*, volume x (New York: Knopf, 1961), 200.

¹⁶¹ *Ibid.*, 61.

elected representatives.¹⁶² The colonies held that this was not the case in placing revenue raising measures in North America to fund the British war debt.

The programs of attempting to refill the treasury of Great Britain through the auspices of the colonies began with a series of taxing efforts that would promptly trouble the Englishmen of North America. Remembering that the colonists held that their sovereignty did not lie with Parliament, but with their own colonial legislatures that held the idea of King-in-Colonial Assembly, the colonists felt that Parliament held no constitutional endorsement to directly tax the colonies.¹⁶³ Furthermore, the colonists felt they had good reason to address Parliament's arbitrary taxation measures. The ancient constitution was a social contract put in place to prevent tyrannical rule, however, Parliament was ignoring their constitutional obligation of consent through direct representation from the colonies. Consequently, since the colonies held no representatives in Parliament, the colonists were fearful that the lack of representation would further produce legislation in Parliament to circumvent their [colonist's] English liberties.¹⁶⁴

¹⁶² Stephen Hopkins, "The Rights of Colonies Examined," 1764, Hyneman and Lutz, eds., 45. "This glorious constitution, the best that ever existed among men, will be confessed by all to be founded by compact and established by consent of the people. By this most beneficent compact British subjects are to be governed only agreeable to laws to which themselves have some way consented, and are not to be compelled to part with their property but as it is called for by the authority of such laws. The former is truly liberty; the latter is really to be possessed of property and to have something that may be called one's own."

¹⁶³ Greene, 52. "[The] colonial leaders certainly understood that their precise relationship to Parliament remained unsettled. Benjamin Franklin spoke for many colonists during the Stamp Act crisis when he questioned the extent of Parliament's jurisdiction over the colonies. 'Planted in times when the powers of parliament were not supposed so extensive as they are become...in lands and countries where the parliament had not then the least jurisdiction.'"; Reid, 41. "The doctrine of consent to taxation was the bone and marrow of the revolutionary controversy, involving not only one of the most fundamental principles of English constitutional history, but invoking aspects of all the other maxims of law that were debated, including the original contract, the second original contract, the authority of precedent and analogy, and the binding force of custom."

¹⁶⁴ Coleman, 26, "The colonial argument for actual representation went deeper than the issues of taxation and legislation. The colonies were connecting actual representation and the authority of

As has been previously mentioned, the end of the French and Indian War looked to be the inauguration of a long period of economic prosperity for the colonists. This prospect of financial boon would present itself through opening trade opportunities to ports around the world without interference, as well as the availability for westward expansion that would promote the colonies in North America to be the greatest of all the holdings of the British Empire. The prediction of an economic windfall for the colonies would not be realized following the war. What lay ahead for the colonists was a period of constitutional disagreements, financial oppression, and ultimate ancestral dissociation.

Consent Through Representation

In virtually every public and private primary through secondary classroom in the US, from the founding of the country to the present, each student has been taught that the cause for independence from Great Britain was the arbitrary taxing measures applied on the colonies with the response of the colonists with the declaration of “no taxation without representation!” Although the path to independence held additional inroads, this traditional teaching in the American schools, although at times taken too literal by a number of contemporary arm chair political scientists and politicians,¹⁶⁵ is correct in understanding how the colonies felt Parliament had violated the ancient constitution and broken the social contract with their fellow Englishmen

their legislature to the protection of traditional English rights. The corporate authority of the legislature protected the liberties of the individuals. Whereas Parliament was the protector of liberty in England, the colonies assigned this role to their individual legislatures.”

¹⁶⁵ Reid, 42. “Occasionally, an American politician or individual American citizen is said to complain that they or someone else is being taxed ‘without representation,’ which, it is added, violates the principle for which Americans fought the Revolution. The contention is not legally accurate. The colonists did not claim the doctrine of consent to taxation as an American right. It had been a minor aspect of colonial constitutional law before 1765, and it would not be law later under the United States Constitution. Taxation by consent was a British not an American rule.”

across the Atlantic.¹⁶⁶ It should be noted that the colonists had never been allowed to send delegates to enjoy direct representation in Parliament. When the colonists pleaded to be allowed to send representatives, the response from Parliament, as well as King George III, was that the colonies were *virtually* represented by King-in-Parliament, so the need for colonial representation was unnecessary.¹⁶⁷ This explanation held an extremely difficult constitutional interpretation for the colonists.

“This is the Sum of what you advance, in all the Pomp of Parliamentary Declamation, to prove that the Colonies are represented in Parliament, and therefore subject to their Taxation; but notwithstanding this Way of reasoning, I cannot comprehend how Men who are excluded from voting at the Election of Members of Parliament can be represented in that Assembly, or how those who are elected do not sit in the House as Representatives of their Constituents. These Assertions appear to me not only paradoxical, but contrary to the fundamental Principles of the English Constitution.”¹⁶⁸

The colonists overwhelmingly held that the ancient constitution guaranteed the right of representation to protect their rights and liberties as Englishmen.

The colonial opinions of representation dated to the previously mentioned creation of Virginia’s original elected assembly in 1619. When King James I had sent the first royal governor to Virginia to oversee the colony and the representative government, the king declared that the Virginians were all Englishmen who deserved all the liberties and freedoms that their fellow Englishmen enjoyed in the mother country. Although significant to the colonists in

¹⁶⁶ Bailyn, *Ideological Origins*, 161-162. “The question of representation was the first serious intellectual problem to come between England and the colonies, and while it was not the most important issue involved in the Anglo-American controversy (the whole matter of taxation and representation was ‘a mere incident,’ Professor McIlwain has observed, in a much more basic constitutional struggle), it received the earliest and most exhaustive examination and underwent a most revealing transformation.” Note: Bailyn is referring to Charles H. McIlwain’s work “The Historical Background of Federal Government,” *Federalism as a Democratic Process* (New Brunswick, N.J., 1942), 35.

¹⁶⁷ Reid, 45.

¹⁶⁸ Richard Bland, “An Inquiry Into the Rights of the British Colonies,” 1766, Hyneman and Lutz, eds. 63.

Virginia, this statement by James should not be observed as a watershed moment of English constitutional sovereignty. The founding of the Jamestown settlement was established by an English company, composed of English investors, who were in desperate need of direct local governing to continue to exist and the Englishmen of Jamestown believed that they should be governed with the constitutional equality as Englishmen of the mother country. Jack Greene observes this situation as the following:

“For English people migrating overseas to establish new communities of settlement, the capacity to enjoy – to possess – the English system of law and liberty was thus crucial to their ability to maintain their identity as English people and to continue to think of themselves and be thought of as Englishmen.”¹⁶⁹

This lack of understanding from Parliament and the monarchy would inspire the colonies to create the first national representative body in the colonies with the Stamp Act Congress in the fall of 1765.

English Tradition of Taxation

The customary taxation measures in England were instigated by the monarchy requesting funds from Parliament, through the House of Commons, which held the constitutional power to create and assess taxes on the subjects of England.¹⁷⁰ In the colonies, revenue raising measures were handled by their colonial assemblies, with the approval of the royal governor who informed England of the measures and were passed by majority consent. This is not to say that all colonists were fond of the measures, however, the taxes were not raised arbitrarily. The colonists were properly represented in their colonial legislatures as the representative bodies adhered to the ancient constitution. In observing the processes on both sides of the Atlantic, all Englishmen were taxed by representation, not by arbitrary monarchical application, or by a

¹⁶⁹ Greene, 8.

¹⁷⁰ Reid, 42.

tyrannical royal governor. The unconstitutional process of taxation in the colonies bolstered the frustration of the colonists in observing how the crown and Parliament had continually lacked the understanding that the colonies held the right of representation in England.¹⁷¹

It should also be noted that prior to 1763, the mother country had never taxed the colonies directly on specific goods, but only on navigational issues that assessed duties and fees collected in the colonial ports.¹⁷² When the decision was made by Parliament through the influence of First Lord of the Treasury George Grenville to tax the colonies for the purpose of funding their protection from foreign enemies,¹⁷³ Grenville attempted to find avenues to levy the measures in a way he believed would create the least amount of financial burden on the colonists.¹⁷⁴ What Grenville could not foresee, with attempting to lightly tax the colonies, was the fact that the colonists felt that any type or amount of tax levied by Parliament was an attack on colonial sovereignty.

¹⁷¹ Greene, 71. "Beginning with their earliest protests against the proposed Stamp Act, they [colonists] insisted that no community of Englishmen and their descendants could be taxed without their consent, an exemption they claimed 'as their Right' and not 'as a *Privilege*.'" Note: The internal quote of this passage is taken from "New York Petition to the House of Commons," October 18, 1764.; Reid, 41-43.

¹⁷² Philip Lawson, "George Grenville and America: The Years of Opposition, 1765 to 1770," *The William and Mary Quarterly* 37, no. 4 (October, 1980), 571.; Gipson, 95-96.; Coleman, 23.; Frohnen, *American Republic*. 167. "Americans had always been 'taxed' through trade regulations that restricted domestic manufacturing and decreed that all goods must go through British ports on British ships, but Americans had not paid specific taxes on specific goods."

¹⁷³ Middlekauff, 62. "George Grenville did not intend to collect money from the colonies to help retire the enormous debt the government carried, or even the interest on it. But he did think that they should help support the troops provided for their defense; he did not propose that they should bear all other charges for troops stationed in America, however. American defense was of interest to the empire – not just to Americans – and so Britain herself would help carry the burdens of keeping troops in the wilderness."

¹⁷⁴ Lawson, 561. "He [Grenville] had a firm grasp of the issues raised by colonial protestors in this period and not only criticized government policy but also sympathized with certain claims made by the Americans. Too often these facts have been ignored or neglected. Grenville's reputation has suffered from the legacy of the Stamp Act, which has clouded judgment of his role as an opposition member of Parliament."

The first attempt at raising revenue in the colonies proposed by Grenville, was actually intended to raise revenue in England as well as in her colonies since "...the British Empire was being very ineffectually operated, and the decision was made to reorganize the Empire so as to lessen the costs that were being borne by Great Britain."¹⁷⁵ This revenue raising measure was not actually a direct tax on the colonies in North America, nor on the other subjects of George III. The act began as a revenue generator that was being revisited on a decree that dealt with customs regulations which had been virtually ignored for nearly thirty years. In considering the colonies, it should be appreciated that neither the original measure, nor the edict that replaced it, was an arbitrary act passed by Parliament. Laws and decrees enacted by Parliament regarding trade in the colonies were at times bothersome, such as the lucrative pursuit of merchant inspired smuggling, but the colonists could not protest that this type of revenue enhancement was unconstitutional.¹⁷⁶ The customs laws were not direct taxes aimed at the individual colonist. Grenville also held that the Sugar Act would be a fair source of attaining revenue for the English treasury without negatively effecting the day-to-day financial lives of the subjects of the British Empire.¹⁷⁷ For the colonists in North America, however, there was destined to be unintended consequences of the measure that Grenville could not have forecasted.

The Sugar Act of 1764 was essentially a revision of the Molasses Act of 1733. The original customs law was not passed to raise revenue, but was "...designed to influence the pattern of trade rather than to raise revenue for the Crown."¹⁷⁸ The new measure, however, was designed to be a revenue stream for Great Britain on colonial, as well as British merchants who

¹⁷⁵ Richard J. Trethewey, "The Economic Burden of the Sugar Act," *The American Economist* 13, no. 1 (Spring, 1969), 63.

¹⁷⁶ Coleman, 19-20.

¹⁷⁷ Allen S. Johnson, "The Passage of the Sugar Act," *The William and Mary Quarterly* 16, no. 4 (October, 1959), 509.

¹⁷⁸ Trethewey, 64.

chose not to import molasses from English held regions, but instead imported foreign molasses from such places as the French West Indies.¹⁷⁹ The merchants who elected to openly import foreign molasses were forced to pay a six pence per gallon penalty collected at their English ports of destination. In the colonies, the Sugar Act re-inspired vast smuggling operations by colonial merchants in which Grenville attempted to eradicate by applying the force of the Royal Navy to stop and seize ships holding foreign cargos of sugar and molasses.¹⁸⁰ The navy had the authority to detain the vessels in question and attempt to trace the cargos back to their original ports of origin and confront the merchants who sponsored the activity. In an attempt to “...remove the incentive for this smuggling, Grenville recommended reducing the duty on foreign molasses, from six pence to three pence a gallon, a measure he believed would benefit both trade and the royal treasury.”¹⁸¹ For the colonial merchants, three pence per gallon were just as detestable as the six pence, and the shippers could still make greater profits from taking the risk of smuggling foreign sugar and molasses than trading with other holdings of the British Empire.¹⁸²

The tightening of the illegal activity on the high seas and in the colonial ports enforced under the Sugar Act, which did not occur with the old Molasses Act, had frightened colonial customs officers due to their years of accepting bribes from colonial merchants and ignoring falsified ship’s manifests.¹⁸³ Numerous vessels were held in colonial ports absent the

¹⁷⁹ Middlekauff, 67.

¹⁸⁰ Johnson, 511. “... the Molasses Act of 1733 had been ‘for the most part either wholly evaded or fraudulently compounded’ and [the Sugar Act] made two recommendations: first, that more drastic penalties for smuggling should be invoked; and, second, that revenue could be augmented if duties were lowered so as to ‘diminish the temptation to smuggling.’”

¹⁸¹ Calloway, 13.

¹⁸² Johnson, 513.

¹⁸³ Calloway, 13. “Grenville realized he could generate some increase in revenue just by tightening up customs laws that were already on the books. Royal customs collectors were

opportunity to unload their lucrative illegal cargos. This activity had a significant effect on rum manufacturing costs and sales due to the lack of the sugar and molasses required for production.¹⁸⁴ As scarcity of the necessary ingredients to manufacture rum escalated, the domestic barrel price of the beverage increased. Although the Sugar Act had no direct tax levied upon the citizenry, to the disappointment of Grenville, the statute swiftly affected the day-to-day lives of the colonists. The upsurge of the production costs of rum, due to the scarcity of the ingredients, had increased the wholesale prices of sugar and molasses. This situation had forced the enjoyment of a mug of rum at the local tavern to become an extravagance. As rum consumption decreased, the downturn of business for the tavern owners resulted in a slowdown of purchasing barrels of rum. The influx of barrels of rum that sat in merchant warehouses forced the barrel price of rum for export to decrease below the price of manufacture.¹⁸⁵ Shipping merchants additionally lost capital by either paying for the English sponsored sugar and molasses or suffering fines, as well as the possibilities of the forfeiture of cargos and vessels of unsuccessful smugglers. The colonial economy had suffered a significant blow due to the applications and consequences of the Sugar Act and the colonists were becoming more aware of the influence that the mother country had on their economy as well as their politics.¹⁸⁶

The most egregious tax placed on the colonies sponsored by Grenville was the Stamp Act of 1765. Although this type of tax, just as the Sugar Act mirrored the thirty-year-old Molasses

ordered to do their jobs (rather than sit back and accept bribes) and Royal Navy warships patrolling American waters were ordered to clamp down on smuggling.”

¹⁸⁴ Trethewey, 64. “The colonists were particularly concerned over the fate of the rum industry in New England which carried on a flourishing trade with the Southern colonies, Newfoundland, and Africa. The tax on molasses threatened the rum industry since molasses is the most expensive component of rum, a gallon of rum requiring a gallon of molasses.”

¹⁸⁵ *Ibid.*, 67-70. Note: This source additionally contains graphs for assistance in assessing the colonial dilemma considering the Sugar Act.

¹⁸⁶ Arthur M. Schlesinger, *The Colonial Merchants And The American Revolution 1763-1776* (New York: Anthenum, 1968), 57-59.

Act, had been placed on the subjects of England prior to being enacted on the colonies,¹⁸⁷ the sharing of the tax burden between the colonies and the mother country would not eradicate the dissatisfaction concerning the unconstitutional behavior of Great Britain. The passage of the Stamp Act in Parliament would not be misinterpreted by the colonists; this was a direct tax on the unrepresented Englishmen of North America.¹⁸⁸ The significance of this tax confirmed the notion that George III in 1765 did not hold the same appreciation of the colonists as James I had in 1624 with determining that the colonist in North America held equal constitutional rights as their fellow Englishmen across the Atlantic. The colonists firmly believed that without direct representation in Parliament, the legislative body was acting unconstitutionally by assessing revenue measures without the consent of those persons responsible for paying the levies.

Historian Colin G. Calloway attempts to explain the opinions of the colonists in their role as Englishmen and their sentiments of the unconstitutional behavior of the Crown and Parliament following the taxing events subsequent of the French and Indian War.

“American colonists in 1763 took pride in being British but ‘their rights in relation to the mother country had never come up for close examination, and hence no one knew exactly what they were.’ They had not raised a constitutional challenge to Great Britain before, but the financial and imperial crisis of 1763 forced the question of who had what rights and what authority.’ Colonial assemblies had been created by royal and proprietary charter to rubber stamp executive recommendations, but during the long struggles against France they had been left pretty much to their own devices and had acquired a fair amount of autonomy. By 1763 they had evolved into ‘miniature parliaments, jealous of their privileges and immunities, proud of their power to initiate and pass legislation.’

¹⁸⁷ Thomas, 104-105. “When Grenville opened his budget on 9 March he also announced his intention to raise additional colonial revenue by stamp duties, to be levied on legal documents, newspapers and other items, as they had been in Britain since the seventeenth century.

¹⁸⁸ Coleman, 23. “While the Sugar Act was an indirect tax, in that if one did not buy molasses or the rum distilled from molasses, they did not pay the tax, the same could not be said of the Stamp and Townshend Acts. Both taxed the colonists directly by forcing them to pay a tax on most paper products, including legal documents, newspapers, and even dice and on other goods such as paint, lead, and paper.”

Colonists expected to share the rights and privileges of British subjects, including the right to resist taxation.”¹⁸⁹

The colonial reaction to the Stamp Act had two significant political results. The first was a colonial assembly being disbanded by their royal governor for confronting the act. The second event was the colonists calling for a national assembly to address Great Britain’s arbitrarily enacted revenue measures.

Colonial Response

In the late spring of 1765, members of the Virginia House of Burgesses brought the issue of the Stamp Act to the floor of their proceedings. The most outspoken of the Virginians, Patrick Henry, was delivering a fiery oration to the oppressive nature of Great Britain’s legislation on Virginia and her sister colonies. Henry had already forged his reputation as an outspoken critic of the unconstitutional activity of Parliament in the Virginia legislature. The particular event that produced Henry’s reputation concerning his opposition to Great Britain’s unconstitutional behavior on the colonies was proclaimed in a speech delivered in the closing arguments of a court case in December 1763, in what would be known as the Parsons Case.

The Parsons Case had originated with the practice of the clergy of Virginia being paid in tobacco due to the scarcity of specie in the colony. As tobacco was used as currency in Virginia, just as whiskey was in western Pennsylvania, this type of salary paid to the Anglican leaders in Virginia had dated nearly to the origination of the colony.¹⁹⁰ In 1758, several previous growing

¹⁸⁹ Calloway, 13-14. Note: the first quote in Calloway’s passage is provided by Edmund S. Morgan and Helen M. Morgan, *The Stamp Act Crisis* (Chapel Hill: University of North Carolina Press, 1951), 5-6 & Harry M. Ward, *The American Revolution: Nationhood Achieved, 1763-1788* (New York: St. Martin’s Press, 1995), 12. The second quote is from Norman K. Risjord, *Jefferson’s America, 1760-1815* (Madison, Wis.: Madison House Publishers, 1991), 12. The third quote is from Jack M. Sosin, *Whitehall and the Wilderness: The Middle West in British Colonial Policy, 1760-1775* (Lincoln: University of Nebraska Press, 1963), chapter 4.

¹⁹⁰ Middlekauff, 82.

seasons produced a poorer product, which in turn affected the domestic market price of tobacco. This downturn in tobacco prices subsequently reduced the salary of the clergymen. In an effort to assist the clergy with their plummeting salaries, the Virginia legislature adopted the Two-Penny Act which guaranteed that the price per pound of tobacco paid to the clergy would be frozen at two pennies, which was problematic, as the average market prices had increased from the previous lower amounts to a fluctuation of between four and six pence per pound.¹⁹¹ The act was prodigious news for the Anglican leaders if the tobacco prices stayed low, but when the market value rose, the increase in price per pound was not passed on to the salaries of the clergy. The Anglican ministers felt that the Two Penny Act was unfair and appealed to Great Britain for assistance. The British courts overturned the House of Burgesses legislation and additionally advised the clergy to sue for their lost wages. A clergyman did in fact file suit against his vestry and was victorious.¹⁹² This ruling incensed Henry, the attorney for the vestry, to the point that he declared in his closing statement in the case that England's interference in the affairs of the colonies, had produced a crisis "... that a King by annulling or disallowing acts of so salutary a nature, from being Father of his people degenerated into a Tyrant, and forfeits all right to his subjects' obedience."¹⁹³

In his response to the Stamp Act in the Virginia House of Burgesses, Henry presented to the colonial assembly a series of resolutions for consideration entitled the Virginia Stamp Act Resolutions. The text of the document declared Henry's belief in the colonist's constitutionally affirmed rights as the following:

¹⁹¹ "The Parsons' Cause Trial: 1763 - The Suit, Suggestions For Further Reading," Law Library - American Law and Legal Information, <http://law.jrank.org/pages/2356/Parsons-Cause-Trial-1763.html>.

¹⁹² *Ibid.*

¹⁹³ Patrick Henry, "Parson's Cause Speech, December 1, 1763," Red Hill, The Patrick Henry Memorial Foundation, <https://www.redhill.org/speech/parsons-cause-speech>.

“Resolved, that the first adventurers and settlers of His Majesty's colony and dominion of Virginia brought with them ... all the liberties, privileges, franchises, and immunities that have at any time been held, enjoyed, and possessed by the people of Great Britain.”

“Resolved, that by two royal charters, granted by King James I, the colonists aforesaid are declared entitled to all liberties, privileges, and immunities of denizens and natural subjects to all intents and purposes as if they had been abiding and born within the Realm of England.”

“Resolved, that the taxation of the people by themselves, or by persons chosen by themselves to represent them, who can only know what taxes the people are able to bear, or the easiest method of raising them... is the only security against a burdensome taxation, and the distinguishing characteristic of British freedom, without which the ancient constitution cannot exist.”

“Resolved, that His Majesty's liege people of this his most ancient and loyal colony have without interruption enjoyed the inestimable right of being governed by such laws, respecting their internal policy and taxation, as are derived from their own consent... has been constantly recognized by the kings and people of Great Britain.”¹⁹⁴

After much debate, the House of Burgesses adopted Henry's resolutions. The royal governor of Virginia, Francis Fauquier, was not pleased with the resolutions and refused to allow its publication in Virginia newspapers. The document, however, was eventually leaked to all of the colonies. In response to the furor in the legislature due to Henry's resolves, Fauquier would only allow a session of the body to be called when the royal governor deemed that it was absolutely necessary.¹⁹⁵ When the activity reached the other colonies concerning Fauquier's response to Henry's resolves, the colonists determined that a national body should be summoned to address the arbitrary taxing measures of the Stamp Act.

The Stamp Act Congress was summoned and began meeting in New York City in October 1765. Following the deliberations of the delegates, the congress produced a document

¹⁹⁴ “Virginia Stamp Act Resolutions, May 30, 1765,” The Roy Rosenzweig Center for History and New Media, *George Mason University*, http://chnm.gmu.edu/loudountah/resources_files/seipt_va-resolutions.pdf.

¹⁹⁵ Middlekauff, 167. “Governor Francis Fauquier, who absorbed the meaning of the Virginia Resolves, now saw the Burgesses as virtually a seditious body and prudently refrained from calling it except when he believed he had no choice.”

entitled "Declaration of Rights and Grievances" to be sent to Parliament. The text of the document holds the spirit of Henry's resolves as the congress was in agreement with the Virginian, however, in this case, it was not an individual colony decrying taxation without consent and representation, but the collective of the nine colonies attending the assembly spoke as a national body when it declared the following:

"That his Majesty's Liege Subjects in these Colonies, are entitled to all the inherent Rights and Liberties of his Natural born Subjects, within the Kingdom of *Great-Britain*."

"That it is inseparably essential to the Freedom of a People, and the undoubted Right of *Englishmen*, that no Taxes be imposed on them, but with their own Consent, given personally, or by their Representatives."

"That the only Representatives of the People of these Colonies, are Persons chosen therein by themselves, and that no Taxes ever have been, or can be Constitutionally imposed on them, but by their respective Legislature."¹⁹⁶

With the assertion of the resolves of the Stamp Act Congress declaring that the colonial legislatures are by default the correct constitutional source retaining the power to tax, George III and Parliament were in danger of breaking the social contract with the colonies regarding the constitutional issues of rule by consent, if their unconstitutional behavior persisted.¹⁹⁷ The "no taxation without representation" cry of the colonists was now placed in documentary form. Parliament responded by rescinding the Stamp Tax, however, future measures applied by Parliament on the colonies would make the Stamp Tax seem benign in comparison. As time progressed following Great Britain's response to the actions of the Stamp Act Congress, a greater feeling of subjugation from George III and Parliament took greater shape in the colonies. Words were not going to be enough for the colonists and when written protests took the form of

¹⁹⁶ "Declarations Of The Stamp Act Congress," Frohnen, ed., *American Republic*, 178.

¹⁹⁷ Greene, 152-153.

actions of protest, England would be incensed at the behavior of the colonists, especially in Massachusetts, as well as other pockets of dissent in English North America.

An Intolerable Parliament

When it was rumored that Parliament was considering repealing the Stamp Act, it is not inconceivable to believe that the colonists were anticipating that Parliament had finally recognized that the colonial assemblies were better suited in deciding measures of revenue enhancement as well as the overall well-being of the colonists. If any of the colonists had held this notion, they were greatly disappointed when the document that in part abolished the Stamp Act arrived in North America. The Declaratory Act of 1766 did indeed halt the activity of the Stamp Act, however, the interpretation of colonial sovereignty concluded by George III and Parliament cemented how the mother country would rule over their colonial possessions in North America in the future.

“That the said colonies and plantations in America have been, are, and of right ought to be, subordinate unto, and dependent upon the imperial crown and parliament of Great Britain; and that the King’s majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of Great Britain, in parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever.”¹⁹⁸

As this portion of the text was disappointing to the colonists in terms of their desired representation in Parliament, the following passage regarding colonial sovereignty was nothing less than incendiary.

“And be it further declared and enacted by the authority aforesaid, That all resolutions, votes, orders, and proceedings, in any of the said colonies or plantations, whereby the power and authority of the parliament of Great Britain, to make laws and statutes as aforesaid, is denied, or drawn into question, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever.”¹⁹⁹

¹⁹⁸ “The Declaratory Act,” Frohnen, ed., *American Republic*, 203.

¹⁹⁹ *Ibid.*, 204.

Parliament had informed the colonists that any legislation passed through their assemblies that held the slightest disagreement with Great Britain was from this point invalidated. With the passage of the Declaratory Act, the colonists had lost the right to freely legislate their own affairs.²⁰⁰

Following the appeal of the Stamp Act, the necessity of raising revenue for Great Britain's treasury, as well as the finances necessary to protect their empirical holdings in North America, did not evaporate.²⁰¹ A new official charged with raising revenue for Great Britain had emerged. Grenville had been removed from his post as Prime Minister following a turbulent time of infighting in his tenure that strained his relationship with George III.²⁰² In the new ministry of William Pitt the Elder, the office of the Chancellor of the Exchequer had been given to Charles Townshend, who would be forever linked to the most notorious of measures placed upon the colonies. These edicts sponsored by Townshend would be forever known in the history of the US as the Intolerable Acts.

Townshend proposed a package of colonial taxing measures to the House of Commons in 1766 that appeared to be nearly identical to the policies placed earlier on the subjects of England in response to the debts mounting during and following the Seven Years War.²⁰³ What would later be discovered, however, was that Townshend was not just attempting to pay down Great

²⁰⁰ Robert J. Chaffin, "The Declaratory Act of 1766: A Reappraisal," *The Historian* 37, no. 1 (November, 1974), 11. "[Edmund] Burke observed that before the passage of the Declaratory Act, 'the legislative rights of this country were not entire, but had certain restrictions and limitations.' Parliament had to have supreme authority in the colonies, however, 'to coerce the negligent, to restrain the violent, and to aid the weak.' Those goals were made possible with the passage of the Declaratory Act, he concluded, because it established 'on the firmest foundations a real, consistent, well-grounded authority in Parliament.'"

²⁰¹ Thomas, 162.

²⁰² *Ibid.*, 114-115.

²⁰³ Middlekauff, 61.

Britain's debt and fund the protection of the colonies. Townshend was also attempting to punish the colony of New York in its refusal to comply with the Quartering Act of 1765.²⁰⁴ This act was in response to the New York colonial assembly's rescinding of legislation passed to help purchase and provide war material, as well as providing housing for British soldiers fighting in the French and Indian War. When victory was achieved, the New York legislature felt there was no need to feed and house a large standing army within their midst.²⁰⁵ When England refused to recall the bulk of the troops following the war for the purpose of protecting the colonies, the New Yorkers decided to ignore the Quartering Act. This activity enraged Townshend as well as the majority of the MP's.

The new Chancellor of the Exchequer was additionally attempting to use the new revenues to pay colonial royal governors.²⁰⁶ This activity became another issue for the colonists regarding their sovereignty, as the colonial assemblies had been charged with raising and maintaining the revenue to pay the salaries of their governors. Townshend continued to inflame the colonists by setting up the American Board of Customs Collections.²⁰⁷ This board made up exclusively of men sent from England or English loyalists residing in the colonies was another blow to the colonial pleas of representation in deciding their affairs. Additionally, when the

²⁰⁴ Thomas, 168. "[William Pitt the Elder] Chatham's last pronouncement on America, before his political retirement, had been that Parliament, not the cabinet, should deal with New York's disobedience of the Mutiny Act. On 12 March the cabinet was presented with three policy proposals, and adopted Townshend's idea of suspending the New York Assembly until it complied with that Act: this was preferred to both [William Petty] Shelburne's direct action plan of billeting soldiers on private houses, and [Henry] Conway's suggestion of extra customs duties for New York."

²⁰⁵ Dora Mae Clark, "The American Board of Customs, 1767-1783," *The American Historical Review* 45, no. 4 (July, 1940), 781.

²⁰⁶ Robert J. Chaffin, "The Townshend Acts of 1767," *The William and Mary Quarterly* 27, no. 1 (January, 1970), 105.

²⁰⁷ Chaffin, "The Townshend Acts," 110. "To remedy the situation in America, the [British Customs] board proposed that 'Seven Commissioners be appointed, three of whom to constitute a Board, and to reside at Philadelphia, for managing the said American duties.'"

board would catch any tax dodgers or smugglers, the common courts were avoided, and these cases were sent to the royal vice admiralty courts for decision.²⁰⁸ It should be noted that the common courts of the colonies were required to have juries to decide the fate of the accused. The vice admiralty courts held no constrictions and the single judge who decided these cases were royal appointees.²⁰⁹ Additionally, the colonists protested that trying tax evaders and smugglers that resided or held their ship's origin in the colonies, should be tried in the colonies. This was not to be the case as the vice admiralty court was located in Halifax, Nova Scotia. This was a direct violation of the constitution and would be a point of contention recorded on the document that declared independence from Great Britain in the summer of 1776.²¹⁰

Colonists Transform into Rebels

What began as a small group of Bostonians calling themselves the Loyal Nine, had transformed into one of the most famous of colonial protest organizations; the Sons of Liberty.²¹¹ These men were not just pamphleteers and newspaper editorialists writing on the unconstitutional behavior of Great Britain over the colonies. These were men of action, or perhaps more succinctly to Great Britain, colonial terrorists who would stop at nothing to

²⁰⁸ Clark, 777.

²⁰⁹ Middlekauff, 65.; Reid, 41. "Prosecutions for violation of the Act[s]...were not cognizable at common law as constitutional custom dictated, but prosecuted in a vice-admiralty court with both law and act determined by an imperially-appointed judge applying civil, not common law. Americans thought this a horrendous violation of their inherited, owned constitutional rights and, as much as any other grievance, depredation of the jury right dramatized to people in North America how partial parliamentary legislation might be."

²¹⁰ Declaration of Independence, United States, July 4, 1776. "He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance." "He has affected to render the Military independent of and superior to the Civil power." "He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers." "For transporting us beyond Seas to be tried for pretended offences."

²¹¹ Benjamin L. Carp, "Terms of Engagement: Who Were The Sons of Liberty?" *CW Journal* (Winter, 2012), Colonial Williamsburg, <http://www.history.org/foundation/journal/winter12/liberty.cfm>.

confront British rule.²¹² At this point, the separation of feelings in the colonies developed into two distinctive camps: loyalists and patriots. To the colonists who felt Great Britain was acting arbitrarily against the colonies, the Sons of Liberty were patriots confronting an oppressive and unconstitutional British monarchy and Parliament. The colonial loyalists held that no matter what the edicts Great Britain imposed on the colonies, it was tantamount to treason to take any actions past peaceful appeals to address their political complaints. It depended upon the devotions of the individual colonist whether the Sons of Liberty were patriots or traitors and loyalists as dutiful Englishmen or sycophants of a tyrant.

Following the actions of the colonists in defying the Townshend Acts such as the taunting of British regulars that developed into nervous soldiers firing into a crowd of Bostonians, the blocking of vessels being unloaded with their taxable goods, to the midnight tossing of British taxable tea into waters of the Boston harbor, Great Britain had enough of the behavior of the colonists in Massachusetts.²¹³ Additional British troops arrived in Boston and the city's port was shut down. More British troops arrived to restore order in New York. Bloody confrontations between colonial militiamen and British troops were occurring in Massachusetts,²¹⁴ with the legend of one colonial militia officer informing his men at Lexington Green to, "Stand your ground. Don't fire unless fired upon, but if they mean to have a war, let it begin here."²¹⁵

In response, the colonists would form two additional colonial congresses to plead with Great Britain to be allowed to enjoy the same rights and liberties appreciated by all Englishmen.

²¹² Middlekauff, 110, 175-176.

²¹³ Clark, 789.

²¹⁴ Middlekauff, 235-240.

²¹⁵ "John Parker," Today in History: July 13, The Library of Congress: American Memory, *The Library of Congress*, <http://memory.loc.gov:8081/ammem/today/jul13.html>. Note: This passage in the text is the legendary order given to his men as the British formed their lines at the Battles of Lexington and Concord, July 13, 1775.

The final colonial national assembly would transform from *Englishmen* fighting for English rights and liberties to *Americans* establishing their own rights and liberties by declaring:

“Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness...”

“We, therefore, the Representatives of the United States of America, in General Congress Assembled, appealing to the Supreme Judge of the World for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly Publish and Declare, That these United Colonies are, and of Right ought to be, Free And Independent States; that they are absolved from all Allegiance to the British Crown, and that all political Connexion between them and the State of Great-Britain, is, and ought to be, totally dissolved;...”²¹⁶

With the sending of the Declaration of Independence to George III, the rebellion of the colonies in North America officially commenced. Ninety-two years after declaring independence, in defending his stance that the sovereignty of the states was paramount to the sovereignty of the national government, Alexander Stephens reminded the nation with the example of declaring independence that:

“... it was then, after being voted upon by States and carried by States, unanimously proclaimed by all the States, so in Congress assembled. The Declaration of Independence was, be it remembered, voted upon and carried by States, and proclaimed by and in the name of States.”²¹⁷

As this and the previous chapter have defined how the social contract in the ancient English Constitution was produced and had changed through time, the next chapter investigates how the new American government defined and established their own idea of the social contract in the form of American Federalism following their victory over Great Britain in the American Revolution. This turbulent period during the founding of the US is what Stephens was

²¹⁶ Declaration of Independence, United States, July 4, 1776.

²¹⁷ Stephens, *A Constitutional View*, 68.

attempting to proclaim in 1868 when he cemented his thoughts on how the Revolution was started with the unanimous approval of each colony-turned-state. The Second Continental Congress did not start the Revolution...the States did.

Chapter 3

*“And Secure the Blessings of Liberty to Ourselves and Our Posterity”*²¹⁸

We have frequently endeavored to effect in our respective states, the happy discrimination which pervades this system; but finding we could not bring the states into it individually, we have determined ... and have taken pains to leave the legislature of each free and independent state, as they now call themselves, in such a situation that they will eventually be absorbed by our grand continental vortex, or dwindle into petty corporations, and have power over little else than yoking hogs or determining the width of cart wheels.²¹⁹

---*Montezuma*
October 17, 1787

This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous and alien sovereignties.²²⁰

---*Publius*
October 31, 1787

In the final days of the American Revolutionary War, General George Washington was forced to confront a large contingent of his officers at their winter camp outside of Newburgh, New York. There was intrigue among a large group of Washington's officers as well as certain members of the Confederation Congress.²²¹ The scheme was instigated due to the failure of the Congress to adequately resolve the issue of past, present and future compensations owed to the

²¹⁸ Preamble, U.S. Constitution.

²¹⁹ “Antifederalist #9,” *Independent Gazetteer*, October 17, 1787, College of Law, *The University of Tulsa*, Morton Borden, ed., *The Anti-Federalist Papers*, (Michigan State University, 1965), <http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/09.htm>. The identity of *Montezuma* has never been confirmed, however, the writer has been referenced as a “Pennsylvanian,” as the text of Antifederalist #9 was published in the Philadelphia newspaper *Independent Gazetteer*.

²²⁰ John Jay, “Federalist #2,” *The Federalist*, Gideon edition, 58.

²²¹ Richard H. Kohn, *Eagle and Sword: The Federalists and the Creation of the Military Establishment in America, 1783-1802*, (New York: The Free Press, 1975), 17. “Behind the events at Newburgh in March 1783, lay a complex plot which involved not only certain leaders of the army, but of Congress as well, most importantly the very same men who would be responsible in the following years for founding an American military establishment.”

officers of the Continental Army. The majority of the officers had not been paid for several months and in numerous cases, had not received any recompense for nearly five years. An additional concern for the officers was a rumor circulating in the Newburgh camp that Congress was rescinding the pensions unofficially promised to the officers in 1780 due to the lack of support in the national legislative body.²²²

The frustration of the men concerning their back-pay and retirement benefits was boiling over into notions of insurrection in the winter of 1782-1783. The plan of the leaders of the disgruntled officers was to pull their support of General Washington and place it with General Horatio Gates as commander of the Continental Army.²²³ Washington had additionally received an epistle from a former aide that suggested that a number of men in the army, as well as in the Congress, believed that the general should march his army to Philadelphia where the national body was meeting and forcefully claim the finances necessary to pay the officers.²²⁴ As this activity was emerging, a letter was sent to General Washington by Colonel Lewis Nicola suggesting that many of Washington's officers, as well as a number of politicians and citizens in the burgeoning US, felt that the Confederation Congress was both partisan and ineffective and

²²² Kohn, *Eagle and Sword*, 19.

²²³ *Ibid.*, 25-26. "There was a group of young officers, a small extremist wing of the corps, which was angrier, more dogmatic and hotheaded, and which formed at Washington's moderate leadership [concerning officer recompense and pension]. Unlike many older officers, these men had grown up in the army and had less to look forward to on returning to civilian life... These young Turks naturally gravitated to Horatio Gates, the 'hero of Saratoga,' an overbearing and sensitive general whose bad blood with Washington was long standing. Gates's pretensions had suffered for years. For him the discontent in Newburgh could be used to recoup his reputation and, incidentally, to snatch the army away from his rival."

²²⁴ "Alexander Hamilton to George Washington, 13 February, 1783," *Founder Online*, National Archives.

<https://founders.archives.gov/?q=%20Author%3A%22Hamilton%2C%20Alexander%22%20Recipient%3A%22Washington%2C%20George%22%20Period%3A%22Revolutionary%20War%22&s=1111311111&r=61>

should be dissolved and a monarchy established by placing Washington as king.²²⁵ When Washington received Col. Nicola's epistle, along with the suggestion of dictatorship, as well as being made aware of a cabal of officers planning to revolt and remove himself due to his moderate approach in acquiring the funds necessary from Congress to recompense his officers, the general knew that quick and decisive action was required.²²⁶ Responding to the unsettling situation, Washington called a meeting of all his officers billeted at Newburgh. In a speech to his men delivered on the Ides of March, Washington warned his men of the consequences of the unspeakable notion of mutiny, establishing a dictatorship or instituting a monarchy. Washington pled for their forbearance as he promised his men that he would continue to fight for their rightful compensation due to them.²²⁷ At the conclusion of his speech, Washington pulled a letter from his breast pocket that was sent to him by Joseph Jones, a Virginia delegate in Congress and friend of the general, who wanted to assure Washington and his officers that there was a renewed effort in Congress to acquire the necessary funds for the officers.²²⁸ As

²²⁵ Robert F. Haggard, "The Nicola Affair: Lewis Nicola, George Washington, and American Military Discontent During the Revolutionary War," *Proceedings of the American Philosophical Society* 146, no. 2 (June, 2002), 140. "In May 1782, acting on behalf of a group of like-minded Continental army officers, Nicola supposedly proposed to Washington that he use the army to effect a *coup d'etat* against Congress and set himself up as king of the United States. Washington's scathing response to Nicola's letter, however, immediately doused the flames of Bonapartism in America."; Kohn, *Eagle and Sword*, 17-18.

²²⁶ "George Washington to Alexander Hamilton: March 12, 1783," *Founder Online*, National Archives. Note: In the post script of the letter, Washington writes that he has just been informed of a second anonymous letter being circulated around the camp at Newburgh to remove him from command.

²²⁷ William M. Fowler Jr. *American Crisis: George Washington and the Dangerous Two Years After Yorktown 1781-1783* (New York: Walker & Company, 2011), 186.

²²⁸ Richard H. Kohn, "The Inside History of the Newburgh Conspiracy: America and the Coup d'Etat," *The William and Mary Quarterly* 27, no. 2 (April, 1970), 207.; "To George Washington from Joseph Jones, 27 February 1783," *Founders Online*, National Archives, <https://founders.archives.gov/?q=Project%3A%22Washington%20Papers%22%20Period%3A%22Revolutionary%20War%22%20Dates-From%3A1783%20Dates->

Washington began to fumble through the first few words of the letter, he paused and did something that no one had ever seen, save the general's closest aides. General Washington reached into his breast pocket and took out a small pair of spectacles. "Gentleman," he said as he unfolded his glasses and squinted to focus through the lenses, "you will permit me to put on my spectacles, for I have not only grown gray, but almost blind, in the service of my country."²²⁹ Many years later, in contributing to a biography on Timothy Pickering, General David Cobb, a member of Washington's general staff and in attendance at Newburgh, recalled that after the commander had produced his spectacles, nearly all of the officers in attendance were brought to tears.²³⁰ The officers resolved to stick with the advice of their general and to rely on him to acquire the compensation that they were due. The confederacy was safe from a military coup that would have possibly installed Horatio Gates as commander of the Continental Army, placed General Washington as dictator, or a royal coronation that would have installed King George I of America on the throne.²³¹

Considering the near miss of a dictatorship or monarchy in the US, it was obvious to many in the country that the Confederation Congress was in distress due to its absence of the ability to accomplish the tasks of efficiently raising funds, as well as addressing other significant concerns of the national government. The rumblings of voices concerning the ineffectiveness of

to%3A1783%20Recipient%3A%22Washington%2C%20George%22&s=1511311111&r=11722. "Seven States have voted 5 years whole pay as the commutation for the half pay to the Officers—but the resolution has not passed the House being postponed for the present from an opinion prevalent with many, that the consent of nine States is necessary to give it validity—Delaware and Georgia are absent, were they represented, probably the vote would be sufficient."

²²⁹ Octavius Pickering, *The Life of Timothy Pickering*, vol. 1, (Boston: Little, Brown, and Co., 1867), 431.; Ferling, 311.

²³⁰ Pickering, 431. "When the General took his station in the desk or pulpit, which, you may recollect, was in the Temple, he took out his written address from his coat pocket, and his spectacles, with his other hand, from his waistcoat pocket, and then addressed the officers... This little address, with the mode and manner of delivering it, drew tears from [many] of the officers."

²³¹ Middlekauff, 605.; Haggard, 169.

the government of the confederacy began to take the form of political action just following the validation of independence from Great Britain with the completion of the Treaty of Paris in 1783. Historian Edwin S. Gaustad described the new confederacy during this time in his biography on Benjamin Franklin as being the following:

“The new nation was threatening to fall apart as the weakness and lawlessness of the recently formed government unnerved many Americans. Under the Articles of Confederation, adopted by most states by 1779, some authority was given to the Congress, but most authority remained with the states—states jealous of their sovereignty and suspicious of any effort by the central government to diminish it. That central government, essentially run by committees and from no fixed capital city, found itself in the position of having to beg the states for money, men, or authority to regulate commerce—or much of anything else.”²³²

With the enactment of the peace treaty with Great Britain, the former English colonists in North America had officially been transformed from a contingent of rebellious Englishmen into Americans governed in a legitimate confederation of independent states.²³³ Subsequently, the question before the American people seemed simple, but in fact was overwhelmingly difficult to define as time wore on. Which government, state or national, should have the final authority to decide the political and economic issues of the people in the US?

Sovereignty and Economic Issues of the Two Confederacies

At this point in the narrative, a brief comparison of the two confederacies of the eighteenth and nineteenth centuries is beneficial in understanding the challenges that the two governments faced, notably in the areas of defining sovereignty and the ability to raise revenue for the requirements of operating the national governments. Just as the southern states that would eventually create the CS struggled to protect their constitutionally protected rights of

²³² Edwin S. Gaustad, *Benjamin Franklin*. (Oxford: Oxford University Press, 2006). 112.

²³³ McDonald, 10-11. “The Treaty of Paris, which can be regarded as the document that granted or recognized independence, was, like the Articles, cast in plural form: ‘His Brittanic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay,’ and the rest ‘to be free, sovereign and independent States’”

sovereignty under American Federalism prior to secession, the confederacy of the Revolution had also grappled with determining their constitutionally protected sovereignty issues in maintaining a federation of independent states connected under their constitution; the Articles of Confederation.²³⁴ Additionally, the equivalent difficulties of the CS being able to raise the funds for their war of independence were previously experienced by the Confederation Congress during and after the American Revolution. In reviewing Washington's situation at Newburgh, as well as harking back to the establishment of the national government in 1778,²³⁵ it must be appreciated that the difficulties of addressing national economic issues was of significant concern for the national government of the confederacy in the eighteenth century. The issues presented to the burgeoning confederacy were the requirement of not just *declaring* independence but *attaining* independence by achieving military victory over the British. This could only be accomplished by achieving two stipulations; being able to raise the funds domestically to arm and maintain the military and gather support from the countries around the world for legitimacy and additional fiscal aid. To win independence from Great Britain, the rebels were required to be victorious on the field to validate their rebellion and secure independence.²³⁶

²³⁴ James Madison and Adrienne Koch, ed., "June 8, 1787," bicentennial edition, *Notes Of Debates In The Federal Convention of 1787 Reported By James Madison* (New York: W. W. Norton & Company, 1987), 88-89. "Mr. Pinckney moved 'that the National Legislature should have authority to negative all laws which they should judge to be improper.' He urged that such a universality of the power was indispensably necessary to render it effectual; that the States must be kept in due subordination to the nation;...Mr. Williamson was against giving a power that might restrain the States from regulating their internal police...Mr. Gerry could not see the extent of such a power, and was against every power that was not necessary."

²³⁵ "Articles of Confederation," Frohnen, ed., *American Republic*, 282. "In Witness whereof we have here-unto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth Day of July in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America."

²³⁶ Kohn, *Eagle and Sword*, 4 & 9.

In considering the situation that the eighteenth century confederacy faced in constructing a military, raising revenue and achieving world legitimacy, it must be noted that the patriot's hatred of Great Britain's arbitrary and unconstitutional acts perpetuated upon the colonies were not adequate to secure independence, just as it was equally inadequate for the southern rebels' detestation of the Yankees and their unconstitutional behavior in the federal government towards the southern states to achieve liberation from the Union. Passionate speeches, sermons and publications were woefully insufficient for independence without the dedication of the soldiers and sailors who were charged with putting political ideas and goals into personal sacrifice. Considering this requirement, neither confederacy held enough domestic wealth or armament to achieve their aspirations for independence and had experienced a great deal of difficulty in raising funds domestically.²³⁷ Both were compelled to search abroad for support. Even noting that both confederacies held to the idea of chattel slavery, the first confederacy achieved the necessary foreign assistance for independence. The second confederate government, however, could not.²³⁸

Government of the Revolution

Previous to declaring independence from Great Britain in 1776, members of the Second Continental Congress felt that it was essential to establish a stable national government to secure their respected place among the régimes of the world as well as protect the sovereignties of the

²³⁷ *Ibid.*, 9.

²³⁸ James McPherson, *Battle Cry of Freedom: The Civil War Era*, (New York: Oxford University Press, 1988), 552-553. "To support a rebellion in behalf of slavery would be un-British. To accept the notion that the South fought for independence rather than slavery required considerable mental legerdemain." "To the extent that the French people thought about it, they disliked slavery. But the French press paid less attention to the American war than did British newspapers, and except for distress caused by shortages of cotton, most Frenchmen cared little about what happened in America."

colonies-turned-states.²³⁹ The greatest challenge to the national body was that to establish their confederacy, they would be forced to confront and defeat the largest military force on the planet.²⁴⁰ The members of the Congress additionally knew that the national government would require a constitution that would be strong enough to retain the tools necessary to achieve independence and weak enough to respect the individual state governments of the confederation. Political historian Jack P. Greene states the situation that the Confederation Congress faced as the following:

“Whether a more formal constitutional union could be achieved and what form it would take were two of the most important constitutional questions confronting American resistance leaders throughout the early years of war and independence. Far from being an inevitable development, the fabrication of such a union was highly problematic. From very early on, however, it had been apparent that the permanent establishment of such a union and the perpetuation of the new United States would be heavily dependent on the resolution of the old problem of the allocation of authority in an extended polity composed of many distinct corporate entities.”²⁴¹

It was completely understood throughout the colonies that independence could only be achieved through binding the individual colonies together for a national cause; achieving independence from an arbitrary and tyrannical British government. Moreover, the members of the secessionist conventions in 1860-1861 faced the same dilemma of rallying behind a national cause to inspire the citizens of the seceded states to fight for independence from an arbitrary and

²³⁹ Coleman, 40.

²⁴⁰ Brewer, xii. “...Britain emerged in the late seventeenth and early eighteenth centuries as the military Wunderkind of the Age. Dutch admirals learnt to fear and then admire its navies, French generals reluctantly conferred respect on its officers and men, and Spanish governors trembled for the safety of their colonies and the sanctity of their trade.”; Jeremy Black, *Britain As A Military Power, 1688-1815* (London: UCL Press, 1999), 1. “Between 1688 and 1815 Britain fought its way to being the strongest power in the world. This involved her forces in conflict across the globe, from the waters of the Pacific, where Anson captured the treasure filled Manila Galleon, to the rocky reaches of the Breton coast, where warships sought signs of French opponents seeking to leave their blockaded bases. Red coated soldiers served on every continent bar Antarctica, and braved disease and terrain without the technological aids their modern counterparts benefit from.”

²⁴¹ Greene, 188-189.

tyrannical government as well. For the future CS, however, the call for liberation was not as unified on the cause of separating from the federal government as was the purpose for the patriot's fight concerning Great Britain's political behavior towards the colonies. In just over a week after the election of Lincoln, a southern newspaper seemed to indicate what the true national cause for secession was manifesting itself to be for the CS. It was not independence from an arbitrary and tyrannical central government, it was securing the South's economic traditions.

“Not even the banner of the stars and stripes excites the same thrill of patriotic emotion, alike in the heart of the northern Republican and the southern Secessionist. The former looks upon that flag as blurred by the stain of African slavery, for which he feels responsible as long as that flag waves over it, and that it is his duty to humanity and religion to obliterate the stigma. The latter looks upon it as the emblem of a gigantic power, soon to pass into the hands of that sworn enemy, and knows that African slavery, though panoplied by the Federal Constitution, is doomed to a war of extermination. All the powers of a Government which has so long sheltered it will be turned to its destruction. The only hope for preservation, therefore, is out of the Union.”²⁴²

In investigating the first government of the US, it is proper to mention two noteworthy events that occurred in the early summer of 1776 that would significantly influence the first notions of American Federalism. The first being the creation of a constitution that could bring the new states together into a national body that would not infringe on the sovereignties of the other entities.²⁴³ This activity would eventually produce the first indications of politicians banding together into unorganized factions that would ultimately become the origins of political

²⁴² David M. Potter and Don E. Fehrenbacher, ed., *The Impending Crisis: 1848-1861* (New York: Harper Perennial, 1976), 448. Note: Quote in text is taken from Dwight Lowell Dumond, ed., *Southern Editorials on Secession* (New York, 1931), 242. The editorial is taken from the *Daily Constitutionalist*, Augusta, Georgia.

²⁴³ “Articles of Confederation,” Frohnen, ed., *American Republic*, 276. “Art. II. Each State retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.”

parties in the US.²⁴⁴ The second event was the emergence of a Virginian who would become a significant leader of one the first opposition political groups in the Confederation Congress, as well as being one of the greatest contributors to the continuation of the US from a confederacy to a democratic republic. This man would be highly instrumental in creating American Federalism, which would be central to the second government of the US in 1788.²⁴⁵

The Articles of Confederation and State Sovereignty

When the Second Continental Congress determined that some sort of written national agreement between the new independent states was required, a committee was formed with John Dickenson of Delaware as its chair. The compact that was produced by the committee was the “Articles of Confederation and Perpetual Union.” The Articles of Confederation was designed to guarantee the sovereignty of each state in the confederation while still holding the ability to attend to certain issues that a national government would be better able to address.²⁴⁶

Unfortunately, a rising number of politicians in the country would hold that the national

²⁴⁴ William Nisbet Chambers, *Political Parties In A New Nation: The American Experience, 1776-1809* (New York: Oxford University Press, 1963), ii-iii.; Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (New York: W. W. Norton & Company, 1972), 464. “Right from the beginning of the [Revolutionary] war a continental-minded minority centered in the middle Atlantic states had sought to strengthen the authority of the Confederation at the expense of the states. By the early [seventeen] eighties the nationalist program of men like Robert Morris and Alexander Hamilton had gathered a substantial amount of support from various groups.”; Coleman, 40.

²⁴⁵ Lance Banning, *The Sacred Fire of Liberty: James Madison & The Founding Of The American Republic* (Ithaca, NY: Cornell University Press, 1995), 1. “Yet even after full allowance had been made for all of the achievements of his colleagues, Madison’s centrality at every step in the creation of the federal republic marks him as preeminent among the men who shaped, explained, and won an overwhelming mandate for the nation’s fundamental law.”; Elazar, 3-4. “The American theory of federalism was developed by the founding fathers in their search for republican remedies for the republican diseases. It’s principle architects were James Madison, the ‘author’ of the Constitution...”

²⁴⁶ Coleman, 40-41.

government under the Articles was proven to be too weak to accomplish the goals it intended to achieve, such as raising the funds necessary to operate the national government.²⁴⁷

As has been previously noted in chapter 2, beginning with their experiences under royal charters and compacts, as well as through representation in the Stamp Act, and the First and Second Continental Congresses prior to independence, it was abundantly clear to the colonies that they were sovereign over their own affairs.²⁴⁸ Each colony held their unique ideas, beliefs and traditions that enabled them to hold a sense of individuality.²⁴⁹ When the colonies declared independence, the colonies-turned-states held that the newly formed nation was a league of separate and independent entities that held limited common ideas, notably, the need to be separated from Great Britain.²⁵⁰ The only true national feeling among the states from 1776 to the Treaty of Paris in 1783 was the shared experience of fighting the British. Even this collective goal, particularly when purchasing the tools necessary to secure independence, was subservient

²⁴⁷ “From James Madison to George Washington, 16 April, 1787,” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Madison/01-09-02-0208>. “I would propose next that in addition to the present federal powers, the national Government should be armed with positive and compleat authority in all cases which require uniformity; such as the regulation of trade, including the right of taxing both exports & imports, the fixing the terms and forms of naturalization, &c &c.”

²⁴⁸ McDonald, 7-8. “The colonies did not have a single hypothetical compact with the king of Great Britain; they had thirteen real compacts in the form of charters that gave them existence as political societies.”; Wood, 356. “A man’s ‘country’ was still his state; for John Adams the Massachusetts delegation in [the Second Continental] Congress was ‘our embassy.’ As late as 1787 Marylanders still called their state ‘the nation.’” Note: internal quote of Adams taken from “John Adams to Abigail Adams, September 18, 1774,” Burnett. ed., *Letters of Congress* I, 35. Quote about Maryland taken from *Maryland Journal*, May 18, 1787.

²⁴⁹ Chambers, 2. “The most obvious difficulty lay in the fact that the ‘nation’ at the outset was actually a loose assemblage of thirteen states. Each had its own history, sense of identity, and political climate; and the neighboring states were often engaged in intense rivalries.”

²⁵⁰ Greene, 189.

to the idea that the sovereignty of the individual states was superior over the powers of the national Congress under the auspices of the first national constitution of the US.²⁵¹

The most telling example of the understanding of states being sovereign was the statute in the Articles that declared each of the states had one equal vote in considering legislation.²⁵² This one-state-one-vote statute meant that all states of the confederacy, no matter their geographical size or population of inhabitants, had equal political standing in the national government. In considering that the Articles of Confederation reasoned that the individual states held themselves as distinct entities bound together in a confederacy of other entities, the notion that the states retained supremacy over the national government in the US was presumed.²⁵³ The confederacy under the Articles of Confederation, however, became problematic for the Confederation Congress to get the states to work together when events dictated that additional funds were required to pay for the war and subsequent peace.²⁵⁴ The Articles contained a provision that each state was responsible for submitting funds to be placed in the national treasury for the confederacy to conduct wars, protect the collective states from invasion, and all other matters

²⁵¹ “James Madison, Vices of the Political System in the United States, April, 1787,” Philip B. Kurland and Ralph Lerner, eds., *The Founder’s Constitution* (Chicago: The University of Chicago Press Books Division, 1987), Electronic Resources from the University of Chicago Press Books Division, <http://press-pubs.uchicago.edu/founders/documents/v1ch5s16.html>. “Want of concert in matters where common interest requires it: This defect is strongly illustrated in the state of our commercial affairs. How much has the national dignity, interest, and revenue suffered from this cause?... for grants of incorporation for national purposes, for canals and other works of general utility, which may at present be defeated by the perverseness of particular States whose concurrence is necessary.”

²⁵² “Articles of Confederation,” Article V, clause 4, Frohnen, ed., *American Republic*, 277.

²⁵³ Theophilus Parsons, “The Essex Result,” 1778, Hynemun and Lutz, eds., 382. “He [Governor of Massachusetts] should likewise command the [Massachusetts’] navy and militia, and have power to march the latter any where within the state. Was this territory so situated, that the militia could not be marched out of it, without entering an enemy’s country, he [Governor] should have no power to march them out of the state. But the late province of Main militia must march through New-Hampshire to enter Massachusetts, and so, on the contrary. The neighbouring states are all friends and allies, united by a perpetual confederacy.”

²⁵⁴ McDonald, 4.

deemed necessary to contribute to the general welfare of the people of the US.²⁵⁵ The difficulty, however, was that most of the states would be tardy in contributing their share to the national body, if they found it appropriate to contribute at all.²⁵⁶ The war was expensive in not only *physical* loss, but in *fiscal* costs. Achieving independence was understandably going to take a great deal of money to pursue, as the representatives of the Confederation Congress must have recalled from their memories of just under fifteen years prior with the draining of Great Britain's coffers fighting the French and her allies in the Seven Years War. Absent of the large amounts of foreign monetary and military aid acquired by diplomatic missions overseas, the confederacy could not have won independence from Great Britain.²⁵⁷

Acquiring Funds for the State and National Governments

John Adams wrote nearly forty-two years following the signing of the Declaration of Independence that the document that was sent to George III signaled a simultaneous striking of thirteen independent clocks.²⁵⁸ This description by Adams is significant to note in considering

²⁵⁵ "Articles of Confederation," Article VIII, Frohnen, ed., *American Republic*, 278-279.

²⁵⁶ Banning, 16. "The [national] treasury was empty. Public credit was exhausted. Congress complained 'of the extortion of the people, the people of the improvidence of Congress, and the army of both.' Congress recommended measures to the states, and the states individually decided whether it was expedient to comply. 'Believe me, Sir, as things now stand, if the states do not vigorously proceed in collecting the old money and establishing funds for the credit of the new, ...we are undone.'" The inner quotes are taken from a letter from James Madison to Thomas Jefferson, March 27, 1780. *Papers of James Madison*, 2:6.

²⁵⁷ James H. Hutson, "Intellectual Foundations of Early American Diplomacy," *Diplomatic History* 1, no. 1 (Winter, 1977), 6. "The consensus among American leaders [During the American Revolution] seems, in fact, to have been that an unrestricted exchange of goods with foreign nations was among the greatest potential threats to the Revolutionary experiment in free government...[R]ecent writers have argued that the principal objective of the American Revolutionary leaders, which both domestic and foreign policy were designed to serve, was the establishment and preservation of a republic."

²⁵⁸ "Letter from John Adams to Hezekiah Niles, 13 February, 1818," National Humanities Center Resource Toolbox, "Making the Revolution: America, 1763-1791," *National Humanities Center*, <http://nationalhumanitiescenter.org/ows/seminars/revolution/Adams-Niles.pdf>. "The complete accomplishment of it in so short a time and by such simple means was perhaps a singular

the problems of the Articles, such as the events that nearly led to a mutiny and a *coup d'état* at Newburgh. The lack of attaining the necessary funds by Congress not only nearly starved and left destitute the military during the Revolution, but was additionally continued after the war with politicians, merchants and land speculators overflowing with the desire for the opportunities of attaining wealth in the area of national and international trade that had the potential of not only creating financial boons for themselves, but also for the treasuries of the state and national governments.²⁵⁹ Unfortunately, for the Confederation Congress, the unintended consequences of the structure of the confederacy under the Articles prevented this opportunity.²⁶⁰ This situation was exasperating to the Congress as well as to the investors of the confederacy, and the growing frustration was instigating a movement of people calling for revisions to the national document. Historian Gordon S. Wood best explains this situation under the Articles and the requirement of its replacement as the following:

“Even at the outset of the Revolution some Americans glimpsed the significance of buying and selling among themselves, which in turn had contributed to the reform of the Articles of Confederation and the creation of a more unified country. If Americans were to be truly a nation, some said in the 1780s, they could no longer exist as thirteen separate

example in the history of mankind. Thirteen clocks were made to strike together — a perfection of mechanism which no artist had ever before effected.”

²⁵⁹ Roger Sherman Boardman, *Roger Sherman: Signer And Statesman*. (Philadelphia: University of Pennsylvania Press, 1938), 223. “And there was plenty of commercial strife. New York, New Jersey, and Connecticut quarreled over tariffs on food products and firewood. Connecticut permitted British commerce within her confines, while the other New England States sought to exclude British ships because Great Britain had cut off the new nation from its West Indian trade. Pennsylvania and Delaware also had commercial differences with each other, as did South Carolina and Georgia; Virginia and Maryland disputed over Chesapeake Bay tariffs.

²⁶⁰ “Articles of Confederation,” Frohnen, ed., *American Republic*, Art. IX, 279. “The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever

states, living on the margin of things, sending their agricultural produce to Europe and receiving manufactured goods in return...All the massive movements of people westward, all the growing productive activity, all the endless trading, were creating a continental marketplace and a natural harmony of economic interests.”²⁶¹

There was no question that the Articles of Confederation had hamstrung the Confederation Congress in being incapable of raising the revenue necessary to operate the national government. This situation was further frustrated by the states being wary of sending their limited funds to the national government, as their own state legislatures were determined to apply those funds to govern and market themselves. The states furthermore felt that being too closely tied financially with the national government would be dangerous to their sovereignties.²⁶²

Frustration among certain members of Congress over the ineffectiveness of the Articles strengthened the political factions that had been active during the war years among the national body as well as in other governmental bodies in the states.²⁶³ The political movements disagreed on not just the previous issue of raising funds, but also questioned the potential power that the national government could retain over the independent sovereign states in making adjustments to the Articles. A group called “states’ rights republicans” were in control of the early stages of the confederate government, but an opposition movement against these politicians rose with the growing frustrations of the Articles of Confederation.²⁶⁴ The “nationalists” held that the

²⁶¹ Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Random House, 1993), 313.

²⁶² Middlekauff, 640. “By itself Congress could not do much. It could not tax; it could not regulate trade except with the Indians. It could do few of the things ordinary governments did. State and local agencies governed the American people. And the American people did not choose Congress – state legislatures did.”

²⁶³ Chambers, 3. “Indeed, American party founders scarcely realized at the outset that they were building parties. They did not see themselves as a set of political contractors who had undertaken to create a modern party system...” 20. “On the national scene [during the Confederation era], there were no comprehensive political formations that could be called parties.”

²⁶⁴ McDonald, 4

Confederation Congress was incapable of effective administration under the current constitution.

The late historian Forrest McDonald described the two factions as the following:

“The states’ rights republicans dominated Congress from 1776 until 1780. They managed to supply the armies in the field, at first through loans from patriotic citizens, then with loans from the Netherlands and France, but mainly by printing unsecured paper money that rapidly depreciated to almost nothing...During the winter of 1780-81 nationalists came into control of Congress and forthwith set out to strengthen it. To obtain funds, they passed and sent to the states for ratification and amendment for the yet-ratified Articles of Confederation that would have given Congress power to levy a 5 percent impost on imported goods. They overhauled the central administrative machinery, scrapping the cumbersome and ineffectual committee system under which Congress had operated and creating three administrative departments – foreign affairs, war, and finance – each to be headed by a superintendent.”²⁶⁵

It was clear that the economic crisis created by the Articles of Confederation had inspired the instigation of political factions that would eventually transform themselves into organized national political parties.²⁶⁶

The Delegate from Orange County

The second event that would significantly influence the first notions of American Federalism occurred following the determination of the Second Continental Congress that the colonies should hold conventions to write their own individual constitutions before independence from Great Britain was announced.²⁶⁷ One of these state constitutional conventions, which would hold significant influence on the future US Constitution, produced the document for the future state of Virginia. The Virginia Declaration of Rights, or more commonly known as the Virginia Bill of Rights, held several statutes that would create American Federalism. For example, the separation of powers is mentioned in Section V, governing by consent in Section

²⁶⁵ *Ibid.*, 12.

²⁶⁶ *ibid.*, 12-13.

²⁶⁷ Middlekauff, 329.

VII and Section XII states “That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.”²⁶⁸

In the final days of the convention in Virginia, a young delegate asked to meet privately with the convention’s president George Mason. Mason, who would also be a delegate at the convention that produced the US Constitution eleven years later, met with the man who desired to present an addition to the state’s constitution. Mason agreed and asked that the delegate present the addition to the convention. The young man begged off and asked if the convention president would bring the proposal to the convention floor instead. Mason, who had a similar proposition that he was willing to be replaced, told the representative to find another delegate if the young man was too shy for the task. Edmund Pendleton was chosen to stand before the Virginians and read the twenty-five-year old James Madison’s proposal.²⁶⁹ Madison’s contribution passed and became the sixteenth and final section of the Virginia Bill of Rights:

“That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the duty of all to practice Christian forbearance, love and charity towards each other.”²⁷⁰

The Virginian would continue to become a valuable contributor to the birth, infancy and early adolescence of the second government of the US, as well as a significant architect of the US Constitution and American Federalism when he wrote, and as in the previous instance asked

²⁶⁸ “Virginia Bill of Rights, June 12, 1776,” Frohnen, ed., *American Republic*, 226-227. “Section V. That the legislative, executive and judicial powers should be separate and distinct.” “Section VII. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.”

²⁶⁹ Banning, 85-87.

²⁷⁰ “Virginia Bill of Rights, June 12, 1776,” Frohnen, ed., *American Republic*, 227.

another delegate to introduce, the Virginia Resolutions to the Constitutional Convention in May 1787.²⁷¹

Path to the Second Constitution

Following the confederacy achieving independence from Great Britain, the war that secured liberation and governmental legitimacy in the world created an enormous national financial burden for the national government. The ability of the Confederation Congress to raise the funds necessary to address the problem became increasingly difficult, as the requisite number of states in Congress could not pass revenue raising legislation.²⁷² In addition, the states had been confronting their own financial obligations incurred during the war and were not readily concerned about tackling the national debt. The state governments felt that being coerced into sending funds to assist in paying on the national debt in lieu of ignoring their own liabilities,

²⁷¹ Banning, 140. "...the Virginia Resolutions, which sought to free the general government from secondary, state decisions capable of baffling all its measures. It was Madison's first major contribution to the framing [of the US Constitution].; Boardman, 237-238. "Madison had done more than any one to bring to pass this Convention—he had worked tirelessly for it in the Virginia Assembly and by precept and letter urged it repeatedly throughout Virginia and far beyond his own State lines. A graduate of Princeton, he had made a thorough study of all the experiments at federal government from ancient Greece to Switzerland and Holland. He was the real author of the "Virginia Plan," which became the framework on which the Constitution was built."; M.E. Bradford, *A Worthy Company: Brief lives of the Framers of the United States Constitution* (Marlborough, NH.: Plymouth Rock Foundation, 1982), 141. "Floor leader for the Federalists. Spoke 161 times, on almost every subject of importance to be discussed in the debates...The last surviving framer, and their first historian by way of the detailed records of the Great Convention which he preserved for publication after his death."; Elazar, 4.

²⁷² Middlekauff, 616.; Gaustad, 112. "The new nation was threatening to fall apart as the weakness and lawlessness of the recently formed government unnerved many Americans. Under the Articles of Confederation, adopted by most states by 1779, some authority was given to the Congress, but most authority remained with the states—states jealous of their sovereignty and suspicious of any effort by the central government to diminish it. That central government, essentially run by committees and from no fixed capital city, found itself in the position of having to beg the states for money, men, or authority to regulate commerce—or much of anything else."

such as had occurred during the war in asking for revenue enhancements from the states, was again dangerously close to violating their sovereignties.²⁷³

Many representatives in both the state and national governments, however, recognized the dire national situation and attempted to convince the Congress to amend the Articles. This became extremely difficult as the Articles stipulated that a unanimous consensus of all the states in Congress was necessary to amend the national document.²⁷⁴ As Congress attempted to augment the Articles, a unanimous vote for the measure continued to be elusive. As frustrations mounted in Congress, the citizens of the confederacy were experiencing situations that brought reminiscences of the failed mutinous behavior of Washington's officers at Newburgh. The actions of the exasperated veterans of the late war who did not receive their reparations promised by the Congress were becoming increasingly violent in response to their frustrations. One of the most notable actions of the disgruntled veterans occurred in the western farmlands of Massachusetts in the summer of 1786 in what is commonly known as Shay's Rebellion.²⁷⁵

Following the Treaty of Paris of 1783, Congress began the process of furloughing and ultimately disbanding nearly all of the Continental Army. By the winter of 1784, Congress had reduced the size of the peace time army to just one infantry regiment and a small unit of artillery consisting of six hundred men.²⁷⁶ As the overwhelming number of discharged veterans returned home, they were forced to confront the difficulties their families incurred during their absences. The farms and businesses of the returning veterans had suffered neglect due to their time fighting

²⁷³ Coleman, 51.

²⁷⁴ "Virginia Bill of Rights, June 12, 1776," Frohnen, ed. *American Republic*, 227. "Article XIII, Articles of Confederation," *American Republic*, 282. "And the Articles of this confederation shall be inviolably observed by every State, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State."

²⁷⁵ Kohn, *Eagle and Sword*, 74.

²⁷⁶ *Ibid.*, 41.

for independence. The cash and specie strapped veterans not only required financial assistance in rebuilding their enterprises but were also in need of patience from their existing creditors.²⁷⁷ In many instances, the taxes on the properties of the veterans had not been paid or were woefully behind due to their service in the war. The veterans hoped that their sacrifice for independence would grant them a time of forbearance, however, the state governments and banks were facing their own financial problems. The state banks lacked adequate specie for their own obligations and many of these state institutions, in hopes of quick replenishment of their coffers, turned to foreclosing on the properties of veterans due to their back taxes on their properties in lieu of restructuring loans, granting extensions or additional credit.²⁷⁸ In Massachusetts, a series of events concerning this situation was followed by acts of insurrection by former soldiers who sacrificed life and limb to secure the confederacy's independence.

The activities that encompassed Shay's Rebellion shook the confederacy. The uprising of the veterans and other participants in Massachusetts held direct correlation to the inadequacies of the Articles of Confederation.²⁷⁹ It was now apparent to a growing number of persons in and out of the national and state governments that a revision of the Articles that would allow an opportunity to bring the states together in some form of limited centralized government to raise

²⁷⁷ *ibid.*, 74. "Long burdened by heavy debts, mounting taxation, and a lack of hard currency, farmers and townspeople west of Worcester [MA] turned on the courts and the legal system with mob action and violence."; McDonald, 13.

²⁷⁸ Jonathan Smith, "The Depression of 1785 and Daniel Shays' Rebellion," *The William and Mary Quarterly* 5, no. 1 (January, 1948), 79. "But, unwisely, all of them [states] but two, Connecticut and Delaware, following the bad example of the confederation in the latter part of the war, had issued large amounts of paper currency, which, years before 1786, had become worthless, notwithstanding the most strenuous efforts of the legislature to compel the people to take it at its face value. The destruction of commerce by the war had driven most of the coin, current before the Revolution, abroad. There was no specie for those who could not live by exchange. The few coins in circulation in the centers of trade were the issues of different countries, and their value was uncertain and constantly fluctuating."; Middlekauff, 621.

²⁷⁹ Boardman, 225.

revenue was required.²⁸⁰ The responses to the need to revise the Articles of Confederation would ultimately lead to the creation of the US Constitution and the second government of the US.²⁸¹

In a session of the lower house of the Virginia legislature in the late fall of 1785, James Madison presented a resolution that the Virginia representatives in the Confederation Congress should urge the national body to call for a convention to search for methods to restructure the Articles in such a way that Congress could have the power to regulate national commercial issues such as international trade and imposts.²⁸² The other Virginians, however, were not ready

²⁸⁰ Smith, “The Depression of 1785 and Daniel Shay’s Rebellion,” 94. “But the event did contribute to the result which all anxiously desired and which was to bring the relief so mistakenly sought. It emphasized the already formed conviction of the wisest minds in the nation, that a strong central national government was an imperative necessity – if the independence of the country was to be preserved and law and order prevail within its borders. Probably no other one incident contributed so powerfully to the acceptance of the proposition which had been already suggested, for a constitutional convention by all the states, or the adoption of the constitution when it was finally formed and submitted to the people as did Shays’ rebellion.”

²⁸¹ Akhil Reed Amar, “Of Sovereignty and Federalism,” *The Yale Law Journal* 96, no. 7 (June, 1987), 1442. “The unicameral assembly created by the Articles lacked power to regulate commerce; to levy duties; to legislate directly upon, and directly tax, individuals; to nullify unjust internal state laws; to enact laws incidental to, or implied by, express enumerations; to nationalize state militias; to directly raise an army and navy; to appoint all military officers; to suppress internal insurrections, coups, and anti-republican governments; to directly execute its own enactments; to set up a general system of national courts; and to insist on observance of the Articles and its own enactments thereunder as supreme law overriding even state constitutions. Because the Federalists proposed to add all of these grand powers, and more, to the central government, they needed to effect a radical redesign of its internal architecture.”

²⁸² “From James Madison to James Monroe, 7 August 1785,” *Founders Online*, National Archives, <https://founders.archives.gov/?q=Project%3A%22Madison%20Papers%22%20Period%3A%22Confederation%20Period%22%20Confederation&s=1511311111&r=40>. “If it be necessary to regulate trade at all, it surely is necessary to lodge the power, where trade can be regulated with effect, and experience has confirmed what reason foresaw, that it can never be so regulated by the States acting in their separate capacities. They can no more exercise this power separately, than they could separately carry on war, or separately form treaties of alliance or Commerce. The nature of the thing therefore proves the former power, no less than the latter, to be within the reason of the foederal Constitution. Much indeed is it to be wished, as I conceive, that no regulations of trade, that is to say, no restrictions or imposts whatever, were necessary.”; Middlekauff, 620.

to cede their state's sovereignty in allowing the national government to have control over economic issues that the states could decide for themselves in their own legislatures. After further deliberation, the Virginia House of Delegates acquiesced that there were problems in confronting national monetary issues, and the situation was in necessity of limited reform. With Madison working with delegates in the Virginia Assembly urging the need for national commercial reform, John Tyler, future tenth president of the US following the death of William Henry Harrison, proposed that letters be sent to the legislatures of the remaining twelve states to attend a convention to discuss the revenue raising difficulties faced by the Confederate Congress under the Articles of Confederation.²⁸³ The delegates of the states were to meet in Annapolis, Maryland on September 4, 1786, however, the tardiness of a majority of the commissioners forced the convention to begin their proceedings seven days later.²⁸⁴

Although the attendance of the convention was not as substantial as anticipated, with only five of the thirteen states sending a total of twelve delegates, there was a significant event that occurred in Annapolis. Following the deliberations of the attendees concerning the failures of the Articles, the body tasked one of the New York delegates, Alexander Hamilton, to pen the results of the convention's deliberations to present to Congress. One historian describes Hamilton's thoughts on the Articles and the results of the Annapolis Convention as the following:

“[Alexander] Hamilton had advocated a constitutional convention as early as 1780 and had made several aborted attempts to call one. The [Annapolis] convention tasked him to draft the report of its rump session to send to Congress. The report noted that all the

²⁸³ Banning, 57.

²⁸⁴ *Ibid.*, 73. “[James] Madison obtained a room at George Mann’s Tavern in Annapolis on September 4, the day appointed for the meeting to convene. Only two commissioners, besides himself, were present in the city. After seven days...several other delegates had trickled into town, but prospects for a large enough attendance ‘to make the meeting respectable’ continued to be glum.”

delegates present admitted that ‘important defects’ existed within the ‘Foedral Government.’ These failings, which resulted from the ‘embarrassments which characterize the present State of our national affairs,’ left the confederation in a ‘delicate and critical’ condition. Hamilton, speaking for the convention, then called for the states to appoint ‘Commissioners’ to meet in Philadelphia in May 1787 to ‘take into consideration the situation of the United States’ and to devise measures to ‘render the constitution [Articles of Confederation] of the Foederal Government adequate to the exigencies of the Union.’”²⁸⁵

In this passage provided by historian Aaron Coleman, it is understood that the task of the convention suggested by Hamilton was to simply rework the Articles to provide a bit more flexibility in the document to address “important defects” concerning national issues. The overwhelming majority of the men selected to represent the states in Philadelphia had no intention of completely replacing the Articles of Confederation with the US Constitution. This replacement of the Articles would not be well received by many in the US. These opponents of the US Constitution would require a good deal of explanation before ratification was achieved.

Federalists, Anti-Federalists and the Constitution

It should be presented at this juncture that it is complete folly to blindly hold that the Philadelphia Convention singularly consisted of a body of men solely dedicated to one common goal of producing a unique and remarkable document that would forever amaze the world with its ability to ensure the personal liberties of all the inhabitants of the US.²⁸⁶ Additionally, it is equally eccentric to believe that all the delegates assembled were void of self-interest, ambition

²⁸⁵ Coleman, 79-80. Note: The inner quotes of this passage are taken from the report to Congress on the proceedings and resolutions of the convention. See, “Annapolis Convention. Address of the Annapolis Convention, 14 September 1786,” *Founders Online*, National Archives.

²⁸⁶ “Bostonians: Serious Questions Proposed To All Friends To The Rights Of Mankind, With Suitable Answers,” *Boston Gazette*, November 19, 1787, Hyneman and Lutz, eds., vol. I, “Q[uestion]. Should the officers of the old constitution be entrusted with the power of making a new one when it becomes necessary? A[nswer]. No. Bodies of men have the same selfish attachments as individuals, and they will be claiming powers and prerogatives inconsistent with the liberties of the people. Aristocracies will by this means be established, and we shall exchange a bad constitution for a worse, or the tyranny of one for the tyranny of many.”

and whose only thought was of safeguarding the welfare of the contemporary and future generations of Americans in restraining power from a prodigiously authoritative central government over all of the states, no matter what their size or population.²⁸⁷ Also, believing that the states speedily approved the contract between themselves and the national government and gleefully celebrated the passage of the constitution is additionally erroneous.²⁸⁸ Moreover, trusting that the delegates at the state ratifying conventions were in complete harmony with the finished document that replaced the Articles of Confederation is notably misguided when considering the events that occurred in a number of the state ratifying conventions. In one instance, a delegate reported that at his ratifying convention, he and other opponents of the Constitution were harassed and threatened with being tarred and feathered if they did not

²⁸⁷ Lance Banning and Todd Estes, ed., *Founding Visions: The Ideas, Individuals, and Intersections That Created America* (Lexington, KY.: University Press of Kentucky, 2014), 113. “One of the finest recent studies of the Constitutional Convention calls its early weeks a period of “nationalist assault.” Certainly, the members from the smaller states felt thoroughly assaulted by a plan that offered to apportion legislative seats according to the populations of the several states. George Read immediately protested that the delegates from Delaware, who were specifically instructed to insist upon the equal vote that every state had always had in Congress (as in the convention), might have to leave the meeting if the larger states were bent upon this change.”; “The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents,” *Pennsylvania Packet and Daily Advertiser*, 18 December, 1787,” Herbert J. Storing and Murray Dry, eds., *The Anti-Federalist: Writings by the Opponents of the Constitution* (Chicago: The University of Chicago Press, 1985), 203. “The Continental convention met in the city of Philadelphia at the time appointed. It was composed of some men of excellent characters; of others who were more remarkable for their ambition and cunning, than their patriotism; and some who had been opponents to the independence of the United States.”

²⁸⁸ David Bernstein, “The Constitutional Convention: Facts and Figures” *The History Teacher* 21, no. 1 (November 1987), 14. Note: The first state to ratify the Constitution was Delaware on 7 December, 1787 with a vote of 30-0. The ninth and requisite number of states to ratify the Constitution was New Hampshire on 21 June, 1788, by a vote of 57-47. The last of the thirteen states to ratify was Rhode Island on 29 May, 1790 by a vote of 34-32. The total number of votes for ratification for all thirteen states was 1072-577. Out of all the votes cast for ratification, the number of votes for passage was 65% in favor and 35% not in favor of the US Constitution replacing the Articles of Confederation.

acquiesce in ratifying the Constitution without any suggestions or concerns attached to the convention's deliberations.²⁸⁹

The thoughts provided in the previous paragraph concerning the behavior and personalities of a number of the delegates who were involved in the debates at the constitutional convention, as well as those in attendance at the state ratifying conventions, is important to present when considering the actual difficulties that were involved in presenting the new constitution to the American people. Furthermore, it is important to note this information to the American populace who are, and who have been, too quick to fantasize on understanding of American history and blindly trusting in what they have held as traditions in the American experience in what can be argued as misguided patriotism. Some examples of this mistaken belief in certain events in American history is noticed in an article written by a former aide and speech writer for President Richard Nixon, as well as a speech delivered by a former aide and speech writer of President Ronald Reagan. The former spoke of President Trump's Fourth of July speech of 2019 as being absent of partisan politics (arguably false) and only spoke of the founders and the latter source lamenting that her son's school did not teach moral patriotic stories of historical figures, such as George Washington and the cutting down of the cherry tree (absolutely false).²⁹⁰

²⁸⁹ "The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents," *Pennsylvania Packet and Daily Advertiser*, 18 December, 1787, Storing and Dry, eds. 204. "While every measure was taken to intimidate the people against opposing it, the public papers teemed with the most violent threats against those who should dare to think for themselves, and tar and feathers were liberally promised to all those who would not immediately join in supporting the proposed government be it what it would." 206. "Tis true the majority permitted us to debate on each article, but restrained us from proposing amendments. – They also determined not to permit us to enter on the minutes our reasons of dissent against any of the articles, nor even on the final question our reasons of dissent against the whole."

²⁹⁰ Patrick Buchanan, "Trump's Patriotism vs. The New Anti-Americanism," July 5, 2019, *RealClear Politics*,

Disregarding any misplaced patriotic notion of the founding fathers being of one mind relating to the replacement of the national governing document, there was not a “kumbaya” moment at the convention concerning the creation of the Constitution. Initially, the delegates

https://www.realclearpolitics.com/articles/2019/07/05/trumps_patriotism_vs_the_new_anti-americanism_140719.html. “Despite predictions he [Trump] would use “Salute to America” for a rally speech, the president shelved partisan politics to recite and celebrate the good things Americans of all colors and creeds are doing, and the great things Americans have done since 1776...’ Together, we are part of one of the greatest stories ever told -- the story of America,” said Trump. ‘It is the epic tale of a great nation whose people have risked everything for what they know is right and what they know is true.’” Note: Perhaps the Trump speech was a bit partisan to his constant claim that the present administration is the best of all presidential administrations.; Donald Trump, “Remarks by President Trump at a Salute to America,” July 4, 2019, The White House, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-salute-america/> “To this day, that spirit runs through the veins of every American patriot. It lives on in each and every one of you here today. It is the spirit of daring and defiance, excellence and adventure, courage and confidence, loyalty and love that built this country into the most exceptional nation in the history of the world, and our nation is stronger today than it ever was before. (Applause.) It is its strongest now. (Applause.); Peggy Noonan, “Patriotism and Young Americans,” April 18, 2017, *The Heritage Foundation*, <https://www.heritage.org/conservatism/commentary/patriotism-and-young-americans>. “The schools, most of them, do not encourage patriotic feeling. Small things—so many of them do not teach the Pledge of Allegiance. Bigger things—they do not celebrate Washington's birthday and draw pictures of him and hear stories about him as they did when we were kids. There is no Washington's birthday; there is President's Day, which my 11-year-old son was once under the impression is a celebration of Bill Clinton's birthday... The old historical teachings that were also moral teachings are by the boards. No teacher has ever taught my son the story of George Washington and the cherry tree.” Note: Washington and his cutting down of the cherry tree and his “I cannot tell a lie” moment is historical fiction. Jay Richardson, “Cherry Tree Myth,” *George Washington's Mount Vernon*, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/cherry-tree-myth/>. “Ironically, this iconic story about the value of honesty was invented by one of Washington's first biographers, an itinerant minister and bookseller named Mason Locke Weems. After Washington's death in 1799 people were anxious to learn about him, and Weems was ready to supply the demand. As he explained to a publisher in January 1800, ‘Washington you know is gone! Millions are gaping to read something about him... My plan! I give his history, sufficiently minute... I then go on to show that his unparalleled rise and elevation were due to his Great Virtues.’ Weems' biography, *The Life of Washington*, was first published in 1800 and was an instant bestseller. However the cherry tree myth did not appear until the book's fifth edition was published in 1806.”

could not completely agree on what the purpose of the convention actually entailed.²⁹¹ This disagreement followed the previous afore mentioned Annapolis Convention where the suggested meeting at Philadelphia was called to rewrite a portion of the Articles of Confederation to allow the Congress to raise revenue nationally and to review the Articles and to possibly additionally amend the document given its problematic past.

“That there are important defects in the system of the Federal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probably, from the embarrassments which characterize the present State of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode, which will unite the Sentiments and Councils of all the States. In the choice of the mode, your Commissioners are of opinion, that a Convention of Deputies from the different States, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference from considerations, which will occur without being particularized.”²⁹²

The sentiment of simply revising the Articles quickly melted away in Philadelphia and it was becoming clear why the deliberations were to be kept secret and taken place behind closed doors.²⁹³ The national government of the US was about to radically change from a confederacy of independent *States* to a union of redefined *states* intertwined in a democratic republic in just four short months of debate and construction.

²⁹¹ Madison and Koch, ed., 28. “Mr. Randolph then opened the main business...He observed that in revising the foederal system we ought to inquire: 1. Into the properit5es which such a government ought to possess. 2. The defects of the confederation, 3. The danger of our situation & 4. The remedy.” 34-35. “Mr. Charles Pinkney wished to know of Mr. Randolph whether he meant to abolish the State governments altogether...Mr. Pinkney expressed a doubt whether the act of Congress recommending the Convention, or the Commissions of the Deputies to it, could authorize a discussion of a System founded on different principles from the federal Constitution [Articles].”

²⁹² “Annapolis Convention Resolution, 1786,” *Teaching American History*, <https://teachingamericanhistory.org/library/document/annapolis-convention-resolution/>.

²⁹³ Madison and Koch, 28. “That nothing spoken in the House be printed, or otherwise published or communicated without leave.”

Notwithstanding the problems at Philadelphia, there is a good deal of unique and greatly beneficial aspects of the US Constitution, such as the development of American Federalism. This is a brilliant aspect of the replacement constitution that created the second US government. With this benefit being mentioned, however, the Constitution endured a difficult path towards passage.²⁹⁴ Many in the US felt that the new governing document was too powerful over the sovereignties of the individual states and the national government would govern over the states as oppressive and arbitrarily as George III and had over the English colonies before the success of independence was achieved in the 1783 Treaty of Paris.²⁹⁵

As the government under the Constitution progress in the US, many people looked upon the Constitution affectionately and perpetuated a fantasized idea that the document was passed in a virtual harmonious fashion.²⁹⁶ Nothing could be further from the truth. There were sharp

²⁹⁴ McClellan, 21. "Given the unavoidable controversy surrounding the legality of writing a new constitution and the opposition of many important political leaders, there was considerable doubt when the delegates left Philadelphia whether nine States could be persuaded to ratify the proposed Constitution. The first hurdle was the Continental Congress. Could it be counted on to vote itself out of power? Fortunately, Congress made no issue of the Convention's authority to draft a new document when, on September 20, 1787, it received the Convention report on the Philadelphia proceedings and a copy of the proposed Constitution."; Carey and McClellan, "Editor's Introduction," *The Federalist*, the Gideon edition, 21. "Given the unavoidable controversy surrounding the legality of writing a new constitution and the opposition of many important political leaders, there was considerable doubt when the delegates left Philadelphia whether nine States could be persuaded to ratify the proposed Constitution."

²⁹⁵ Antifederalist #70, "An Old Whig's Essay, *The New York Journal*, December 11, 1787," <http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/70.htm>. "In the first place the office of president of the United States appears to me to be clothed with such powers as are dangerous. To be the fountain of all honors in the United States--commander in chief of the army, navy, and militia; with the power of making treaties and of granting pardons; and to be vested with an authority to put a negative upon all laws, unless two thirds of both houses shall persist in enacting it, and put their names down upon calling the yeas and nays for that purpose--is in reality to be a king, as much a king as the king of Great Britain, and a king too of the worst kind: an elective king."

²⁹⁶ Francis Newton Thorpe, *The Constitutional History of the United States*, vol. I, 1765-1788 (Chicago: Callaghan & Company, 1901), 1-2. "For the origin of the American system of national government, we must look beyond the assembly of eminent men who framed the Constitution of

disagreements in the convention, and one so great nearing the end of the deliberations that three significant members of the founding fathers refused to sign the document in disgust over issues at the convention, but the most significant was the lack of a bill of rights being considered for inclusion in the Constitution.²⁹⁷ This famous rebellion of Virginians George Mason and Edmond Randolph, along with Pennsylvanian Elbridge Gerry shocked the convention delegates and would be one of the components for James Madison later insisting that if he was elected to the first US Congress, the Virginian would work towards the first amendments to the Constitution being a bill of rights.²⁹⁸

Following the Philadelphia convention, the new document was presented to the Confederation Congress. With the approval of the body, it was decreed that the Constitution should be sent to the states for ratification in specially called ratification conventions. The activities of those opposed to ratification, the Anti-Federalists, labored diligently to declare the new document as being nothing more than a revisit of a powerful and arbitrary government waiting to overshadow the rights of the people. The work of the Anti-Federalists was initiated when it became aware that a secret meeting of appointed delegates was holding deliberations in the same facility that was employed to declare independence from Great Britain in 1776.²⁹⁹ The

the United States. Acting as the representatives of the States and indirectly of the people, they preserved the traditions of the Anglo-Saxon race to which most of them belonged. At a critical time in its history they did not break with the past. Though yet in the midst of a great revolution, they laid no desecrating hand upon the foundations of liberty and justice. They knew better than we that no system of government can become enshrined in the hearts of a people unless it embodies their traditions, their customs and their laws.”

²⁹⁷ Bradford, 9-10, 154, 161, 165, 168.; Madison and Koch, September 8, 1787, 630. “Mr. Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights. Col. Mason 2nd the motion.”; Banning, 176-177. “The crusty author [Mason] powerfully denounced that failure to include a bill of rights.”

²⁹⁸ Banning, 270-271, 279.

²⁹⁹ William Grayson, Antifederalist #2, “We Have Been Told of Phantoms,” June 11, 1788, <http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/02.htm>. “The adoption

league of opposition commenced to protest the results of the Philadelphia convention. The work of the Anti-Federalists manifested itself in a series of passionate speeches and newspaper editorials sparring with persons who were proponents of the Constitution's installation as the national governing document: the Federalists.³⁰⁰

As the Anti-Federalists protested in speeches and newspaper editorials, the Federalists were compelled to address the men who led the opposition to the Constitution. Organized by Alexander Hamilton, with subsequent requests from John Jay and James Madison, this three man team of Federalists published responses in New York newspaper editorials to not just combat the Anti-Federalists, but to bring to influence the passage of the Constitution in the New York ratification convention.³⁰¹ The writings of Hamilton, Madison and Jay were later compiled into book form with numbers associated with each published editorial. *The Federalist* has been viewed as one of the greatest primary sources into the political thoughts of the three contributors, and its importance became so abundant that US Supreme Court decisions were based on the thoughts of Hamilton, Madison and Jay.³⁰²

of this government will not meliorate our own particular system. I beg leave to consider the circumstances of the Union antecedent to the meeting of the Convention at Philadelphia. We have been told of phantoms and ideal dangers to lead us into measures which will, in my opinion, be the ruin of our country."

³⁰⁰ Carey and McClellan, "Editor's Introduction," *The Federalist*, the Gideon edition, 22. "Those who favored ratification were called Federalists, and those opposed, for lack of a better term, came to be known as the Anti-Federalists. The Federalists tended to favor a stronger national government, which the new Constitution promised to bring, whereas the Anti-Federalists inclined toward a weaker national government that better protected States' rights."

³⁰¹ *Ibid.*, 23.

³⁰² Pamela C. Corley, Robert M. Howard and David C. Nixon, "The Supreme Court and Opinion Content: The Use of the Federalist Papers" *Political Research Quarterly* 58, no. 2 (June, 2005), 329. "Many scholars of the Supreme Court and many justices assert the importance of the Federalist Papers. They provide important evidence of original meaning and interpretation of the Constitution, and there is evidence that there is an increase in citations to the Federalist Papers in Supreme Court opinions."; Carey and McClellan, "Editor's Introduction," *The Federalist*, the Gideon edition, 28.

The work of the three authors of *The Federalist* did not accomplish their immediate goal of getting New York to be one of the nine required states for ratification. New York would, however, pass the Constitution in their state constitutional convention, but not before New Hampshire became the requisite ninth state for national passage. New York would ultimately be the eleventh state to accept the national document just over a month later than New Hampshire with a razor thin vote of 30-27.³⁰³ What came out of the work of the Federalists, however, was a plethora of political thoughts on not just the passage of the Constitution, but on the ideas of what good government was, and what it was capable of accomplishing.³⁰⁴

In observing the purpose of Part I of the thesis is to investigate the social contract and the creation of American Federalism, a few examples of the thoughts on these subjects from the Federalists and Anti-Federalists is required. As to the social contract, the Anti-Federalists felt that the new Constitution broke that connection between the government and the people with the notion that the new document would trample on the sovereignty of the states in the confederacy. The author of Anti-Federalist No. 17 believed that Article I, Section 6 and 8 of the proposed Constitution were direct destructors of state sovereignty.

³⁰³ Bernstein, 14.

³⁰⁴ Carey and McClellan, "Editor's Introduction," *The Federalist*, the Gideon edition, 24. "Within the pages of *The Federalist* is the whole theory of American constitutional government. Here Publius [synonym for authors of *The Federalist*] explains the structure upon which the Constitution is built and the rationale of the Framers in constructing a republican form of government based on a separation and division of powers. Why did the Framers favor two legislative chambers (a bicameral system) over a single one (a unicameral system)? What interests were to be represented in these assemblies? Why did they provide for a single instead of a plural executive? Why did they give Federal judges life tenure, during "good behavior," rather than a limited term of office? Why did they grant certain powers to the central government and reserve others to the States? More fundamentally, why did they fear a concentration of power and prefer limited government? The answers to these and other important questions about the nature and purpose of the constitutional design, and the meaning of virtually every political principle and clause in the Constitution, will be found in these essays."

“This [new] government is to possess absolute and uncontrollable powers, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section eighth, article first, it is declared, that the Congress shall have power ‘to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.’ And by the sixth article, it is declared, ‘that this Constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or law of any State to the contrary notwithstanding.’ It appears from these articles, that there is no need of any intervention of the State governments, between the Congress and the people, to execute any one power vested in the general government, and that the Constitution and laws of every State are nullified and declared void, so far as they are or shall be inconsistent with this Constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States.”³⁰⁵

In response to this notion of neglected sovereignty of the states in the Constitution, Publius (Madison) attempted to reassure the Anti-Federalists that the states were not in danger of losing their independences, and if there was going to be difficulties concerning sovereignty the states would be more likely to present obstacles than the national government.³⁰⁶

The Anti-Federalists were equally concerned with the type of government that was included in the Constitution. The relationship between the states and the federal government had additional components aside from determining the sovereignty of the states. Although the absence of a bill of rights in the Constitution was disturbing to the Anti-Federalists, the possibility of the national government holding a large standing army during peacetime, the bane of the short American tradition but overwhelmingly feared in the long history of the English

³⁰⁵ Brutus, Antifederalist #17, “Federalist Power Will Ultimately Subvert State Authority,” <http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/17.htm>.

³⁰⁶ James Madison, “Federalist #45,” *The Federalist*, Gideon edition, 247-248. “Several important considerations have been touched in the course of these papers, which discountenance the supposition, that the operation of the federal government will by degrees prove fatal to the state governments. The more I revolve the subject, the more fully I am persuaded that the balance is much more likely to be disturbed by the preponderancy of the last than of the first scale.

people was of great concern to the opponents of the Constitution. In one example, six months prior to declaring independence in 1776, Samuel Adams wrote to a colleague on the dangers of this type of military activity that was being perpetuated by the British forces stationed in the colonies.³⁰⁷ Furthermore, considering the long held belief that a large standing army was a threat to the liberties and safety of the populace, the Anti-Federalists feared that this type of military act held additional problems for the people of the US. Under the Constitution, the states were not permitted to have their own official military forces, save the state militias who the executive as commander-in-chief of the military could mobilize [the state militias] at his leisure for national military service.³⁰⁸ The Anti-Federalists were deeply concerned about this issue.³⁰⁹ For the

³⁰⁷ “Samuel Adams to James Warren, January 7, 1776,” Irving Stone, ed., *Warren-Adams Letters, Being Chiefly A Correspondence Among John Adams, Samuel Adams, and James Warren, 1734-1814* (Boston: The Massachusetts Historical Society, 1925), 197-198. Internet Archive, <https://archive.org/details/letterscorrespond00warrich/page/196>. “A Standing Army, however necessary it may be at some times, is always dangerous to the Liberties of the People. Soldiers are apt to consider themselves as a Body distinct from the rest of the Citizens. They have their Arms always in their hands. Their Rules and their Discipline is severe. They soon become attached to their officers and disposed to yield implicit obedience to their Commands.”

³⁰⁸ Article I, section 8, clause 12-16, U.S. Constitution, “To raise and support Armies, but no appropriation of Money to that Use shall be for a longer Term than two Years. To provide and maintain a Navy. To make Rules for the Government and Regulation of the land and naval Forces. To provide for calling forth the Militia to execute the laws of the Union, suppress Insurrections, and repel Invasions. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.”; Article II, section 2, clause 1, U.S. Constitution. “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”

³⁰⁹ Brutus, Antifederalist #24, “Objections to a Standing Army (Part I),” *The New York Journal*, January 17, 1788.

<http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/24.htm>. “Standing armies are dangerous to the liberties of a people... But, why is this provision so ridiculous? Because, says this author, it is unnecessary. But, why is it unnecessary? Because, “the principles and habits, as well as the power of the Americans are directly opposed to standing armies; and there is as little necessity to guard against them by positive constitutions... It is admitted then, that a standing army in time of peace is an evil. I ask then, why should this government be

Federalists, the possibility of the national government employing a large peacetime standing army was addressed by Hamilton as being a bit reactionary. Absent of the mention of a large standing army in the text of the Constitution, did not imply that this type of military establishment was inevitable.³¹⁰ Hamilton does, however, acknowledge that this type of military would be beneficial in protecting the liberties of the people. The veteran of the Revolutionary War firmly held that national security was a collective issue for the entire Union and if the Anti-Federalists felt that retaining a large national army in peacetime was a threat to liberty, so be it, but just a fraction of compromise on this issue might be necessary for the safety of the whole nation.

“Safety from external danger, is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war; the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty, to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they, at length, become willing to run the risk of being less free.”³¹¹

Summation of PART I

Notwithstanding all of the political difficulties that were experienced in the US debating its merits and shortcomings, the Constitution was accepted as the national governing document when the state of New Hampshire, being the ninth and final requisite state for passage, voted for

authorized to do evil? If the principles and habits of the people of this country are opposed to standing armies in time of peace, if they do not contribute to the public good, but would endanger the public liberty and happiness, why should the government be vested with the power? No reason can be given, why rulers should be authorized to do, what, if done, would oppose the principles and habits of the people, and endanger the public safety; but there is every reason in the world, that they should be prohibited from the exercise of such a power.”

³¹⁰ Alexander Hamilton, Federalist #8, *The Federalist*, Gideon edition, 81, “Standing armies, it is said, are not provided against in the new constitution; and it is thence inferred that they would exist under it. This inference, from the very form of the proposition, is, at best, problematical and uncertain.”

³¹¹ *Ibid.*, 81.

approval on June 21, 1788.³¹² Virginia and New York consented within a few days, however, North Carolina would refuse passage until November 1789 and Rhode Island was the last of the original thirteen colonies to accept the Constitution on May 19, 1790.³¹³ The first presidential election in the US was held on February 3, 1789 with George Washington nearly sweeping the Electoral College.³¹⁴ John Adams was awarded the vice-presidency under the first operations of the executive elections process prior to the Twelfth and subsequent Twentieth Amendments. The first Congress of the Senate and House of Representatives was elected and began their inaugural sessions on March 4, 1789. As Madison had promised, he worked diligently to pass amendments to the Constitution to include a bill of rights. The work concluded with the first ten amendments becoming the official Bill of Rights of the US on December 15, 1791.³¹⁵ The second government of the US was now poised to commence the journey of maintaining itself by adhering to American Federalism guaranteed in the US Constitution.

The three chapters that construct PART I of the thesis have presented a good deal of information for the foundations of the social contract, defining sovereignty and the manifestation of American Federalism in the US. Commencing with the importance of understanding how the original thirteen colonies were established, as well as appreciating their origins in the English traditions of social and political customs established by the ancient English constitution, and then comprehending the colonist's frustrations of feeling betrayed by their monarchy and parliament that had ruled over them in a tyrannical and arbitrary fashion following the Glorious Revolution

³¹² Bernstein, 14.

³¹³ *Ibid.*, 14. Note: The vote in Rhode Island was 34-32.

³¹⁴ D. Jason Berggren, "Presidential Election of 1789," *George Washington's Mount Vernon*, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/presidential-election-of-1789/>.

³¹⁵ "1st to 9th Congresses (1789-1807)," United States House of Representatives, <https://history.house.gov/Institution/Session-Dates/1-9/>.

in 1688 and more harshly following the Seven Years War in 1763, it is not difficult to see why the thirteen colonies felt that only total independence from Great Britain was the sole path of re-attaining their liberties and freedoms that they had previously held as Englishmen guaranteed to them from time immemorial. The colonists were aware that to declare independence, they would have to cease viewing themselves as *Englishmen* and hold the new moniker of *Americans*. Instigated by the Treaty of Paris in 1783, the rebellious Englishmen in North America officially became Americans ruling themselves as member states of a confederacy called the United States of America. As the first government of the confederacy was inadequate to govern successfully, a restructure of the US was initiated and turbulently passed ratification to end the confederacy and become part of “a more perfect Union.”

From the establishment of the second US government, PART II of the thesis will investigate how the country suffered the difficulties of finding solutions in keeping the social contract between the national and state governments secured. The sovereignty issues concerning the states in the Union were destined to be tested through a series of events that would tear the nation in two. Through the theories of an irrepressible conflict and opposing principles, the tear in the country will result with the impetus of a new confederacy in North America torn from the southern region of the Union that will be known as the Confederate States of America.

“What is the true relation between the two governments—that of the United States and those of the several States? and what is the relation between the individuals respectively composing them? For it is clear, if the States still retain their sovereignty as separate and independent communities, the allegiance and obedience of the citizens of each would be due to their respective States; and that the government of the United States and those of the several States would stand as equals and co-ordinates in their respective spheres; and, instead of being united socially, their citizens would be politically connected through their respective States. On the contrary, if they have, by ratifying the constitution, divested themselves of their individuality and sovereignty, and merged themselves into one great community or nation, it is equally clear, that the sovereignty would reside in the whole—or what is called the American people; and that allegiance and obedience would be due to them. Nor is it less so, that the government of the several States would, in such

case, stand to that of the United States, in the relation of inferior and subordinate, to superior and paramount; and that the individuals of the several States, thus fused, as it were, into one general mass, would be united socially, and not politically. So great a change of condition would have involved a thorough and radical revolution, both socially and politically—a revolution much more radical, indeed, than that which followed the Declaration of Independence.”³¹⁶

³¹⁶ John C. Calhoun and Ross M. Lence, ed.. *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis: Liberty Fund Inc., 1992), 69.

PART II IRREPRESSIBLE CONFLICT / OPPOSING PRINCIPLES

Particular acts of magistrates, whether executive or judicial, and decrees which affect only a part of the community, are not acts of sovereignty, but mere applications of laws in particular instances. The general will is always right. Its object is the general interest. The danger to be guarded against is the formation of powerful parties in the state, with interests of their own, which may override the general will.³¹⁷

---Edmond Burke
1790

As the notion of American Federalism gained significance in the second government of the US, there arose two circumstances that challenged the political and social life of the American people; the rise of organized political parties and the ongoing regional differences experienced between the northern and southern regions of the country. The establishment of political parties in the US would be the facilitator that greatly exposed the difficulties of defining American Federalism and the proper determination of sovereignty between the state and federal governments. The task of resolving sovereignty would dramatically affect the polarization of the regional differences concerning the issue of free and slave labor in the nation.

Chapter four of Part II will be dedicated to analyzing selected events in the US that culminated into southern secession. Chapter five will examine the thoughts of William H. Seward concerning the dangers of retaining slave labor in the country with his Irrepressible Conflict theory. Part II will conclude by a chapter devoted to Alexander H. Stephens and his Opposing Principles opinions on the subject of slave labor and the true reasons for the motivation of the southern states to secede from the Union.

³¹⁷ Edmond Burke and F. G. Selby, ed., *Burke's Reflections on the Revolution in France* (London: MacMillan and Co., 1890), 53.

Chapter 4

*“It can no longer be disguised or denied that the Union is in danger”*³¹⁸

Whenever this effect shall be produced among us; whenever the vicious portion of population shall be permitted to gather in bands of hundreds and thousands, and burn churches, ravage and rob provision stores, throw printing presses into rivers, shoot editors, and hang and burn obnoxious persons at pleasure, and with impunity; depend on it, this Government cannot last.³¹⁹

---Abraham Lincoln
January 27, 1838

In the spring of 1856, a US Senator sat working at his desk in the Senate chamber when a member of the US House of Representatives stormed into the room with designs of retribution on his mind. Senator Charles Sumner of Massachusetts had earlier delivered a speech entitled “The Crimes Against Kansas,” which in its text had specifically targeted the cousin of South Carolinian House member Preston Brooks in an unflattering light.³²⁰ Exactly two years following the passage of the Kansas-Nebraska Act in 1854, Representative Brooks approached Sumner and declared that the senator had insulted Brooks’ cousin in his speech.³²¹ As Sumner attempted to stand and face his accuser, Brooks raised his walking stick and struck Sumner in the

³¹⁸ John C. Calhoun, “Speech on the Slavery Question, Delivered in the Senate March 4, 1850,” Frohnen, ed., *The American Republic*, 835.

³¹⁹ “Address To The Young Men’s Lyceum Of Springfield, Illinois,” January 27, 1838, Frohnen, ed., *American Republic*, 725.

³²⁰ Potter, 209-210.; Schott, 204.; Charles Sumner, “Senator Charles Sumner of Massachusetts on the Crime Against Kansas; Senate, May 19-20, 1856,” The Roy Rosenzweig Center, *George Mason University*, http://chnm.gmu.edu/mcpstah/wordpress/wp-content/themes/tah/files/reilly_documents.pdf. “The Senator from South Carolina [Andrew Butler] has read many books of chivalry, and believes himself a chivalrous knight, with sentiments of honor and courage. Of course he has chosen a mistress to whom he has made his vows, and who, though ugly to others, is always lovely to him; though polluted in the sight of the world, is chaste in his sight I mean the harlot, Slavery. For her, his tongue is always profuse in words. Let her be impeached in character, or any proposition made to shut her out from the extension of her wantonness, and no extravagance of manner or hardihood of assertion is then too great for this Senator...”

³²¹ William H. Freehling, *The Road To Disunion: Secessionists Triumphant 1854-1861*, vol. II (New York: Oxford University Press, 2007), 79.

head which resulted in the senator to slump to the floor. As a fellow member of the House attempted to restrain Brooks, the South Carolinian shrugged off the interloper and continued to deliver additional blows on Sumner until the cane broke into two bloody splintered sticks. With blood streaming from Sumner's wounds, Brooks dropped what was left of his weapon and calmly walked away from the scene. Brooks would later become a celebrity in the South and his admirers sent him replacement canes.³²² It would take nearly two years for Sumner to recover to the point of being able to return to his seat in the Senate.³²³

Debating Regional Issues

Nearly twenty-three years prior to Brooks' assault on Sumner in the Senate chamber, one of the most significant senatorial confrontations occurred that held a direct relationship to the speech that prompted Brooks' assault on Sumner. The senatorial debate was instigated due to political confrontations concerning the mounting regional differences regarding the conduct of the northern and western congressmen toward southern statesmen who were attempting to protect the economic rights of their respective states.³²⁴ American Constitutional Historian Herman Belz described the debates as the following:

“The debates between Daniel Webster of Massachusetts and Robert Hayne of South Carolina gave fateful utterance to the differing understandings of the nature of the American Union that had come to predominate in the North and the South, respectively, by 1830. To Webster the Union was the indivisible expression of one nation of people. To Hayne the Union was the voluntary compact among sovereign states. Each man spoke more or less for his section, and their classic expositions of their respective views framed the political conflicts that culminated at last in the secession of the Southern states and war between advocates of Union and champions of Confederacy.”³²⁵

³²² Schott, 204. “In South Carolina, Brooks, inundated with canes from thoughtful admirers, was lionized, feted, and praised; the state press almost universally proclaimed him a hero.”

³²³ Potter, 210-211.

³²⁴ Herman Belz, ed., *The Webster-Hayne Debate on the Nature of the Constitution: Selected Documents* (Indianapolis: Liberty Fund Inc., 2000), 9.

³²⁵ Belz, ed., *Webster-Hayne Debate*, 2-3.

Considering the thoughts of Belz, the confrontation between Webster and Hayne in the US Senate was a significant precursor as to the *cause* of the secession movement in 1860-1861 that produced the Confederacy. This declaration by Belz should be seriously considered when bearing in mind that the debates had taken place thirty-one years prior to the secession winter. This information proves that the country had been contemplating the issues concerning state sovereignty and secession for many years preceding the impetus of the Confederacy.

To wholly disavow that the southern states solely left the Union for the violation of their sovereignties and that slavery was the only instigator for secession is a bit erroneous, however, what can be argued is that protecting state sovereignty was a component of the larger issue of the South's imbroglio into the economic requirement of retaining chattel slavery that was protected in the Constitution.³²⁶ The violation of the sovereignties of the southern states by the federal government was the *cause* for support among the southern populace to adhere to the purpose and results of the secessionist conventions in the winter of 1860-1861. Thus, retaining slavery was the *reason* that the secessionists created the Confederate government. The slave holders and politicians in the South feared that the election of a Republican president and a number of Republican Congressmen would work diligently to abolish their economic traditions concerning slave labor.

³²⁶ "A Declaration of the Immediate Causes Which Induce and Justify the Secession of the State of Mississippi from the Federal Union, January 9, 1861," Bruce Frohnen, ed., *The American Nation: Primary Sources* (Indianapolis: Liberty Books Inc., 2008), 36. "Our position is thoroughly identified with the institution of slavery—the greatest material interest of the world. Its labor supplies the product which constitutes by far the largest and most important portions of the commerce of the earth. These products are peculiar to the climate verging on the tropical regions, and by an imperious law of nature none but the black race can bear exposure to the tropical sun. These products have become necessities of the world, and a blow at slavery is a blow at commerce and civilization. That blow has been long aimed at the institution, and was at the point of reaching its consummation. There was no choice left us but submission to the mandates of abolition, or a dissolution of the Union, whose principles had been subverted to work out our ruin."

The fore mentioned clash in the Senate occurred in the opening days of the first session of the Twenty-First Congress in December 1829.³²⁷ This event would propagate the thoughts and beliefs of the southern congressmen that the northern and western members of the government had been breaking the social compact with the South cemented in American Federalism since the opening days of the selling of government lands in the western portion of the US.³²⁸ The senators who felt that the southerner's positions were false would vehemently defend the federal government's actions and promote the necessity of keeping all the regions of the young republic prosperous. The inauguration of President Andrew Jackson had occurred just nine months prior to the opening of the Twenty-Fifth Congress and the Democrat, who would later have an ally with Webster in their interpretations in the nullification crisis but not with destroying the Bank of the United States, was taking special interest in the debates.³²⁹

The debates between Hayne and Webster were originally prompted by what appeared to be an essentially benign resolution presented by Connecticut Senator Samuel A. Foot. The senator presented a plan to temporarily cease the sale of western public lands, except parcels that were already surveyed and plotted, and to suspend the federal position of Surveyor General until such time as the reestablishment of selling public lands would be prudent.³³⁰ Foote had reasoned

³²⁷ Belz, ed., *Webster-Hayne Debate*, 7.; McDonald, 105-106.

³²⁸ Daniel Walker Howe, *What God Hath Wrought: The Transformation of America, 1815-1848* (New York: Oxford University Press, 2007), 368.

³²⁹ Belz, ed., *Webster-Hayne Debate*, 24.

³³⁰ "The Following Resolution, Moved By Mr. Foot, Of Connecticut, Being Under Consideration," Frohnen, ed., *American Republic*, 750-751. "Resolved, That the Committee on Public Lands be instructed to inquire and report the quantity of the public lands remaining unsold within each State and Territory, and whether it be expedient to limit, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price. And, also, whether the office of Surveyor General, and some of the Land Offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands."

that many of the available lands were still unsold and to suspend their availability would allow the federal government time to selloff the remaining parcels.³³¹ Nearly all of the senators representing states west of the Mississippi River and below the line of the Missouri Compromise were offended by this measure. Missourian Thomas Hart Benton, senator of the only slave state that was allowed above the slavery boundary line in the Missouri Compromise, immediately challenged Foote's resolution, and found an ally in Hayne, who was acting,

“...on behalf of Southern interests, [Hayne] saw an opportunity, through cooperation with Western members, to shift federal tax policy away from the high protective duties adopted by Congress in 1828, referred to as the “tariff of abominations.” Therefore, on January 19, 1830, Hayne entered the discussion.”³³²

Upon hearing Foote's proposition, Senator Benton became enraged and fumed that the senator from Connecticut and his northern colleagues were attempting to manipulate the populating of the west for the benefit of midwestern and eastern manufacturing interests.³³³ Prior to additional observations into the Webster-Hayne debates, an explanation into the “tariff of abominations” and the subsequent nullification crisis, with its effect on the proceedings in the Senate as well as being a component in the difficulties between the regions of the North and South is required.

Tariff of Abominations and Nullification Crisis

What is actually called the Tariff of 1828 was designed to assist northern and western agricultural and manufacturing interests in the US competing with cheap foreign imports. The

³³¹ Howe, 368, “[Foote] proposed a temporary moratorium on new lands being offered for sale until more of the existing stock of available land had found buyers.”

³³² Belz, ed., *Webster-Hayne Debate*, 9. Note: the “Tariff of Abominations that Benton referred to was the Tariff of 1828.

³³³ *Ibid.*, 9. “Western senators viewed the resolution as a hostile measure intended to stop the growth of Western states by keeping Eastern workers from moving west, thus assuring a labor supply for New England manufacturers.”; Smith, 104-105. “Senator Benton took this move as an assault on the growth of the West. He referred to Foot and his compatriots as “yankees” who were trying to maintain control of Congress by preventing population expansion in the West... Benton was agitated, so agitated that he yelled loudly during his speech—even rattling the windows, by some accounts.”

unintended consequence of the tariff quickly became apparent when the tax percentage of the tariff greatly increased the cost of living in the South due to the inability to export cotton with the capacity of the product being cost-effective, which additionally sliced into the profits of the manufacturers of finished textiles and other goods in New England to be shipped abroad. Historian Daniel W. Howe explained how the South and New England were affected differently by the Tariff of 1828 in the area of growing and refining cotton.

“The relationship between the planters and the Yankee processors of their raw cotton proved by no means altogether compatible. Two-thirds of the cotton crop was exported, mainly to Britain, giving its producers an interest in free trade. But the American cotton mills needed a tariff to stay in business. Even with its protection they could only compete in the cheaper lines of product; the finer goods required a skilled workmanship that was prohibitively expensive in the United States.”³³⁴

For the New England industrialists, the hope of the Tariff of 1828 was to alleviate their fear of the practice of free trade occurring in the countries of the world, mainly from Great Britain that flooded American markets with cheap foreign goods. The manufactures of the US hoped that their finished goods would become more desirable if a tariff was placed on foreign imports that would allow the domestic manufacturers to undercut imported goods. “Before long, claimed pro-tariff polemicists, American industry would boom, American jobs would increase, American productivity would soar, and American-made goods would cost less than English products had ever fetched.”³³⁵

What became additionally problematic with the Tariff of 1828 was that it was essentially an extension of the Tariffs of 1816 and 1824. The tariff was around twenty-five percent in 1816

³³⁴ Howe, 273.

³³⁵ James Madison, “Federalist 10,” *The Federalist*, Gideon edition, 88. “Complaints are every where heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority.”; Freehling, 255.

and thirty-three percent in 1824. The Tariff of Abominations was set at an exorbitant fifty percent.³³⁶ Although the both previous tariffs were vehemently opposed by the South, the increase of seventeen percent with the renewed tariff was too much for southern consumers to endure. As the southern politicians looked to alter the legislation in the Congress, in what James Madison had once said that the representative body would be able to prevent, “This majority tyranny, many Carolinians thought, indicated that more than Justice William Johnson’s liberation of black seamen must be nullified.”³³⁷ Nullification of the Tariff of Abominations was perceived as an oppressive and tyrannical federal act, and was compared by Historian William H. Freehling as being to South Carolinians as nullifying the law that was interpreting the condition of black men. The law concerning black men determined that it would be better if these men labored as slaves rather than serve as freemen sailors on British ships that sought portage in the US.³³⁸ The agricultural South felt that being forced to abide by the Tariff of 1828 was as despicable as abolishing slavery and also held that this behavior was another instance of the national government circumventing the rights of the states.

³³⁶ Freehling, 255.

³³⁷ *Ibid.*, 257.

³³⁸ Herbert A. Johnson, “The Constitutional Thought of William Johnson,” *The South Carolina Historical Magazine* 89, no. 3, (July, 1988), 136. “After the Denmark Vesey slave uprising in 1822, the South Carolina legislature passed a statute which provided for the automatic imprisonment of any free black seaman who arrived in South Carolina until such time as the captain of his vessel sailed and carried him away. If the captain failed to do so, he was subject to fine and imprisonment and the black seaman was declared a slave subject to sale by the county sheriff. Passed in December 1822, the South Carolina statute caused protests by the British consul in Washington. As a result of discussions between Secretary of State John Quincy Adams and the South Carolina congressional delegation, the state stopped official enforcement of the act. But a group of private citizens, calling themselves the South Carolina Association, would not let the matter rest. When the British ship *Homer* arrived in Charleston with a Jamaican seaman aboard, the Association seized him under the act and caused his imprisonment in the Charleston jail. Before Justice Johnson, the attorneys for the Association argued that the act was a necessary measure for the protection of residents of the state. As a sovereign state, South Carolina had a right to provide for the welfare and safety of her residents.”

The nullification crisis in 1828 was essentially President Andrew Jackson's first experience of being challenged as the chief executive of the US. To make matters more interesting, Vice President John C. Calhoun rose to be the leader of the persons that were protesting the 1828 tariff and searching for legal avenues to refuse obeying the law. The South Carolina state legislature sought out Calhoun to inquire of the vice president if there was a proper constitutional path for the state to nullify the tariff. Calhoun agreed to the task, but only if he could maintain anonymity.³³⁹ A few months after accepting the request of the South Carolinians, Calhoun had anonymously produced two essays entitled *Exposition and Protest* to be presented to the legislature of South Carolina. Calhoun seemed to stretch the popularly held notion of state's rights proponents in the beginning of the nineteenth century to an "abnormal extreme."³⁴⁰ The state's rights movement felt that Congress singularly held the power explicitly recorded in the text of the Constitution. "No constitutional clause specifically gave congressional majorities power to protect industry through taxes on imports or to use taxes to colonize and /or free slaves."³⁴¹ Calhoun would take this notion a bit farther. It was apparent that Calhoun did not just fear the national government through the executive and legislative branches exclusively; he feared the Supreme Court more than either a nationalistic president or congress.

"It is, in a word, a violation by perversion—the most dangerous of all, because the most insidious, and difficult to resist. Others cannot be perpetrated without the aid of the judiciary—this may be by the Executive and Legislative departments alone. The courts cannot look into the motives of legislators. They are obliged to take acts by their titles and professed objects, and if these be constitutional, they cannot interpose their power, however grossly the acts may, in reality, violate the Constitution."³⁴²

³³⁹ Freehling, 257.; "Exposition and Protest," Calhoun and Lence, ed., 203.

³⁴⁰ Freehling, 257.

³⁴¹ *Ibid.*, 257.

³⁴² "Exposition and Protest," Calhoun and Lence, 204.

Calhoun was convinced that the ultimate protector of nationalism, and the direct opponent to state's rights, was the US Supreme Court.

In the end, South Carolina accepted a replacement tariff in 1833 in the form of legislation pushed by President Jackson that was defiantly called by South Carolinians as the "Force Bill."³⁴³ In terms of the right of a state to nullify a law or secede from the Union by the declaration of a convention of an individual state, Jackson was adamant that the entire populace of the US elects the chief executive and the office superseded any states acts in circumventing the wishes of a portion, or the entirety of the nation.³⁴⁴ Prior to the Force Bill, the officials of South Carolina threatened secession and mobilized their militia. Jackson reinforced federal forts in Charleston harbor and dispatched armed revenue cutters as well.³⁴⁵ Passionate speeches and editorials replaced any military operations between federal forces and the South Carolinians, however, the future leaders of South Carolina did not forget the incident. They made their thoughts abundantly clear in December 1860 when they led the secessionist movement and eventually instigated the CS.

³⁴³ Howe, 406.

³⁴⁴ Freehling, 267.; Andrew Jackson, "First Inaugural Address of Andrew Jackson," Wednesday, March 4, 1829, *The Avalon Project*, https://avalon.law.yale.edu/19th_century/jackson1.asp. "About to undertake the arduous duties that I have been appointed to perform by the choice of a free people, I avail myself of this customary and solemn occasion to express the gratitude which their confidence inspires and to acknowledge the accountability which my situation enjoins. While the magnitude of their interests convinces me that no thanks can be adequate to the honor they have conferred, it admonishes me that the best return I can make is the zealous dedication of my humble abilities to their service and their good. As the instrument of the Federal Constitution it will devolve on me for a stated period to execute the laws of the United States, to superintend their foreign and their confederate relations, to manage their revenue, to command their forces, and, by communications to the Legislature, to watch over and to promote their interests generally. And the principles of action by which I shall endeavor to accomplish this circle of duties it is now proper for me briefly to explain."

³⁴⁵ Howe, 405-406.

Nationalism v. State's Rights

In concerning the Webster-Hayne debates, one of the most significant speeches that leaned toward a stronger national government in the US was delivered by Webster. The Massachusetts senator mentions the passage of the Northwest Ordinance in beginning his observations towards the necessity of serious considerations of the importance of the national government. Webster additionally takes a jab at Hayne for the South Carolinian previously stating that he had never heard of the Massachusettsan who led in the authorship and passage of the last significant legislation under the Articles of Confederation; Senator Nathan Dane.³⁴⁶ From this point, Webster narrows the focus of what Hayne and the other southerners in the Senate were really determining was their experience of having their state sovereignty's violated by the northern and western colleagues in the Congress; protecting chattel slavery.

“I spoke, sir, of the ordinance of 1787, which prohibited slavery, in all future times, northwest of the Ohio, as a measure of great wisdom and foresight; and one which had been attended with highly beneficial and permanent consequences. I supposed, that on this point, no two gentlemen in the Senate could entertain different opinions. But, the simple expression of this sentiment has led the gentleman [Hayne], not only into a labored defence of slavery, in the abstract, and on principle, but, also, into a warm accusation against me, as having attacked the system of domestic slavery, now existing in the Southern States.”³⁴⁷

Webster further explains that he [Webster] was not intending to bring up the issue of slavery, as he was accused of in his previous speech, except that Webster felt that introducing slavery into

³⁴⁶ Belz, ed., *Webster-Hayne Debates*, 77. “He [Hayne] was rather disposed to make it matter of ridicule, that I had introduced into the debate the name of one Nathan Dane, of whom he assures us he had never before heard. Sir, if the honorable member had never before heard of Mr. Dane, I am sorry for it. It shows him less acquainted with the public men of the country, than I had supposed. Let me tell him, however, that a sneer from him, at the mention of the name of Mr. Dane, is in bad taste. It may well be a high mark of ambition, sir, either with the honorable gentleman or myself, to accomplish as much to make our names known to advantage, and remembered with gratitude, as Mr. Dane has accomplished. But the truth is, sir, I suspect, that Mr. Dane lives a little too far North. He is of Massachusetts, and too near the North star to be reached by the honorable gentleman's telescope.”

³⁴⁷ *Ibid.*, 77.

the territories would have been a mistake given its climate for the crops that slavery was traditionally accustomed to labor in and that Kentucky may have benefitted from refusing to allow slavery in the state.³⁴⁸

Webster proceeds to remind Hayne and the other southern Senators that since the passage of the Missouri Compromise, there has not been a concerted effort by the northern states in Congress to prohibit slavery where it existed. Webster further assures the southern Senators that their sovereignties are safely intact in the Constitution.³⁴⁹ There is, however, an issue that Webster cannot concede to in acquiescing with his southern colleagues. The North is not conspiring to destroy slavery, although Webster and many of his fellow northern congressmen find the institution detestable.

“I need not say I differ with him, altogether and most widely, on that point. I regard domestic slavery as one of the greatest of evils, both moral and political. But, though it be a malady, and whether it be curable, and if so, by what means; or, on the other hand, whether it be the *vulnus immedicabile* of the social system, I leave it to those whose right and duty it is to inquire and to decide. And this I believe, sir, is, and uniformly has been, the sentiment of the North.”³⁵⁰

Webster had now crossed the line from bringing a more civil tone to his argument to accusing the slave holding South that they were committing crimes against nature for enslaving their fellow man, although that fellow man has been considered inferior from not just the South but from the North as well.³⁵¹

³⁴⁸ *ibid.*, 77.

³⁴⁹ *ibid.*, 77-78. “But the feeling is without all adequate cause, and the suspicion which exists wholly groundless. There is not, and never has been, a disposition in the North to interfere with these interests of the South. Such interference has never been supposed to be within the power of Government; nor has it been, in any way, attempted. It has always been regarded as a matter of domestic policy, left with the States themselves, and with which the Federal Government had nothing to do. Certainly, sir, I am, and ever have been of that opinion.”

³⁵⁰ *ibid.*, 78.

³⁵¹ Eric Foner, *Forever Free: The Story of Emancipation and Reconstruction* (New York: Vintage Books, 2006), 49. “The initial northern reaction [to emancipation] was not encouraging.

Webster then harkened back to the days of the founding of the second government of the US. He talks about the first sessions of Congress and how there were debates in the body that including slavery in the Constitution might have been a mistake and that there was a movement in the North and one state in the upper-South that slavery should be reevaluated. The Massachusetts senator further acknowledged that there was a committee established in the House of Representatives to seek a way to determine the fate of slavery in the US.³⁵² The committee determined that Congress could not prohibit the slave trade as described in the Constitution. The committee did, however, conclude that Congress could suspend the international slave trade in the US to cease assisting other countries into acquiring human property. The third and final determination of the committee had direct relation to protecting slavery and guaranteeing sovereignty of the states.

*“Resolved, That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them in any of the States; it remaining with the several States alone to provide rules and regulations therein, which humanity and true policy may require.”*³⁵³

For the purpose of the thesis seeking the impetus of the Confederacy, this statement by Webster is significantly important in searching for the links between the cause and reason for secession. The South’s *cause* for secession was their claim of being denied their state’s rights and the *reason* for breaking from the Union was the southern states economic addiction to chattel slavery.

In the fall elections of 1862, Democrats made opposition to emancipation the centerpiece of their campaign, warning that the North would be “Africanized” – inundated by freed slaves competing for jobs and seeking to marry white women.”

³⁵² Belz, ed., *Webster-Hayne Debates*, 78.

³⁵³ *Ibid.*, 78 & 79. “The House agreed to insert these resolutions in its journal; and from that day to this, it has never been maintained or contended, that Congress had any authority to regulate, or interfere with, the condition of slaves in the several States. No Northern gentleman, to my knowledge, has moved any such question in either House of Congress.”

Balancing Power in the Senate

In just a short time following the Webster-Haynes debates in the Senate, it was becoming abundantly clear that the aspects of the Missouri Compromise in 1820 were not strong enough to hold the test of time following California's desire for statehood in 1849. From the admission of Missouri and Maine subsequent to the Compromise of 1820, the arrival of the next six states still held a fragile balance between slave and free states represented in the US Senate. The slave states were continually concerned with the danger of not being able to maintain a voting balance of power in the Senate.³⁵⁴ With California looking towards statehood, the equilibrium of free and slave states was in danger of being upset. As things stood in the Senate prior to the complications of admitting California, there were fifteen corresponding free and slave states.³⁵⁵ Once again, the slave states were declaring that their sovereignties were in jeopardy and continuing the regulations of the Missouri Compromise could not address the situation in the US following the results of the annexation of Texas and the territories gained following the Mexican-American War. There had to be an additional congressional act to confront the ongoing problems that the southern states perceived as an assault on their sovereignties. Once again, it was going to be up to Congress to find a member or a group of members to broker a compromise that could satisfy the southern states.

Moreover, in the events that led to the creation of the Compromise of 1850, it should be understood and acknowledged that the southern states were not afraid of their sovereignties being trampled in areas such as combating high tariffs, thoughts on nullification of federal laws,

³⁵⁴ Freehling, 149.

³⁵⁵ *Ibid.*, 487. "If free laborers' surge towards statehood triumphed, slavery would be barred in 16 states, allowed in 15. Sothern control over the Senate, that longstanding counterpoise to the northern controlled House, might be permanently lost."; David S. Heidler and Jeanne T. Heidler, *Henry Clay: The Essential American* (New York: Random House Publishing, 2011), 460.

or the difficulties of promoting and maintaining internal improvements in the US. The problem that faced the country harkened back to the impetus of the Webster-Haynes debates roughly two decades prior to the annexation of Texas and the results of the Mexican-American War, which was the ability to acquire new lands for the US to accept chattel slavery and the power it would give to the southern states in the US Senate. From the point of the Republic of Texas transforming into the state of Texas and up to the secession winter of 1860-1861, the cry from the southern states in having their sovereignties violated was overwhelmingly the expansion and protection of maintaining chattel slavery in the US. No other issue came close to being as important when deciding secession. The *reason* for secession was prodigiously supreme to the *cause* of secession as has been previously presented.

The requirement for the Compromise of 1850 to be implemented was overwhelming proof that the southern states equated their individual sovereignties with protecting chattel slavery.³⁵⁶ There was talk among Democrats that the new state of Texas could be subdivided into five slave holding states that would create a power base in the Senate for southern interests.³⁵⁷ There would be several events in the decade of the 1850's that would further prove this interpretation of southern sovereignty linked to slavery, however, an event that followed the annexation of Texas and the US victory in the Mexican-American War would present a situation that would further polarize the northern and southern regions of the nation. The path to the

³⁵⁶ Heidler and Heidler, 478. "The [Fugitive Slave] law, however, became the compromise's linchpin as southerners insisted that its enforcement was crucial to their continuance in the Union."

³⁵⁷ Freehling, 424. "Annexation involved the largest acquisition of a southern land mass; some Englishmen did rather hope to plant free labor on it; the land was politically and economically sublime for slavery; and annexationists demanded the soil to solve practical, political, racial, economic, military, demographic, and moral problems at the heart of southern concern for half a century."; Howe, 699. "Texas received admission as a state, not a territory, with the proviso that it might later be subdivided into as many as five states. This provision, never implemented, horrified northern Whigs."

Compromise of 1850 would not only differentiate the social fabric of the US, but the fight over slavery would ultimately change political party memberships. The Whigs and Democrats would not just retain ideological differences as a party, but their regional locations would factor into their decision-making regarding slavery. The Whigs would eventually implode, and the political vacuum would be filled by a new political party calling themselves Republicans.

Compromise of 1850

The motivation for the Compromise of 1850 began in March 1845 when President John Tyler signed the joint resolution of the US Congress to annex the former Republic of Texas. The president gifted the golden pen that he used to sign the document to his young wife, to whom he had recently wed and who had lobbied diligently to her husband for Texas to become a member of the US.³⁵⁸ With the southern slave states enthusiastic at the opportunity of subdividing Texas into additional slave holding states, an extra opportunity of expanding slavery occurred a year later with the breakout of hostilities in the southwest that would culminate into the Mexican-American War. With the victory over the Mexicans in 1848, the treaty that concluded the conflict expanded the territory of the US with the additions of parts or the entirety of the future states of California, Nevada, Utah, Wyoming, Colorado, Arizona and New Mexico.³⁵⁹ In regards to the Compromise of 1850, the future state of California would be at the forefront of the creation of the compromise, however, the institution of slavery and the expansion of slave labor would be the catalyst for the deal struck between the North and South.

“The North is making the most strenuous efforts to appropriate the whole [of territory annexed from Mexico] to herself, by excluding the South from every foot of it. If she should succeed, it will add to that from which the South has already been excluded, 526,078 square miles, and would increase the whole which the North has appropriated to

³⁵⁸ Howe, 699.

³⁵⁹ “Treaty of Guadalupe Hidalgo,” Article V, February 2, 1848, *The Avalon Project*, https://avalon.law.yale.edu/19th_century/guadhida.asp.

herself, to 1,764,023, not including the portion that she may succeed in excluding us from in Texas. To sum up the whole, the United States, since they declared their independence, have acquired 2,373,046 square miles of territory, from which the North will have excluded the South, if she should succeed in monopolizing the newly acquired territories, about three-fourths of the whole, leaving to the South but about one-fourth. Such is the first and great cause that has destroyed the equilibrium between the two sections in the Government.”³⁶⁰

The acquisition of California by the US as one of the results of the war with Mexico became troublesome when the former Mexican property desired statehood. At the time of California’s transition into the US, the region had already outlawed slavery while still in the hands of the Mexican government and desired to maintain its status quo. Just over a year following the defeat of Mexico, the famous gold strike of 1949 occurred in California. As massive amounts of people invaded California in search of the precious metal, the new people arriving in the lawless lands began to desire the safety of statehood.³⁶¹ When the southern states became aware of California desiring statehood, along with the knowledge that the future state had already prohibited slavery in their midst, the southerners of the US were fearful of the potential of experiencing a powerful anti-slavery dominance in the US Senate. Oregon had previously joined the Union absent of slave labor and this created an equal balance between the proslavery and antislavery states represented in the Senate. If California was allowed to enter the Union without legal chattel slavery, the balance against the southerners would be initiated and the fear of abolition in the South would be realized and destroy the southerner’s social and economic ways of life. Something had to be done and the US looked to the author and broker of the Missouri Compromise of 1820 to save the Union from dissolving; Kentuckian Henry Clay.

³⁶⁰ John C. Calhoun, “Speech On The Slavery Question, Delivered In The Senate March 4th, 1850,” Frohnen, ed., *American Republic*, 839.

³⁶¹ Freehling, 487. “In 1848-49, discovery of gold in California lured 80,000 fortune hunters westward. Few gold dusters were Southerners. Only an occasional ‘49er brought a slave. Treasure seekers desired to make California a free labor state immediately.”; McPherson, *Battle Cry of Freedom*, 64.

There was a problem when Clay began his work to bring balance to the Senate and appease the southern states. The Kentuckian was not as young and healthy in 1850 as he was in 1820. Friends of Clay knew that he was suffering from bouts of coughing up blood and Clay told his intimates that he feared that he had contracted tuberculosis and would be dead in just a short time. Clay's instincts concerning his mortality were correct, the Great Compromiser died just over two years following his work to prevent the Union from imploding.³⁶²

As tensions ran high in Congress over the events that presented opportunities for the expansion of slavery, Clay began working with other Whigs and a number of Democrats on legislation that would prevent the expansion of slavery but somehow appease the slave states with other enticements. Clay had, unfortunately, simply alienated not only his fellow Whigs in the South but a good many Democrats in the US when his initial plan for dealing with slavery came to light.³⁶³ Clay, however, was undeterred and reluctantly looked to the ideas of Mississippi Democrat Senator Henry Foote in creating a congressional committee to address the many issues concerning slavery in the West into one legislative bill called the Omnibus Plan.³⁶⁴ Clay was derided by his fellow Whigs, but the Kentuckian was adamant in his belief that the country would fall apart without legislation that could bring compromise to the expansion of slavery.

The Omnibus Plan had transformed to legislation called the Omnibus Bill and was sent to the full Senate for debate. Clay introduced the bill to the Senate, however, the Kentuckian

³⁶² Heidler and Heidler, 462-463.

³⁶³ Freehling, 487. "The Kentucky Whig instead provoked a controversy as important as the one between warring sections: a bitter clash within the South. Deep South senators demanded and secured critical revisions of Henry Clay's Border South design for sectional adjustment. Especially after slaveholders had made Clay's proposals less northern, the Southern Whig's bills could not have carried the majority section – and perhaps unless President Zachary Taylor, Clay's most threatening Whig rival, die."

³⁶⁴ Heidler and Heidler, 469.

desired to construct a momentous gesture prior to laying out the components of the legislation. Clay had previously led a movement in Congress for the federal government to purchase George Washington's Mount Vernon estate. Money was appropriated by the House of Representatives and the measure passed overwhelmingly in both houses of Congress. Prior to Clay speaking to the body of senators, one of the caretakers at Mount Vernon presented Clay with a sliver of wood from the coffin of the first president. With a piece of Washington's history held in his hand, Clay looked to the senators and proclaimed "It [the piece from Washington's coffin] was a warning voice, coming from the grave to the Congress ... to beware, to pause, to reflect before they lend themselves to any purposes which shall destroy the Union."³⁶⁵ Clay knew that he would require a good deal of patriotism to convince southern senators to pass the bill that placed in its text some controversial impacts for the slave holding South.

A partial list of the components of the Omnibus Bill held that "...the North would gain California as a free state and an end to the slave trade in Washington, D.C., while the South would get a stronger fugitive slave law and the possibility of western slavery through popular sovereignty."³⁶⁶ This portion of the Omnibus Bill was not sufficient for the southern states to accept. California admitted as a free state was in direct opposition to the work of the southern senators following the victory of the US over Mexico. Putting an end to the slave trade in the nation's Capital was equally dangerous to the possibility of abolition in the US. The act of applying popular sovereignty to the rest of the former Mexican territories was additionally troublesome when considering California's previous attitude towards chattel slavery. The only

³⁶⁵ "Clay's Last Compromise, January 29, 1850," The United States Senate, https://www.senate.gov/artandhistory/history/minute/Clays_Last_Compromise.htm.; Heidler and Heidler, 462.;

³⁶⁶ "Clay's Compromise, The United States Senate.

bright spot for the slave holding states was the strengthening of the constitutionally protected fugitive slave law that free states in the North had been ignoring.

“But how stands the profession of devotion to the Union by our assailants, when brought to this test? Have they abstained from violating the constitution? Let the many acts passed by the Northern States to set aside and annul the clause of the constitution providing for the delivery up of fugitive slaves answer. I cite this, not that it is the only instance (for there are many others), but because the violation in this particular is too notorious and palpable to be denied. Again: have they stood forth faithfully to repel violations of the constitution? Let their course in reference to the agitation of the slavery question, which was commenced and has been carried on for fifteen years, avowedly for the purpose of abolishing slavery in the States—an object all acknowledged to be unconstitutional—answer. Let them show a single instance, during this long period, in which they have denounced the agitators or their attempts to effect what is admitted to be unconstitutional, or a single measure which they have brought forward for that purpose. How can we, with all these facts before us, believe that they are sincere in their profession of devotion to the Union, or avoid believing their profession is but intended to increase the vigor of their assaults and to weaken the force of our resistance?”³⁶⁷

The debate in the Senate lasted a grueling eight months prior to voting on the bill. Many US Congressman, state political leaders, as well as President Zachary Taylor were completely opposed to Clay’s bill.³⁶⁸ When it came time to vote, the people who were opposed to the measure made their voices heard to their senators. After various senators had included motions of striking parts of the bill, or simply passing portions of the legislation, the fate of the bill became devastatingly apparent to Clay. With Taylors influence on Whig senators, as well as long time dissenters of the bill, the Senate rejected the totality of the Omnibus Bill excluding the legislation that included a territorial bill for Utah.³⁶⁹

When Clay failed to pass the Omnibus Bill, his health was deteriorating by the day and he left for Philadelphia for rest and recuperation. When Clay left Washington, there were still proponents of the bill left in Congress who knew that a deal must be accomplished between slave

³⁶⁷ Calhoun, “Speech On The Slavery Question, Delivered In The Senate,” Frohnen, ed., *American Republic*, 845-846.

³⁶⁸ Freehling, 491, 493-499; Heidler and Heidler, 463-465.;

³⁶⁹ Heidler and Heidler, 475.

and free states to avoid the breakup of the Union. It would be in the form of legislation that, ironically, Clay had originally desired by considering separate items of compromise to be considered, instead of presenting on large bill for accomplishing a compromise. The leader of the reconsideration of the failed Omnibus Bill came from an unlikely source, Illinois Democrat Stephen A. Douglas. "In seeking to mass his [Douglas'] National Democratic Party behind a national adjustment ever becoming less 'Clay's'...The Illinois Democrat would secure a favorable vote on each segment of the now-unraveled Omnibus."³⁷⁰ Douglas and his fellow proponents of resurrecting the Omnibus in piecemeal came from an unforeseen, but beneficial event. President Taylor, following a long, hot and humid Fourth of July at the dedication of the groundbreaking ceremonies for the Washington Monument, went back to the White House and partook of several glasses of iced milk and bowls of fruits and vegetables. The president began to feel pain in his torso later that evening, and suffering from undiagnosed gastroenteritis, writhed in agony for the next five days before dying.³⁷¹

The death of Zachary Taylor elevated Vice President Millard Fillmore to the presidency. The last Whig to be the executive of the US was as much a proponent of the Omnibus as Taylor was opposed.³⁷² With Fillmore's blessing and help, Douglas and his colleagues held little opposition to passing in parts the former Omnibus in the form of the Compromise of 1850. The following are the components of the final legislation that became the Compromise of 1850:

1. California was accepted in the Union as the sixteenth free state.
2. New Mexico and Utah were organized without the mention of slavery.
3. Texas received ten million dollars from the federal government in exchange for lands gained during the Mexican American War and reset the present geographical state boundaries.

³⁷⁰ Freehling, 508.

³⁷¹ *Ibid.*, 493.; Heidler and Heidler, 472.; McPherson, *Battle Cry of Freedom*, 74.

³⁷² *ibid.*, 493-494.; McPherson, *Battle Cry of Freedom*, 74-75.

4. The slave trade was abolished in Washington D. C., but slave ownership was left intact.
5. The Fugitive Slave Act was amended and strengthened.

Arguably, the most egregious component of the Compromise of 1850, as well as the southern states erroneous claim of adhering to the sovereignty of the states, was the federal mandate of recapturing slaves mentioned in the US Constitution and expanded with the Fugitive Slave Act of 1850. What should be realized, however, is that the practice of capturing runaway slaves was not a new notion when written into the Constitution in 1787. North Americans that would eventually create the US were applying the practice of slave recapture many years before the Second Continental Congress informed King George III and the English Parliament that all men were created equal.

Fugitive Slave Laws

In 1750, a pamphlet circulating the Boston area listed a number of fugitive slaves who had recently escaped and were believed to be in the region. One of the men mentioned had already signed on to a merchant ship and had left the harbor of Boston. The fugitive slave became a twenty-year veteran of the sea serving on a British owned merchant vessel. In the late winter of 1770, while waiting for his ship to be unloaded, reloaded and refitted for sea, representatives of a Boston patriot leader had journeyed to the waterfront to ask for help from the seamen to confront British regulars guarding the Boston customhouse. The former slave joined the group of volunteers requested by Samuel Adams to assist in the patriot cause. As the Bostonians gathered with clubs, sticks and snowballs taunting the British soldiers, a scream of “fire” rang out. One of the first men to fall was Crispus Attucks, the fugitive slave that had

escaped twenty years earlier and had given his life for the cause of liberty in a colony that made it legal to deny his liberty.³⁷³

In considering that Attucks had escaped his master in Massachusetts, a state that is recognized as leading the other states that were proponents of abolition, this incident of an escaping slave and the existence of a fugitive slave law seems incredible. The inescapable truth, however, is that slavery in Massachusetts, as well as other future New England states, would not occur until the middle or end of the American Revolution.³⁷⁴ Additionally, with slavery accepted there was the requirement of retaining mechanisms to address the fate of escaped slaves. In the US, the first laws addressing escaped slaves occurred in 1643.

In addressing the need for protection against military incursions from Native American, French, and Dutch contingents, the colonies of Massachusetts Bay, Plymouth, Connecticut, and New Haven banded together to form an alliance known as United Colonies of New England. The four colonies sent representatives to meet and discuss their common problems, which overwhelmingly were the results following the Pequot War. On May 19, 1643, the four colonies banded themselves together by writing “The Articles of Confederation of the United Colonies of New England.”³⁷⁵ This document, more closely defined as a military treaty than a national

³⁷³ C. W. A. David, “The Fugitive Slave Law of 1793 and its Antecedents,” *The Journal of Negro History*, Vol. 9, No. 1 (January, 1924), 18-19.

³⁷⁴ David., 20. “During the American Revolution, many of the States framed new constitutions; and, feeling the truth of the declaration, ‘All men are created equal,’ they passed emancipation acts. Slavery was actually abolished in Vermont in 1777, in Massachusetts in 1780, in Pennsylvania by a gradual emancipation act in 1780, and in New Hampshire in 1784. In 1782 The Pennsylvania Abolition Society was formed. Its aim was to help the Negro and to create a sentiment against slavery. In 1785 the anti-slavery sentiment reached New York and forced that State to abolish slavery by gradual process which, however, was not completed until 1827. Thus we see the country divided into slave and non-slave-holding sections, a condition which made the return of fugitives a sectional question.

³⁷⁵ *Ibid.*, 19.

compact of the four colonies, contained a section that is recognized as the first fugitive slave law in North America.

“It is also agreed that if any servant run away from his master into any other of these Jurisdictions, that in such case, upon the certificate of one magistrate in the Jurisdiction out of which the said servant fled, or upon other due proof; the said servant shall be delivered, either to his master, or any other that pursues and brings such certificate or proof.”³⁷⁶

With the illumination of the practice of apprehending fugitive slaves in North America, it is difficult to believe that it was necessary for the Compromise of 1850 to embolden the already established constitutional practice, however, for the southern states it was essential. Escaping slaves were finding refuge in states north of the Mason-Dixon Line and the Ohio River with the aid of the northern people. It was imperative in 1850 to strengthen the practice of recapturing slaves to appease the slave states with the reality of the federal government virtually disallowing the expansion of slavery in the West, except for Texas. Unfortunately, the Compromise of 1850 and the subsequent events concerning slavery, such as the practice of popular sovereignty in deciding slavery in formerly protected territories and states from the institution, as well as the significant Supreme Court case that validated slavery to be accepted in states that had abolished the practice many years before, were not enough victories for the southern slave states to enjoy following the election of a Republican president in 1860. It was the opportunity that southern leaders had been hoping and searching for. It was time for the *cause* of secession to be proclaimed to protect the *reason* for separating from the Union.

Secession

Political Scientist Lawrence M. Anderson quotes Professor of Management and Organization Viva Bartkus in defining secession as "...the formal withdrawal of a constituent

³⁷⁶ “The Articles of Confederation of the United Colonies of New England; May 19, 1643.” Section 8 (partial). *The Avalon Project*, http://avalon.law.yale.edu/17th_century/art1613.asp.

unit from an internationally recognized state and the creation of a new state.”³⁷⁷ This definition is directly on point when just under a week after the election of Lincoln to the presidency, the legislature of South Carolina called for a convention to decide if it was possible to remain part of the national government under a Republican president. On December 20, 1860 the South Carolinian secession convention concluded that it was indeed impossible.³⁷⁸ In March of the following year, President Lincoln would deny the accusations of the South Carolina as well as the other six additional state secession conventions.³⁷⁹ With the dichotomy of interpretations between the fear of being governed by an abolitionist Republican national government and Lincoln’s stated purpose of ensuring the South’s constitutional rights by protecting their “peculiar institution” where it existed, the country had simply come to the breaking point of

³⁷⁷ Lawrence M. Anderson, “The Institutional Basis of Secessionist Politics: Federalism and Secession in the United States,” *Publius* 34, no. 2 (Spring, 2004), 2. Quote from Viva Ona Barkus, *The Dynamic of Secession* (Cambridge: Cambridge University Press, 1999), 9. Professor Barkus is the Associate Professor of Management and Organization in the Mendoza College of Business at the University of Notre Dame.

³⁷⁸ “South Carolina Declaration Of Causes Of Secession, December 20, 1860,” Frohnen, ed., *The American Nation*, 30-31. “Observing the forms of the Constitution, a sectional party has found within that article establishing the Executive Department, the means of subverting the Constitution itself... On the 4th March next, this party will take possession of the Government. It has announced, that the South shall be excluded from the common Territory; that the Judicial Tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States.

The Guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self government, or self-protection, and the Federal Government will have become their enemy.”

³⁷⁹ “First Inaugural Address – Final Text, March 4, 1861,” Lincoln and Basler, ed., 262-263.

“Apprehension seems to exist among the people of the Southern States, that by the accession of a Republican Administration, their property, and their peace, and personal security, are to be endangered. There has never been any reasonable cause for such apprehension. Indeed, the most ample evidence to the contrary has all the while existed, and been open to their inspection. It is found in nearly all the published speeches of him who now addresses you. I do but quote from one of those speeches when I declare that ‘I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.’ Those who nominated and elected me did so with full knowledge that I had made this, and many similar declarations, and had never recanted them.”

nearly seventy-three years of debating the constitutional protection of state sovereignty and the perpetuation of chattel slavery. The *cause* and *reason* for southern secession.

In February of 1861, Mary Chestnut, the wife of the former US Senator from South Carolina and newly appointed delegate to the Constitutional Convention for the burgeoning CS, was in route to Montgomery, Alabama to meet her husband at the site of the convention. The South was alive with jingoistic fervor concerning the commencement of the Confederate government as well as the anticipated war for independence with the US. As of the date of the scheduled convention, the home state of the Chestnuts had led the secession movement five days before Christmas with the states of Georgia, Florida, Alabama, Mississippi and Louisiana following in the winter of 1860-1861.³⁸⁰ While on her journey, Mrs. Chestnut wrote in her now famous diary, in which she recorded her thoughts and experiences during the Civil War, of how she believed the persons forming the new Confederacy should be composed. “This Southern Confederacy must be supported now by calm determination and cool brains. We have risked all, and we must play our best, for the stake is life or death.”³⁸¹ Upon reflecting on the individuals involved in the new government, Chestnut wrote in her diary that she was less than enthusiastic on the choices of leadership.

“One of the first things which depressed me was the kind of men put in office at this crisis, invariably some sleeping deadhead long forgotten or passed over. Young and active spirits ignored, places for worn-out politicians seemed the rule – when our only

³⁸⁰ Provisional Congress of the Confederate States, *Journal of the Congress of the Confederate States of America, 1861-1865*, vol. i, United States Senate, U.S. Serial Set, (Washington, D.C.: 1904), [https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(cc0015\)\)](https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(cc0015))); 7-10. Note: At the beginning of the first session of the Congress, all of the state secession resolves were read. The states in order of secession were South Carolina on December 20, 1860, Alabama, Florida and Mississippi on January 11, Georgia on January 19 and Louisiana on January 26, 1861.

³⁸¹ Mary Chestnut and C. Vann Woodward, ed., *Mary Chestnut's Civil War* (New Haven: Yale University Press, 1981), 3.

hope is to use all the talents God has given us. This thing continues. In every state, as each election comes on, they resolutely put aside everything but the inefficient.”³⁸²

Whatever the initial thoughts of Chestnut on her observations of the new officials of the Confederacy, the government had been established by writing and adopting a constitution. The seat of the national government would move from Montgomery, Alabama to Richmond, Virginia, just over one hundred miles from Washington, D. C. The US Congress was experiencing resignations of southern congressmen. Federal installations in the harbor of Charleston, South Carolina were attacked and overcome. Lincoln then proceeded to act with questionable constitutional powers in blockading the coasts of the rebellious states and arresting people suspected of treason then denying them habeas corpus. A call for volunteers to embolden the US army to train for the inevitable conflict to keep the Union together was enacted. Before the war to ensure the traditions of the South ended, more men would die than in all previous wars combined up to the Vietnam conflict.³⁸³

³⁸² Chestnut and Woodward, ed., 5.

³⁸³ Drew Gilpin Faust, “‘Numbers on Top of Numbers:’ Counting the Civil War Dead,” *The Journal of Military History* 70, no. 4 (October, 2006), 997.

Chapter 5

*“The free-labor system conforms to the divine law of equality”*³⁸⁴

“In the South, unfortunately, no kind of labor, is either free or respectable. Every white man who is under the necessity of earning his bread, by the sweat of his brow, or by manual labor, in any capacity, no matter how unassuming in deportment, or exemplary in morals, is treated as if he was a loathsome beast, and shunned with the utmost disdain.”³⁸⁵

---Hinton Rowan Helper
1857

Following the capture of Fort Sumter, when it became unquestionably apparent that the seceded states were inflexible in their determination to create a new government in North America, US Secretary of State William Seward grew concerned about the process of sending diplomatic representatives around the world. Seward was aware that the Confederacy would be sending their own foreign agents to garner sympathy for their new government and the dichotomy of the US and CS working in the field of foreign relations would be a challenging endeavor for the US Secretary of State.³⁸⁶ As had been practiced in previous administrations, the role of US diplomats around the world held challenging duties and personal behavior responsibilities in their representation of the country. The Secretary of State related the roles of foreign ministers to President Lincoln and the cabinet early in the administration’s first days.

³⁸⁴ William H. Seward, “The Irrepressible Conflict, Rochester [N.Y.], October 25, 1858,” Seward and Baker, ed., 290.

³⁸⁵ Hinton Rowan Helper, *The Impending Crisis of the South: How to Meet It* (New York: Burdick Brothers, 1857), 41.

³⁸⁶ McPherson, *Battle Cry of Freedom*, 383. “A major goal of Confederate diplomacy in 1861 was to persuade Britain to declare the blockade illegal as a prelude to intervention by the royal navy to protect British trade with the South.”; Glyndon G. Van Deusen, *William Henry Seward* (New York: Oxford University Press, 1967), 292. “The conduct of diplomacy (the shaping of relationships with foreign countries) in a nation in the throes of civil strife, was, as Seward speedily discovered, an absorbing and delicate business. He addressed himself to this task with his customary energy and enthusiasm.”

Seward additionally related to the group that further assistance to the US diplomats in Europe would be beneficial during the present crisis.

“A Minister at a European court always receives the courtesy and respect due to his official character as a representative of his country. But that character also imposes restraints upon his freedom of movement and conversation. He must weigh his words, and be guarded in his inquiries. He must remain at or near his legation. He may not write for the press. Even at social reunions he must avoid talk that might embarrass his Government. It occurred to Seward, early in the war, that it would be desirable to have some prominent Americans in Europe, who could effectually supplement the Ministers, without being trammelled by official duties or restrictions.”³⁸⁷

The Secretary of State was determined to keep the ambassadors of the US free of undignified behavior but realized that the present situation required informing the nations of the world the clear stances of the US government. Seward was already being informed that a number of ambassadors from the previous administration were attempting to undermine Lincoln’s foreign policies. The Secretary of State’s task of informing the nations of the world of the new administration’s policies would have to be accomplished by sending additional Americans that were not directly connected to the government in announcing the moral superiority of the US and the immoral practice of the Confederacy concerning chattel slavery. Seward further informed the new world representatives of the US concerning the dangers of the Confederacy sending envoys to Europe and other regions in attempting to secure diplomatic relations and acquiring financial and military aid through the only desirable commodity that the Confederacy held for the markets of the world; the overwhelming availability of King Cotton.³⁸⁸

³⁸⁷ William H. Seward and Frederick W. Seward, ed., *Autobiography of William H. Seward, From 1801 to 1834, With A Memoir Of His Life, And Selections From His Letters From 1831 to 1846* (New York: D. Appleton and Company, 1877), 2.

³⁸⁸ Judith F. Gentry, “White Gold: The Confederate Government and Cotton in Louisiana,” *Louisiana History: The Journal of the Louisiana Historical Association* 33, no. 3 (Summer, 1992), 229.

Early Life and Politics

William Henry Seward was born on May 16, 1801, in Orange County, New York. The fourth of six children, Seward was a very small and frail child. His parents recognized early that their third son was not destined for a life of physical labor that would be essential to work the family farm. For this reason, William, or Harry as he preferred to be called, was given the most extensive education that the family could provide. At the age of nine, Harry was sent to an academy in Goshen, where he would live with his paternal cousins during his primary education.³⁸⁹

When Seward graduated from the Farmer's Hall Academy, he applied and was accepted at Union College in Schenectady, New York. Upon arriving on campus, Seward was given the standard examinations for class placement. When the collegiate was asked at what level of rank he should be examined, the young man recalled, "I summoned boldness to answer that I had studied for examination to enter the junior class." When Seward's examinations were reviewed, the impressive scores placed the fifteen-year-old at the exact rank of his ambition. As the statutes of the college prevented a person of Seward's age to be ranked as a junior, the school was forced to place the teenager in the sophomore class.³⁹⁰

Seward's first experience with state and national politics came at the end of his junior year at Union in 1817. The young New Yorker was well aware of the burgeoning opposition within his first chosen political party, the Jeffersonian Republicans, by two factions that developed in New York during and after the presidential election of 1816. The leaders of both

³⁸⁹ Frederic Bancroft, *The Life of William Seward*, vol. I (Gloucester, MA.: Peter Smith, 1967), 2-3.; Van Deusen, 3.; Seward and Seward, 20. "I have been told that the tenderness of my health caused me to be early set apart for a collegiate education, then regarded, by every family, as a privilege so high and so costly that not more than one son could expect it."

³⁹⁰ Seward and Seward, ed., 30.

factions, New York Governor De Witt Clinton and future President of the United States Martin Van Buren, had split over the choice of a vice president for the Jeffersonian presidential candidate James Monroe. Van Buren had been instrumental in choosing Monroe and assisted in positioning New Yorker Daniel D. Tompkins as vice-president. Tompkins was in Schenectady stumping for George Clinton, the first vice president in the previous administration of James Madison, for the governorship of New York. De Witt Clinton was running for reelection and was suffering from the lack of support from the Monroe administration. Seward admitted that “My training at home had prepared me to be an earnest admirer of Tompkins, and of course hostile to [De Witt] Clinton.”³⁹¹ Seward gave a speech at a gathering in Schenectady in honor of Tompkins and for George Clinton’s election campaign. Seward admitted his disappointment concerning the lack of success with his speech as the hotly contested gubernatorial race concluded with De Witt Clinton being reelected.³⁹²

In the summer prior to graduating with honors from Union College in 1820, Seward began his legal ambitions by reading the law under the direction of attorney John Duer.³⁹³ As with many young aspiring lawyers of his day, a good portion of studying the law was attending court sessions and working with court clerks in learning the inner-workings of the law. Seward’s work paid off in October 1822 when he was admitted to the New York bar.³⁹⁴ Seward formally initiated his political career as a Jeffersonian Republican in supporting John Q. Adams for president in the election of 1824. The Republicans had split into four different factions and

³⁹¹ *Ibid.*, 36.

³⁹² *ibid.*, 36.; Van Deusen, 10-11.

³⁹³ Van Deusen, 6.

³⁹⁴ *Ibid.*, 7; Thornton Kirkland Lothrop, *William Henry Seward*, American Statesmen Series (Boston: Houghton, Mifflin and Company, 1899), 4-5.

proposed four different candidates for the presidency with Massachusetts born Adams, Kentuckian Henry Clay, William Crawford of Georgia, and Tennessean Andrew Jackson. The contentious election was thrown into the House of Representatives as no candidate received a clear electoral majority. Jackson would later claim that a “corrupt bargain” was struck between Adams and Clay when the Kentuckian had been rumored to be influencing his fellow members of the Bluegrass state in the House to sway their previous votes for Jackson to be cast for Adams.³⁹⁵ Clay was promised the office of Secretary of State from leaders of Adams campaign if Clay could successfully hand Adams the presidency with influencing House members from Kentucky. This promise may sound a bit benign in the twenty-first century, however, in 1824 the office of the Secretary of State was a springboard to the presidency. Out of the first five presidents, the last three of the chief executives were previous secretaries of state. Clay did not disappoint Adams and delivered the House Kentuckians to the camp of the oldest son of John Adams. John Quincy Adams became the sixth president of the US and Henry Clay became the ninth Secretary of State. Clinging to the assumption of the political tradition of being the next president, Clay would be sadly disappointed in his designs for the office of the chief executive when Andrew Jackson secured the presidency in the following two presidential elections. Seward continued his opposition of the Jacksonians by backing John Q. Adams for the presidency in 1828 and to the Anti-Mason candidate, former Attorney General in the Monroe administration, William Wirt in 1832.³⁹⁶

³⁹⁵ Freeling, 267. “Instead, Henry Clay, whose Kentucky constituents who had voted for Jackson, threw Kentucky’s congressional votes, and thus the presidency, to Secretary of State Adams. President-elect Adams named Clay to be Secretary of State. Clay thus assumed the office which for a quarter-century had led to the White House. Jackson, charging Corrupt Bargain, vowed that the next time, the people would triumph.”

³⁹⁶ Lothrop, 13.; Seward and Seward, ed., 93.; Van Deusen, 21.

Seward's politics began to take a significant shift following the election of 1828. Becoming increasingly suspicious of the political influences of the Masons in the US, in which Jackson was a member, Seward became associated with the Anti-Mason Party in the mid-term election of 1830 and was elected to the New York Senate as an Anti-Mason.³⁹⁷ He then abandoned the party to align himself with the new Whig Party formed in New York in 1834.³⁹⁸ The New Yorker began to rise into leadership roles within his new chosen party and was elected to the governorship of New York. As his tenure in the Whig Party progressed, the nation was dealing with a significant and divisive issue that was directly affecting the social and political fabrics of the US: the continuation of the institution of slavery. This subject of chattel slavery became weighing heavily upon Seward during his governorship and he began to speak more frequently with governors of slave holding states on eradicating the practice of spreading slave labor with the annexation of Texas.³⁹⁹

Seward was elected to the US Senate in the winter of 1849 and was in the congressional body when the difficulties of reconciliation between the free and slave states were attempted in 1850. Seward by this time was a distinct voice in the leadership of opposition to slavery and detested the idea that its expansion would be allowed in the newly acquired lands of Texas and the spoils gained by the US victory over Mexico. As explained in the previous chapter, the Compromise of 1850 created an enormous problem for the abolitionist movement to accept with

³⁹⁷ Lothrop, 56.

³⁹⁸ Van Deusan, 25. "[Seward was] busy preparing the ground for a new political structure, and during the winter of 1833-34 the state [New York] Whig party came into being." "Most of the Antimasons became Whig, and for years the heavy majorities they rolled up in western New York played a large part in Whig victories."

³⁹⁹ Lothrop, 58. "...but minor incidents [during the political campaigns from 1836] and such events as the correspondence between Seward and the Southern governors kept alive and tended to increase the hostile feeling between the two sections [free and slave states], which the proposed annexation of Texas threatened at any time to kindle into an active flame."

the legislation that strengthened the practice of recapturing escaped slaves in the Fugitive Slave Act of 1850. Seward was as vocal as any anti-slavery man regarding the new components of capturing fugitive slaves, however, the senator from New York shocked the Congress when he dared to proclaim that the most vital political document in the US was inferior to another law that was divinely mandated.

“But there is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purposes. The territory is a part, no inconsiderable part, of the common heritage of mankind, bestowed upon them by the Creator of the universe. We are his stewards, and must so discharge our trust as to secure in the highest attainable degree their happiness.”⁴⁰⁰

In addition to declaring that there existed a higher law that superseded the powers of the Constitution, Seward refused to ignore the situation that was confronting the Senate in deciding the fates of Texas and Mexican annexation. The only issue confronting the US in the compromise being debated could not be solely dedicated to addressing the institution of slavery. There were many freedoms and liberties to be considered with the annexation of the lands in question. Seward fully believed that slavery was going to be eradicated in the US in the future and that the institutions that would stand the test of time for Americans are the freedoms guaranteed in the US Constitution.

“There is another aspect of the principle of compromise which deserves consideration. It assumes that slavery, if not the only institution in a slave state, is at least a ruling institution, and that this characteristic is recognized by the Constitution. But *slavery* is only *one* of many institutions there. Freedom is equally an institution there. Slavery is only a temporary, accidental, partial, and incongruous one. Freedom on the contrary, is a perpetual, organic, universal one, in harmony with the Constitution of the United States. The slaveholder himself stands under the protection of the latter, in common with all the free citizens of the state. But it is, moreover, an indispensable institution. You may separate slavery from South Carolina, and the state will still remain; but if you subvert freedom there, the state will cease to exist. But the principle of this compromise gives complete ascendancy in the slave states, and in the Constitution of the United States, to

⁴⁰⁰ William Seward, “William Seward’s Higher Law Speech,” Nineteenth Century Documents Project, Furman University, <http://eweb.furman.edu/~benson/docs/seward.htm>.

the subordinate, accidental, and incongruous institution, over its paramount antagonist. To reduce this claim of slavery to an absurdity, it is only necessary to add that there are only two states in which slaves are a majority, and not one in which the slaveholders are not a very disproportionate minority.”⁴⁰¹

Following the debates in the Senate that struck down the first attempt at compromise, yet later accepted the Compromise of 1850 in piecemeal legislation, the Whig party was struggling to remain a viable political institution. The party had split into two factions in the North of Seward Whigs and Webster Whigs and essentially all of the southern slave holding Whigs split from the northern Whigs.⁴⁰² The two divisions of the northern Whigs struggled to get along and the whole party began to show the effects of their disagreements. As other smaller political parties struggled to maintain their own viability, such as former Democrats renaming themselves Free Soilers and American Party members who dubbed themselves “Know Nothings,” a stronger and more national party was ripe for formation.⁴⁰³ When the Kansas-Nebraska problem became a crisis with the domination of the Democratic party and the application of popular sovereignty in determining if the future states would be free or slave by voter referendum, the Whigs had lost their power.⁴⁰⁴ The Republicans in New York had been courting Seward for several months

⁴⁰¹ *Ibid.*

⁴⁰² Eric Foner, *Free Soil, Free Labor, Free Men: The Ideological of the Republican Party Before the Civil War* (New York: Oxford University Press, 1995), 194.; Lothrop, 135. “The former [Seward Whigs] were the more numerous, and had been recruited by the addition of most of the young Whigs; the strength of the latter [Webster Whigs] was in the cities and with the older, richer, and more influential classes. Of the former Seward was the leader; but by the latter he [Seward] was looked upon with distrust and dislike.”

⁴⁰³ Jeffery A. Jenkins and Timothy P. Nokken, “The Institutional Origins of the Republican Party, Spatial Voting and the House Speakership Election of 1855-56,” *Legislative Studies Quarterly* 25, no. 1 (February 2000), 105.

⁴⁰⁴ Foner, *Free Soil*, 195.; Lothrop, 135.; Jenkins and Nokken, 101-102. “...a new group of anti-administration candidates, running on disparate tickets, emerged in 1854-55 to challenge Democratic dominance. A portion of this group was elected to the House in 1856 and, after a period of coalescing, took control of the chamber. Once in charge, they became known as the Republican Party. Four years later, the Republicans would capture both chambers of Congress as well as the presidency, sowing the seeds for secession and war.”

when in September of 1855, the Whig and Republican conventions were both meeting in Syracuse. The Whigs went to the Republican convention hall and hammered out a platform and presented the official Republican ticket of candidates. Seward would quickly become a leader in New York, as well as a national figure in the Republican party in the winter of 1855.⁴⁰⁵

The Irrepressible Conflict

The midterm elections were just a few weeks away when Seward spoke at a Republican campaign rally in Rochester in 1858. The social and political situation in the US was at a heightened state of fervor and the election of 1856⁴⁰⁶ had given the young Republican Party substantial hope into becoming a significant player in state and national politics in the upcoming midterms as well as the general election two years later in 1860.⁴⁰⁷ In the general election of 1856 the first Republican presidential candidate John C. Fremont, had lost the presidency by only twelve percent of the popular vote and only sixty electoral votes to the Democratic victor James Buchanan. To give further credibility to the showing of the Republicans, the soon-to-be defunct American Party grabbed nearly twenty-two percent of the popular vote and Maryland's eight electoral votes. In Congress, the Republicans held ninety of the two hundred thirty-seven seats in the House, and twenty of the sixty-two delegates in the Senate.⁴⁰⁸ Furthermore, the Republican numbers would have been higher, as Seward proclaimed in Rochester, as there were states in the South that refused to include the Republican candidates on their ballots.

“The slave States, without law, at the last national election, successfully forbade, within their own limits, even the casting of votes for a candidate for President of the United

⁴⁰⁵ Van Deusen, 163.

⁴⁰⁶ See Map II:1

⁴⁰⁷ Michael W. Whalon, “The Republican Party In Its Early Stages: Some New Perspectives” *Social Science Quarterly*. 51, no. 1 (June, 1970), 154-155.

⁴⁰⁸ “Election of 1856,” *The American Presidency Project*, <http://www.presidency.ucsb.edu/showelection.php?year=1856>.

States supposed to be favorable to the establishment of the free-labor system in new States.”⁴⁰⁹

After the election of Buchanan and the Thirty-Fifth Congress in 1856, the Republicans did not hold the executive branch or have a majority in the legislative, however, the party was on the rise and had become the only viable opposition to the Democrats.⁴¹⁰

In the intervening period between the election of 1856 and Seward’s speech in Rochester, there were two significant events that were shaping the mood of the country. The first being a case brought to the US Supreme Court involving a slave who claimed to be free when he was taken by his former owner from a slave state to reside in a free state. Dred Scott argued this relocation granted his freedom, however, the Court held in a seven to two decision that only a citizen of the US could constitutionally bring suits to the courts and Scott, being a slave, was not a citizen and therefore not entitled to participate in the legal system of US.⁴¹¹ Secondly, a series of debates involving a Senate race in Illinois was about to take place. Incumbent Democrat Stephen Douglas was being challenged by former long-time Whig turned Republican Abraham Lincoln. Lincoln had been propelled from his law practice into re-seeking public office in response to Douglas’ popular sovereignty doctrine in the Kansas and Nebraska territories as well

⁴⁰⁹ Seward and Baker, ed., “The Irrepressible Conflict,” 293. Note: The same activity of state election boards holding Republican candidates from ballots in the South in 1856, would also occur in the election of 1860.

⁴¹⁰ Freehling, 93-96; Harry V. Jaffa, *A New Birth Of Freedom: Abraham Lincoln And The Coming Of The Civil War* (New York: Rowman & Littlefield Publishers Inc., 2004), 305-306; Potter, 259.

⁴¹¹ “Majority Opinion in *Scott v. Sandford*,” Frohnen, ed., *American Republic*, 902-903. “The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race...?” “The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.”

as the Supreme Court's decision in *Scott v. Sandford*.⁴¹² In the now famous Lincoln-Douglas debates, the two candidates predominately sparred on the issues concerning the Kansas-Nebraska Act and the issue of popular sovereignty in determining the addition of slavery into the territories.⁴¹³

Although many held that Lincoln had won the series of debates, Douglas would eventually be sent to the US Senate by the Illinois legislature.⁴¹⁴ For Lincoln, however, the failure to win the seat in the Senate was not the death knell to his political career. On the contrary, the debates with Douglas became the catalyst for Lincoln attaining a national spotlight on himself as well as the Republican Party. The result of the notoriety would propel Lincoln to leap-frog over the popular Seward to be the dark horse candidate to win the party's nomination for the presidency in 1860.⁴¹⁵

The two previously mentioned events involving the Dred Scott decision and the Lincoln-Douglas debates confirmed a constant theme of conflicting political opinions of the populace in the two regions of the US. In the South, the situation was over the issue of governmental

⁴¹² David Herbert Donald, *Lincoln* (New York: Simon & Schuster Inc., 1995), 199-201; James G. Randall, *Lincoln The President: Springfield to Gettysburg* (New York: Da Capo Press, 1997), 104-106.

⁴¹³ Randall, *Springfield to Gettysburg*, 106. "Citing the Kansas-Nebraska bill of Stephen Douglas, the Dred Scott decision of Roger Taney, and the endorsement of that decision by Franklin Pierce and James Buchanan (outgoing and incoming Presidents), he asserted that all pieces fitted together in terms of a one-sided proslavery application of popular sovereignty..."

⁴¹⁴ McPherson, *Battle Cry of Freedom*, 187-188. "In the judgement of history – or at least of most historians – Lincoln 'won' the debates." [In the 1858 state elections in Illinois] Democrats carried all but three of the fifty-four southern counties and Republicans all but six of the forty-eight northern counties. Because the legislature had not been reapportioned to reflect the faster growth of northern counties in the 1850s, and because eight of the thirteen holdover senators not up for election were Democrats, that party had a majority of fifty-four to forty-six in the next legislature and elected Douglas."

⁴¹⁵ *Ibid.*, 217. "This left Lincoln, by the time the convention's opening gavel came down on May 16, [1860], Lincoln had emerged from a position as the darkest of horses to that of Seward's main rival;" Randall, *Springfield to Gettysburg*, 166-168.

sovereignty that protected the right of the states to retain the institution of slavery. In the North, the issue was over the fear of keeping the Union together. Seward's irrepressible conflict speech is significant in understanding the impetus of the CS. Seward was so certain that the continuation of slavery in the US would ultimately create a new and separate pro-slavery government in the South, that the New York Republican made a similar prediction two years prior to his Rochester speech.⁴¹⁶ Seward additionally correlates the problems of a slave society in relation to the free labor ideology of the Republicans. "Our country is a theatre, which exhibits, in full operation, two radically different political systems; the one resting on the basis of servile or slave labor, the other on voluntary labor of freemen."⁴¹⁷

It is obvious that Seward was convinced that the subject of slavery in 1858 was the most powerful social and political issue, not just between the regions of North and South, but with party politics as well. Seward rightfully feared that the southern Democrats would influence their states to leave the Union and form their own government if they were not appeased in the issues concerning slavery. The issue of retaining chattel slavery had been occurring in the US dating to the debates in the Constitutional Convention in 1787.⁴¹⁸ In harking back to Seward's "higher law" speech in the US Senate, the New Yorker gave a brief encounter in the

⁴¹⁶ "The Contest And The Crisis," 19 October, 1855, Buffalo, New York, Seward and Baker, ed., 245. "I conclude, therefore, that you all, if not now, yet soon enough, will take one side or the other in this great controversy. Which side? It will be the side on which justice, equality and freedom, shall be found; and, therefore, on which final success and triumph shall be found."

⁴¹⁷ "The Irrepressible Conflict," Seward and Baker, ed., 289.

⁴¹⁸ Ralph Ketcham, *James Madison* (Charlottesville, Va.: University of Virginia Press, 1990), 224-225. James Madison and Adrienne Koch, 411. "Mr. Govr. Morris moved to insert "free" before the word "inhabitants." Much, he said, would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of Heaven on the States where it prevailed. Compare the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland, and the other States having slaves."

Constitutional Convention that presented how certain delegates felt about including a fugitive slave provision in the US Constitution.

“Mr. BUTLER and MR. PINCKNEY moved to require fugitive slaves and servants to be delivered up like convicts.
Mr. WILSON. This would oblige the executive of the state to do it at public expense.
Mr. SHERMAN saw no more propriety in the public seizing and surrendering a slave or a servant than a horse.
Mr. BUTLER withdrew his proposition, in order that some particular provision might be made, apart from this article.”⁴¹⁹

In observing Seward’s Rochester speech, the possibility of a new pro-slavery government being created and splintered from the US was evident to the New Yorker. The whole country had been wrestling with the question of how to deal with the issue of slave labor prior to the founding generation declaring independence from Great Britain as well as the first government of the US under the Articles of Confederation. With the second government of the US under the Constitution, the government was further entrenched into the quagmire of chattel slavery by attempting to appease the states who desired human bondage to continue their economic traditions dating to the first slaves entering North America in the early English colonial age.⁴²⁰ The new government that Seward predicted would be the catalyst of the fears of the New Yorker in regarding his theory of the irrepressible conflict between the two regions of the nation concerning free and slave labor. In just over two years following his speech in Rochester, Seward would be proven correct in his political hypothesis.

⁴¹⁹ William Seward, “William Seward’s Higher Law Speech,” Nineteenth Century Documents Project. Note: The text of the encounter in the Constitutional Convention related by Seward is verbatim in James Madison and Adrienne Koch, ed., *Notes on the Debates in the Federal Convention* (New York: W.W. Norton & Company, 1987), 454-546. Mr. Butler is Pierce Butler of South Carolina, Mr. Pinckney is Charles Cotesworth Pinckney of South Carolina, Mr. Wilson is James Wilson of Pennsylvania, and Mr. Sherman is Roger Sherman of Connecticut.

⁴²⁰ Bailyn, *Barbarous Years*, 174. “‘Negars,’ ‘negors,’ and Africans otherwise identified by color had begun appearing in very small numbers well before 1619, when John Rolfe noted the arrival in Virginia of ‘20. and odd.’” They were Angolans hijacked from a shipment to Spanish America and sold by their Dutch captors ‘for victualles.’”

Secretary of State and Secession

When the Republicans took the presidency and a significant number of seats in both houses of Congress in the election of 1860, the process of secession from the Union of the slave states was instigated. During the interim period between the election and his arrival in Washington, president-elect Lincoln convinced Seward to be the Administration's Secretary of State.⁴²¹ This was not an easy task, as Seward was still a bit disappointed in his inability to win the presidential nomination at the Republican convention in Chicago.⁴²² The New Yorker, however, took to his post well and was determined to serve his country as best he could in his new capacity as the chief ambassador of the US.

Just twelve days following the firing of the first shells from the artillerymen of the CS upon the Union fort located in the harbor of Charleston, South Carolina, Secretary Seward still held out hope that negotiating a reconciliation with the newly created Confederacy was possible. On the morning of April 24, 1861, the German Minister Resident for the US arrived at the office

⁴²¹ "Abraham Lincoln to William H. Seward, Private & Confidential, Springfield, Ills., Dec. 8, 1860," Lincoln and Basler, eds., 49. "My dear Sir: In addition to the accompanying, and more formal note, inviting you to take charge of the State Department, I deem it proper to address you this. Rumors have got into the newspapers to the effect that the Department, named above, would be tendered you, as a compliment, and with the expectation that you would decline it. I beg you to be assured that I have said nothing to justify these rumors. On the contrary, it has been my purpose, from the day of the nomination at Chicago, to assign you, by your leave, this place in the administration. I have delayed so long to communicate that purpose, in deference to what appeared to me to be a proper caution in the case. Nothing has been developed to change my view in the premises; and I now offer you the place, in the hope that you will accept it, and with the belief that your position in the public eye, your integrity, ability, learning, and great experience, all combine to render it an appointment pre-eminently fit to be made."; Van Deusen, 240-241. "As for Lincoln, some thought that he was lukewarm toward Seward, and was reluctant to take him into the Cabinet. The weight of evidence, however, indicates that he wanted Seward to head the State Department; that he was sincere when he assured the New Yorker on December 8, in a warm letter accompanying his formal offer, that the rumors of his lack of interest were false, and that Seward's position, integrity, learning, and great experience 'all combine to render it an appointment preeminently fit to be made.'"

⁴²² McPherson, *Battle Cry of Freedom*, 216-217.; Van Deusen, 222-229.

of Secretary of State Seward to offer his services in attempting to meet with a few of the Confederate officials who happened to be visiting the future Capitol of the CS in Richmond, Va. Seward took Rudolph Schleiden to meet with President Lincoln to discuss the diplomatic mission. The President was skeptical, but eventually acquiesced to Seward's scheme and the Secretary of State acquired a pass for Schleiden who was sent off to Richmond. The vice president of the Confederacy met with Schleiden to discuss topics such as complete reconciliation of the seceded states back into the Union, or to negotiate a three-month armistice so the newly elected US Congress could meet in an emergency session to discuss the results of the secession winter of 1860-1861. Confederate Vice-President Alexander Stephens refused the proposals presented by Schleiden and the German Minister returned to Washington to inform Lincoln and Seward of the unsuccessful peace mission. Lincoln concluded that further negotiation would be pointless, and historian Glyndon G. Van Deusen observed that this mission was the last effort to diplomatically avoid the war by Secretary Seward before Lincoln called a special session of Congress to meet in July 1861.⁴²³

Irrepressible Conflict in 1864

Following the re-election of Lincoln in November 1864, Seward wrote jubilantly to his wife on the political and military successes of the Lincoln Administration. There was a good deal to celebrate in the Union war effort, especially in the western theater of operations, as reported in southern newspapers. General William T. Sherman, although out of reliable communications with Washington, was rumored to be conquering Georgia in an apparent invasion southeastward towards the seaport of Savannah, Georgia and the state of Missouri was finally rid of the last effective Confederate forces. There was also panic in the Confederate

⁴²³ Van Deusen, 286-287.

capitol concerning the lack of able-bodied men for military service. Seward proclaimed to his wife that Richmond was finally being forced to accept the “irrepressible conflict” on free and slave labor and the fallacy that the South felt about black men of being destined to only chattel servanthood.

“The exigencies of civil war have at last brought the treasonable conclave at Richmond to a serious debate upon propositions for arming, and, of course, emancipating a portion of the slave population. Thus it is seen that the so deeply-deprecated “irresistible conflict” has at last broken out in the very seat and citadel of slavery itself!”⁴²⁴

For Seward, his notion of how the slave states felt the black man was limited to, as simply an instrument of labor, was nothing short of hypocrisy in considering the Confederate war effort. Especially when the Confederacy, in observing how well the Union had achieved success enlisting black men into the military, employed former chattel slaves to fight for a government that an overwhelmingly majority of the people of the South believed that black men were incapable of doing. The misguided beliefs of the southern people, however, were superimposed by the acceptance of being defeated for their *reason* in starting the conflict in the first place.⁴²⁵

“The Congress of the Confederate States of America do enact, That, in order to provide additional forces to repel invasion, maintain the rightful possession of the Confederate States, secure their independence, and preserve their institutions, the President be, and he is hereby, authorized to ask for and accept from the owners of slaves, the services of such number of able-bodied negro men as he may deem expedient, for and during the war, to perform military service in whatever capacity he may direct.
SEC 2. That the General-in-Chief be authorized to organize the said slaves into companies, battalions, regiments, and brigades, under such rules and regulations as the Secretary of War may prescribe, and to be commanded by such officers as the President may appoint.

⁴²⁴ Seward and Seward, 251.

⁴²⁵ Leon F. Litwack, *Been In The Storm So Long: The Aftermath of Slavery*, first vintage books edition (New York: Vintage Books, 1980), 43. “For some whites, at least, the urgent need to preserve the independence of the South took precedence over the institution upon which it was based, and the system they had initially viewed as the economic strength of the South now loomed a critical source of military manpower as well.”

SEC 3. That while employed in the service the said troops shall receive the same rations, clothing, and compensation as are allowed to other troops in the same branch of the service.

SEC 4. That if, under the previous sections of this act, the President shall not be able to raise a sufficient number of troops to prosecute the war successfully and maintain the sovereignty of the States and the independence of the Confederate States, then he is hereby authorized to call on each State, whenever he thinks it expedient, for her quota of 300,000 troops, in addition to those subject to military service under existing laws, or so many thereof as the President may deem necessary to be raised from such classes of the population, irrespective of color, in each State, as the proper authorities thereof may determine: Provided, That not more than twenty-five per cent. of the male slaves between the ages of eighteen and forty-five, in any State, shall be called for under the provisions of this act.

SEC 5. That nothing in this act shall be construed to authorize a change in the relation which the said slaves shall bear toward their owners, except by consent of the owners and of the States in which they may reside, and in pursuance of the laws thereof.”⁴²⁶

⁴²⁶ “General Orders, No. 14, An Act to increase the military force of the Confederate States. Richmond, Va., March 23, 1865.” Freedman and Southern Society Project, University of Maryland, <http://www.freedmen.umd.edu/csenlist.htm>.

Chapter 6

*"It is otherwise arbitrary and unconstitutional"*⁴²⁷

No people on earth were ever more united, earnest, resolved to resist to the last extremity, than the Southern people at the outbreak of the war and during its first two years. They were ready to sacrifice property, life, everything, for the Cause, which was then simply the right of self-government. They conscientiously believed that the old Union was a compact between Sovereign Independent States; only certain powers named in the Constitution had been delegated by the States separately to the Central Government; among these was not ultimate absolute Sovereignty, this being retained by the States separately in the reserved powers...⁴²⁸

---Alexander H. Stephens
5 June, 1865

When President James Polk asked the US Congress for a declaration of war against the country of Mexico on May 11, 1846, at least two members of the House of Representatives were concerned about the president's motives to go to war. They were both Whigs, one from Illinois and the other from Georgia. The representative from Illinois was serving in his first and only term in the House and the Georgian was serving his second term and had taken a leadership role among the congressmen who were questioning the involvement of the US in the war with Mexico.⁴²⁹ Both representatives had delivered passionate speeches questioning the necessity of the war. Georgian Alexander Stephens stood before the House and spoke of his concerns over the war on June 16, 1846 and Illinoisan Abraham Lincoln delivered his "Spot Resolutions" speech on December 22, 1847.⁴³⁰ The two congressmen would become friends while serving

⁴²⁷ Stephens, *A Constitutional View*, 260.

⁴²⁸ Stephens and Avary, ed., 165.

⁴²⁹ *Ibid.*, 18. "I denounced the [Mexican] war and its inauguration. I took the lead in this method of treating it in the House."

⁴³⁰ Alexander H. Stephens, "Speech of Mr. Stephens, of Georgia, on the Subject of The Mexican War," Delivered in the House of Representatives of the U. S., June 16, 1846, *A Continent Divided: The U.S. – Mexican War*, University of Texas, Arlington.

[www.https://library.uta.edu/usmexicowar/item?content_id=1142&format_id=12&ofst=19&sort=dateasc&ni=101](https://library.uta.edu/usmexicowar/item?content_id=1142&format_id=12&ofst=19&sort=dateasc&ni=101). "I allude, Mr. Chairman, to the Mexican war; and I will state in the outset that I

together in Congress and Stephens had fond memories of his service with Lincoln and admired the Illinoisans' personal attributes.

“I knew Mr. Lincoln well. We met in the House in December, 1847. We were together during the Thirtieth Congress. I was an intimate with him as with any other man of that Congress except perhaps one. That exception was my colleague, Mr. Toombs. Mr. Lincoln was warm-hearted; he was generous; he was magnanimous; he was most truly ‘with malice toward none, with charity for all.’”⁴³¹

In just eleven years following the adjournment of the congressional session, the two would be placed at odds over the former Illinois Whig's election to the presidency as a Republican. The former Georgia Whig-turned-Democrat was taking a hiatus from government service when he was appointed to the second highest political post in the national government of the confederation of states that had chosen secession over subjecting themselves to a Republican's ascendancy to the office of the President of the US.

Early Life and Politics

Alexander Stephens, the second son of Andrew and Margaret (Grier) Stephens, was born in what would later be reorganized as the Georgia county of Taliaferro near the small town of Crawfordville on February 11, 1812. Young “Aleck” would experience heartache and loss early in his young life. His mother died shortly after his birth and his father just three months after his

am not, as some gentlemen seem to be, the advocate of war in the abstract – war for war's sake. I hold all wars to be great calamities. I do not maintain that war can or should always be avoided. I do not belong to the peace-party, so called; I am no non-resistance man; I am far from holding that all wars are wrong. But I do hold that they ought never to be rushed into blindly or rashly. The *ultima ratio* – this *last resort* of nations to settle matters of dispute or disagreement between them, should always be avoided, when it can be done without a sacrifice of national rights or honor. And the greatest responsibility rests upon those at the head of affairs, to whom are confided the interests and destinies of a country, that they do not disregard the heavy obligations of this most important trust.”; “‘Spot’ Resolutions in the United States House of Representatives,” December 22, 1847, Lincoln and Basler, ed., 422. “And whereas this house desires to obtain a full knowledge of all the facts which go to establish whether the particular spot of soil on which the blood of *our citizens* was so shed, was, or was *not, our own soil*, at that time...”

⁴³¹ Stephens and Avery, ed., 61.

fourteenth birthday. Described as being slight and frail like his mother, Stephens would attempt to endure life without the benefit of having nearly all of his immediate family members available for comfort and support.⁴³² Stephens would be fortunate, however, to be associated with many individuals who would pass through his life that would become his patrons and mentors during his orphaned youth. In one case, Stephens held such high regard for one of his guarantors that he officially altered his name by adding “Hamilton” as his middle name.⁴³³

Stephens’ formal schooling during his youth was regrettably sparse, but the young Georgian presented great promise and was positively recognized by many of the distinguished men of the region. One of these individuals, an acquaintance of Stephens’ late father, had arranged for Aleck to study Latin at an academy in Washington, Georgia. He attained lodging from a close friendship and eventual mentorship from Reverend Alexander Hamilton Webster.⁴³⁴ A Presbyterian minister and the source of Stephens’ middle name, Reverend Webster was especially fond of Aleck and recognized significant attributes in the young man. As Stephens excelled at the academy, Webster noticed the strength of the young man’s piety and suggested that Aleck should enter the ministry. Stephens’ faith was strong but did not hold the measure of devotion that would be required for a lifetime dedicated to the work of God.⁴³⁵

⁴³² Schott, 2, 9-10 & 50. “‘It was the consummation of my woes,’ said Stephens. Not because his stepmother had died but because now the children would be scattered. Alexander and [older brother] Aaron went off to Raytown in Warren County to live with their uncle Aaron Grier and his sister Elizabeth. The children of the second marriage, John, Catherine, and Linton [who Alexander would become very close with later in life], were parceled out to relatives of their mother.” Note: Aaron died in November, 1843.

⁴³³ Stephens and Avary, ed., 10-11. “Indeed, upon learning Webster’s full name from the cover of a book, he adopted ‘Hamilton’ as his own middle name.”

⁴³⁴ Schott, 11.; Stephens and Avary, ed., 8.

⁴³⁵ Schott, 11-12. “Only a few weeks’ observation had convinced him that the reports about Alexander were true: the sad, lonesome, and gifted young man of seemingly irreproachable morality was eminently suitable for the ministry. Webster proposed the idea to him. Confused by this entirely unexpected turn of events, Stephens could not make up his mind what to do.

Stephens graduated from the Washington Academy and entered Franklin College, the future University of Georgia, in August of 1828. Prior to his acceptance into Franklin College, Stephens was struck by yet another significant loss. Rev. Webster had died by contracting “a malignant autumn fever.”⁴³⁶ With the death of his parents, as well as his friend and mentor, Stephens began showing signs of a melancholy that would follow him through the remainder of his life.⁴³⁷

Following his education, Stephens decided that he would be useful as an instructor of young men. After a few years teaching, however, he left his post and began to study law in Crawfordville. Stephens purchased a few legal materials from the only attorney in town, Swepston C. Jeffries, who was giving up his practice and moving to Columbus, Georgia. Stephens studied the law with his new books and by assisting the clerk of the court of Crawfordville with his duties. In July 1833, Stephens took the state bar exams and was licensed to practice law in the state of Georgia. The new attorney felt that he would be better served with attaining additional income and prestige by applying his strong appetite for politics. Stephens ran for the vacant seat representing Crawfordville and was elected to the Georgia House of Representatives in 1836.⁴³⁸

Stephens recalled that his first political views were shaped by his family and fellow Georgians who were strict Jeffersonians. Stephens further reflected that he could not recall any Jeffersonians who were not additionally influenced by the Georgia political machine under the

Alluring as the service to God might be, preparation for it would require still more debts.” “Aunt Betsy’s urging [of refusing the ministry] ended Stephens’ indecision.”; Stephens and Avary, ed., 8.

⁴³⁶ Schott, 11.

⁴³⁷ *Ibid.*, 9. “Stephens’ melancholy is complex – terrifying in intensity, fascinating in expression, and bewildering in texture.”

⁴³⁸ *ibid.*, 27 & 38.

direction of William H. Crawford and George Troup.⁴³⁹ When Stephens began his political career in 1836, the Whig Party had not achieved credible significance in Georgia politics. Stephens and the vast majority of Georgians were still holding on to the ideology of the Jeffersonian Republicans. After the first election of Jackson, a portion of the Jeffersonians split from the party and began calling themselves “state rights” men and eventually created the State Rights Party.⁴⁴⁰ Although the State Rights members stood with the Jackson and the Democrats on the president’s pro-slavery stance and treatment of Native Americans, the breaking point for the State Rights men and Jackson was the president’s handling of the Nullification Crisis.⁴⁴¹

In 1835, while Stephens was on a trip to Washington D.C. visiting Georgians in the Congress, he called upon Old Hickory at the White House during his second term in office. As was the custom of many presidents in the early years of the republic, Jackson answered the door himself when Stephens arrived. The young Georgian was taken a bit off guard when the hero of the Battle of New Orleans greeted him in only his “dressing gown and slippers.”⁴⁴² The president invited Stephens to his study and asked the Georgian about the news from his state. Stephens got a taste of Jackson’s famous temper upon relating to the president the news of Indian uprisings in Georgia.

“Stephens told of the outbreak of the Creek Indians; the stage he [Stephens] boarded at Washington, Ga., was the only one of a train of coaches which had escaped capture with massacre of all passengers between Montgomery and Columbus. ‘I have a letter by the lower route telling something of this,’ said Jackson. ‘In God's name, where's Howard?’ ‘I don't know. As Major Howard's are Georgia forces under control of the Georgia Legislature, there may be some question of jurisdiction’ — ‘Jurisdiction by the Eternal!

⁴³⁹ Stephens and Avary, ed., 15. “I was brought up a Jeffersonian Democrat of the strictest sect — of the [William Harris] Crawford and [George] Troup school in Georgia. All Georgians belonged to that school when I was a boy.”; Schott, 26 & 37.

⁴⁴⁰ Schott, 26 & 37.

⁴⁴¹ *Ibid.*, 37. “[The] State Rights party, broke with the president [Jackson] over his proclamation to the people of South Carolina and the subsequent force bill.”; Stephens and Avary, ed., 15.

⁴⁴² Stephen and Avary, ed., 14.

when the United States Mail is robbed and citizens murdered!’ cried Old Hickory, springing to his feet.”⁴⁴³

Following Jackson’s handling of the Nullification Crisis and his confrontations with South Carolina, especially with his own Vice President John C. Calhoun, the state of Georgia began to experience significant political divisions. These political dissections forced the former Jeffersonians in the state to choose between the States Rights, Whig or the burgeoning Jacksonian Democratic Parties. For Stephens, he held that his beliefs were best suited among the Whigs, however, he would recognize during the Texas and Mexican annexation difficulties that he was not in lock-step with his chosen party.⁴⁴⁴

Stephens’ election run for the Georgia legislature was just as contentious as the presidential campaigns in 1836. Accusations swirled around Stephens of supporting Jackson in the Nullification Crisis as well as being associated with northern abolitionists attempting to influence the eradication of slavery in Georgia. Stephens biographer Thomas E. Schott explains the reasoning of this type of charge by the Georgia Democrats against Stephens as the following:

“This absurd but always mortifying and dangerous charge in southern politics stemmed from his [Stephens’] role in discouraging the formation of a local vigilance committees. Several counties in Georgia had organized such committees to deal summarily with circulators of northern abolitionist literature. When someone proposed forming a committee in Taliaferro [county], Stephens, almost alone, opposed it, arguing that punishment of offenders must be by duly constituted authority and not mob rule.”⁴⁴⁵

Although the Jacksonian Van Buren handily won the presidency in 1836, Schott writes that political candidates who were associated with abolitionists or supported black suffrage in free states would determine that, “Henceforth slavery and its protection would always be the

⁴⁴³ *Ibid.*, 14.

⁴⁴⁴ *ibid.*, 17. “I favoured the incorporation of Texas into the Union; not under the Tyler treaty — that I opposed — but under joint resolution for her admission as a State. This well-nigh severed my connection even in name with the Whig party at Washington as well as in Georgia.”

⁴⁴⁵ Schott., 38.

fundamental issue in party politics.”⁴⁴⁶ With Stephens campaigning for Whig William Henry Harrison for the presidency, Stephens still held a good deal of popularity among the Whig voters in Georgia despite his rumored moderate stance on retaining slave labor in Georgia as well as in the other slave states. When the Whig party began to disassemble in the mid 1850’s, the wing of southern Whigs began flocking towards the Democrats as the only logical allies in the fight of retaining the institution of slavery. Although Stephens never held the Democratic party in high regard, the Georgian would further be disappointed in the party of Jackson when the political organization split in chaotic fashion over the institution of slavery in their conventions for the presidency in 1860.⁴⁴⁷

As Stephens was forced to reexamine his politics in response to the death of the Whig Party and aligning himself with the splintering Democrats in the party conventions selecting a ticket in the election of 1860, his choice of support for the Democratic presidential candidate brought a good deal of consternation from his fellow Georgians. Stephens became a Stephen Douglas man, much to the chagrin of his close friend Robert Toombs, who was supporting Kentuckian John C. Breckinridge.⁴⁴⁸ Douglas, the author of popular sovereignty, was the bane of the southern Democrats who determined that allowing territories to decide for themselves the issue of slavery would bring disaster to the slave states regarding balance of free and slave states in the US Senate.⁴⁴⁹ To Stephens, however, the Douglas doctrine lay subservient to the Illinoisan’s strength of electability in the North and West. Breckinridge, in Stephens’ estimation, only held strength in the South where the Democrats already held a political majority. The only

⁴⁴⁶ *Ibid.*, 37.

⁴⁴⁷ Rabun, 290. “For in his early career Stephens was a wholehearted Whig, and he made little secret of his opinion that all Democrats were fools or knaves.”; Schott, 294-295.

⁴⁴⁸ Davis, *The Union That Shaped the Confederacy*, 2.; McPherson, *Battle Cry of Freedom*, 215.

⁴⁴⁹ McPherson, *Battle Cry of Freedom*, 58.

avenue for Breckinridge to attain the presidency, Stephens believed, was that “[Douglas] would take enough votes from Lincoln ...to throw the election into the House, where Breckinridge could overcome the field and be elected president.”⁴⁵⁰

Unfortunately for Stephens, his colleagues in Georgia and most of the southern Democrats in the slave states were adamant opposed to his preference of Douglas over Breckenridge for president, although the Georgian had not publicly campaigned for any presidential candidate. Things came to a head when Stephens was corresponding with his good friend Georgian Herschel V. Johnson, Douglas’ running mate for the northern Democrats. Johnson was upset that Stephens would not publicly endorse the Douglas/Johnson ticket, agree to be an elector (as Stephens was not serving in any political capacity at the time)⁴⁵¹ and speak on behalf of their [Douglas and Johnson] candidacy in Georgia. Johnson then proceeded to insinuate that Stephens was being disloyal to the Democratic party as well as to his fellow Georgians by being silent on these issues. This turned out to be the breaking point for Stephens on the matter.

“Mortified that a friend would doubt his allegiance, Stephens quickly set matters straight by announcing his support for Douglas publicly. It had been rumored that Stephens meant to support Breckenridge. ‘Never,’ he scoffed, ‘could I do such a thing until I became as inconsistent’ as the radicals. Others might eat their words, he told Dick [Richard Malcolm] Johnston,⁴⁵² ‘but I do not feed upon such a die.’ But he still refused to campaign among a people running mad. ‘The surest sign that a dog is going mad is to see him eat his own ordure,’ he explained, ‘and this eating of words and old party

⁴⁵⁰ Schott, 294.

⁴⁵¹ Article II, Section 1, US Constitution. “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”

⁴⁵² Stephens and Avary, ed., 86. “Richard Malcolm Johnston, a friend much beloved by Mr. Stephens and his brother Linton; he is best known to the public as the author of the “Dukesborough Tales” and as Mr. Stephens’s biographer.” Note: Richard Malcolm Johnston was an author, lawyer, and professor. He was also briefly the law partner of Linton Stephens.

principles is ...a like sign of approaching *rabies* among the people.’ He was adamant, ‘I am out of politics, and mean to stay out.’”⁴⁵³

Stephens did not stay out of politics for long. He was invited to the Georgia legislature to speak and help determine if a secession convention should be called. Stephens attempted to rein in secession fever in his home state, but to no avail. A secession convention was called and Georgia seceded from the Union in January 1861.⁴⁵⁴

Opposing Principles

As controversial as Stephens was in endorsing Stephen Douglas for president, the Georgian was equally contentious on his thoughts on secession prior to the state secession convention. Stephens was asked to speak at a special called session of the Georgia legislature just days following the election of 1860. The Georgian was asked to contribute his thoughts to the crisis regarding the consideration of Georgia allowing to be part of a national government that had chosen to be administered by Republicans. On November 14, 1860, Stephens stood before the state legislature to make his case against secession. Stephens began his speech by reassuring his audience that he was not looking to stir up sentiment for or against secession. There was enough frenzy stirred by politicians and newspaper editors regarding the ascendance of the political party of the abolitionists. Stephen was there to attempt to unite the people of Georgia following the presidential election.⁴⁵⁵

⁴⁵³ Schott, 295.

⁴⁵⁴ McPherson, *Battle Cry of Freedom*, 237.

⁴⁵⁵ Alexander Stephens, “Union Speech of 1860,” A. D. Candler, comp., *The Confederate Record of the State of Georgia: Compiled and Published Under Authority of the Legislature*, vol I (Atlanta: Charles P. Byrd, State Printer, 1909), 183-184. “My object is not to stir up strife, but to allay it; not to appeal to your passions, but to your reason. Let us, therefore, reason together. It is not my purpose to say aught to wound the feelings of any individual who may be present; and if in the ardency with which I shall express my opinions, I shall say anything which may be deemed too strong, let it be set down to the zeal with which I advocate my own convictions. There is with me no intention to irritate or offend.”

Stephens believed that he needed to let the people of Georgia know what the purpose of secession meant to them. Why are they wanting to secede? Was it simply to counteract the people of the North who elected a perceived abolitionist president?⁴⁵⁶ Stephens assured Georgia that Lincoln was not the anti-slavery boogiemán that they had been told.

“But it is said Mr. Lincoln's policy and principles are against the Constitution, and that, if he carries them out, it will be destructive of our rights. Let us not anticipate a threatened evil. If he violates the Constitution, then will come our time to act. Do not let us break it because, forsooth, he may. If he does, that is the time for us to act. I think it would be injudicious and unwise to do this sooner. I do not anticipate that Mr. Lincoln will do anything, to jeopardize our safety or security, whatever may be his spirit to do it; for he is bound by the constitutional checks which are thrown around him, which at this time render him powerless to do any great mischief.”⁴⁵⁷

Stephens additionally relates that the office of the president was not constitutionally created to be an emperor or a dictator and has very little power in the present situation concerning slavery.

The place for the issue of slavery to be addressed is in the legislative branch of government and Stephens informs the Georgians that there is not adequate support in the two houses to accomplish the feat of abolishing slave labor in the US.⁴⁵⁸

As Stephens nears the conclusion of his address, he informs the Georgians that if they are determined to pursue the idea of secession, then a convention should be called and deny the Georgia legislature the power to decide secession. “Let the sovereignty of the people speak,” Stephens proclaimed, as “Some think that the election of Mr. Lincoln is cause sufficient to dissolve the Union.” Stephens further confirms that those who think that the Georgia legislature

⁴⁵⁶ *Ibid.*, 184. “The consternation that has come upon the people is the result of a sectional election of a President of the United States, one whose opinions and avowed principles are in antagonism to our interests and rights, and we believe, if carried out, would subvert the Constitution under which we now live. But are we entirely blameless in this matter, my countrymen? I give it to you as my opinion, that but for the policy the Southern people pursued, this fearful result would not have occurred.”

⁴⁵⁷ *ibid.*, 185-186.

⁴⁵⁸ *ibid.*, 186.

should determine secession are in error. “I have no hesitancy in saying that the Legislature is not the proper body to sever our Federal relations, if that necessity should arise.”⁴⁵⁹ At this point in his address, Stephens became adamant on where sovereignty laid when determining such monumental decisions such as separating from the Union.

“You must refer this question to the people, and you must wait to hear from the men at the cross-roads, and even the groceries; for the people of this country, whether at the cross-roads or groceries, whether in cottages or palaces, are all equal, and they are the Sovereigns in this country. Sovereignty is not in the Legislature. We, the people, are sovereign. I am one of them, and have a right to be heard; and so has every other citizen of the State. You Legislators—I speak it respectfully are but our servants. You are the servants of the people, and not their masters. Power resides with the people in this country.”⁴⁶⁰

It is important to pause at this point and examine where Stephens believed sovereignty resided. It is no question that the Georgian believed that sovereignty belonged with the people. The people of Georgia should make the decision concerning secession, as well as other matters concerning the future of their state. With this notion in mind, it should be apparent to the observer how Stephen’s felt when he wrote in *A Constitutional View*:

“However strongly opposed I was to the policy of Secession, or whatever views I gave against it as a policy, or wise measure, yet in that very speech [at the Georgia legislature, Nov. 14, 1860], which you considered so strong a Union speech, I declared my convictions to be, that if the people of Georgia, in their majesty, and in the exercise of their resumed full Sovereignty, should, in a regularly constituted Convention called for that purpose, withdraw from the Compact of Union, by which she was confederated, or united, with the other States under the Constitution, that it would be my duty to obey her high behest.”⁴⁶¹

It was apparent in 1860, as well as in 1868, that Stephens not only held that the people were sovereign in determining the monumental issue of secession, but the Georgian would follow the will of the people despite his personal beliefs on the matter. When Stephens had announced that

⁴⁵⁹ *ibid.*, 201.

⁴⁶⁰ *ibid.*, 201.

⁴⁶¹ Stephens, *A Constitutional View*, 20.

a secession convention should be called, the Georgian announced that he would acquiesce to whatever the secession convention determined.⁴⁶² It is also noteworthy that Stephens had no illusion that the Lincoln administration was going to let the seceded states to go without a fight. Stephens knew that a civil war was on the horizon.⁴⁶³

Perhaps the most intriguing part of recognizing how the South felt about their own sovereignty, in relation to the national government, was the notion of the citizens of the southern states that there was no overwhelming political connection to the US before, during, and after southern secession. Their loyalties lay within their own states, and that this attitude of sovereignty among the southern people had been understood prior to the founding of the republic.⁴⁶⁴ This notion of sovereignty should not be difficult to understand. As has been previously investigated in the thesis, during the first government of the US under the Articles of Confederation, the states felt themselves to be akin to individual countries that had bound themselves together by a treaty creating a confederacy of states. John Calhoun explains the connection between the Articles, the Constitution and state sovereignty as the following:

“The style of the present constitution and government is precisely the style by which the confederacy that existed when it was adopted, and which it superseded, was designated. The instrument that formed the latter was called— “Articles of Confederation and

⁴⁶² Stephens, “Union Speech of 1860,” 202. “Should Georgia determine to go out of the Union, I speak for one, though my views might not agree with them, whatever the result may be, I shall bow to the will of her people. Their cause is my cause, and their destiny is my destiny; and I trust this will be the ultimate course of all.”

⁴⁶³ *Ibid.*, 202. “The greatest curse that can befall a free people, is civil war.”

⁴⁶⁴ Stephens, *A Constitutional View*, 19-20 & 64. “Judge Story here maintains and clearly shows that the whole people of the United States became one people, one political society, and bound together in one National Government, by the Declaration of Independence, which was one Supreme Sovereign National act, done by the Paramount authority, or Sovereignty of the whole people of all the Colonies, as one Nation, and that all idea of separate State Sovereignty, or of the States ever having been separate, Independent Sovereign powers at any period of their history, is utterly unfounded. That the separate Independence and individual Sovereignty of the several States were never thought of by the enlightened band of patriots, who framed the Declaration of Independence. To my mind his positions are unassailable, and his arguments unanswerable.”

Perpetual Union.” Its first article declares that the style of this confederacy shall be, “The United States of America;” and the second, in order to leave no doubt as to the relation in which the States should stand to each other in the confederacy about to be formed, declared— “Each State retains its sovereignty, freedom and independence; and every power, jurisdiction, and right, which is not, by this confederation, expressly delegated to the United States in Congress assembled.” If we go one step further back, the style of the confederacy will be found to be the same with that of the revolutionary government, which existed when it was adopted, and which it superseded.”⁴⁶⁵

When Calhoun wrote of this connection of the Constitution holding the spirit of the Articles on the idea of the sovereignties of the states, the country was struggling with the question of allowing slavery in the lands acquired from Mexico following the Mexican-American War. As was presented in chapter four, this was an incredibly contentious time and was a component of the process for the southern slave states to secede in 1860-1861.

Going back further from the Articles of Confederation, the experiences of being British subjects in North America during the colonial era had given the southerners further confirmation of the idea of state sovereignty. It has been previously presented that the events that created the autonomous notion of the states during the colonial era, such as the creation of individual colonial compacts and charters, the situation of the colonies having little in common with the other, and most importantly, the colonies enjoying only one source of a common thread of social and political existence; the ancient English constitution. The importance of the origins of state sovereignty is significant. The states that believed their sovereignties were violated by the national government would seek to explain their stances in not only the Articles of Confederation and the US Constitution, but additionally with their political experiences as Englishmen.⁴⁶⁶

⁴⁶⁵ Calhoun, “A Discourse on the Constitution and Government of the United States,” Calhoun and Lence, ed., 66.

⁴⁶⁶ Stephens, “Union Speech of 1860,” 190. “England, my friend [Robert Toombs] says. Well, that is the next best, I grant; but I think we have improved upon England. Statesmen tried their apprentice hand on the Government of England, and then ours was made. Ours sprung from that, avoiding many of its defects, taking most of the good, and leaving out many of its errors, and

“Thirteen of those bodies now known as States of ‘the Union,’ were originally, or before the date of our common history, Colonies of Great Britain... They were all planted at different times, and had different forms of government ; that is, the Constitutions or Charters of no two of them were alike, though all were founded upon the representative principle. They were all free Democratic Governments. These Colonies, as stated, were all separate and distinct political bodies, without any direct permanent political connection between them until 1774.”⁴⁶⁷

When the second government of the US was created under the Constitution, the ideas of sovereignty, especially in the South, had not changed. The Constitution was simply a compact with the other states and the national government should have as little to do with the everyday lives of the people as possible.⁴⁶⁸ Unfortunately, the idea that the national government was going to function under the US Constitution as it had under the Articles of Confederation was destined to be a source of consternation for the state right’s proponents. There was a bit of hope when the first ten amendments were passed to appease the persons who feared the Constitution was too powerful over the individual states. The last addition to the Bill of Rights seemed to settle the issue between the national government and the states. “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁴⁶⁹ This portion of the Constitution would be the source of great controversy for the state’s rights proponents, as leaders of the South felt the national government had acted unconstitutionally by violating the rights of the individual states in ignoring the Tenth Amendment.⁴⁷⁰

from the whole our Fathers constructed and built up this model Republic—the best which the history of the world gives any account of.”

⁴⁶⁷ Stephens, *A Constitutional View*, 54-55.

⁴⁶⁸ *Ibid.*, 40-41.

⁴⁶⁹ Tenth Amendment, United States Constitution.

⁴⁷⁰ Calhoun, “A Discourse on the Constitution and Government of the United States,” Calhoun and Lence, ed., 79. “But suppose this difficulty surmounted—another not less perplexing remains. If sovereignty be surrendered and transferred, in part or entirely, by the several States, it must be transferred to somebody; and the question is, to whom? Not, certainly, to the

As has been previously mentioned, the opposing principles theory of Stephens is taken from his post-war work entitled *A Constitutional View of the Late War Between the States*. Stephens' writes in the dedication of the book that his work is devoted to "All true friends of the Union under the Constitution of the United States..."⁴⁷¹ It is curious that Stephens did not devote his work to the memory of the fallen Confederate government or to the actions of the Union forces that inflicted damages upon the defeated South. It is made clear early into the book that Stephens is writing to present a different narrative concerning the late war between the states; the constitutional affirmation of the reasons for the creation of the Confederacy. In further reflection on Stephens' dedication he writes to, and clarifies the attributes, of the aforementioned "true friends" of the Constitution.

"Without regard to present or past party associations; and to all true friends of Constitutional Liberty, the world over, now and forever,—especially to all, everywhere, who may, now or hereafter, look to the Federative System, between neighboring Free Democratic States, as the surest means of saving Mankind from ultimate universal Monarchical Rule..."⁴⁷²

Stephens dedicated his work to all the "true friends" of the country who will honor and abide by the US Constitution, which is understood to be everyone who will ignore political party affiliation, understand the constitutional liberties guaranteed in the Constitution, adhere to American Federalism, and abhor the rule of monarchs. This dedicatory passage by Stephens

government—as has been thoughtlessly asserted by some; for that would subvert the fundamental principle of our system—that sovereignty resides in the people. But if not to the government, it must be transferred—if at all—to the people, regarded in the aggregate, as a nation. But this is opposed, not only by a force of reason which cannot be resisted, but by the preamble and tenth amended article of the constitution, as has just been shown. If then it be transferred neither to the one nor the other, it cannot be transferred at all; as it is impossible to conceive to whom else the transfer could have been made. It must, therefore, and of course, remain unsundered and unimpaired in the people of the several States—to whom, it is admitted, it appertained when the constitution was adopted."

⁴⁷¹ Stephens, *A Constitutional View*, viii.

⁴⁷² *Ibid.*, viii.

toward his targeted audience, which is essentially everyone who loves the Constitution and hates anything contrary to the government that is created in the document, is imperative to note.

Stephens is embracing his readers as being a partner in the author's beliefs on the thesis of his work: defending the Confederacy by legitimizing secession in the guise of protecting the sovereignty of the state governments over the national government.

There is, however, a bit of hypocrisy in Stephens new adherence to the national document. Stephens additionally wrote that his loyalties prior to the creation of the Confederacy were predominately to his home state of Georgia and not to the US. "My allegiance therefore was, as I considered it, not due to the United States, or to the people of the United States, but to Georgia in her Sovereign capacity. Georgia had never parted with her right to command the ultimate allegiance of her citizens."⁴⁷³ These two thoughts in the same work can give the impression of confused ideas, but quite the opposite is correct. As this thesis has surmised that the *cause* for secession was the violation of state's rights and the *reason* being the protection of chattel slavery, the description directed at Stephen's thoughts can be observed in the same fashion. For Stephens, his and the South's *cause* for secession was the violation of the Constitution and American Federalism by the national government and the *reason* was his and the southern state's loyalties lying with their own states and the people who resided in those entities.

Perhaps the most glaring point of Stephen's opposition to Seward's ideas of an irrepressible conflict between the North and South was the destiny of the two regions going to war over slavery. For Stephens, this notion does have its difficulties when investigating how the Georgian felt about slavery and its effect on the South. In March 1861, Stephens gave a speech

⁴⁷³ *ibid.*, 19-20.

which, according to historian William E. Gienapp, had upset newly appointed Confederate President Jefferson Davis concerning the reliance of the South on chattel slavery. The problem was not that Davis disagreed with his new vice president. Davis' difficulty was that he and many leaders of the new government were trying to avoid having slavery associated with secession from European countries whose financial assistance and trade would be crucial to the Confederacy's existence.⁴⁷⁴ Excluding the concerns of Davis, Stephens was determined to make clear the new government's relationship with chattel slavery and its result in instigating secession.

“...the new [Confederate] Constitution has put at rest *forever* all the agitating questions relating to our peculiar institutions – African slavery as it exists among us – the proper *status* of the negro in our form of civilization. *This was the immediate cause of the late rupture and present revolution.* [Thomas] Jefferson, in his forecast, had anticipated this as the ‘rock upon which the old Union would split,’”⁴⁷⁵

Stephens then further determines that slavery is the natural place for black people, is ordained by God and is to be placed in this condition by the slave holding states because the white southern man is superior to the black man by virtue of race. This description by Stephens is the very definition of the white supremacy that will be proclaimed in speeches, declared in publications and preached from pulpits across America up to the present age.

“Many Governments have been founded upon the principles of certain classes; but the classes thus enslaved, were of the same race, and in violation of the laws of nature. Our system commits no such violation of nature's laws. The negro by nature, or by the curse against Canaan, is fitted for that condition which he occupies in our system...The substratum of our society is made of the material fitted by nature for it, and by experience

⁴⁷⁴ William E. Gienapp, ed., *The Civil War and Reconstruction: A Documentary Collection* (New York: W. W. Norton & Company, 2001), 71. “...shortly after his [Stephens] election, he discussed the central importance of slavery to the Confederacy. Jefferson Davis was dismayed by Stephens's blunt identification of the Confederacy with slavery, not because he disagreed with this point, but because he believed that it would hurt Confederate efforts to win European diplomatic recognition.”

⁴⁷⁵ Alexander Stephens, “Slavery is the Cornerstone of the Confederacy,” Gienapp, ed., 71.

we know that it is the best, not only for the superior but for the inferior race, that it should be so.”⁴⁷⁶

In what is the most disturbing part of the previous quote by Stephens in regard to the societal placement of the black race, is the fact that he says that when countries in the past have held their same race as slaves, that this somehow places the institution of slavery against the law of nature. When the black race is enslaved, however, there is no violation of the laws of nature because the white race is superior. This misguided idea had been interpreted as fact in scripture with the story of Noah’s son Ham and his grandson Canaan. Following reaping the harvest of his first vineyard, Noah discovers that Ham had “seen their father’s nakedness,” when Noah had passed out from a night of drinking the first distilled fruits of his vineyard, Noah inexplicably curses Ham’s son Canaan.⁴⁷⁷ Many religious leaders, especially in the South, looked at this scripture as the basis of determining that Canaan is the progenitor of the black race. This idea is known as “The Curse of Ham.”⁴⁷⁸ This notion that Ham was black is not found in Jewish texts or research, however, there is a connection of research in early Christianity. The church father Origen does write about a link between Ham and the black race. Origen looks to chapter nine of the book of Genesis to present the curse of Ham as the source of Noah’s son possibly being a member of the black race but does not equate the race as being ultimately cursed to being slaves.

“Origen says that due to Ham’s sin, his descendants were punished with everlasting servitude of various kinds. He seems to include all of Ham’s descendants, including Egypt, in the curse pronounced against Canaan...Origen describes the Egyptians as dark-skinned (decolor), but he does not say that their skin color was a result of Ham’s sin. It is

⁴⁷⁶ Stephens, “Cornerstone,” Gienapp, ed., 72.

⁴⁷⁷ Genesis 9: 21-25, *The Holy Bible*, English Standard Version. “When Noah had awoke from his wine and knew what his youngest son had done to him, he said, ‘Cursed be Canaan; a servant of servants he shall be to his brothers.’” Note: Noah blesses his two sons Shem and Japheth and also says that Canaan will be their servants as well. There is no evidence that Canaan’s father Ham received a blessing from Noah.

⁴⁷⁸ David M. Goldenberg, *The Curse of Ham: Race and Slavery in Early Judaism, Christianity, and Islam* (Princeton, NJ.: Princeton University Press, 2003), 168.

not the Egyptians' decolor that "imitate[s] the ignobility of the race," but their bondage and "slavery of the vices." Decolor is merely meant as a description of the Egyptians, not as an external manifestation of their ancestor's sin. There is thus no explicit statement that dark-skinned people are meant to be enslaved by Noah's curse on Canaan."⁴⁷⁹

In Stephens work *A Constitutional View*, published seven years following his Cornerstone speech, the Georgian recants his previous declaration that slavery instigated secession. He was forced to make this change in his views by keeping with his theory that the opposing principles that forced the war for southern independence was the issue of the violation of the rights of the individual states by the federal government.

"The contest, so commenced, which ended in the War, was, indeed, a contest between opposing principles; but not such as bore upon the policy or impolicy of African Subordination. They were principles deeply underlying all considerations of that sort. They involved the very nature and organic Structure of the Government itself. The conflict, on this question of Slavery, in the Federal Councils, from the beginning, was not a contest between the advocates or opponents of that peculiar Institution, but a contest, as stated before, between the supporters of a strictly Federative Government, on the one side, and a thoroughly National one, on the other."⁴⁸⁰

To Stephens, in an attempt to reclaim the dignity of the fallen South, it was imperative to separate the protection of slavery from the reason the southern states attempted to start a new government in North America. The *cause* must be loftier than the *reason* for secession. Stephens must probe deeper into the events that led to secession and additionally dilute the Confederacy's requirement for slavery in separating from the Union. The Georgian does accomplish, at least for the purpose of his intent in the book, the task of claiming that state's rights was the cause for secession and that retaining slavery was a footnote in the overall aim of the progenitors of the Confederacy. The problem for Stephens, however, is the fact that he had not disavowed the requirement to retain the institution of slavery from his childhood up to the writing of *A Constitutional View*. It cannot be ignored, however, that Stephens never denied or

⁴⁷⁹ Goldenberg, 169.

⁴⁸⁰ Stephens, *A Constitutional View*, 12.

disavowed that the secession of the southern states was a mistake, as he had written and spoke many times on this issue. The closest that Stephens came to approve the secession movement was when he was forced to define the true meaning of Union.⁴⁸¹

Ultimately, Stephens book sold very well, but his second volume of *A Constitutional View* did not sell as he had hoped. The first volume was too deep and constructed a bit too difficult for a great many readers. Many were expecting an inside look into the government of the Confederacy but were given a treatise of Stephens constitutional interpretations of the impetus of the CS.⁴⁸² William C. Davis interpreted that the people though the work was “...hopelessly boring and too legalistic.”⁴⁸³ Thomas E. Schott said of Stephens book “Throughout the work the writing sparkled with all the brilliance of a polished mudball, and it went on forever.”⁴⁸⁴ Despite the criticism of *A Constitutional View*, Schott relates that an opinion of a recent scholar’s study of the work of Stephens concluded that it was the “ablest defense of the Southern position ever made.”⁴⁸⁵

The question posed for the purpose of the thesis is; did Stephens successfully make his case for the impetus of the Confederacy? In determining the answer, it must be remembered that Stephens was attempting to sanitize the Confederacy from the position of the South’s overwhelming desire to secede from the Union to protect chattel slavery. It must be observed that the Georgian did accomplish this task with an overwhelming amount of evidence that

⁴⁸¹ Stephens, *A Constitutional View*, 18. “But what Union? or the Union of what? Of course, the Union of the States under the Constitution. That was what I was so ardently devoted to. The Union is a phrase often used, I apprehend, without considering its correct import or meaning. By many it is used to signify the integrity of the country as it is called, or the unity of the whole people of the United States, in geographical view, as one Nation.”

⁴⁸² Davis, *The Union That Shaped the Confederacy*, 242-243. Schott, 470-471.

⁴⁸³ *Ibid.*, 243.

⁴⁸⁴ Schott, 471.

⁴⁸⁵ *Ibid.*, 471.

produced a work of over six hundred fifty pages in just the first volume. It can be determined that Stephens accomplished his task, however, it is difficult to adhere to the Georgian's conclusions when his opinions on slavery had changed significantly from his time in the early stage of the Confederate government. Stephens confirms the thought of the thesis that the *cause* for secession was violation of the rights of the states and the *reason* for seceding from the Union was to protect chattel slavery.

Summary of PART II

PART II of this work had a good deal of information and explanation into the dichotomy of beliefs between the regions of the North and South in the US. By beginning with the events that culminated in the Webster-Hayne debates, through the difficulties of the South having to suffer under congressionally mandated tariffs that always seemed to economically harm the South, then confronting the difficulties experienced through the annexation of Texas and the land acquisitions resulting from the Mexican-American War, the problems of determining the rights and sovereignties of the states and the economic tradition of chattel slavery was continually in the forefront of the social and political lives of Americans. This situation in the US would cause a good deal of animosity between the two regions, not just to the culmination of instigating the Confederacy, but would continue through to the modern age.

In chapters five and six, the thoughts and experiences of two significant political contemporaries of the era that participated and wrote about the differences between the North and South were examined. What is incredibly interesting is the numerous similarities that existed between William H. Seward and Alexander H. Stephens. Both were not born into wealth or luxury and struggled a bit to achieve their chosen vocations and then abandon them for a life in the political arena. Both men began their political lives as Jeffersonian Republicans, then

turned to the Whigs until the party's demise. The party affiliations then change when Seward chose the Republicans and Stephens reluctantly aligned himself with the Democrats.

The changes between the two men would change following their final party affiliations. Seward was an opponent of slave labor and Stephens was a proponent of the institution of slavery. Seward, while campaigning for the Republicans in 1858 spoke on the irrepressible conflict between the North and South. Stephens would stay silent on the issue until the results of the election of 1860 and his elevation to the vice presidency of the new government of the Confederacy. US Secretary of State Seward would attempt to convince Confederate vice president Stephens in the last days of the rebel government that if the remaining states in the Confederacy would return to the Union, the country would not have the votes to pass the Thirteenth Amendment in Congress. Stephens refused and the government of the southern states would capitulate in just a few months. The war and the Confederacy would be over, but the South would not let the memory of the antebellum and Confederate south be destroyed.

PART III THE LOST CAUSE / THE RENEWED CAUSE

“To you, Sons of Confederate Veterans, we will commit the vindication of the cause for which we fought. To your strength will be given the defense of the Confederate soldier’s good name, the guardianship of his history, the emulation of his virtues, the perpetuation of those principles which he loved and which you love also, and those ideals which made him glorious and which you also cherish.”⁴⁸⁶

----Lt. General Stephen Dill Lee
April 25, 1906

“Ok y’all it’s getting down to crunch time. It’s time to #flagup or shut up. You have a choice, you can answer the call of our homeland. You can stand as brave as our men and woman did in the war of southern independence. Or you can stay at home.”⁴⁸⁷

----Orange County Taking Back Orange County
April 5, 2015

In the final section of the thesis, Part III has been tasked to investigate the Lost Cause movement and the motives of memorializing the failed Confederacy from the antebellum to the present day. Chapter seven will explore the demise of the CS, impetus of Reconstruction and the results of attempting reconciliation between the North and the South. The following chapter will examine the rise of Jim Crow and organizations that perpetuated oppressive and violent acts towards African Americans and the perpetuation of memorials dedicated to the Confederacy. Chapter nine will be devoted to considering the resurgence of the Lost Cause doctrine and its influence on the social and political lives in the US that reflect fondly on the Confederacy and the monuments dedicated to its memory.

⁴⁸⁶ Lt. General Stephen Dill Lee, Commander General, United Confederate Veterans, New Orleans, Louisiana, April 25, 1906. Sons of Confederate Veterans, “Charge to the Sons of Confederate Veterans,” <http://www.scv.org/new/>.

⁴⁸⁷ Mab Segrest, “Flagged Up, Locked, and Loaded: The Confederacy’s Call, The Trump Disaster, and the Apocalyptic Crisis of White People,” *South: A Scholarly Journal* 50, no., 1 (Fall 2017), 22. Quoted from “Orange County Taking Back Orange County, Orange County, North Carolina Facebook page, April 5, 2015,”

Chapter 7
“The true nature and value of the Union”⁴⁸⁸

“Marked consideration and courtesy were exhibited at Appomattox by the victorious Federals, from the commanding generals to the privates in the ranks. General Meade, who had known General Lee in the old army, paid, after the surrender, an unofficial visit to the Confederate chieftain. After cordial salutations, General Lee said playfully to his former comrade in arms that years were telling upon him. General Meade, who had fought Lee at Gettysburg and in many subsequent battles, made the strikingly gracious and magnanimous answer: ‘Not years, but General Lee himself has made me gray.’”⁴⁸⁹

---John B. Gordon
1904

On the morning of Memorial Day 1909, a widow of one of General Robert E. Lee’s commanders in the Army of Northern Virginia stood in the wings of the main stage at the annual holiday’s celebration in Boston, Massachusetts. The widow had received an invitation to speak at the celebration from the GAR, the Union veteran’s organization that oversaw the festivities. This was the first time in the history of the celebration that the GAR selected a woman as speaker and only the second instance that a person from the former Confederacy was given the honor to address the Bostonians, who had been well known for their abolitionist activities dating to the results of the Second Great Awakening in the US.⁴⁹⁰ At the appointed time Lasalle Corbell Pickett, the wife of deceased General George E. Pickett who led the famous Confederate

⁴⁸⁸ Pollard, 84.

⁴⁸⁹ John B. Gordon, *Reminiscences of the Civil War* (New York: Charles Scribner’s Sons, 1904), 443-444.

⁴⁹⁰ McPherson, *Battle Cry of Freedom*, 8. “Meanwhile, a wave of Protestant revivals known as the Second Great Awakening swept the country during the first third of the nineteenth century. In New England...the evangelical enthusiasm generated a host of moral and cultural reforms. The most dynamic and divisive of them was abolitionism.” “...these Yankee reformers repudiated Calvinism predestination, preached the availability of redemption to anyone who truly sought it, urged converts to abjure sin, and worked for the elimination of sins from society. The most heinous social sin was slavery. All people were equal in God’s sight; the souls of black folks were as valuable as those of whites; for one of God’s children to enslave another was a violation of the Higher Law, even if it was sanctioned by the Constitution.”

charge on the last day of the Gettysburg engagements, walked to the podium and addressed the townspeople and their visitors to the holiday festivities. Following LaSalle Pickett's hour long speech, the "...audience members rose from their seats with a thunderous applause that shook the building."⁴⁹¹ Pickett, by accepting this opportunity to speak to her former enemies in the North, was continuing her work of attempting to reconcile her beloved South with their Yankee conquerors. Pickett had learned from her work in reconciliation that attempting to bind the ties of the two regions had become an arduous task.⁴⁹² The former Confederate knew, however, that the entire country was in need of reconciliation following the bloodiest conflict in American history. Additionally, through her efforts of redeeming her late husband's name, who had been accused of being a "mediocre" general in some southern circles,⁴⁹³ she became one of the most famous authors and activists concerning the late Confederacy and the Lost Cause movement. Pickett was one of the rarest of individuals who attempted to honor the ideas of the Lost Cause movement as well as laboring towards resolution with her former enemies. "By the time of her death in 1931, her voluminous writings had helped LaSalle Pickett become, as journalist Willard French noted in 1907, 'one of the best-known women of America . . . one of the best loved, North and South.'⁴⁹⁴

⁴⁹¹ Caroline E. Janney, "'One of the Best Loved, North and South': The Appropriation of National Reconciliation by LaSalle Corbell Pickett," *The Virginia Magazine of History and Biography* 116, no. 4 (2008), 371.

⁴⁹² Janney, "'One of the Best Loved, North and South,'" 372. "But no one should have been surprised by her message or her reception. By the time she walked onto that stage in 1909, much of the country already agreed that 'to her belonged the honor of bringing about a fraternal union of the blue and gray.'"

⁴⁹³ *Ibid.*, 372. "Recent scholarship has demonstrated that LaSalle Pickett helped transform her husband's reputation from that of mediocre officer into a Confederate hero. Lesley J. Gordon's biography of General Pickett, in particular, provides a perceptive treatment of LaSalle's efforts to repair his military image." *General George E. Pickett in Life and Legend* (Chapel Hill, 1998).

⁴⁹⁴ *ibid.*, 372. Note: Willard French was a journalist, author and lecturer.

Concerning the issue of perpetuating the Lost Cause movement, the first serious effort of creating a positive remembrance to the former Confederacy was instigated through the efforts of a great number of the southern women, such as Caroline Meriwether Goodlett, founder of the UDC. The emotional toll of being defeated by the Yankees created a significant source of social, political and emotional pain for the southern people. This situation was being addressed firstly by the UDC in their efforts to tackle the issues of the respectful treatment and welfare of the slain, wounded, and surviving Confederate soldiers with burials and reinternments, as well as the establishment of monuments of remembrances to the southern veterans.⁴⁹⁵ The difficulties that were experienced during and following this activity was the perpetuation of placing the participants of the Confederate military and government into an overtly positive and often romantic light. The persons who began writing memoirs of their experiences in the Confederacy started emerging shortly after the fall of the failed government and the people of the South, as well as an ever growing audience in the North, began to look upon the Confederate soldiers and officials as crusaders of liberty and champions of state sovereignty rather than as an army and government dedicated to insurrection against the US.⁴⁹⁶

⁴⁹⁵ “Meet the Founders, Caroline Meriwether Goodlett, Founder of UDC,” United Daughters of the Confederacy, <https://www.hqudc.org/caroline-meriwether-goodlett/>. “Through the years following the War, Caroline continued working with various Confederate veterans’ organizations. In 1866 the Benevolent Society was organized for the purpose of securing funds for artificial limbs for Confederate veterans. Realizing the South’s everlasting debt of gratitude to the “Confederate Veteran,” she persevered until the first old soldiers home was established in Nashville, followed by hundreds of others throughout the country, where care and comfort were provided for the helpless. It was largely through her efforts that the state deeded part of the Hermitage tract for a home for needy Confederate soldiers. In 1870 the Confederate women of Nashville organized a Memorial Association and bought a lot in Mount Olivet Cemetery, where they buried the remains of Confederate soldiers in the vicinity of Nashville. Caroline was a charter member of the Board of the Confederate Monumental Association that erected a monument over the Confederate soldiers buried in the circle.”

⁴⁹⁶ Sarah H. Case, “The Historical Ideology of Mildred Lewis Rutherford: A Confederate Historian’s New South Creed.” *The Journal of Southern History* 68, no. 3 (August, 2002), 599.

Fall of the Confederacy

On January 30, 1865, delegations from the US and the CS met for what would be the last war-time peace summit between officials of the two governments onboard the *River Queen* at Hampton Roads, Virginia. For Lincoln, there was only one purpose for the meeting, and that was "... securing peace to the people of our one common country."⁴⁹⁷ Upon deliberating the possible success of the conference, Confederate President Davis was skeptical and feared that Lincoln would refuse to negotiate any terms favorable to the Confederacy at the summit, as Davis believed that Lincoln would not relinquish his [Lincoln's] legal opinion that he did not have the power or legal authority to settle any terms of peace that was absent of the demise of the Confederacy. If Lincoln would allow any other activity to occur, Davis reasoned, he [Lincoln] would be forced to admit that the Confederacy was a legitimate government, which Lincoln had denied many times prior to the conference.⁴⁹⁸ When Davis read the report of the Confederate

"[Mildred Lewis] Rutherford, the long-serving national historian of the United Daughters of the Confederacy (UDC), spent her life publicizing her version of the 'truth' about the Civil War and the southern past."

⁴⁹⁷ Lincoln and Basler, ed., "To Francis P. Blair Sr." January 18, 1865, 220-221. "Your [Blair] having shown me [Lincoln] Mr. [Jefferson] Davis' letter to you of the 12th. Inst., you may say to him that I have constantly been, am now, and shall continue, ready to receive any agent whom he, or any other influential person now resisting the national authority, may informally send to me, with the view of securing peace to the people of our one common country."; McPherson, *Battle Cry of Freedom*, 822. "Their [Confederate delegation] proposed conference with William H. Seward, whom Lincoln had sent to Hampton Roads to meet with them, almost aborted because of the irreconcilable differences between the agendas for 'two countries' and 'our one common country.' But after talking with Stephens and Hunter and becoming convinced of their sincere desire for peace, General Grant telegraphed Washington that to send them home without a meeting would leave a bad impression. On the spur of the moment Lincoln decided to journey to Hampton Roads and join Seward for a face-to-face meeting with the Confederate commissioners."

⁴⁹⁸ Jefferson Davis, *A Short History of the Confederate States of America* (New York: Belford Company Publishers, 1890), 427.; Lincoln and Basler, ed. "Message to Congress in Special Session," July 4, 1861, 426. "It presents the question, whether discontented individuals, too few in numbers to control administration, according to organic law, in any case, can always, upon the pretences made in this case, or on any other pretences, or arbitrarily, without any pretence, break

commissioners concerning the meeting, the reservations of the Confederate President were proven to be accurate.⁴⁹⁹ For the Confederates, establishing peace within “one common country” was out of the question. The three men representing the Confederate delegation, led by Vice President Stephens, were under the direction of Davis to negotiate with the understanding that the Confederacy was a sovereign nation, and there was no political connection between the two governments.⁵⁰⁰

In preparation for the conference with the Confederates, Secretary of State Seward met with the president to discuss the terms of peace to be presented to the Confederate commissioners. Lincoln insisted that peace could only be achieved by the complete capitulation of all the military forces of the Confederacy and full submission of the rebellious states to the US governmental authority.⁵⁰¹ Lincoln held that an additional purpose of stressing the absolute compliance to the authority of the Union was to emphasize to the Confederates that the abolition of slavery in the US was nearly completed. The US Congress had passed the Thirteenth Amendment and the measure was in the process of being sent to the states for ratification. Slavery was on the path of destruction in the US and the rebellious slave holding states were going to be obligated to accept the successful outcome of the abolition movement.⁵⁰²

up their Government, and thus practically put an end to free government upon the earth. It forces us to ask: ‘Is there, in all republics, this inherent, and fatal weakness?’ ‘Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?’”

⁴⁹⁹ Davis, *A Short History*, 428.

⁵⁰⁰ William C. Davis, *The Cause Lost: Myths and Realities of the Confederacy* (Lawrence, KS.: University Press of Kansas, 1996), kindle edition, location 32626.

⁵⁰¹ James G. Randall, *Constitutional Problems Under Lincoln* (New York: D. Appleton and Company, 1926), 64.

⁵⁰² Seward and Seward, ed., 261.

The banter between the emissaries onboard the *River Queen* began in a cordial manner.⁵⁰³ Lincoln and Stephens had served together as Whigs in the US House of Representatives and both men had a measure of admiration for the other.⁵⁰⁴ There was a good deal of subjects that were open for discussion at the summit and Seward presented the matters on the agenda with all attending agreeing on each item.⁵⁰⁵ To entice the Confederates, Secretary Seward offered that there were two tempting motives for the Confederacy to surrender and reenter the Union as quickly as possible. One option held the possibility of retaining slavery and the other was to be rewarded for accepting the abolition of chattel servanthood. Firstly, if the southern states had any remaining desire of subverting abolition in the US, the seceded states should admit defeat, reenter the Union as quickly as possible and refuse to pass the Thirteenth Amendment.⁵⁰⁶ This option was viable as the required number of states for ratification of the amendment would be increased and the southern states could possibly influence the final number of requisite states for passage.

A second enticement to rejoin the Union was brought up by Lincoln. The president informed the Confederate delegation that there was a good deal of support of the people in the

⁵⁰³ Stephens and Avery, ed., 81. "The Commissioners met Lincoln and Seward aboard the *River Queen*, in Hampton Roads. Stephens opened the conference with some pleasant remarks to Lincoln on their association in Congress and as Young Indians. Lincoln responded cordially; inquiries concerning old comrades were exchanged."

⁵⁰⁴ *Ibid.*, 61., "I knew Mr. Lincoln well. We met in the House in December, 1847. We were together during the Thirtieth Congress. I was as intimate with him as with any other man of that Congress except perhaps one. That exception was my colleague, Mr. Toombs. Mr. Lincoln was warm-hearted; he was generous; he was magnanimous; he was most truly 'with malice toward none, with charity for all.'"

⁵⁰⁵ *ibid.*, 81. "Seward promised that there should be no clerk, no records. The military convention, Monroe doctrine, armistice, emancipation, compensation for slaves and status of seceded States if war were abandoned, were reviewed."

⁵⁰⁶ Schott, 446. "The president sat silently while Seward outlined a startling possibility. The Thirteenth Amendment, barring slavery forever, had just passed the U.S. Congress and was on its way to the states for ratification. With the southern states back in the Union, ratification could be blocked."

North as well as in the US Congress for monetary compensation to the remaining slaveholders residing in the rebellious states should they [the seceded states] immediately dissolve their governments, reenter the Union and pass the Thirteenth Amendment.⁵⁰⁷ Unfortunately, on the issue of returning to the Union, the Confederate officials still held to the notion that their war for independence was still viable and the thought of placing their economic traditions in jeopardy by admitting defeat was simply out of the question. Furthermore, when the matter of compensation for slavery was introduced into the negotiations, Stephens and the other Confederates refused to consider the proposal.⁵⁰⁸ The Confederate officials had determined that the slavery issue between the Union and the Confederacy was going to be decided by the spilling of blood on the battlefield. In the years following the defeat of the CS, the hope of victory placed on the lives of the Confederate soldiers by Stephens and his colleagues would be a significant factor in the construction of monuments and memorials, such as placing southern heroism on the soldiers and the dedication of the southern officials and populace to the failed Confederacy from the end of the war through to the twenty-first century. The meeting of the two delegations concluded with no progress towards peace being accomplished. The Confederacy would be in ruins in less than four months.

On the morning of April 2, just three months after the Hampton Roads conference, President Davis was attending services at St. Paul's Episcopal Church. During the service, a

⁵⁰⁷ *Ibid.*, 446. "Lincoln had another suggestion to make. If he were Stephens, he said, addressing his old friend, he would go down to Georgia, persuade the governor to call a state reconstruction convention, elect senators and representatives to the U.S. Congress, recall Georgia troops from the war, and ratify the Thirteenth Amendment... Northerners were as guilty as southerners for tolerating slavery and should be willing to bear the costs of freedom. He himself would be willing to be taxed for the remuneration of southern slaveowners. He knew many in the North who felt the same way, and he had heard sums as large as \$400 million mentioned."

⁵⁰⁸ Donald, 558; Stephens and Avery, ed., 81-82.; James M. McPherson, *Tried By War: Abraham Lincoln as Commander In Chief* (New York: The Penguin Press, 2008), 259.

messenger handed Davis a telegram from General Lee. Lee informed Davis that the Army of Northern Virginia had abandoned their positions at Petersburg and urgently informed the Confederate President to evacuate the government and all other significant persons connected to the CS from Richmond. Davis quietly rose from his pew and called a cabinet meeting to assemble at his office to discuss the impending withdrawal.⁵⁰⁹ Following the meeting, the cabinet members still in Richmond went to work informing the remaining members of the government to prepare for removal. Davis later recalled that there were evacuation plans already conceived by Confederate officials, but the necessity of flight "... came sooner than expected."⁵¹⁰ The last remnants of the government in Virginia boarded a commandeered train and left just after midnight on April 3. Later that morning, Union cavalry arrived at Richmond to assist in putting out the fires ignited at the direction of the evacuating governmental officials.⁵¹¹

As Davis' party travelled through the Virginia countryside they stopped in Danville. Before continuing on the train that was attempting to outrun their Union pursuers, the Confederate President published his final proclamation to the crumbling Confederacy. The ever-optimistic Davis informed his countrymen that the capitulation of Richmond would benefit the military in not being forced to focus on saving the major cities in the Confederacy but instead

⁵⁰⁹ James Elliott Walmsley, "The Last Meeting of the Confederate Cabinet." *The Mississippi Valley Historical Review* 6, no. 3 (December, 1919), 336. "This meeting, which resolved on the last steps necessary for leaving Richmond, was brief, as the situation was by no means a surprise and many of the archives and much of the property had already been removed. Those present at the meeting, in addition to President Davis, were Judah P. Benjamin, secretary of state; John C. Breckenridge, secretary of war; George A. Trenholm, secretary of the treasury; Stephen R. Mallory, secretary of the navy; and John H. Reagan, postmaster-general."

⁵¹⁰ Jefferson Davis, *The Rise and Fall of the Confederate Government*, vol. ii (New York: D. Appleton and Company, 1881), 667.; Walmsley, 336-337.

⁵¹¹ Davis, *Rise and Fall*, vol. ii, 666. "In obedience to a law of the Congress, General Ewell had made arrangements to burn the tobacco at Richmond Whenever the evacuation of the city should render the burning necessary, to prevent the tobacco from falling into the hands of the enemy. Orders were also given to destroy certain property of the Confederate States, exceptions being made as in the case of the arsenal, the burning which would endanger the city."

being able to fully devote themselves to destroying the enemy in the field.⁵¹² The Confederate military, however, could not accomplish the desires of Davis. General Grant was keeping the Confederates on the defensive by pursuing and flanking Lee's army in Virginia and Sherman had chased and nearly surrounded General Johnston's forces in North Carolina. Now Johnston was forced to do what Davis had been pleading against since the evacuation of Richmond. Upon discovering that Lee had surrendered the once mighty Army of Northern Virginia, Davis began openly entertaining the possibility of Johnston conducting capitulation negotiations with the Union army.⁵¹³

In considering Davis' disdain of any Confederate military command being willing to discuss surrender options with the Union army, notably just prior and during the CS government's flight from Richmond, there arises a significant condition that requires examination in considering the Confederate President's behavior during the last days of the Confederacy. Davis' conduct is considered by presenting two noteworthy events that were occurring while Davis and the Confederate government were fleeing the pursuing Union forces. Firstly, the fore-mentioned surrendering of the various armies of the Confederacy, and possibly the most disturbing, Davis' refusal to accept the inevitable demise of the Confederacy. The Confederate military and government was disintegrating as Davis and his small band of soldiers and officials were scrambling to evade capture in the spring of 1865. There were very few effective Confederate military personnel in the area where Davis' party was traveling and Union cavalry was moving virtually unopposed in search of the remaining remnants of the failed

⁵¹² *Ibid.*, 677. Walmsley, 338. Note: The proclamation was published in the *Danville Register* on April 5 and later picked up by the *New York Herald* on April 15.

⁵¹³ Davis, *Rise and Fall*, vol. ii, 681. "I yielded to the judgment of my constitutional advisers, of whom only one held my views [of not surrendering], and consented to permit General Johnston, as he desired, to hold a conference with General Sherman for the purpose above recited [surrender of his army]."

government.⁵¹⁴ Yet, Davis was directing his commanding officers, for those he was still in communication, to either continue the fight where they were or possibly redeploy and regroup with other units in the protection of the border states to strike when the opportunity arose.⁵¹⁵ This notable irresponsibility and lack of empathetic feeling towards his own people to sacrifice for a war that was clearly lost, which Davis' own Secretary of War had already come to terms with,⁵¹⁶ is significantly troubling.

In addition to the disturbingly telling aspect of Davis' attitude on his actions upon continuing the war in the spring of 1865, was that he was completely unapologetic on this issue and fully held that the military personnel, officials and citizens of the Confederacy were willing to sacrifice themselves and their families to save the Confederacy.⁵¹⁷ In Davis' observation of

⁵¹⁴ *Ibid.*, 678. McPherson, *Battle Cry of Freedom*, 847.

⁵¹⁵ Davis, *Rise and Fall*, vol. ii, 677. "If, by the stress of numbers, we should be compelled to a temporary withdrawal from her limits or those of any other border State, we will return until the baffled and exhausted enemy shall abandon in despair his endless and impossible task of making slaves of a people resolved to be free."

⁵¹⁶ Davis, *The Cause Lost*, kindle, 34652-34710. "A few days after sending the papers to Davis, Breckinridge called a conference at the hotel room of Kentucky senator Henry C. Burnett. Present were Louis T. Wigfall of Texas, Hunter and Allen Caperton of Virginia, and Waldo Johnston and George G. Vest of Missouri. As Vest later recorded the meeting, 'Breckinridge stated his conviction that the Confederate cause was hopeless and in a very few days all would be lost.' 'I have wished for some time to confer with the members of the Confederate Senate... as to the effect of the final collapse... What I propose is this: That the Confederacy should not be captured in fragments, that we should not disband like banditti, but that we should surrender as a government, and we will thus maintain the dignity of our cause, and secure the respect of our enemies, and the best terms for our soldiers.'"

⁵¹⁷ Davis, *Rise and Fall*, vol. ii, 677. "Animated by that confidence in your spirit and fortitude which never yet failed me, I announce to you, fellow-countrymen, that it is my purpose to maintain your cause with my whole heart and soul; that I will never consent to abandon to the enemy one foot of the soil of any of the States of the Confederacy; that Virginia — noble State, whose ancient renown has been eclipsed by her still more glorious recent history; whose bosom has been bared to receive the main shock of this war; whose sons and daughters have exhibited heroism so sublime as to render her illustrious in all time to come — that Virginia, with the help of the people and by the blessing of Providence, shall be held and defended, and no peace ever be made with the infamous invaders of her territory. If, by the stress of numbers, we should be compelled to a temporary withdrawal from her limits or those of any other border State, we will

this matter, he was unequivocally incorrect. The desertion rate among the military was rising above any number previous during the conflict.⁵¹⁸ Confederate officers were becoming disillusioned, and the populace of the South had been sacrificing and suffering from a lack of sustenance for many months.⁵¹⁹ One could argue that countless lives were spared when Davis and the remainder of his officials accompanying him were captured by a contingent of Union cavalry near Irwinville, Ga. on May 10, 1865.⁵²⁰ With the capture of Davis and his compatriots, the experiment of the governance in North America in the nineteenth century had ended in just over four years from its impetus.⁵²¹

Killing the Confederacy

When considering the demise of the Confederate government, aside from the fact that the leaders of the Confederacy could not break free from its entanglement in protecting chattel slavery, an observation into what events had ultimately destroyed the CS is warranted. This can be firstly observed in the text of the Confederate Constitution. Items placed in the Confederate

return until the baffled and exhausted enemy shall abandon in despair his endless and impossible task of making slaves of a people resolved to be free.”

⁵¹⁸ McPherson, *Battle Cry of Freedom*, 820-821. “Desertions from Lee’s army, especially of North Carolinian troops [in February 1865], rose to disastrous levels. ‘Hundreds of men are deserting nightly,’ reported Lee in February [1865]. In a single month the army lost 8 percent of its [Army of Northern Virginia] strength by desertion.”

⁵¹⁹ McPherson, *Battle Cry of Freedom*, 615-616. “By the spring of 1863, runaway inflation finally compelled Richmond’s lawmakers to seek alternatives to the printing press to finance the war. In April they followed the Union example and enacted a comprehensive tax law that included a progressive income tax, an 8 percent levy on certain goods held for sale, excise and license duties, and a 10 percent profits tax on wholesales intended to take back some of the money that ‘speculators’ had ‘extorted’ from the people.”

⁵²⁰ Davis, *Rise and Fall*, vol. ii, 698. McPherson, *Battle Cry of Freedom*, 853.

⁵²¹ Davis, *A Short History*, 503. “With the capture of the capital, the dispersion of the civil authorities, the surrender of the armies in the field, and the arrest of the President, the Confederate States of America disappeared as an independent power, and the States of which it was composed, yielding to the force of overwhelming numbers, were forced to rejoin the Union from which, four years before, they had one by one withdrawn.”

document such as protecting the rights and liberties of all white citizens, are nearly identical to the US Constitution.

“We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity—invoking the favor and guidance of Almighty God—do ordain and establish this Constitution for the Confederate States of America.”⁵²²

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”⁵²³

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances.”⁵²⁴

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”⁵²⁵

Additionally, the two governments had identical ancestral origins in their political and social views and practices. Both governments held the same religious views that God had pre-ordained the establishment of the US and the CS. Both had fought together before secession in conflicts that either threatened the safety or extended the country’s boundaries. Furthermore, both governments had the same officer training before the war at military academies such as West Point and Annapolis. With the understanding that both North and South had more in common in the areas of political and military operation than differences, one must ask; why was the Confederacy the one to disintegrate first and so quickly?

⁵²² Preamble, Constitution Of The Confederate States Of America.

⁵²³ Preamble, United State Constitution.

⁵²⁴ Article I, Section 9, Clause 12, Constitution Of The Confederate States Of America.

⁵²⁵ Amendment I, United States Constitution.

In considering the military, the leadership of the Confederate forces did not reach the level of brilliance that was later bestowed upon them with the Lost Cause movement following the war.⁵²⁶ In the case of Robert E. Lee, arguably the most admired of all generals engaged in the Civil War, had fought a significant majority of the war within the state of Virginia and was apprehensive to send any part of the Army of Northern Virginia to the western and southern armies for assistance.⁵²⁷ Lee led only two offensive operations outside of Virginia which both resulted in complete failures. Lee was wrong in his reasoning that invading Maryland would unite a legion of Confederate sympathizers to join his army, surround Washington D.C. and force the Union to let the southern states leave. Lee also wasted a third of his Army of Northern Virginia in the summer of 1863 with the failed movement of invading Pennsylvania at the famous engagements in and surrounding the small town of Gettysburg.⁵²⁸ For those who desire to propose that the Confederate military was led by the greatest generals to ever exist, the reality that the military capitulated after only fighting just over three years must be considered.⁵²⁹

In terms of the Confederate government, determining what state sovereignty really meant was a source of contention, much like it was in the South prior to secession from the US. The governors of the states in the Confederacy were wary of sending aid to the national government, as the state executives felt that they were their own individual entities that were required to

⁵²⁶ Davis, *The Cause Lost*, kindle location, 463.

⁵²⁷ McPherson, *Battle Cry of Freedom*, 857.

⁵²⁸ *Ibid.*, 534-535 & 664.

⁵²⁹ Drew Gilpin Faust, *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South* (Baton Rouge, LA.: Louisiana State University Press, 1988), 3. “If North Vietnam could win, why not the South? Why did Appomattox effectively signal the end of the conflict? Why did southerners lose the will to fight after only four years whereas the Vietnamese struggled for two generations?”

defend and sustain their own regions.⁵³⁰ This situation sounds vaguely familiar from the first government of the US in fighting the war of independence. Fortunately, foreign aid was enjoyed during the Revolution that provided success for the US in attaining independence. The Confederacy would not be able to convince any country in the world to come to their aid except in instances of selling a limited amount of supplies from neutral countries who recognized the CS as a belligerent state when Lincoln initiated the naval blockade of the South shortly following the assault on Fort Sumter in April 1861.⁵³¹

It would be safe to observe that the most famous of the Confederacy's governors who were the most vocal on the issue of the Confederate national government violating the sovereignty of the southern states was John Brown of Georgia and North Carolinian Zebulun Vance.

“Governors Brown and Vance are infamous as [Confederate] obstructionists who valued their states and their citizens' liberties to such an extent that, according to some historians, they were willing to sacrifice the Confederacy for the sake of their principles. Historians have repeatedly used their actions to demonstrate the weakness of Confederate identity and to support theses that the Confederacy collapsed from internal dissent. These works conclude that Southerners' lack of Confederate nationalism or Confederate identity doomed the nascent nation. Several also contend that the friction between the governors and the national government in Richmond exacerbated this dissatisfaction.”⁵³²

Brown and Vance could not come to terms with the fact that national government could not establish independence from the Union without winning the war, which Davis and the Confederate government felt it was their responsibility to conduct with a national military.⁵³³ It

⁵³⁰ John M. Sacher, "'Our Interest and Destiny Are the Same:' Gov. Thomas Overton Moore and Confederate Loyalty," *Louisiana History: The Journal of the Louisiana Historical Association* 49, no.3 (Summer, 2008), 261.

⁵³¹ McPherson, *Battle Cry of Freedom*, 388 & 838.

⁵³² Sacher, 263.

⁵³³ Article I, Section 8, Clause 1, Constitution of the Confederate States. “The Congress shall have power to lay and collect taxes, duties, imposts, and excises, for revenue necessary to pay the debts, provide for the common defence, and carry on the government of the Confederate

must also be acknowledged that there were also governors who felt that it was imperative for their states to send the men, money and material necessary to the Confederate central government to win independence on the battlefield as well as attempting to convince foreign nations to come to the aid of the burgeoning country. Louisiana governor Thomas Overton Moore, who was later believed to be the politician who lobbied the hardest for secession in Louisiana,⁵³⁴ was the chief executive of one of the most significant states in the Deep South which sent substantial amounts of military and monetary aid to the Confederate government. Governor Moore oversaw New Orleans, the largest international port in the Confederacy. The port of New Orleans exported more cotton, the crop that the Confederacy was convinced would secure foreign aid for fear of scarcity of the staple textile component around the world, than any other port in the CS.⁵³⁵

The states that made up the Confederacy were additionally concerned about their sovereignties within the central government when President Davis proposed a national conscription ordinance in March 1862. For the states, this was in direct violation of their individual sovereignties.⁵³⁶ The Confederate Congress passed the bill shortly after Davis'

States.”; Article I, Section 8, Clause 13, “To provide and maintain a navy.”; Article I, Section 8, Clause 15, “To provide for calling forth the militia to execute the laws of the Confederate States, suppress insurrections, and repel invasions.”; Article I, Section 16, Clause, 16, “To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the Confederate States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.”; Article II, Section 2, Clause 1, “The President shall be commander-in-chief of the army and navy of the Confederate States, and of the militia of the several States, when called into the actual service of the Confederate States.”

⁵³⁴ Sacher, 261.

⁵³⁵ Gentry, 229.

⁵³⁶ Stephens and Avary, 167. “The first great blow was conscription! With this came impressments, suspension of habeas corpus, military arrests and imprisonments, martial law. The effect upon the minds of the Southern people was fatal to the Confederate Cause. Besides in the management of the finances, the line of policy pursued by the Executive and Congress in almost

proposal and the home state of the vice president became inflamed at the measure. The newspapers in Georgia published editorials denouncing the act of the Congress as being an attempt to “override all the barriers of the Constitution and every vestige of State’s Rights.”⁵³⁷ Governor Brown wrote to President Davis concerning the measure and the constitutional problems with the national government creating such an act. Additionally, Brown let Davis know that the state of Georgia had already supplied over sixty thousand troops and could be counted upon to send more. Brown additionally declared that the national government had no constitutional authority to coerce the states to send military aid for national service.⁵³⁸

Vice President Alexander Stephens was not a supporter of the Conscription Act, however, his contention had little to do with the constitutional problems that concerned Governor Brown. Stephens felt that applying such a measure involving the male population would cause a crisis of food and material shortages in the Confederacy. Stephens argued that the conscription act would take farmers away from their food productions and workers from factories and feared that such a broad age of mandatory military service would create more men in the army and government than in the civilian population.⁵³⁹ The protest of the Conscription Act continued, however, most of the states reluctantly complied in one way or another. Georgia, for example, applied the act but kept a good portion of the conscripted soldiers within the state instead of

every department of government soon led the most sensible men of the country to believe that there was not enough wisdom or statesmanship in control to afford reasonable hope for ultimate success.”

⁵³⁷ Schott, 353. Note: the newspaper quote come from the Milledgeville *Southern Recorder*, July 1, 1862.

⁵³⁸ *Ibid.*, 354.

⁵³⁹ Stephens and Avary ed., 69-70.

sending all for national service.⁵⁴⁰ For Brown, defending Georgia was paramount to protecting Richmond and fighting the Yankees in other regions of the seceded south.

Southern Commitment and Sacrifice

There is no question that the leaders of the Confederacy knew early on that to raise a military force large enough to secure their independence, all of the men in the seceded states were required to be convinced that their sacrifice to fight the Yankees in 1861 was just as essential as their ancestor's dedication to fighting the redcoats in 1775. The soldiers of the Confederacy would have to be converted to the belief that to protect their homes and country, their heroism performed on the battlefield were the result of their patriotism in protecting their customs and traditions that was being celebrated and defended by seceding from the Union. Historian Wayne K. Durrill believes that the requirement of raising the patriotism among the southern men was three fold; address his "manhood, faith, and community."⁵⁴¹ Durrill further held that "Manhood, faith and community after all formed the basis upon which Southern white men had constructed their personal identities and secured their social positions for generations."⁵⁴² Without exploiting the perceived southern virtues by the leaders of the secession movement upon the common people of the South, that was required to recruit the soldiers and sailors to defend the new southern government, the Confederate army and navy could not have been established. The role of the southern politicians was to instigate secession, the duty of the common southern man was to die establishing the Confederacy. In the early days of the Confederacy, the manipulation of the common people defending their southern virtuous

⁵⁴⁰ Schott, 344-355.

⁵⁴¹ Wayne K. Durrill, "Ritual, Community and War: Local Flag Presentation Ceremonies and Disunity in the Early Confederacy." *Journal of Social History* 39, no. 4 (Summer, 2006), 1111.

⁵⁴² Durrill, 1111.

ideas by the leaders of the South was successful.⁵⁴³ By the end of 1863, however, the common soldier's and citizen's desire for defending their virtues was becoming increasingly then overwhelmingly sacrificial.

In considering the final days of the war, the issue of the southerner's commitment to their military obligations, it is not surprising that a significant portion of the common soldiery in the last days of the conflict had reluctantly chosen to defect from their positions and go home to their struggling families. This behavior was not exclusive to the Confederate forces. The army of the Union suffered a good deal of desertions during the war.⁵⁴⁴ Notwithstanding, it is important to note that the most overwhelming influence on the wayward Confederate soldier to abandon his post was not due to a lack of commitment, patriotism or courage. In overwhelming accounts, the southern soldiers had proven their mettle time and again under the harshest of circumstances and were not responsible for the failure of the Confederate government to sustain itself. It was the Confederate leadership in the government and military that circumvented the sacrifices of the common soldier.⁵⁴⁵ For example, a few days following the evacuation of the government of the

⁵⁴³ Stephens and Avary, 166-167. "The view of the great mass was that with the recognition of the principle of State Sovereignty as a basis of adjustment, the future might well be left to take care of itself; the States would soon assume relations to each other in such political bonds as would be most conducive to the interest, peace, happiness, and prosperity of all. These views and principles were what mainly animated the breasts of an overwhelming majority at the South. In their views not only their own domestic institution of the subordination of the African race amongst them was involved in the issue, but the very essence of constitutional liberty. So long as these principles were the watchword in the camp and at home, the people were ready to sacrifice everything in maintenance of the cause."

⁵⁴⁴ McPherson, *Battle Cry of Freedom*, 584. "Men in the [Union] ranks were deserting at the rate of a hundred or more every day during January [1863]. 720. "Much of the North's apparent superiority in numbers thus dissolved during 1864. 'The men we have been getting in this way [conscripts and bounty recruits] nearly all desert,' Grant complained in September [1864], 'and out of five reported North as having enlisted we don't get more than one effective soldier.'"

⁵⁴⁵ James Longstreet, *From Manassas to Appomattox: Memoirs of the Civil War in America* (Philadelphia: J. B. Lippincott Company, 1903), 519. "The Law disaffection [resignation of Confederate General Hugh Law] was having effect, or seemed to be, among some of the officers,

CS from Richmond, Mary Chestnut reflected on what she believed was at the core of the imminent demise of the Confederacy.

“Did we lose by imbecility or because one man cannot fight ten for more than four years? We waited and hoped. They [The Union] organized and worked like moles, with the riches of all the world at their backs. They have made their private fortunes by their country’s war. We talked of negro recruits. The Yankees used them – 18 million against six. The odds were too great.”⁵⁴⁶

An overpowering factor regarding the desertion rate among the soldiers of the CS was due to the desperate pleas from their families to return home and save them from their terrible plight of being occupied by Union forces or to assist them in providing food and fuel to confront the lack of sustenance to maintain their existence in the yet to be conquered regions of the Confederacy. In one example, related in a personal encounter by Lasalle Pickett, a soldier was being held for execution for desertion. The accused presented a letter from his wife at his trial that explained why the young man was forced to desert his ranks and go home.

“We haven't got nothing in the house to eat but a little bit o ' meal. The last pound of meet you got from Mr. G--- is all eat up, and so is the chickens we raised. I don't want you to stop fighten them yankees till you kill the last one of them, but try and get off and come home and fix us all up some and then you can go back and fight them a heep harder than you ever fought them before. We can't none of us hold out much longer down hear. One of General Mahone's skouts promis me on his word to carry this letter through the lines to you, but, my dear, if you put off a-comin' 'twon't be no use to come, for we'll all hands of us be out there in the garden in the old graveyard with your ma and mine.”⁵⁴⁷

What is significant concerning this plea for help from a beleaguered southern woman to her battle hardened soldier husband is the fact that just a few years prior, it was very possible that the

but most of them and all of the soldiers were true and brave, even through all of the hardships of the severest winter of the four years of war. Marching and fighting had been almost daily occupation from the middle of January, 1863... when we found bleak winter again breaking upon us, away from our friends, and dependent upon our own efforts for food and clothing. It is difficult for a soldier to find words that can express his high appreciation of conduct in officers and men who endured so bravely the severe trials they were called to encounter.”

⁵⁴⁶ Chestnut and Woodward, ed., 794.

⁵⁴⁷ Lasalle Corbell Pickett, *Pickett And His Men*, 2nd edition (Atlanta: The Foote & Davies Company, 1900), 368.

man's wife and her female friends were encouraging the men in their community to fight the Yankees to protect their southern way of life.⁵⁴⁸

Inspiring Southern Men to Fight

It is apparent in the previous letter that the family held no slaves, so the reason for the man to march off to war to protect the institution of slavery was unlikely. It is more probable that he was inspired to fight for the Confederacy through the patriotic encouragement that appealed to his manhood as a southern male. For the men of the South, especially the youngest of the group, the thought of being a military hero to impress the young ladies and return as a victorious conqueror to impress them was an incredible recruitment motivator. This type of recruiting tool by the leaders of the Confederacy was not inadvertent.

“By drawing attention to physical beauty, published accounts of flag presentations urged young men to volunteer so as to have a chance of marrying these sexually desirable young white women. This was made plain in an article published in a newspaper in Dalton, Georgia: ‘All the Misses are perfectly enthusiastic and self-denying, and many of them aver that they will encourage no young men's visits who is not ready and willing to go forth and do battle for their homes and firesides.’”⁵⁴⁹

It must be understood that convincing the soldier to fight for the ladies of the South was only one component in enlarging the Confederate military forces. As many of the younger men looked to marching off to war as an adventure, older men, such as veterans of the Mexican-American War who had experienced combat just over twelve years prior, were well aware of the hardships that were going to be endured by the soldiery in establishing the second American

⁵⁴⁸ Durrill, 1112. “Local Confederates [leaders] expected mothers and sisters and wives to pressure their sons and brothers and husbands into volunteering even to the extremity of permanently breaking the very social bonds that made a Southern white man's social position possible in the first place.”

⁵⁴⁹ *Ibid.*, 1112. “If a soldier wanted to marry a beautiful young virgin and establish a new household, he had no alternative but to join the Confederate army and fight the Yankees.” Note: Newspaper quote taken from the *Rockingham Register and Advertiser*, May 17, 1861. Harrisburg, Virginia.

Revolution. The leaders of the secession movement new that there would be additional reasons to promote the soldier and citizen to sacrifice their lives and leave the comforts of their homes. This would be accomplished by appealing to the religious beliefs of the southern people.⁵⁵⁰ The notion that God was on their side in their fight for independence would have to be perpetuated to ensure southern patriotism. The notion that the southern Christian would fight for the protection of slavery would be more problematic but would still be accomplished by the southern clergy.⁵⁵¹

The late historian and political scientist Harry Jaffa lent his thoughts on the issue of the confrontations of Christianity and slavery in his work *A New Birth of Freedom*. In seeking the causes of the Civil War, Jaffa looked to the question of slavery through the history of the US and its relationship with Christian teachings.

“Whether Christianity condemned or endorsed slavery as one of the great issues that divided Americans on the eve of the Civil War. Because the Northern and Southern churches divided over the question, the Civil War took on many of the characteristics of a religious war. It was well understood in the period of the Founding that the free exercise of religion and the separation of state and church were indispensable adjuncts of a regime of majority rule and minority rights.”⁵⁵²

To avoid the issue of slavery with the southern common populace, the leaders of the future military and government of the South would have to apply the example of looking to God for His power and grace to create and sustain the Confederacy. Upon reflection, it would seem that if

⁵⁵⁰ Ralph Erickson, “The Clergy of the Confederacy.” *Journal of Religious Thought* 54/55, issue 2/1 (Spring-Fall, 1998), 63. “For decades, church sermons had declared that the North was the Antichrist, newly escaped from the Pit. The North was a mongrel nation, it was felt, composed of the descendants of the sweepings of European jails, brothels, alleys, and illiterate rural countrysides. This belief was often correct, but it was also just as true of the South. The downfall of the North was the holy mission of the South. Johnny Reb never felt he was fighting for such gross ideas as slavery or the tariff. Rather his war was about states' rights, motherhood, and personal freedom. Bishop Stephen Elliott of Georgia insisted that the war was to destroy the infidel and rationalistic principles of the North, which wanted to substitute a gospel of the Stars and Stripes for the Gospel of Jesus Christ.

⁵⁵¹ Erickson, “The Clergy of the Confederacy,” 64-65.

⁵⁵² Jaffa, 155.

God was involved in creating the new government, sustaining the new government was apparently not in God's plan.

In an instance where a former US officer had recently resigned his commission and went to his state's secession convention, the body overwhelmingly approved accepting the former US officer's credentials and gave him a commission to command the military of the state. In his acceptance letter, Robert E. Lee looked to God for the success of the war to come and the new confederate government that was being established. "Trusting to Almighty God, an approving conscience, and the aid of my fellow-citizens, I will devote myself to the defense and service of my native State, in whose behalf alone would I have ever drawn my sword."⁵⁵³ On January 21, 1861, one of the senators from Mississippi stood and addressed a joint session of Congress. The senator had recently received word that his state had decided to secede from the Union. Nearly everyone in the Congress knew that any member whose state had determined to secede during the secession crisis would be obligated to follow their respective state and resign their office in the US government. After explaining the reason for Mississippi's resolve to secede, Senator Jefferson Davis warned Congress on the dangers of not letting the southern states leave by using force of arms.

"I therefore feel that I but express their desire when I say I hope, and they hope, for peaceful relations with you, though we must part. They may be mutually beneficial to us in the future, as they have been in the past, if you so will it. The reverse may bring disaster on every portion of the country; and if you will have it thus, we will invoke the God of our fathers, who delivered them from the power of the lion, to protect us from the ravages of the bear; and thus, putting our trust in God, and in our own firm hearts and strong arms, we will vindicate the right as best we may."⁵⁵⁴

⁵⁵³ Robert E. Lee and Robert E. Lee Jr., ed., "Response at Virginia Secession Convention, April 22, 1861," *Recollections and Letters of Robert E Lee* (New York: Doubleday, Page & Company, 1904), 28.

⁵⁵⁴ Jefferson Davis, "Farewell Speech To The United States Congress," January 21, 1861, Frohnen, ed., *American Nation*, 68.

With understanding that it was imperative for the military and political leaders to give the example to the southern populace of applying their religious beliefs to fight for and govern in the new southern regime, the common citizen turned soldier would additionally require the religious and political leaders closer to home to assist in applying religious teachings to spill their blood, as well as take the lives of Yankees. “A certain Reverend Gierlow, for example, told the members of the Baton Rouge Fencibles at a flag presentation, ‘The Lord reineth; and under His banner you may manfully fight with the hope of success. With arms in your hand, look to God as your refuge, and hope, and pray.’”⁵⁵⁵

In an interesting addition to looking to religion to motivate soldiers and citizens of the southern states to sacrifice for their new government, Durrill presents that the religious and governmental leaders tasked with raising southern pride to fight the impending war were careful not to mention Jesus in their sermons and speeches. The religious leaders were convinced that since Christ came to the earth to be a peacemaker, following the teachings of the Prince of Peace would be counterproductive to their war aims. To confront this issue, the southern clergy simply looked to the Old Testament for confirmation that God was complacent in applying war to preserve and perpetuate religious motivations of the southern populace.⁵⁵⁶ For the Confederate leadership, to apply the religious confirmation of independence from the government of the US was not a good opportunity to look to the words of Jesus and his requirement of loving your

⁵⁵⁵ Durrill, 1113. Note: The inner quote of this passage was printed in the *Weekly Gazette & Comet*, June 5, 1861, Baton Rouge, La.

⁵⁵⁶ *Ibid.*, 1113. ...speakers at flag presentations – whether clergymen or lay persons – carefully avoided mentioning Jesus, the son and peacemaker that might have brought the legitimacy of the war itself into question. Ministers speaking at flag presentations also seldom invoked the presence of the Holy Spirit because that might have drawn attention to the romantic soul in which the Holy Spirit dwelt in the nineteenth century, and hence to individualism which was portrayed by Southern speakers as a Northern vice.”

neighbor as yourself. To accomplish the aims of the Confederacy, it was necessary to be willing to kill your neighbor from the North.

Forgiving Treason

It should be noted that few Confederate officials and soldiers were incarcerated for treason following the Civil War. For the combat soldier, moreover, the opportunity to charge them with treason seemed to be unnecessary to the Union government. These men had spilled blood for their failed country and it seemed reasonable to simply send these ex-Confederates back home as they had already surrendered and had been granted paroles.⁵⁵⁷ There was concern, however, by Secretary of War Edmond Stanton a few days following Lincoln's assassination that having former rebel soldiers returning to their homes in Maryland and Washington D.C. wearing their former uniforms so close to the Capitol was cause for concern. Stanton met with Attorney General James Speed to inquire if the paroles were valid following the pending fall of the Confederacy. Attorney General Speed felt that there was room for interpretation on the matter, however, as soon as the Confederate veterans surrendered and signed loyalty oaths that were required for their paroles, they simply went back home to attempt the difficult task of rebuilding their previous lives.⁵⁵⁸ It would be counterproductive to go South and arrest these men for treason. Stanton's fear of Washington D.C. being overrun by southern veterans was ultimately proved to be invalid. For the veterans on both sides of the conflict the war was over. Nevertheless, the persons who the US felt were of deeper concern for trial and incarceration for treason would be men of higher military and governmental posts of the failed Confederacy.

⁵⁵⁷ William A Blair, *With Malice toward Some: Treason and Loyalty in the Civil War Era* (Chapel Hill, NC.: The University of North Carolina Press, 2014), 236.

⁵⁵⁸ Blair, 236-237.

Those government officials who were arrested, however, were not detained for a significant period of time.⁵⁵⁹ Perhaps the longest incarceration of a political official was the former President of the Confederacy. For former Vice President Stephens, however, the length of confinement was much different than that of Davis. Stephens would only serve five months for his role as the second highest official of the Confederacy and Davis would serve nearly two years before he would be paroled by the US government.⁵⁶⁰

As defeat became apparent, there were several Confederate officials who felt it expedient to flee the country instead of facing the possibility of being tried for treason. This was not the case for Stephens. He simply waited at his home in Georgia to be arrested.⁵⁶¹ Additionally, there were a large amount of plantation owners and a few industrialists of the former Confederacy that were concerned about their safety and future livelihoods following capitulation. The subject of anticipating the government's activity of charging all or some of the wealthy citizens, officials and soldiers of the Confederacy for treason was of great significance to these individuals. Moreover, with reconstructing the South back into the Union as being a forgone conclusion, these three groups were also afraid of the Union placing former slaves over the defeated southerners to rule over them. The fear of the former Confederate citizenry, as well as military and government officials being arrested for treason, as well as fearing that former slaves

⁵⁵⁹ *Ibid.*, 1. Note: There were, however, significant amounts of low-level military officers and soldiers who were subject to military tribunals for treason during and after the war. Blair includes in his work several tables of statistics of results of military courts marshals, 311-315.

⁵⁶⁰ McPherson, *Battle Cry of Freedom*, 853.; Schott, 452. "Davis suffered a far worse ordeal than Stephens—a two-year incarceration at Fortress Monroe, at times manacled in leg irons, constantly guarded, his cell illuminated twenty-four hours a day."

⁵⁶¹ Stephens and Avary, 85.

would be put in positions of authority was put to rest when President Andrew Johnson signed an Amnesty Act in May 1865.⁵⁶²

“...that the authority of the government of the United States may be restored, and that peace, order, and freedom may be established, I, ANDREW JOHNSON, President of the United States, do proclaim and declare that I hereby grant to all persons who have, directly or indirectly, participated in the existing rebellion, except as hereinafter excepted, amnesty and pardon, with restoration of all rights of property, except as to slaves, and except in cases where legal proceedings, under the laws of the United States providing for the confiscation of property of persons engage in rebellion, have been instituted; but upon the condition, nevertheless, that every such person shall take and subscribe the following oath, (or affirmation,) and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation... The following classes of persons are excepted from the benefits of this Proclamation:

- 1st. All who are or shall have been pretended civil or diplomatic officers, or otherwise domestic or foreign agents, of the pretended confederate government;
- 2d. All who left judicial stations under the United States to aid the rebellion;
- 3d. All who shall have been military or naval officers of said pretended confederate government above the rank of colonel in the army or lieutenant in the navy;
- 4th. All who left seats in the Congress of the United States to aid the rebellion;
- 5th. All who resigned or tendered resignations of their commissions in the army or navy of the United States to evade duty in resisting the rebellion;
- 8th. All military and naval officers in the rebel service, who were educated by the government in the Military Academy at West Point or the United States Naval Academy;
- 9th. All persons who held the pretended offices of governors of states in insurrection against the United States; ...”⁵⁶³

The Republicans in Congress were not pleased with the president’s proclamation, however, the Constitution gave the executive the power to pardon and Johnson seized on this opportunity.⁵⁶⁴

⁵⁶² Eric Foner, *A Short History of Reconstruction, 1863-1877* (New York: Harper & Row Publishers, 1990), 85. ‘White men alone,’ Johnson declared [in Spring 1865], ‘Must manage the South,’”

⁵⁶³ Andrew Johnson, “President Johnson Offers Amnesty to Former Confederates,” Lowcountry Digital History Initiative, *College of Charleston*, https://ldhi.library.cofc.edu/exhibits/show/after_slavery_educator/unit_one_documents/document_two

⁵⁶⁴ Blair, 237. “More to the point, [Attorney General James] Speed indicated that only the president could issue a pardon. He maintained, with a good deal of constitutional support: ‘His power to pardon, as a civil magistrate, cannot be delegated; it is a personal trust, inseparably connected with the office of President.’”; Foner, *A Short History of Reconstruction*, 85. “Indeed, while Johnson claimed that his Reconstruction policy continued Lincoln’s, in crucial respects it was very much his own. On the one hand, Lincoln, at the end of his life, favored a limited

Following the results of the election of 1860, although misunderstood by the leaders of the South, the wave of Republicans elected to the Thirty-Seventh Congress were not charged with a significant amount of zeal for promoting abolition when they took their seats in the House and Senate in 1861. These Republicans were committed to the party's platform of 1860; that the goal of the Republican was to only prohibit slavery in the territories, and the most important issue, that the Republicans would not disband the Union for any cause; especially over the total abolition of slavery in the states.

*“Declaration 3: That to the Union of the States this nation owes its unprecedented increase in population, its surprising development of material resources, its rapid augmentation of wealth, its happiness at home and its honor abroad; and we hold in abhorrence all schemes for disunion, come from whatever source they may. And we congratulate the country that no Republican member of Congress has uttered or countenanced the threats of disunion so often made by Democratic members, without rebuke and with applause from their political associates; and we denounce those threats of disunion, in case of a popular overthrow of their ascendancy as denying the vital principles of a free government, and as an avowal of contemplated treason, which it is the imperative duty of an indignant people sternly to rebuke and forever silence.”*⁵⁶⁵

Moreover, it appeared that the majority of the newly elected Republican congressmen would follow the example of the moderate President Lincoln regarding slavery,⁵⁶⁶ however, this restrained political behavior of the Republicans would be short lived.⁵⁶⁷ Through the next two

suffrage for Southern blacks; on the other, he had never suggested exemptions to Presidential amnesty as sweeping as those contained in Johnson's proclamation.”

⁵⁶⁵ “Republican Party Platform of 1860,” Republican Party Platforms Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <https://www.presidency.ucsb.edu/node/273296>.

⁵⁶⁶ Lincoln and Basler, ed., “First Debate with Stephen A. Douglas at Ottawa, Illinois,” August 21, 1858, 17. “I will say here, while upon this subject, that I have no purpose directly or indirectly to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so. I have no purpose to introduce political and social equality between the white and the black races.”

⁵⁶⁷ Walker Lewis, “The Hayes-Tilden Election Contest,” *American Bar Association Journal* 47, no. 1 (January, 1961), 36. “For a time they [Republican congressmen] were moderated by the wisdom, strength and tolerance of Abraham Lincoln. But even before his assassination, the radical leaders of the party rebelled against his leniency toward the South.”

years, the moderates would be influenced by a small group of “radicalized” Republicans on the issue of abolition as the slaughter of Union soldiers at the hands of the Confederates became a frequent occurrence. Following the mid-term elections of 1862, the newly organized Radical Republicans were on their way to becoming the most dominant political force in both houses of Congress until the election of 1880 when the “Stalwart” Republicans took over leadership of the party.⁵⁶⁸

Radical Republicans

Although historically viewed as a strong organized group of abolitionists with the single goal of eradicating slavery, Historian Eric Foner holds that the radicals during the early stages of the war were not completely united on any one subject.⁵⁶⁹ The modern view of the radical Republicans is essentially narrowed to a description of the group’s detestation of chattel slavery and punishing the South in their long history of adhering to the institution. In the first Congress of the Lincoln administration, the modern notion of the group is incorrect. In the Thirty-ninth Congress and up to the end of Reconstruction, however, the traditional view of the radicals became fact. The radical Republicans became united on the eradication of slavery and the opportunity to punish the states who held the institution to such a regard that they were willing to spill blood for its retention. In perhaps understanding the goals of the radicals more clearly, the group believed, especially as the devastation of the war appeared to be endless, that their

⁵⁶⁸ Foner, *A Short History of Reconstruction*, 216.

⁵⁶⁹ Foner, *Free Soil, Free Labor, Free Men*, 105. “These radical Republicans certainly did not think alike on all matters. It is now well established, for example, that they did not share any unified economic policy or purpose.”

ideology would bring a renewed social and political society that was fully entrenched in the notion of all people in the US are equal to each other.⁵⁷⁰

As early as 1862, however, the radical Republicans were seeking a constitutional opportunity of charging and punishing the former Confederates for treason.⁵⁷¹ There were two constitutional questions for the radicals to consider on their ability to accomplish their task. Firstly, was it legal to charge Confederate officials and soldiers with treason? It seemed clear that the Constitution allowed this activity in Article III, Section 3, Clause 1.⁵⁷² There was no question that the southern secessionists had instigated a war within the US. Secondly, who has the power to punish a traitor once they are convicted? Once again, the radicals had constitutional affirmation as “The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.”⁵⁷³ There was no uncertainty in the minds of the radical Republicans that Congress had the constitutional right to charge and punish the Confederates. The problem for the radicals, however, was that the moderate President Lincoln had already been laboring on the terms of reconstructing the nation through proposed presidential proclamations, or if practical, through acts of Congress. Charging the wayward Confederates with treason was not to be considered, however, preventing high ranking officials in the rebel government and military of retaining the right to hold national office was determined in Lincoln’s plan of reconstruction. As

⁵⁷⁰ Foner, *A Short History of Reconstruction*, 105. “The driving force of Radical ideology was the utopian vision of a nation whose citizens enjoyed equality of civil and political rights secured by a powerful and beneficial national state.”

⁵⁷¹ Hans L. Trefousse, *Thaddeus Stevens: Nineteenth-Century Egalitarian* (Chapel Hill, NC.: The University of North Carolina Press, 1997), 138.

⁵⁷² Article III, Section 3, Clause 1, United States Constitution. “Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.

⁵⁷³ Article III, Section 3, Clause 2, United States Constitution.

has been previously mentioned, however, Lincoln would be assassinated prior to implementing his plan for reconstructing the nation and President Johnson would present his own amnesty plan in May 1865. It is still important to investigate what Lincoln perceived as being the most successful way of bringing the former Confederates back into the Union.

Lincoln's Reconstruction

Following three major Union victories in the summer and fall of 1863, Lincoln began conceiving a plan of reunifying the Union. Lincoln had continually felt that the government of the Confederacy was illegitimate, and the president did not recognize the legality of secession. He also felt that a lenient plan for readmission of the rebellious states was crucial to begin the healing process for the nation.⁵⁷⁴ Lincoln's idea of leniency towards the rebels ran completely contrary to the radical Republican's notion of reconstruction. Lincoln formally presented his plan for the reconstruction of the Union in the December, 1863 as the "Proclamation Of Amnesty And Reconstruction."

"I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them, with restoration of all rights of property, except as to slaves... and upon the condition that every such person shall take and subscribe an oath, and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation... and that I will, in like manner, abide by and faithfully support all acts of congress passed during the existing rebellion with reference to slaves, so long and so far

⁵⁷⁴ "Abraham Lincoln to August Belmont, July 31, 1862," Lincoln and Basler, ed., 351. "Broken eggs cannot be mended; but Louisiana has nothing to do now but to take her place in the Union as it was, barring the already broken eggs. The sooner she does so, the smaller will be the amount of that which will be past mending. This government cannot much longer play a game in which it stakes all, and its enemies stake nothing. Those enemies must understand that they cannot experiment for ten years trying to destroy the government, and if they fail still come back into the Union unhurt. If they expect in any contingency to ever have the Union as it was, I join with the writer in saying, 'Now is the time.'"

as not repealed, modified, or held void by congress, or by decision of the supreme court...”⁵⁷⁵

Lincoln’s proclamation, also known as his “Ten-Percent Plan,” included a liberal reapplication for statehood to be decided by ten percent of all registered voters who participated in the election of 1860. These voters would be required to take loyalty oaths to the Union and would then be qualified to vote for their state to be readmitted into the Union.⁵⁷⁶ The moderate Lincoln, however, did take a hard line on certain high ranking individuals involved in the military and government of the former Confederacy.

“The persons excepted from the benefits of the foregoing provisions [pardons and rights of property] with are all who are, or shall have been, civil or diplomatic officers or agents of the so-called Confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called Confederate government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States congress to aid the rebellion; all who resigned commissions in the army or navy of the United States and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity.”⁵⁷⁷

When the radicals received word of Lincoln’s liberal reconstruction plan, notwithstanding the stipulations on high ranking Confederate officials, soldiers and sailors, they [radicals] had determined to take action against the president’s plan. All the workings of the radicals, however, were eventually deemed to be unnecessary after the assassination of Lincoln

⁵⁷⁵ Lincoln, “Proclamation Of Amnesty And Reconstruction,” Frohnen, ed., *American Nation*, 121.

⁵⁷⁶ *Ibid.*, 122. “And I do further proclaim, declare, and make known that whenever,... a number of persons, not less than one tenth in number of the votes cast in such state at the presidential election of the year of our Lord one thousand eight hundred and sixty, each having taken the oath aforesaid, and not having since violated it, and being a qualified voter by the election law of the state existing immediately before the so-called act of secession, and excluding all others, shall reestablish a state government... and the state shall receive thereunder the benefits of the constitutional provision which declares that ‘the United States shall guaranty to every state in this Union a republican form of government...’”

⁵⁷⁷ *ibid.*, 122.

in April, 1865. The radicals would now be confronted with the issue of influencing a new president on the immediate need for radical reconstruction. President Johnson would be a complete disappointment for the radicals.

The aim of Reconstruction for the newly ascended President Andrew Johnson was closer to Lincoln's ideas than to the radicals in Congress, however, Johnson would be more lenient than even Lincoln could have accepted. Reconstruction scholar Eric Foner describes Johnson's policy of bringing the South back into the Union as follows:

“Johnson's pardon policy reinforced his emerging image as the white South's champion. Despite talk of punishing traitors, the President proved amazingly lenient. No mass arrests followed the collapse of the Confederacy. Jefferson Davis spent two years in federal prison but was never put on trial; his Vice President, Alexander H. Stephens, served a brief imprisonment, returned to Congress in 1873, and ended his days as governor of Georgia.”⁵⁷⁸

Stephens Experiences Reconstruction

As has been previously mentioned, President Andrew Johnson's first significant executive action on Reconstruction was the Amnesty Proclamation in May 1865. The Congress, however, was also working on plans for bringing the rebellious states back into the Union. One of the first items on the radical's agenda was to prevent southern military personnel and politicians to attend or return to the Congress. When Alexander Stephens was released from his incarceration at Fort Warren located in the harbor of Boston, he returned to Georgia and in under two months was elected in the state legislature to the US Senate. There existed a problem for Stephens, however, in the form of the “ironclad” loyalty oath required from southerners for public office. Part of the oath required that the person must not have willingly supported the Confederacy. Stephens knew that he could not perform the oath but solemnly believed that this

⁵⁷⁸ Foner, *A Short History of Reconstruction*, 89.

infraction would be ignored in Washington.⁵⁷⁹ Even President Johnson, who was a proponent of placating southerners back into public service, advised Stephens not to accept national political offices and that he would be better served in assisting Georgia in reconstruction back home. There was also the situation of Stephens, although released from custody, still being in danger of being prosecuted for treason.⁵⁸⁰ Many of Stephens family, friends and colleagues counselled against going to Washington. Stephens ignored his advisors and along with Herschel Johnson, the other Georgian elected by the legislature to the senate, traveled to the Capitol to sit in their elected chamber. When the two arrived the majority members of the Senate, led by the radical Republicans, refused to seat them.⁵⁸¹ Stephens would be allowed to return to Congress following the end of Reconstruction when he was elected to the US House of Representatives.⁵⁸²

Reconciliation of the Veterans

In a congressional meeting being held to discuss the matter of using federal funds to construct a battlefield park in Manassas, Virginia, an aging Union veteran testified on behalf of building the park in question as well as additional battlefield parks in the US. Alfred S. Roe held that such facilities would go far in assisting in reconciling the North and South following the Confederate defeat in their war for independence.⁵⁸³ It was in 1913, forty-eight years since the end of the war, that Roe still recognized that the two regions were still at odds with the other following the bloody civil contest on the battlefields that decimated the southern states. To the

⁵⁷⁹ Schott, 460.

⁵⁸⁰ *Ibid.*, 462.

⁵⁸¹ William B. Hesseltine and Larry Gara, "Georgia's Confederate Leaders After Appomattox," *The Georgia Historical Quarterly*, Vol. 35, No. 1 (March, 1951), 10.

⁵⁸² Hesseltine and Gara, 10.

⁵⁸³ Michael Burns, "A Confederate Memorial the 'Equal of Gettysburg:' Sectionalism and Memory in the Establishment of Manassas National Battlefield Park, 1890-1940." *The Virginia Magazine of History and Biography* 123, no. 2 (2015), 141.

old veteran's dismay, the members of the committee that heard his testimony would table the park and it would not be built until 1940.⁵⁸⁴

Although it can be concluded that the combat veterans of the Civil War held significant motives for resisting reconciliation due to their experiences performing the bloody work of securing secession or preserving the Union, there were successful attempts at creating a movement for reunification of the veterans of the CS and the US. This attempt at reconciliation was most successful in the activities of Civil War reunions and the establishment of military parks.⁵⁸⁵ The first such endeavor in creating military parks occurred in the 1890's with the founding of the first five battlefield memorials in Tennessee, Maryland, Pennsylvania, and Mississippi.⁵⁸⁶ The sixth park that was under consideration was planned to be located in Manassas, Virginia. Although the first five parks mentioned had a measure of success in reconciling animosities among the veterans, the proposed park in Virginia experienced a bit of more difficulties in establishment.⁵⁸⁷

Union veteran George Carr Round, a resident of Manassas, became the foremost advocate of constructing a battlefield park in Manassas and attempted to achieve this goal by soliciting funds from the federal government. Unfortunately, after ten years of waiting on Congress, Round observed that the federal government was souring on the idea of supplying

⁵⁸⁴ Burns, 141.

⁵⁸⁵ Caroline E. Janney, "War over a Shrine of Peace: The Appomattox Peace Monument and Retreat from Reconciliation." *The Journal of Southern History* 77, no. 1 (February, 2011), pp. 91-120.

⁵⁸⁶ *Ibid.*, 141. The five parks are Chickamauga-Chattanooga and Shiloh in Tennessee, Antietam in Maryland, Gettysburg in Pennsylvania, and Vicksburg in Mississippi.

⁵⁸⁷ *ibid.*, 142. "Although the creation of the original five national battlefield and military parks—Chickamauga-Chattanooga, Antietam, Gettysburg, Shiloh, and Vicksburg—in the 1890s generally represented postwar reconciliation, Manassas fits into an opposing category."

funds for battlefield parks.⁵⁸⁸ Pressure from two veterans groups, The GAR and the UCV on the federal government in ceasing applying federal funds did not assist Round's cause and the two veterans organizations looked to other states and sites for their choice of battlefield parks. Round's desire for the Manassas park would not be deterred.⁵⁸⁹

Round continued to lobby congressman and sought out veterans on both sides of the conflict for assistance in renewing the Manassas effort. In the early twentieth century, the veterans who were young men during the struggle from 1861-1865 were passing away due to old age or succumbing to their battlefield wounds. Round found success, however, with the aging veterans as their desire for reconciliation grew with age. Round knew that a large event to bring the veterans together would instill even more desire for reconciling with former enemies.⁵⁹⁰ In 1911, Round was a leading organizer of an event called the Manassas National Peace Jubilee, planned to occur at the fiftieth anniversary of the first major engagement of the two armies near Manassas. The anniversary event brought a great number of veterans together on July 11, 1911 in what would be observed as the largest reunion of veterans to occur in the US.⁵⁹¹

The work of Round organizing the week-long event of the Manassas National Peace Jubilee was a great success. The old veterans spent their time at events, sharing meals, as well as stories and anecdotes of their time in the military. There was genuine affection being shown between Johnny Reb and Billy Yank that only men of shared experience could understand and

⁵⁸⁸ *ibid.*, 143-144.

⁵⁸⁹ *ibid.*, 144.

⁵⁹⁰ *ibid.*, 144. "Round had a two-fold purpose for this event: he wanted to bring former combatants together to further the cause of reconciliation; and he hoped to promote Manassas as a suitable site for federal preservation."

⁵⁹¹ *ibid.*, 144.

ultimately forgive.⁵⁹² Round also achieved success in having the issue of the Manassas battlefield park receive another congressional hearing. As has been previously mentioned, this particular congressional event did not bring the Manassas park to fruition until a different set of Congressman and national situation occurred to set up the construction of the battlefield park just under a year prior to the US entering World War II.⁵⁹³

As successful as George Carr Round was in his work for reconciliation while attempting to construct the Manassas battlefield park, there were those who were against the resolution between the soldiers of the US and CS. The Lost Cause movement was alive and well in its aims of keeping the southern patriotic fervor apart from the people desiring reconciliation in the country. The leading organization attempting to quash the reconciliation with the North was the women's southern organization; the UDC. Being responsible for decorating the graves and memorials to Confederate heroes since the days following the Civil War, the women's group was not about to have any positive relationship with the Yankees.

Mary Davidson Carter, a leading member of the UDC in her town of Upperville, Virginia was upset in the spring of 1931. Carter had discovered that the national government was about to allocate funds for a peace memorial at the site of Robert E. Lee's surrender of his Army of Northern Virginia. Carter wrote a heated letter to an official in the US War Department

⁵⁹² *ibid.*, 145-146. "Former Confederate J. T. Frazier described the events. The veterans met at the Henry House, he wrote, 'and after mingling together for several hours formed in line facing each other, not with guns, but extended hands and brotherly greetings. It was an inspiring scene.'" "A New York reporter indicated that the veterans, after marching toward each other and 'grasping hands,' vowed 'eternal friendship,' marking, as a reporter from Texas noted, a 'token of everlasting peace.'" "J. B. Stinson, a Texas resident and Confederate veteran, believed that the 'fraternal character of the meeting there and the friendly hand shake goes to show that the animosities of the period are fast fading out.' Frazier wrote that the exhibition of reconciliation made his 'heart grow tender' and he 'thanked God for the kindly feeling that prevailed among' the veterans.

⁵⁹³ *ibid.*, 160-163.

denouncing the government's desire to pay for a monument in the middle of the Great Depression that was located at "the place where Constitutional Government and Lee were crucified in 1865."⁵⁹⁴ Carter also said that she would acquiesce to the government paying for a monument if it contained the following restrictions:

"She proposed that one side of the monument feature General Lee's alleged statement to Governor Fletcher Summerfield Stockdale of Texas: 'Had I fore seen the results of my subjugation, I would have preferred to die at Appomattox, with my brave men, my sword in this right hand.' For the second side she advised the use of a picture of either the burning of Columbia, South Carolina, or 'the exodus of the 15,000 women and children from Atlanta.' She recommended that U.S. general Benjamin Butler's General Order No. 28 be inscribed on the third side, with a picture of 'Beast Butler and his Negro Troops' beneath the words. For the final side she suggested an image she had enclosed of the South Carolina legislature in 1868, which had been primarily African American. Failing to acknowledge that South Carolina was the only former Confederate state whose legislature had a black majority during Reconstruction, she added her own inscription for this side: 'Lee died an alien in Virginia while these creatures filled our Legislative Halls in Richmond.'"⁵⁹⁵

This type of rhetoric spewed by Carter was commonplace in the South concerning the fear that the visages of the Confederate soldier would be lost if organizations such as the UDC did not keep their work alive. What was such a concern for persons like Carter and the members of the UDC is that Confederate veterans in Virginia and other states in the South were resolving to reconnect with their battlefield foes and to heal the nation through their reconciliations.⁵⁹⁶ The UDC and their followers, however, would not subject themselves to any conversations or activities that would bring any resemblance of reconciliation at the Appomattox site. The detractors of veterans attempting to reunite themselves at the scene of the surrender of the Confederacy claimed that the southern veterans were subjugating themselves to another defeat

⁵⁹⁴ *ibid.*, 91.

⁵⁹⁵ *ibid.*, 91.

⁵⁹⁶ *ibid.*, 92. "Unlike Mary Carter, Union and Confederate veterans in the decades following Lee's surrender had seen Appomattox as a site of fraternal camaraderie and the immediate dissolution of sectional animosities. In the 1890s they jointly endorsed proposals for a national park at the site of peace and called for a national memorial."

and the Yankees were not seeking peace with the southerners but displayed superiority over the defeated South.⁵⁹⁷

From the Manassas park being initiated and reevaluated from 1890 to 1913, the UDC seemed to essentially ignore the attempts of building military parks. This seemed to change beginning during the Great Depression. The UDC wrote letters to the government and published articles denouncing reconciliation activities, such as the peace monument at Appomattox. In the end, the UDC was victorious and the peace monument was never constructed. The request that a battlefield park be installed in its place passed through the US Department of the Interior with the UDC being uncharacteristically silent.⁵⁹⁸ The Lost Cause movement had gained a significant defeat in attempting to stifle the reconciliation of the US.

“Just as had been the case in 1865, however, the story did not end at Appomattox. Instead, the conflict generated by a dwindling yet vocal group of Confederate associations foreshadowed the more virulent white supremacist attitudes that shaped debates over Confederate symbols such as the battle flag in the latter half of the twentieth century.¹¹⁹ Indeed, the war over a shrine of peace and the battles that continue to rage around the Confederacy belie the notion that the Civil War has receded from Americans' collective memory.”⁵⁹⁹

⁵⁹⁷ *ibid.*, 92-93.

⁵⁹⁸ *ibid.*, 117.

⁵⁹⁹ *ibid.*, 120.

Chapter 8

*“To assist descendants of worthy Confederates in securing a proper education”*⁶⁰⁰

Southern trees bear a strange fruit,
Blood on the leaves and blood at the root,
Black body swinging in the Southern breeze,
Strange fruit hanging from the poplar trees.⁶⁰¹

---Abel Meeropol
1937

Just a few months prior to President John F. Kennedy’s assassination, a young African American army officer and his wife were driving from Massachusetts to North Carolina. The officer was required to experience further training before being deployed to Vietnam. As the couple drove further southward, restrictions upon the couple’s restroom, dining, and sleeping accommodations became increasingly problematic. The veteran would later write in his 1995 autobiography that traveling through the South was a bit unsettling as he was constantly cognizant of protecting his young wife from the possible confrontations with white supremacists. He recalled that while traveling through Virginia, he could not find a gas station that would allow the couple to use their restroom. As the situation became increasingly uncomfortable, the future four-star general and US Secretary of State and his wife were forced to find a country side isolated enough so that Colin and Alma Powell could relieve themselves without experiencing a violation of the “Jim Crow” laws in the South.⁶⁰²

⁶⁰⁰ “About the UDC, Objectives,” United Daughters of the Confederacy, <https://madisonudc.org/history-and-objectives/>.

⁶⁰¹ Cary O’Dell, “‘Strange Fruit’ – Billie Holiday,” first stanza, Library of Congress, <https://www.loc.gov/programs/static/national-recording-preservation-board/documents/StrangeFruit.pdf>.

⁶⁰² Thernstrom and Thernstrom, 8, footnote 1.; Colin L. Powell, *My American Journey* (New York: Random House, 1995), 72.

The situation that Powell and his wife experienced was not a novel phenomenon in the 1960s. The difficulties that they faced was a time-honored tradition of white supremacy that had been perpetuated on black persons since the defeat of the Confederacy in 1865. This activity was greatly invigorated following the presidential election of 1876 and the Compromise of 1877, in which the governmental sources of Reconstruction began to be dismantled.⁶⁰³ What started as a book written to present a bit of a biased account on behalf of the Confederacy in the Civil War, had transformed into a national movement concerning the perpetuation of pride, elitism, and hero worship of the southern way of life initiating in the antebellum era in the US.⁶⁰⁴ This movement would encapsulate a plethora of events and attributes that would bring the former slaves from a bright future of abolition and citizenship to a subservient class of humans that would be forced to suffer emotional and physical violence in their lives for more than one hundred years following the demise of the government of the Confederacy.

The Lost Cause movement is responsible for a good deal of lives lost among the black citizenry in the US. It has also been responsible for the perpetuation of a lifestyle of elitist attitudes and activities that have been enjoyed by many in the US in utilizing oppressive actions against African Americans as their only avenue of experiencing a sense of superiority over other human beings. The activities surrounding the Lost Cause movement created a white person's paradise of domestic terrorism against people of the black race. In what became prominent in the darkest sense, is that the terrorism aimed at the African Americans was perfectly legal in the US.⁶⁰⁵

⁶⁰³ C. Vann Woodward, *The Strange Career of Jim Crow*, commemorative edition, (New York: Oxford University Press, Inc., 2002), 4.; Foner, *Forever Free*, 198.; Lewis, 36.

⁶⁰⁴ Glen Robins, "Lost Cause Motherhood: Southern Women Writers," *Louisiana History: The Journal of the Louisiana Historical Association*, Vol. 44, No. 3 (Summer, 2003), pp. 275-300.

⁶⁰⁵ Leon F. Litwack, "Jim Crow Blues," *OAH Magazine of History* 18, no. 2, (January, 2004), 7.

The Lost Cause

In the opening pages of Edward A. Pollard's work that would be the inspiration of the Lost Cause movement, he benignly states that he hoped that "If the author succeeds in what he proposes, he will have no reason to boast that he has produced any great literary wonder; but he will claim that he has made an important contribution to Truth, and done something to satisfy curiosity without 'sensation,' and to form public opinion without violence."⁶⁰⁶ What Pollard could not have imagined was that his book would actually stir a whole nation into a romantic reflection into the antebellum and Confederate South, along with the ultimate desire of reliving those ages as closely as possible in the defeated southern region for years to come. The declaration of "the south will rise again" became a rallying cry of the southern people. The rise of the South would be accomplished through tactics of hero worship and subjugation of an entire race of Americans.

Following Pollard's book becoming a best seller in the South, there was a group of people who began a concerted effort in using *The Lost Cause* to instigate a distinctive realm of thought on the social and political fabric of the South. For his part, Pollard wrote his book as a history of the events that occurred by applying first hand, as well as through primary evidences of the author's interpretation of the oppressive nature of the Union and how the Confederacy was defeated.⁶⁰⁷ In the end, however, a new group of individuals desired to bring a positive reflection of the South, though not exclusively from the war years.

⁶⁰⁶ Pollard, v.

⁶⁰⁷ *Ibid.*, iii., "By composing a severely just account of the War on the basis of contemporary evidence — ascertaining and testing its facts, combining them in compact narrative, and illustrating them by careful analyses of the spirit of the press, not only in this country, but in Europe, the author aspires to place the history of the War above political misrepresentations, to draw it from disguises and concealments, and to make it complete in three departments: the

“Class stratification had characterized the antebellum South where a small elite of slave-rich planters and related professionals - attorneys, physicians, and merchants - controlled the region's basic institutions. They constructed a culture based upon the premise of man's innate inequality and assumed that social order was best served when every individual resided in his ‘proper place.’”⁶⁰⁸

With this quote from historian Fred A. Bailey being considered, it was initially a small group of elite southerners who desired to create the development of the Lost Cause movement.⁶⁰⁹

Although Pollard’s work had an overwhelming positive opinion of the South and its aims concerning fighting for the right to secede from the Union, it was obvious that the former editor of the *Richmond Examiner* was not attempting to start a cohesive movement of remembrance of the Confederacy that would eventually take over the emotional and spiritual lives of former members and descendants in the South from the antebellum and war years.⁶¹⁰ That feat was assumed by the elitist class of the South. Furthermore, the movement would attempt to create a type of class system of former slave owners, non-slave owners and former slaves following the demise of the Confederacy. Although the passage of the Reconstruction Amendments would be completed by 1870, the movement would still put the African American at the level of a new

record of facts; the accounts of public opinion existing with them; and the lessons their context should convey or inspire. These three are the just elements of History.”

⁶⁰⁸ Fred A. Bailey, “The Textbooks of the ‘Lost Cause’: Censorship and the Creation of Southern State Histories,” *The Georgia Historical Quarterly* 75, no. 3 (Fall, 1991), 508.

⁶⁰⁹ Rebecca Simmons Graf, “Origins of the Lost Cause: Pollard to the Present,” *Saber and Scroll* 4, iss. 2, article 7 (Spring/Summer, 2015), 69. “Southern men, such as Edward Pollard, Jubal Early, and Jefferson Davis, were determined that their version of history would be carried into the future. Therefore, they wrote early and wrote often, disseminating their version throughout the nation, so that Southern heroes such as Robert E. Lee and Thomas J. “Stonewall” Jackson would remain in the forefront of the history of the Civil War. These authors left a legacy of conflicting information for future generations that has led some to continue debating the implications of the war even in the twenty-first century.”

⁶¹⁰ Graf, 69. “Lost Cause literary efforts are considered apologies: pieces written as explanation or justification of motives, convictions, or acts. The motivation of these writers centered on their attempts to ensure that their views reached posterity. This version of history has been continuously debated for nearly 150 years.”

type of slave; a free but submissive and disposable human being.⁶¹¹ It appeared that the white southerner was planning to punish the former slaves for their freedom.

As was investigated previously in this work in looking at the need for the southern states to create a Confederate nationalism to install the patriotism into the common citizen to sacrifice their livelihoods and bodies for secession, it should also be offered that the ideas that formed the nationalism assisted in keeping the worship of the failed experiment of governance alive for over one hundred-fifty years.⁶¹² The need of faithfully adhering to the notion that God was on the side of the South in fighting for secession, and that when the Confederacy was defeated, the Union desired to inflict harsh retributions on the defeated South with the components of Reconstruction, the Lost Cause movement was emboldened and would continue to gain strength throughout the following years. To reclaim southern pride, there would arise the requirement of organizations to take control of the Lost Cause movement to perpetuate the heroic and virtuous activities of the former Confederate officials and military figures. The instigators of the movement required assistance in creating a southern myth of honor and patriotism that was superior to the people of the North.⁶¹³ To achieve this prerequisite, the founders of the

⁶¹¹ Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford: Oxford University Press, 2004), 3. “In the years 1895–1900, an average of 101 blacks were lynched a year—mostly in the South. In 1898, a white supremacist campaign to eliminate black political influence culminated in a race riot in Wilmington, North Carolina, which killed at least a dozen blacks.”

⁶¹² Robins. 277. “Lost Cause standard-bearers fashioned a view of Southern history that emphasized three basic themes. The first characterized the peculiar institution as a noble and paternalistic attempt to civilize an inferior race. The second praised Confederate soldiers for defending Southern homes, hearths, family, and womanhood against the attacks of a ruthless, bestial invader. The third portrayed the Reconstruction years as an oppressive period of black rule, political corruption, and Yankee vindictiveness.”

⁶¹³ Graf, 70. “Additionally, the Confederate military loss was due to the “massive Northern manpower and material,” not any martial ability on the part of Union officers or men. Finally, Northern military leaders were viewed as butchers, specifically William Tecumseh Sherman and

movement first looked to the organization that had taken on the initial components of presenting positive remembrances of the Confederacy. This activity was originated with the work of the continuing care and honorable internment of the veterans of the CS.

The United Daughters of the Confederacy

The origins of the UDC came from women who had organized themselves into committees of nurses, knitting circles, food suppliers, and many other components of providing comfort to the Confederate soldiers during the war.⁶¹⁴ The aim of the UDC following the conflict was to organize groups of women to find and inter the soldiers who had lost their lives for the Confederacy as well as taking care of the veterans who survived the bloody conflict.⁶¹⁵ As the organization grew in popularity and strength in the social and political fabric of the South, the activities of the UDC developed into a group that held more power and influence than believed possible for a women's association to attain at that point in American history.⁶¹⁶ From the organization's inception to the present, perpetuating the idea of the honorable and heroic

Ulysses S. Grant, or blundering, such as George B. McClellan; meanwhile, the Confederate generals, in particular Robert E. Lee and Thomas J. "Stonewall" Jackson, were considered saintly or Christ-like—as were the common Confederate soldiers.” “the purpose of the legend was to ‘foster a heroic image of secession and the war so that the Confederates would have salvaged at least their honor from the all-encompassing defeat. Thus the purpose of the legend was to hide the Southerners’ tragic and self-destructive mistake.’ (Southerners, after all, are the only [white] Americans who have ever had to suffer the humiliation of being conquered.)” Note: Inner quote provided by Alan T. Nolan, “The Anatomy of the Myth,” in Gallagher, ed., *The Myth of the Lost Cause*,

⁶¹⁴ “History of the UDC,” The United Daughters of the Confederacy, <https://hqudc.org/history-of-the-united-daughters-of-the-confederacy/>.

⁶¹⁵ *Ibid.* “After the War, these organizations kept pace with the changing times and evolved into cemetery, memorial, monument and Confederate Home Associations and Auxiliaries to Camps of Confederate Veterans.”

⁶¹⁶ Robins, 277. “This effort to control the Southern ethos was an elite response to the challenges presented by the Grange movement of the 1870s, the Farmers' Alliances of the 1880s, and the Populist party of the 1890s.”

Confederate soldier and statesman is still fervently being preserved in the US by the work of the UDC.

In 1895, a former general of the Confederacy Stephen D. Lee, addressed a Houston chapter of the SCV warning his audience that if the veterans of the Confederacy "...and their descendants do not look to their own vindication . . . [then] the record of history will contain many errors and false indictments against the South which have originated with northern writers."⁶¹⁷ With this statement, the UDC received their marching orders. It was imperative that a team of authors should be commissioned to write the history of the South by southerners who understood their mentality and emotions following the defeat of the Confederacy. The revision of the South's history was about to be accomplished with books and materials written for the education of the southern people and their descendants led by the UDC, but also accomplished by the SCV and the UCV.⁶¹⁸

Lost Cause Education

One of the most successful attempts at presenting a positive presentation of the southern way of life by the UDC was its influence on the children of the former Confederacy.⁶¹⁹ One of the effects on the southern young people was the availability of publicly published books and textbooks dedicated to positive remembrances of the antebellum, Confederate, and post war

⁶¹⁷ Bailey, 507-533.

⁶¹⁸ *Ibid.*, 508. "From 1890s until well into the twentieth century, the United Confederate Veterans, the United Daughters of the Confederacy, the Sons of the Confederate Veterans condemned the sectionalism of northern historians, established lists of approved and disapproved books, and produced literature more congenial to their perception of an unbiased history."

⁶¹⁹ Robins, 276. "The UDC also conducted field trips to Confederate cemeteries and soldiers' homes, filled classrooms with Confederate memorabilia, endorsed and/or censored school textbooks, and sponsored student essay contests. The educational activities served as important opportunities for Southern women. And as they pursued these avenues of civic involvement, they forged a special relationship with Southern school children, a bond that was fundamental to the transmission of Confederate culture."

south. This activity employed many authors to the cause, yet an overwhelming majority of the writers were women.⁶²⁰ This should not be surprising, as in many cultures, the women of the civilization have been charged with carrying on traditions that directly affect their family and society. In the US for example, during and after the Revolution, many women carried the burden of perpetuating the histories of the struggle for independence from Great Britain.⁶²¹

One of the first of the women who would become well known for her authorship in southern revisionist history was the long-time national historian for the UDC, Mildred Lewis Rutherford.⁶²² Rutherford wrote that her ultimate goal in her writings "...was the production of a 'true history' that would reunify North and South, while legitimizing southern culture and autonomy in matters of racial policy."⁶²³ Historian Sarah H. Case feels that Rutherford was more clearly attempting to promote white supremacy. "Rutherford also appealed to history to warn of the folly of deviating from white supremacy, Democratic control, and gender hierarchy." Other female southern writers, such as Sarah Dorsey were additionally important to the education of the revisionist southern way of life.⁶²⁴

Although Rutherford is known for her role as being one of the first Lost Cause defenders, Sarah Dorsey had been writing fictional accounts of the lives of elite southern women for years prior to the writings of the female authors associated with the movement.⁶²⁵ Writing her first non-fiction work on her perceived notion of southern history just prior to the formation of the

⁶²⁰ *Ibid.*, 275-276. "There is, however, general agreement that Southern women played an indispensable role in the creation and dissemination of the Confederate heritage. In fact, historian Karen Cox has coined the phrase 'Lost Cause Motherhood' to explain the participation of Southern women in their region's postwar civic culture, comparing *les femmes de Dixie* to their maternal predecessors of the Revolutionary generation."

⁶²¹ *ibid.*, 276.; Case, 600.

⁶²² Case, 599.

⁶²³ *Ibid.*, 600.

⁶²⁴ Robins, 278-279.

⁶²⁵ *Ibid.*, 278.

UDC, Dorsey had desired from her childhood to be an author. As a female member of the plantation class of Louisiana preceding secession and the war, Dorsey desired to write “to combine the routines of a typical plantation lady with a sense of feminine intellectuality.”⁶²⁶ Dorsey was married to successful New Orleans businessman and plantation owner Samuel Dorsey and the author seemed to enjoy the role of being a woman in the patriarchal system of the wealthy southern class. When secession and war came to the doorstep of the Dorsey family, however, Sarah was forced to abandon her genteel life she had enjoyed in the plantation elite. As Louisiana became occupied by Union forces and eventually suffering from the demise of the Confederacy, Dorsey abandoned her previous style of writing and moved to penning southern history. Dorsey’s idea of writing southern history was influenced by the need to protect the southern man from the atrocities of being traitors and slave owners that was being perpetuated immediately following the fall of the Confederacy by a Republican congress as well as the general feeling of the victorious members of the Union.⁶²⁷ In considering the writings and influence of Dorsey, historian Bertram Wyatt-Brown believed that Sarah was “the mother of the Lost Cause.”⁶²⁸

Dorsey’s first attempt at writing non-fiction was a biography of Louisiana Governor and Confederate general Henry W. Allen. As a woman who had previously written fictional accounts of the lives of wealthy southern women, many did not take Dorsey seriously and determined that she lacked the credibility to write a non-fiction biographical work. The author

⁶²⁶ *ibid.*, 278.

⁶²⁷ *ibid.*, 278. “Sarah accepted her place within the Old South's patriarchal order and developed an obvious need to both adore men and protect their public reputations, a sense of personal identity that subsequently colored her understanding of Southern history.

⁶²⁸ *ibid.*, 279. Note: quote taken from Bertram Wyatt-Brown, *The House of Percy: Honor, Melancholy, and Imagination in a Southern Family* (New York: Oxford University Press, 1996), 119, 135.

recognized that this situation would occur and historian Glenn Robins wrote of this problem that Dorsey faced as the following:

“In her biography of Allen, Dorsey commented that ‘in writing matters of history, and holding a *vehme gericht* upon the conduct of our own leaders, it is essential’ to remain dispassionate and render a fair and rational verdict. ‘This is not an agreeable nor a simple task-especially for a woman,’ she admitted, ‘but it must be remembered I am not writing history, but telling the story of my friend’s life to the people who loved him. I write for the South-not for critics.’”⁶²⁹

In this instance, Dorsey did not believe she was writing history, but simply penning a biography of an acquaintance that happened to be a significant contributor to the Confederacy.

Notwithstanding Dorsey’s attempt at a “fair and rational verdict” on the lives of the members of the Confederacy, professor Robins holds that “From the outset of her postwar literary career, Dorsey maintained that it was ‘essential, for the sake of Southern honor,’ to establish ‘our version of the terrific struggle’ known as the Civil War.”⁶³⁰ Redeeming the South through the movement of the Lost Cause was paramount to searching too deeply from other sources critical of the South and the failed Confederacy.

Confederate Monuments and Memorials

In 1895, the Texas state legislature determined that a monument dedicated to the slain soldiers of the Confederacy should be constructed and placed on the grounds of the Texas Capitol. Following a wait for construction and delivery that lasted eight years, a ceremony was conducted to unveil the newly placed monument with former Confederate Postmaster General John H. Reagan invited to be the main speaker of the event. The eighty-five-year-old former Confederate official wasted no time in blaming who he believed was responsible for the war that

⁶²⁹ *ibid.*, 279. Note: the inner quotes are taken from Sarah A. Dorsey, *Recollections of Henry Watkins Allen, Brigadier-General Confederate States Army, Ex-Governor of Louisiana* (New York, 1866), 160.; *Vehme gericht* was a medieval German secret tribunal.

⁶³⁰ *ibid.*, 280. Note: inner quotes are taken from Dorsey, *Recollections of Henry Watkins Allen*, 20, 38 & 55.

claimed the deaths of those commemorated by the monument. “The people of the New England states, even as far back as 1803, when the Louisiana Purchase was consummated, opposed it [slavery], as they declared it would increase the power of the agriculture states and diminish the power of the manufacturing states.”⁶³¹ What is a bit ironic in Reagan’s statement is that although the manufacturing states, which was a moniker for the states in the North that desired to limit and eventually end slavery, Reagan indirectly admits that this form of labor is what the Confederacy was willing to go to war to protect. The notion of the federal government circumventing the sovereignty of the southern states is not mentioned by Reagan in his speech in Austin. Moreover, this monument would not be the last Confederate remembrance located on the Capitol grounds. From 1903 to 1910, three additional monuments would be erected. “During each unveiling, Confederate war heroes and high-profile politicians of the day used the opportunity to depict the North as the aggressor and downplay slavery as a cause of the Civil War...”⁶³²

The memorials dedicated to the Confederacy have been a part of the fabric of the US since the end of the Civil War. These memorials were initiated without much controversy, however, in the years since Reconstruction, and then resurging from the Civil Rights era to the present, the dedications have been a source of consternation in the country. In addition, the symbols dedicated to the Confederacy has not stopped at the traditional examples such as monuments, statues, etc. Many people have taken these emblems and put them on many untraditional items. Historian Grace E. Hale has observed the following:

⁶³¹ Jonathan Silver, “Purpose of Confederate Monuments Political, Psychological,” *The Associated Press*, October 21, 2017, reprinted in *The Seattle Times*, <https://www.seattletimes.com/nation-world/purpose-of-confederate-monuments-political-psychological/>. “Reagan said slavery had ‘existed in every civilized country in the world, including the Eastern states.’”

⁶³² Silver, “Purpose of Confederate Monuments Political, Psychological,” <https://www.seattletimes.com/nation-world/purpose-of-confederate-monuments-political-psychological/>.

“Civil War history and Confederate flags do not just appear in museums, archives, and the state’s many Civil War historic sites. They also show up on city sidewalks, and in town parks; on beach towels, car bumpers, and the mud flaps of trucks; in dorm windows; and in the statements of elected officials. The Lost Cause – what neo-Confederates today call southern heritage – surrounds us.”⁶³³

The Confederate Flag

One of the most visible and controversial examples of the memorials dedicated to the Confederacy, which has powerfully prompted stalwart adherences to the Lost Cause movement, has been the Confederate flag and the redesigning of the state flags to celebrate their membership in the unsuccessful Confederacy. The restructure of the state flags has been an effective tool for the Lost Cause movement in reminding the populace that the ideology of the failed Confederate government is still alive and represented in the states where these banners are displayed in state and municipal offices as well as flying over their governmental buildings and facilities. In perhaps the most diabolical of the messaging perpetuated by the state flags that hold remnants of the Confederate “Southern Cross” or the “Cross of St. Andrew,” is the reminder to the descendants of the former slaves that the late Confederacy is well represented in the courtrooms and law enforcement facilities of their state.⁶³⁴ Furthermore, the southern states that have not eliminated the Confederate reminiscences from their flags have instilled on the African

⁶³³ Grace Elizabeth Hale, “The Lost Cause and the Meaning of History,” *OAH Magazine of History* 27, no. 1, History Wars (January 2013), 13-17.

⁶³⁴ J. Michael Martinez, “The Georgia Confederate Flag Dispute,” *The Georgia Historical Quarterly* 92, no. 2 (Summer, 2008), 200. “Few symbols incite as much passion or political controversy as the St. Andrew’s cross design of the Confederate battle flag.... For proponents, who are sometimes labeled “traditionalists,” for want of a better term, the Southern Cross recalls the valor of Confederate soldiers who fought and sometimes died on the battlefield as well as a romanticized view of the nineteenth-century South when the planter elite controlled state governments with a sense of noblesse oblige and white Southerners believed in small, localized governments and the fixed social position of the races. Yet even traditionalists are divided over the appropriate interpretation of the Confederate battle emblem. ‘Heritage preservation’ traditionalists see themselves as guardians of the southern inheritance of honor and chivalry while a second group of traditionalists, most notably the Ku Klux Klan, espouses racist views.”

American populace constant reminders that perpetuating white supremacy is paramount to preserving racial equality within their own state governmental and legal entities.⁶³⁵

What seems to be deficient to the followers of the Lost Cause movement regarding the Confederate flag, however, is that the revered symbol of the Confederacy, the banner that has been traditionally labeled as the Southern Cross, had never been exclusively the national flag of the CS. The banner that predominately displays the blue Cross of St. Andrew placed in a field of red was simply the battle flag of the army and the naval jack of the navy.⁶³⁶ The only inclusion of the Southern Cross to the national flag was two later revisions that placed the battle flag in the upper left corner of the national banner of the Confederacy. The first national flag of the CS was the “Stars and Bars” and was adopted by the Confederate Congress in March of 1861.⁶³⁷ In investigating the redesigning of state flags to commemorate the Confederacy as well as the spreading of the Lost Cause mentality, the activities that occurred in Georgia concerning this issue is worthy of examination.

The Georgia state flag has experienced a number of changes through the years from British colonization to the present. From the first unofficial flag following independence that was designed and used by the state’s militia units to the flag that was widely used in the state that was solid blue save for the Georgia state seal being placed in the middle of the banner, the augmentation of the flag held little attention among the citizenry of the state up to secession

⁶³⁵ Martinez, 201.; Alexander J. Azarian and Eden Fesshazion, “The State Flag of Georgia: The 1956 Change In Its Historical Context,” *Senate Research Office*, Georgia State Senate, Atlanta, GA., (August, 2000), 1. “Rather, this paper will focus on the flag as it has become associated, since the 1956 session, with preserving segregation, resisting the 1954 U.S. Supreme Court decision of *Brown v. Board of Education of Topeka*, and maintaining white supremacy in Georgia.”

⁶³⁶ E. Merton Coulter, “The Flags of the Confederacy,” *The Georgia Historical Quarterly* 37, no. 3 (September, 1953), 191.

⁶³⁷ Illustrations III:1-4.; Coulter, 191-192.

winter of 1860-1861.⁶³⁸ Following the events that occurred during the secession conventions, Georgia determined to join the Confederacy and knew that the state flag was of great importance for visual representation regarding the state's independent status within the CS on the battlefield as well as in the national government. Firstly, Georgia unofficially adopted the famous "Bonnie Blue" flag that was extremely popular in the South and within the states of the new Confederacy. This flag was simply a blue banner that held either a white or yellow single star in the center of the flag. As time in the Confederacy progressed, Georgia had unofficially readopted the last edition of the state militia banner that was solid blue with the Georgia state seal placed in the center.⁶³⁹ This flag survived the demise of the Confederacy and remained the unofficial state banner until 1879.

In an effort to place a memorial to Georgia's membership in the Confederacy, the state flag was again redesigned to reflect the Confederacy's first nation banner. This flag, designed and introduced to the Georgia legislature by former Confederate general and present state Senator Herman H. Perry, had the original red and white horizontal bars with a top to bottom plain blue field placed on the left side of the banner. Following passage in both houses of the Georgia General Assembly, this edition became the first officially recognized state flag of Georgia.⁶⁴⁰ This flag was unaltered until 1902, when the state seal was placed in the blue field in different variations that was ultimately completed in 1920.⁶⁴¹

In 1956, however, a concerted effort was launched to achieve another augmentation of the state flag that was an obvious attempt to push forward a positive remembrance of the

⁶³⁸ Martinez, 203.

⁶³⁹ Illustration III:5; Edwin L. Jackson, "State Flags of Georgia," *New Georgia Encyclopedia*, <https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>.

⁶⁴⁰ Azarian and Fesshazion, 4.

⁶⁴¹ Illustrations III: 6 & 7.

Confederacy, embolden the Lost Cause mentality, as well as protesting the civil rights movement which had threatened segregation within Georgia with the US Supreme Court decision in *Brown v. Board of Education*.⁶⁴² The resurrection of the southern cross that reflected the design of the Confederate battle flag was to replace the three horizontal red and white bars on the current flag. The blue field on the left portion of the banner containing the state seal was to stay intact. The new flag was presented to the Georgia General Assembly for debate by John Sammons Bell, the designer of the proposed state banner and chairman of the Georgia Democratic Party.⁶⁴³

Two years prior to Sammons assisting in pushing through the revised official state flag of Georgia, he attended the annual convention of the Association of County Commissioners, of which Sammons was an attorney for the organization. Meeting just months following the *Brown v. Board* decision, Sammons assisted in pushing through a series of resolutions at the convention of county commissioners to add the Confederate Southern Cross to the state flag.

“‘Whereas, the flag of the state or nation is a symbol of loyalty and devotion of a people to that government and Whereas, such a flag should be distinctive and beautiful and yet symbolic of the tradition it represents,’ Georgia should change its flag to feature the Confederate battle emblem. The third resolution attacked the U.S. Supreme Court's decision to desegregate public schools in *Brown v. Board of Education* and concluded that it was ‘an affront and challenge to the traditions of our people.’”⁶⁴⁴

The resolutions passed at the convention were not concerned about promoting state’s rights or violations to their governmental sovereignties. The men at the commissioner’s convention were more concerned with their perceived violations of their customs and traditions concerning white supremacy. The paramount reason to place the Confederate remembrance on the state flag was

⁶⁴² Martinez, 203. “During the 1950s, almost a century after the end of the Civil War, several southern state legislatures, including the Georgia General Assembly, adopted the Confederate battle emblem in the flag as part of a stand against federal intervention into state rights, especially regarding school integration.”

⁶⁴³ Azarian and Fesshazion, 1.; Martinez, 205.; See Illustration III:8.

⁶⁴⁴ Martinez, 205.

to remind the African Americans in Georgia that the federal government may desire equality among the races but Georgia will remain entrenched in their Jim Crow ideology and the white persons in the state will continue to raise the banner that perpetuated chattel slavery among its black inhabitants.

Following a brief period of national media coverage, the revision to the state flag in 1956 received no tangible attention for several years. In 1969, A white Georgian state legislator attempted to present several proposals to the state legislature to abolish the Southern Cross from the state flag. Unfortunately, Jane Merritt could not achieve the requisite number of supporters to successfully pass her legislation.⁶⁴⁵ A similar push to remove the Confederate battle flag was attempted sixteen years later in response to an incident where a group of white supremacists carrying the Confederate battle flag assaulted a group of civil rights demonstrators in Forsyth County with bottles, rocks and other debris. Georgia Governor Joe Frank Harris formed a committee to investigate the incident and to discover the impetus of the violence. The committee concluded that the presence of the Confederate flag overwhelmingly contributed to the confrontation.⁶⁴⁶ Although the committee recommended that the state flag should be augmented to remove the Southern Cross, Governor Harris was wary to enact this drastic measure. In just months following the committee's findings, state legislator Frank Redding offered several bills for consideration to remove the Southern Cross. Redding was a successful in 1987 as Merritt in 1969. The state flag would retain its Confederate memorial.⁶⁴⁷

⁶⁴⁵ *Ibid.*, 206.

⁶⁴⁶ *ibid.*, 206. "A committee formed by Gov. Joe Frank Harris delved into the causes of the assault and concluded that the presence of the Confederate battle emblem on the flag exacerbated racial tensions. The committee recommended that the state should remove the St. Andrew's cross design."

⁶⁴⁷ *ibid.*, 206.

The path that led to the ultimate augmentation to the Georgia state flag was instigated on March 9, 1993. State Representative Denmark Groover stood in front of the state legislature and declared that the present state flag is offensive to many citizens of Georgia. This statement given by the aging legislator was shocking as he was in the Georgia Assembly in 1956 and vehemently supported the new flag containing the Southern Cross.⁶⁴⁸ Groover further explained his reasons for his support of the new flag in 1956. “I cannot say to you that I personally was in no way motivated by a desire to defy. I can say in all honesty that my willingness was in large part because ... that flag symbolized a willingness of a people to sacrifice their all for their beliefs.”⁶⁴⁹ For Groover in 1993, his support of the flag in 1956 was incorrect. Groover appealed to his fellow legislators to once again change the state flag to a more inclusive representation of all the people of Georgia. The present flag had corrupted itself into being “...the most divisive issue that has faced the people of Georgia in many, many a day.”⁶⁵⁰ Representative Groover did not just come to the legislative body to speak. He had additionally brought a proposal and redesign for a new state flag. Unfortunately, Groover’s design still contained a portion of the Confederate flag and many legislators could not support Groover’s proposal.

The next step in the path of changing the state flag of 1956 was the election of Democratic Governor Roy Barnes. When Barnes took office in January 1999, the new governor was not a vehement proponent of flag augmentation, however, the people of the state were becoming more vocal on the issue and Barnes was aware that the situation with the Southern

⁶⁴⁸ Azarian and Fesshazion, 29. “In 1956, Denmark Groover, in a fiery speech before the House of Representatives, declared that the then-proposed state flag ‘...will serve notice that we intend to uphold what we stood for, will stand for, and will fight for.’ Groover has since dismissed that statement as simply ‘rhetoric at a time of turmoil. Those were the times. We had a bill to pass.’”

⁶⁴⁹ *Ibid.*, 30.

⁶⁵⁰ *ibid.*, 30.

Cross on the state banner was in need of resolution.⁶⁵¹ The task would be daunting in the southern state, but there was a good deal of reason for proponents of changing the flag to have hope for success. A columnist for the *Atlanta Journal-Constitution* wrote in January 2001, "The good news is that Georgia has grown tremendously since that last flag fight, and a new poll of state opinion shows a drop from 62 percent in 1992 to 49 percent today in those who want to keep the current flag."⁶⁵² The editors of the *Atlanta Journal-Constitution* went further in their idea of how the state banner would be successfully changed; keep the state legislature out of the process.

"It's time for courageous leadership on the Georgia state flag, and it's unlikely to come from the Legislature... This means that leaders outside politics - business and religious leaders - will have to take up the crusade. Together, the business and religious communities offer the economic and moral clout to persuade Georgians that the state flag ought to be one that unified rather than divides citizen"⁶⁵³

Editorial-page editor of the paper Cynthia Tucker was in full agreement with her colleagues.

"With courageous moral leadership, Georgians will do the right thing. All it takes is ministers and business executives from around the state who are willing to provide it."⁶⁵⁴

As soon as the Georgia legislative session began in 2001, HB 16 was introduced by the Democratic leadership. The bill held a compromised revision of the flag that seemed to be agreeable to the point of passage in just a short time of debate. The flag would be augmented to a blue field with the Georgia seal at the top with a banner beneath the seal that contained five flags that represented the history of the state, which included the US Flag of 1776, the unofficial

⁶⁵¹ Martinez, 217.

⁶⁵² *Ibid.*, 217. Note: Quote from, Colin Campbell, "Georgia's Flag Fight Could Get Messy - Once Again," *AJC*, January 9, 2001.

⁶⁵³ *ibid.*, 217-218. Note: Quote from Colin Campbell, "Business, Church Leaders Must Demand Flag Change," *AJC*, January 23, 2001

⁶⁵⁴ *ibid.*, 218. Note: Quote from Cynthia Tucker, "State Flag: Open-minded Georgians Will See Need for Change," *AJC*, January 24, 2001.

flag from 1861-1879, the official flag from 1879-1956 that contained the Stars and Bars, the official flag from 1856-2001 that contained the Southern Cross and finally the current US Flag.⁶⁵⁵ The passage of the new flag bill was a milestone of compromise in Georgia. The predominate display of the Southern Cross was eliminated with only a small regeneration of the 1856 flag among four other banners in the history of Georgia. In what was believed to be a weak governorship of Barnes concerning the flag issue became a triumph of political compromise within the statehouse as well as with achieving the aid of the religious and business leadership in the state.⁶⁵⁶

Even with the euphoria of many citizens in the state celebrating the new state flag, there were also a great number of detractors who felt the old flag was a perfect reflection of the southern heritage of Georgia. In some cases, voices of dissent turned to threats and acts of non-violent terrorism. A number of legislators who voted to change the flag received plain white envelopes with small rubber snakes placed inside with threatening notes attached. One received a note that contained thirty dimes, to represent the thirty pieces of silver that the Apostle Judas received for turning Jesus Christ over to the Jewish authorities. To the credit of these victims, none were shaken by the threats. One of the legislators who received an envelope filled with rubber snakes declared, "If they don't have enough nerve to sign their names to it, I don't think a lot of them...I'm pretty comfortable about what I did. I feel like I did the right thing."⁶⁵⁷

The next gubernatorial election in Georgia brought out several candidates who promised the members of the Lost Cause movement to reconsider the replacement of the 1956 flag. The new Georgia Governor was Sonny Perdue, the first Republican to win the top seat in the state in

⁶⁵⁵ *ibid.*, 218.; See Illustration III:9.

⁶⁵⁶ *ibid.*, 219.

⁶⁵⁷ *ibid.*, 219.

over one hundred and thirty years was brought to task on his pledge concerning the flag issue. The governor presented to the Georgia assembly that a nonbinding referendum should be attached to the ballots in the upcoming election in 2004. The referendum would hold nearly the exact wording of a proposed referendum during the 2001 flag controversy. The assembly acquiesced and HB 380 was introduced for debate.⁶⁵⁸ The referendum would be presented as the following:

“Five options were possible: (1) retain the "Barnes" flag adopted in 2001; (2) return to the 1956-2001 flag displaying the battle emblem; (3) return to the pre-1956 state flag design, which contained the lesser known Stars and Bars Confederate symbol; (4) return to some other state flag design from Georgia's history; or (5) design a completely new flag from scratch.”⁶⁵⁹

The referendum concluded in the March 2004 elections that the voters of Georgia desired to return to the first official state flag that contained the Stars and Bars and the state seal placed in the blue field.⁶⁶⁰ Although the SCV and many others who held to the Lost Cause movement were disappointed that the 1956 flag, that prominently displayed the Southern Cross had failed, the Confederacy and white supremacy were still represented in the people's choice in the current state flag of Georgia. This memorial to the Confederacy has the potential of being a part of the Lost Cause movement for many years to come.⁶⁶¹

⁶⁵⁸ Jackson, “State Flags of Georgia,” <https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>; Martinez, 224.

⁶⁵⁹ Martinez, 224.

⁶⁶⁰ Jackson, “State Flags of Georgia,” <https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>.

⁶⁶¹ Martinez, 226. “Summarizing the exhaustion that most citizens felt, state senator George Hooks, a Democrat from Americus [Georgia], observed that ‘the flag debate is now a chapter in history. We need to move forward to critical issues we have on the table.’ As of this writing, Georgia seems to have done exactly that.

The Ku Klux Klan

Within just a year of the destruction of the CS,⁶⁶² an organization that was originally created as a Confederate veterans association, that had little interest in frightening black people,⁶⁶³ had morphed into a domestic terrorist organization that would ultimately develop into the enforcement arm of the most oppressive social and political conduct of white persons perpetuated on African Americans from the end of the Civil War through the twenty-first century. The Ku Klux Klan has been instrumental in recruiting and supplying a good deal of the muscle and money required to assist white supremacist organizations in the US in the present twenty-first century.⁶⁶⁴ When the Klan vacated its benign origins of a club organized for prominent southerners and Confederate veterans, the organization performed terrorist acts as small as ripping down signs celebrating equal rights to burning homes and businesses of freedmen as well as performing murder. In just months following the introduction of Reconstruction in Giles County, Tennessee, a successful former slave who had accumulated his wealth by assisting his master in agricultural techniques during his slavery days as well as sharecropping and buying farmland of his own, wrote to the Freedmen' Bureau of the oppressive nature of the people who were influenced and supported by the Klan.

“‘There is a dispossession [sic] on the part of the white Citizens some of them to impose and the colored citizens.’ They reported that whites refused to let them use the church

⁶⁶² Elaine Frantz Parsons, *Ku Klux: The Birth of the Klan during Reconstruction* (Chapel Hill, NC: University of North Carolina Press, 2015), 27. “The Klan began as a name. It was chosen by a group of young former Confederates in Pulaski, Tennessee, in May or June 1866.”

⁶⁶³ Parsons, 32. “The first Ku-Klux was likely not founded for the direct purpose of racial conflict. The nonpolitical origin of the Ku-Klux is one of the few areas where historians have largely agreed. Allen Trelease could not have been clearer: ‘The Ku-klux was designed purely for amusement, and for some time after its founding it had no ulterior motive or effect. All the evidence supports this.’ Yet the evidence is so scant and unreliable that it must be approached with care.”

⁶⁶⁴ David A. Horowitz, *Inside the Klavern: The Secret History of a Ku Klux Klan of the 1920s* (Carbondale IL.: Southern Illinois University Press, 2019), 2-3.

basement that had been promised to them for their own church services (after allowing them to renovate it for the purpose), and also refused to allow a black-owned grocery to sell alcoholic beverages, despite its proper licensing.”⁶⁶⁵

There was also reports of violence in the early days of the Klan. “It can almost be said that there is no law in Giles County all do just as they see fit without regard to law or decency.”⁶⁶⁶ There were many who blamed the affluent wealthy class of perpetuating the lion share of the violence on the freedmen, however, the southern elite blamed the lower-class whites for the violent behavior. When the Freedmen’s Bureau came to investigate, they agreed with the southern elites. “Captain George E. Judd [of the Freedmen’s Bureau], soon after his arrival in Pulaski [Tennessee], fingered poor whites, ‘men who amount to nothing, have no property and no principle,’ or ‘the low class of whites.’”⁶⁶⁷

Historian Elaine Frantz Parsons relates a story of the origins of the Klan in her 2016 work *Ku Klux: The Birth of the Klan during Reconstruction*. In late Spring 1866, several men gathered one evening at the law office of a prominent attorney in Pulaski, Tennessee to discuss their plights following the Confederacy’s defeat and the proposed reconstruction of the defeated South contemplated by the federal government. During their deliberations, the idea of an association of like-minded colleagues was introduced, as well as the new organization deciding on what they should hold as their moniker.

“Boys, let us get up a club of society of some description.” The suggestion was discussed with enthusiasm. . . . The committee appointed to select a name, reported that they had found the task difficult, and had not made a selection. They explained that they had been trying to discover or invent a name which would be, to some extent, suggestive of the character and objects of the society. They mentioned several which they had been considering. In this number was the name “Kukloi” from the Greek word Kuklos, meaning a band or circle. At mention of this, some one cried out: “Call it Ku Klux.” “Klan” at once suggested itself, and was added to complete the alliteration. So instead of

⁶⁶⁵ Parsons, 28.

⁶⁶⁶ *Ibid.*, 28.

⁶⁶⁷ *ibid.* 29.

adopting a name, as was the first intention, which had a definite meaning, they chose one which to the proposer of it, and to every one else, was absolutely meaningless.”⁶⁶⁸

The original group of men who initiated the Klan – Frank O. McCord, Richard Reed, John C. Lester, Calvin Jones, John Booker Kennedy, and James Crowe – believed themselves to be the elites of Pulaski.⁶⁶⁹ They felt it was their duty as prominent men to launch their organization to be responsible for returning Tennessee to its antebellum days which included reestablishing the rightful place of the superior white race in their social and political standing over black men and women.⁶⁷⁰ They could not return the former slaves back to their chattel existence, but the white Tennesseans could do everything they could to subjugate and humiliate the black race through violence and intimidation.⁶⁷¹

Jim Crow

The impetus of the Jim Crow Era was essentially synonymous with the results of the presidential election of 1876 and the subsequent Compromise of 1877. The controversial presidential contest began with a lack of an electoral majority and as the Constitution stipulates, the election was thrown into the House of Representatives for a vote. Essentially holding to party lines, the House could not achieve a clear majority. In what would be later known as the “corrupt bargain” of 1876, the party bosses of both Democrats and Republicans brokered a deal to set up a committee to decide the election.⁶⁷² In their negotiations, the Republicans promised

⁶⁶⁸ *ibid.*, 30.

⁶⁶⁹ *ibid.*, 28.

⁶⁷⁰ *ibid.*, 30-31.

⁶⁷¹ *ibid.*, 44. “No one pins down precisely when the Ku-Klux began to threaten and commit violence upon freedpeople and white Republicans, but discussions of the timing of the transition tend to work from the understanding that Ku-Klux had turned to both politics and violence by late 1867.

⁶⁷² Lewis, 39. “It was agreed that the commission would consist of five Senators, five Representatives, and five Justices. The congressional membership would be divided equally between Democrats and Republicans and the problem of the odd man would be solved by

that if they were awarded the presidency, Rutherford B. Hayes would begin the process of ending Reconstruction.⁶⁷³ In the minds of the Democrats, the oppressive federal government's activity of shielding former slaves in various avenues such as black elected officials, political and social protections, and the military districts set up in the former Confederate states became unbearable. For the Democrats, giving up the executive branch to be relieved of black freedoms and an occupying federal force was worth the political sacrifice of losing the presidency.⁶⁷⁴ The committee announced that the Republican Hayes was selected over Democrat Samuel Tilden. In just months after Hayes took office, the tentacles of Reconstruction were being cut and the claws of Jim Crow were being sharpened.

In regards to the name Jim Crow, the history is not definitive upon its origins.⁶⁷⁵ What is decisive, however, is that the term was used to describe the nature a black person was treated following the end of Reconstruction. The protection of the former slaves and their descendants vacated the South beginning in 1877 and African Americans were left unprotected from the former Confederates and their progeny in applying the retribution of being ruled by Yankees and their black charges.

The political activities under Jim Crow began as quickly as President Hayes could rescind the components of Reconstruction. To prevent black legislators from being reelected as well as discouraging aspiring black men to attain office, the former slaves and their descendants

designating four Justices, Democrats Clifford and Field and Republicans Miller and Strong, and leaving it to them to select the fifth.

⁶⁷³ Foner, *A Short History of Reconstruction*, 244-245.

⁶⁷⁴ *Ibid.*, 246-247.

⁶⁷⁵ Woodward, 7. "The origin of the term 'Jim Crow' applied to Negroes is lost in obscurity. Thomas D. Rice wrote a song and dance called 'Jim Crow' in 1832, and the term had become an adjective by 1838. The first example of 'Jim Crow law' listed by the Dictionary of American English is dated 1904. But the expression was used by writers in the 1890's who are quoted on the following pages [of Woodward's book]."

were being turned away from polling places by either physical prevention, literacy tests or poll taxes. All the Republican black officials that had been elected to state or federal offices during Reconstruction were being systematically voted out by white Democrats. State and municipal legislatures were resurrecting the old, as well as enacting new “black codes” that covered a plethora of opportunities for violations, such as vagrancy laws that would allow the police to wantonly arrest black people for simply standing on street corners, as well as walking in town or in the countryside after dark.⁶⁷⁶ An additional component of the vagrancy laws contained statutes that black persons were obligated to sign labor contracts with former plantation owners to work the fields that the former slaves had labored in prior to the Confederate defeat. The black codes had emboldened the new Jim Crow laws into working diligently to put black people back into as close as a state of slavery as the white legislators could accomplish.

Jim Crow and Segregation

H. A. Scott was born the son of a sawmill laborer and a steam press operator in the Mississippi Delta town of Yazoo City in the early 1920s. Scott recalled that as a child, it was not uncommon for black and white children of similar economic standing to play together after school. The parents of the white children, however, did not bother to learn his name and simply called him “boy.” As Scott became a man, the white Mississippians that he came in contact with continued to call him boy. In addition, Scott recalled that nearly every building in his hometown had a separate entrance for black people. Some of these doors were located in the back of the facility or along-side the “whites only” entrance. What intrigued Scott was that the distinction between white and black doorways were strictly enforced without exception. Inside the buildings, especially in eating facilities, the dining arrangements were further segregated by

⁶⁷⁶ Klarman, 71.

white and black only seating. As Scott would later observe, ““You could see each other but there was a space between you.”⁶⁷⁷

It cannot be ignored that the South, as well as a good portion of the rest of the US, held a society that created a chasm between the white and black races. What was produced in this type of behavior was the idea that this separation of the races could be made legal through statutes within municipalities as well as in the laws of the states. The Jim Crow laws infiltrated the US with the aim of keeping the black race subservient and segregate from the whites.⁶⁷⁸ This type of behavior was instigated initially in the South out of fear of the mingling of the races. A new term concerning this issue, the “New Negro,” was given to the children of the former slaves whom the southern people believed were “too aggressive” in their desire for equality among the whites.⁶⁷⁹ The New Negro was a significant threat to the southerners as the former slaves began dying away. These former slaves, in the minds of the southerners, knew their place and did not act aggressively in attaining certain rights. The former slaves still fell into calling their former owner “master” and during the days of Reconstruction were willing to go back to the plantations they had once labored for fear of breaking a statute of the black codes of vagrancy.⁶⁸⁰

⁶⁷⁷ Stephen A. Berrey, *The Jim Crow Routine: Everyday Performances of Race, Civil Rights, and Segregation in Mississippi*, (Chapel Hill, NC: The University of North Carolina Press, 2015), 19.

⁶⁷⁸ Berrey, 20. “The space that Scott looked out upon was part of a racial geography that had been forged a generation earlier. In the 1880s and 1890s, new laws firmed up racial lines and in the process made segregation more official and more permanent.”

⁶⁷⁹ *Ibid.*, 21.

⁶⁸⁰ *ibid.*, 21. “...many white Southerners worried especially about the presence of a “New Negro” who had never been enslaved and who was perceived as more aggressive. They compared this less-deferential individual to what they remembered as a faithful slave who, in contrast to this New Negro, had always—at least in their memories—looked and acted the part of a social and racial inferior. In the nineteenth century, many whites increasingly found themselves in public spaces where African Americans insisted on playing the part of social equals.”; Litwack, 318-319. “In Mobile [Alabama] the mayor instructed the police to arrest ‘vagrants’ and warned freedmen either to find employment, leave the city, or be forced to work on the streets.”

As the black codes progressed into becoming Jim Crow laws, the purpose of the two statutes directed at African Americans changed. The black codes were placed to not only perpetuate a type of segregation but were mainly put into place to keep the former slaves from rising beyond their understood level of employment. The former slaves were nearly all trained in agricultural work and were required to bring the predominately agricultural South back from its economic ruin following the war. Jim Crow laws were designed to confront the New Negroes and to bring them down to the behavior of their slave ancestors. The following are a few examples of the Jim Crow laws:

“It shall be unlawful for a negro and white person to play together or in company with each other in any game of cards or dice, dominoes or checkers.”

Birmingham, Alabama, 1930.

“Separate free schools shall be established for the education of children of African descent; and it shall be unlawful for any colored child to attend any white school, or any white child to attend a colored school.”

Missouri, 1929.⁶⁸¹

As has been previously mentioned, the Jim Crow laws were not exclusive to former slave states.

“Marriages are void when one party is a white person and the other is possessed of one-eighth or more negro, Japanese, or Chinese blood.”

Nebraska, 1911.⁶⁸²

The most disturbing component of Jim Crow was the acceptable violence that was applied to enforce the social and political laws of Jim Crow. The police often harassed and beat violators for violating the laws, in some instances, for just omitting to tip their hat to white women or giving way on the sidewalk to any white person.⁶⁸³ Under Jim Crow, black persons held no recourse in complaining about the violent behavior being perpetrated on them. The

⁶⁸¹ “Separate Is Not Equal: Brown v. Board of Education,” Smithsonian National Museum of American History, <https://americanhistory.si.edu/brown/history/1-segregated/jim-crow.html>.

⁶⁸² “Separate Is Not Equal: Brown v. Board of Education,” <https://americanhistory.si.edu/brown/history/1-segregated/jim-crow.html>.

⁶⁸³ Berrey, 31.

police would often jail a black person for having the audacity to complain about the law, which was a sign of disrespect to the white race. The story of Rubin Stacy is an event that is all too familiar in the retribution directed towards an African American who violated the black codes.

In the summer of 1935, Rubin Stacy was arrested in Florida for “frightening” Marion Jones, a local white woman. While Stacy was awaiting trial, a mob broke into his jail cell and lynched him for having the audacity to violate a white woman’s emotional well-being. Leaving Stacey’s body hanging from the tree that was employed for the lynching, white families traveled to the field in Ft. Lauderdale to have their pictures taken with the slain black man. As white men, women and children joyfully had their pictures taken with Stacey’s hanging body, smiles and faces displaying satisfaction at the white Floridian mob’s retribution of violating a white woman was presented. A few days later, the local Young Women’s Christian Association chapter wrote to the NAACP to inform them of Stacey’s lynching and subsequent photo opportunity.⁶⁸⁴ Historian Kristina Durocher wrote in her work *Raising Racists: The Socialization of White Children in the Jim Crow South*, a portion of the information provided by the representative of the YWCA. “One white woman, who had brought her young niece and nephew to view the body, explained that the ‘opinion that it was a shocking sight for women and children was entirely erroneous.’ She continued: ‘It was not bad at all. He was just hanging there.’”⁶⁸⁵

What has been previously observed as one of the most horrific ages in American history concerning civil rights violations towards African Americans, which included wanton and often legal violence, occurred following the Reconstruction Era and then continued through to the

⁶⁸⁴ Kristina DuRocher, *Raising Racists: The Socialization of White Children in the Jim Crow South* (Lexington: The University Press of Kentucky, 2011), 1.

⁶⁸⁵ DuRocher, 1.

Civil Rights movements. Although the present events in the twenty-first century are also disturbing in its nature of viciousness towards African Americans perpetrated by white supremacists groups masking themselves in all walks of life, the era known as Jim Crow saw not only the lynching and terrorizing of black persons, but the social laws and norms employed in the US of treating African Americans as sub-human beings were especially abhorrent. Moreover, the Jim Crow activities towards black Americans were not exclusively practiced in the South. Many other states perpetuated violence towards African Americans and held Jim Crow statutes that have been traditionally viewed as a southern practice.

One of the most diabolical successes of the South's calculated violence upon black persons during Jim Crow was that many generations of black parents were forced to hide the identity of the perpetrators of the inhumanity from their children. In one particular instance, civil rights activist Anne Moody recalled that she was about to enter her freshman year of high school when she learned of Emmitt Till's lynching.⁶⁸⁶ She had recalled many instances of violence committed upon black persons, and when she had previously asked her mother about the violence, Moody was told that good girls had no fear of this type of ferocity and should steer clear of the "evil spirit" that has caused many black people in Mississippi to be "...found floating in a river or dead somewhere with their bodies riddled with bullets."⁶⁸⁷ Moody's mother would not dare to implicate any persons of the white race regarding the violence against African Americans to her daughter for fear that the teenager would seek retribution. It was well enough to refer to the whites in the South as evil spirits than to risk her daughter being murdered to confront the indiscriminate racial violence.

⁶⁸⁶ Anne Moody, *Coming of Age In Mississippi* (New York: Random House Inc., 1976), 119.

⁶⁸⁷ Moody, 121.

Separate but Equal

In 1890, the Louisiana state legislature passed the “Louisiana Railway Accommodations Act” that described itself as being necessary “...to provide equal but separate accommodations for the white and colored races...” in railroad passenger trains.⁶⁸⁸ In response to this legislation, a group of Louisianans of Afro-Creole descent determined that the accommodation law should be challenged in the federal courts. From the election of 1876, which essentially concluded the Reconstruction Era and initiated the Era of Jim Crow that would allow the passage of the accommodations act in 1890, American legal and constitutional scholar Michael J. Klarman described the motivation of the group attempting to overturn the “separate but equal” idea was simply “...emblematic of the deterioration in the civil and political rights of southern blacks around this time.”⁶⁸⁹ The group hired civil rights attorney Albion Tourgee to argue against the act protecting separate but equal. Tourgee required a plaintiff to experience the consequences of a black person violating the act by sitting in a “white’s only” car and decided to choose an Afro-Creole who “shared the white physical appearance” required to cause an incident on a train.⁶⁹⁰

Prior to further investigation of the incident that inspired the famous Supreme Court case *Plessy v. Ferguson*, it must be presented that the persons backing the plan was not a group of working-class black men such as Homer Plessy. The “committee” of the Afro-Creoles was a part of the financial elite of New Orleans and was working with local railroad officials to set up the incident to occur in or near the Crescent City as to protect Plessy from being beaten and

⁶⁸⁸ “The Louisiana Railway Accommodations Act,” Railroads and the Making of America, Digital History Project, *University of Nebraska-Lincoln*.
http://railroads.unl.edu/documents/view_document.php?id=rail.gen.0060.

⁶⁸⁹ Klarman, 8.

⁶⁹⁰ *Ibid.*, 8.

thrown off the train in the Louisiana countryside for his violation of the act.⁶⁹¹ Moreover, there was good reason for the railroad to be involved in the incident. The accommodations act had hit the Louisiana railroads directly in their profit centers. Having to provide cars for segregated accommodations was expensive for the railroads in the areas of car availability, maintenance, and additional employees for enforcement of the act.⁶⁹² As planned, Plessy was confronted with his seat choice and was thrown off the train. The required facts for the case were accomplished. When the case had arrived in the Louisiana courts, Tourgee argued that the accommodations act violated Plessy's rights under the Thirteenth and Fourteenth Amendments.⁶⁹³ Plessy lost and was charged with violating the accommodations act. Tourgee appealed the case to the US Supreme Court and was set for attorney arguments on April 13, 1896.

Armed with the same argument as in the Louisiana courts, Tourgee claimed that Plessy's rights under the afore mentioned Amendments had been violated. In a seven to one decision the Court found for Ferguson.⁶⁹⁴ The high court held that the state law did not violate Plessy's Constitutional liberties. With this decision, separate-but-equal for African Americans was now federal law. Determining what separate-but-equal in the Jim Crow era entailed was another subject entirely. It would take a little over fifty-seven years for this component of racial inequality to be rectified in the US.

⁶⁹¹ *ibid.*, 8.

⁶⁹² "Plessy v. Ferguson," *Oyez*, <https://www.oyez.org/cases/1850-1900/163us537>.

⁶⁹³ Klarman, 9.

⁶⁹⁴ "Plessy v. Ferguson," <https://www.oyez.org/cases/1850-1900/163us537>.

Chapter 9

*“To protect, preserve and mark the places made historic by Confederate valor”*⁶⁹⁵

“I think there is blame on both sides. You look at both sides. I think there is blame object on both sides. I have no doubt about it. You don’t have doubt about it either. If you reported it accurately, you would say that the neo-Nazis started this thing. They showed up in Charlottesville. Excuse me. They didn’t put themselves down as neo-Nazis. You had some very bad people in that group – excuse me, excuse me. I saw the same pictures you did. You had people in that group that were there to protest the taking down, of to them, a very, very, important statue and the renaming of a park from Robert E. Lee to another name.”⁶⁹⁶

----President Donald Trump
August 14, 2017

At approximately 10:00 a.m. on the morning of August 12, 2017, a protest demonstration located just north of Emancipation Park in Charlottesville, Virginia turned violent when roughly twenty-five members of a white supremacist group attacked counter-protesters at the “Unite The Right” rally. Several of the white supremacist members, protected by wooden helmets and shields, charged into the oppositional group composed of mainly African-Americans. “One white man dove into the violence with particular zeal. Using his fists and feet, the man attacked one person after another.”⁶⁹⁷ At the end of the “...chaotic and bloody day,” thirty-two-year-old Heather Heyer would lose her life when she was struck and killed by a vehicle that was driven into the

⁶⁹⁵ “History of the UDC,” The United Daughters of the Confederacy, <https://hqudc.org/history-of-the-united-daughters-of-the-confederacy/>.

⁶⁹⁶ Libby Nelson and Kelly Swanson, “Full Transcript: Donald Trump’s Press Conference Defending the Charlottesville Rally,” August 15, 2017, *Vox*, <https://www.vox.com/2017/8/15/16154028/trump-press-conference-transcript-charlottesville>.

⁶⁹⁷ A. C. Thompson, “Racist, Violent, Unpunished: A White Hate Group’s Campaign of Menace,” Oct. 19, 2017, *ProPublica*, <https://www.propublica.org/article/white-hate-group-campaign-of-menace-rise-above-movement>. Note: Article found in the document “Recent Online Resources for the Analysis of Terrorism and Related Subjects,” *Perspectives on Terrorism* 11, no. 6 (December, 2017), 251.

crowd of counter-protesters.⁶⁹⁸ Just two year prior to this incident, the massacre of nine members of the Emanuel African Methodist Episcopal Church in Charleston, South Carolina occurred. In over a year following the Charlottesville riot, and three years after the Charleston, massacre, Nelma Crutchers, the President General of the UDC, published a statement on December 1, 2018 concerning the tragedies.

“The United Daughters of the Confederacy appreciates the feelings of citizens across the country currently being expressed concerning Confederate memorial statues and monuments that were erected by our members in decades past.

To some, these memorial statues and markers are viewed as divisive and thus unworthy of being allowed to remain in public places. To others, they simply represent a memorial to our forefathers who fought bravely during four years of war. These memorial statues and markers have been a part of the Southern landscape for decades.

We are grieved that certain hate groups have taken the Confederate flag and other symbols as their own. We are the descendants of Confederate soldiers, sailors, and patriots. Our members are the ones who have spent 123 years honoring their memory by various activities in the fields of education, history and charity, promoting patriotism and good citizenship. Our members are the ones who, like our statues, have stayed quietly in the background, never engaging in public controversy.

The United Daughters of the Confederacy totally denounces any individual or group that promotes racial divisiveness or white supremacy. And we call on these people to cease using Confederate symbols for their abhorrent and reprehensible purposes.

We are saddened that some people find anything connected with the Confederacy to be offensive. Our Confederate ancestors were and are Americans. We as an Organization do not sit in judgment of them nor do we impose the standards of the 21st century on these Americans of the 19th century.

It is our sincere wish that our great nation and its citizens will continue to let its fellow Americans, the descendants of Confederate soldiers, honor the memory of their ancestors. Indeed, we urge all Americans to honor their ancestors’ contributions to our country as well. This diversity is what makes our nation stronger.

Join us in denouncing hate groups and affirming that Confederate memorial statues and monuments are part of our shared American history and should remain in place.”⁶⁹⁹

⁶⁹⁸ Thompson; Tom Porter, “Charlottesville: Heather Heyer’s Cause of Death Has Been Revealed In A Medical Report,” October 17, 2017, *Newsweek*, <https://www.newsweek.com/charlottesville-heather-heyers-cause-death-revealed-medical-report-686471>.

⁶⁹⁹ Nelma Crutcher, President General of the UDC, “Statement from the President General,” United Daughters of the Confederacy, <https://hqudc.org/>.

The SCV also released a statement nearly a month following the Emanuel A.M.E. Church killings. The two statements from the leading proponents of the old Lost Cause movements were strikingly different. The UDC attempted to place itself in a reconciliatory stance concerning the two events without offering to remove the memorials dedicated to the Confederacy. The SCV also did not feel compelled to reproach the existence of Confederate memorials in any form, however, the SCV did not feel the need for any type of reconciliation with the persons offended by the memorials or the violence associated with white supremacy that the events in Charleston and Charlottesville experienced.

“Since the despicable murders of nine persons in a church in Charleston, South Carolina, back on June 17, we have witnessed a growing number of acts of desecration of cemeteries and historic monuments all across North Carolina. Monuments honoring veterans of the War Between the States in Asheville and in Durham and “Silent Sam” on the campus of the University of North Carolina –Chapel Hill have been defaced, and Maplewood Cemetery in Durham has been desecrated. These are acts of wanton vandalism that not only violate our laws, but also strike at one of the most sacred duties that all men have: respect for their ancestors. Sadly, some students and professors, when interviewed about these acts of outright vandalism smugly excuse these attacks as “just another form of civic protest,” and “our right to protest racism.” In some ways, the mentality of these respondents demonstrates a worse regard for history and law than that of the criminals who committed the actions. It indicates that in our society too many people are ignorant of the past, or, at the very least, misunderstand it. Monuments, whether to soldiers who fought in the War Between the States or to George Washington or to a Booker T. Washington, are symbols of our collective history. They are visible reminders that recall our past. Certainly, not all of that past pleases everyone. Each of us who thinks about our history has every right to dislike some events and some individuals. But all of it goes into the mix of what made our nation. It is one thing to criticize our first president and the real Founder of our nation, George Washington, because he was a slaveholder, or Nathan Bedford Forrest, because he was a Confederate general. It is quite another thing to attempt to erase them, and the monuments that remind us of them, from our history and our historical consciousness.”⁷⁰⁰

⁷⁰⁰ J. Daniel Bolick, Commander, The North Carolina Division The Sons of Confederate Veterans Claremont, North Carolina “Statement on Monuments and Cemeteries, July 12, 2015,” Press Releases, Sons of Confederate Veterans, <http://www.ncscv.org/press-releases->. Note: following quote is the remainder of the press release. “The present physical attacks and assaults on the artifacts of our history, thus, are not only vandalism that must be punished by the full extent of the law. They are attempts to erase and eradicate any real memory of that history. Somehow, we are told, if we banish a monument and hide it, or stick a flag in a dusty archives

Five days following the violent clash between demonstrators in Charlottesville, over two thousand miles distant a plaque commemorating Jefferson Davis near Phoenix, Arizona was tarred and feathered. Additionally, a monument dedicated to the soldiers of the Confederacy was spray painted in downtown Phoenix.⁷⁰¹ It is interesting to note that two of the initial responses to the confrontation in Charlottesville in vandalizing Confederate memorials occurred in a region that would be the last continental territory to be organized into a state nearly forty-seven years after Lee's surrender at Appomattox.⁷⁰² The reason that Arizona holds a position in the existence of Lost Cause memorabilia is that the majority of white settlers that staked their claims in the territory of New Mexico, which Arizona is located, overwhelmingly held southern sympathies.

out of public view, that will make our problems go away. Yet, removing the visible symbols of our past, the symbols of our heritage, whether we treasure them or dislike them, destroys our perspective and real sense of history. There is a cultural Marxist agenda in this nation that would like nothing better than to eradicate all historical memory and all visible signs of a past that it despises. With students and a population who have been purged of any idea of the complexities of the past, with all memory aborted, all opposing views stricken, vacant minds may be indoctrinated with the latest politically correct ideology. It is a slippery slope that leads to totalitarianism: what is next, we ask? Change the name of Washington, D.C.? What about Hoke, Lee and Vance counties? What about all the streets, forts, parks and other symbolic names—must they all be purged from our consciousness? Is this not Stalinism full blown? We of the North Carolina Division, the Sons of Confederate Veterans, strongly urge our law enforcement agencies and those responsible for public order to rigorously take all necessary measures to protect the monuments of North Carolina's history. We strongly urge Governor McCrory to add his voice and join with us in condemning acts of violence and vandalism against these symbols. We call upon the leaders of the University of North Carolina to publicly and forcefully condemn these acts of hatred and take vigorous action to protect monuments on university grounds. Our history and historical memory as a people are at stake.”

⁷⁰¹ Nicole Chavez, “These are the Monuments Vandalized After Charlottesville,” August 22, 2017, *CNN*, <https://www.cnn.com/2017/08/18/us/monuments-memorials-vandalized-charlottesville/index.html>.

⁷⁰² “Arizona Statehood,” arizonaexperience.org, <http://arizonaexperience.org/remember/arizona-statehood>. “That historic day in February sparked celebrations with dancing, fireworks, and gunpowder throughout the Arizona Territory. Arizona had just become the last state in the continental U.S., and the status was hard won. Mine owner and politician Charles D. Poston, known as the Father of Arizona, had lobbied Abraham Lincoln for statehood since before the Civil War, just after the Gadsden Purchase was made!”

There was a small military contingent of Confederates near Tucson, but soon retreated into Texas in 1862 to be relegated to attempting infrequent guerilla incursions into what is now southern Arizona.⁷⁰³

When considering these events that have direct connection with two of the most ardent defenders of Confederate history, it appears that the UDC is making some strides to bring itself into reconciliation with the people who find these monuments offensive. It must be presented, however, that the UDC does not condone removing the monuments but are attempting to bridge the divide between the pro-memorial and anti-memorial groups. It would appear that the SCV, however, have virtually no desire to reconcile the differences between the two camps. Reading the organizations statement of purpose emphasizes this observation.⁷⁰⁴

Resurgence of Lost Cause

Although one could argue that the Lost Cause movement has not significantly ceased from the days immediately following the fall of the Confederacy, it would be folly to ignore that a growing number of vocal and active persons holding admiration for the failed southern government have been exceedingly vigorous in the past few years, notably with the election of Barack Obama in 2008. In bearing the presidential election of 2008 in mind, a significant component of the resurgence of the Lost Cause has been the propensity of white supremacy in the US. The result of the revival of the Lost Cause is of great concern to a significant number of

⁷⁰³ "Civil War in Arizona," Arizona Department of Emergency and Military Affairs, <https://dema.az.gov/sites/default/files/Publications/AR-CIVIL%20WAR%20IN%20ARIZONA-BORUNDA.pdf>.

⁷⁰⁴ "Statement of Purpose," The Sons of Confederate Veterans, <https://scv.org/confederate-veteran-magazine/>. "We, the Sons of Confederate Veterans, having been commissioned by the Confederate Veterans themselves, retain our responsibility and right to adhere to the founding principles of the United States of America remembering the bravery, defending the honor and protecting the memory of our beloved Confederate Veterans, which includes their memorials, images, symbols, monuments and grave sites for ourselves and future generations."

persons in the US, as well as in the world. In a 2008 report commissioned by the United Nations and conducted by the Center of Democratic Renewal, the findings of the study held the following:

“Today we [in the US] are experiencing unprecedented levels of intolerance, racism, xenophobia, anti-Semitism, nationalism, bigotry and homophobia as the ideologies of white supremacists gain greater public acceptance. The rhetoric of the new right-wing has become almost indistinguishable from mainstream politicians, public policy makers, talk radio and our next door neighbors. Stepping outside the democratic process with guns and threats of violence has become the norm in some areas of our country. The new faces of white supremacy are succeeding where the old Klan had failed.”⁷⁰⁵

This portion of the information presented to the United Nations is important when considering that the US has attempted to bring to the world organization the notion that the country is the foremost leader in guaranteeing freedom, liberty, and civil rights.⁷⁰⁶ With the significant rise of white supremacist organizations and their activities, it is difficult for the US to boast of its leadership in the area of promoting human rights on the world stage.

Lost Cause Resurgence and Religious Organizations

There is no question that the Christian religion has played a significant role in the resurgence of the Lost Cause mentality. Churches that boast congregations that are associated with white supremacist ideology, or even involved openly in white power organizations, are

⁷⁰⁵ “Hate Groups: Mainstreaming of the Far Right,” The Center for Democratic Renewal, Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination, February, 2008, United Nations, New York City, NY.

⁷⁰⁶ “Human Rights and Democracy,” Policies, *U.S. Department of State*, <https://www.state.gov/policy-issues/human-rights-and-democracy/>. “... a central goal of U.S. foreign policy has been the promotion of respect for human rights, as embodied in the Universal Declaration of Human Rights. Supporting democracy not only promotes such fundamental American values as religious freedom and worker rights, but also helps create a more secure, stable, and prosperous global arena in which the United States can advance its national interests. In addition, democracy is the one national interest that helps to secure all the others. Democratically governed nations are more likely to secure the peace, deter aggression, expand open markets, promote economic development, protect American citizens, combat international terrorism and crime, uphold human and worker rights, avoid humanitarian crises and refugee flows, improve the global environment, and protect human health.

attempting to explain the inferiority of the black race that has been debunked by religious scholars for centuries. This ideology was briefly mentioned in chapter six when Alexander Stephens gave his Cornerstone speech that defended the practice of enslaving the black race but is still alive in a number of fundamental evangelical churches located predominately in the South. In a news story published by the SPLC in 2013, the issue came to light in a Texas church.⁷⁰⁷

“For hundreds of years, the so-called curse of Ham was frequently taught by religious leaders as the source for racial differences, and in more recent times was seized on as a Biblical excuse for segregation and slavery, said [Rachel] Tabachnick. ‘There’s been a shift, and you don’t often see churches that are this forthright now, but the underlying theme is still there in fundamentalist holdout churches.’”⁷⁰⁸

The Texas church additionally publishes racists statements on its website such as the male descendants of Ham are predominantly attracted to white women and that since the Israelites did not associate with the people of Ham’s lineage in the Old Testament, this practice confirms that God “...is a separator, not a mixer. It is God who set the boundaries... You don’t get thoroughbreds by taking the fences down. You get thoroughbreds by putting the fences up.”⁷⁰⁹ In terms of slavery, the church proclaims that God is a proponent of the institution but wants slave masters to be kind to their chattel property.⁷¹⁰ Although the author of this article makes it clear that this type of religious organization is not the trumpet of mainstream Christianity, there still exists the difficult message that is being promoted in terms of white supremacy in a number

⁷⁰⁷ Marilyn Elias, “Texas’ Appleby Baptist Church Pushes Racist Doctrine,” April 25, 2013, *SPLC*, <https://www.splcenter.org/hatewatch/2013/04/25/texas'-appleby-baptist-church-pushes-racist-doctrine>. “The Appleby Baptist Church in Nacogdoches, Texas, is among this country’s scattered, independent fundamentalist churches still openly promoting the idea that the Biblical Noah pronounced a curse on descendants of his son, Ham.”

⁷⁰⁸ Elias, “Texas’ Appleby Baptist Church Pushes Racist Doctrine,” April 25, 2013. Note: Rachel Tabachnick, is a fellow at the think tank Political Research Associates.

⁷⁰⁹ *Ibid.*

⁷¹⁰ *ibid.* “...the church helpfully reminds us that slavery is fine with God. ‘The New Testament does not condemn slavery,’ it says. ‘What it does condemn is the misuse of a slave.’”

of fundamentalist congregations. One of the fears of perpetuating the thoughts of this church and those similar, is the rising situation of fundamentalist Christians homeschooling their children and a good portion of the material provided by Christian publishers hold to the teachings of the curse of Ham ideology.

“And there’s great concern about the increased teaching of Biblical literalism to thousands of U.S. children. Homeschooling is on the upswing, and public dollars are flowing into private schools through vouchers and corporate tax credit programs, she [Tabachnick] points out. In textbooks used by students in these programs ‘some of the foundations for the Biblical justification of racism and slavery are still being widely taught.’”⁷¹¹

As the Lost Cause movement applied the use of public school textbooks and other writings by southern authors sympathetic to the antebellum age and the defeated Confederacy, it is not inconceivable that homeschool textbooks can have the same influence on future generations perpetuating the perceived idea of the correctness of black chattel slavery and white supremacy.

Lost Cause Resurgence and Southern Detractors

Four days following the violent demonstrations in Charlottesville, the text of an open letter directed to the mayor and members of the Monument Avenue Commission of Richmond, Va. was published in *Slate* magazine. The two authors of the letter were deeply concerned over the actions in Charlottesville and did not want the same violent behavior to occur in their town.

“...we are writing today to ask for the removal of his [Stonewall Jackson’s] statue, as well as the removal of all Confederate statues from Monument Avenue. They are overt symbols of racism and white supremacy, and the time is long overdue for them to depart from public display. Overnight, Baltimore has seen fit to take this action. Richmond should, too.”⁷¹²

The authors of the letter were brothers who had been taught from infancy of their ancestors who fought for the Confederacy. The brothers were not ashamed of their heritage or disparaging to

⁷¹¹ *ibid.*

⁷¹² Jack Christian and Warren Christian, “The Monuments Must Go: Reflecting on Opportunities for Campus Conversations.” *South: A Scholarly Journal* 50, no. 1 (Fall, 2017), 47.

those who chose to support the Confederacy in 1860-1861. They did hold, however, that they were a bit disappointed in the choices of choosing a government that was determined to defend slavery.

“Through our upbringing and education, we have learned much about Stonewall Jackson. We have learned about his reluctance to fight and his teaching of Sunday School to enslaved peoples in Lexington, Virginia, a potentially criminal activity at the time. We have learned how thoughtful and loving he was toward his family. But we cannot ignore his decision to own slaves, his decision to go to war for the Confederacy, and, ultimately, the fact that he was a white man fighting on the side of white supremacy.”⁷¹³

What makes this letter so unique is the ancestral lineage of the authors. These brothers, both university professors, were not descendants of obscure members of the South and the Confederacy. The authors hailed from a significant family that was revered in the South as well as a large portion of the nation.

“We are native Richmonders and also the great-great-grandsons of Stonewall Jackson... We are writing to say that we understand justice very differently from our grandfather’s grandfather, and we wish to make it clear his statue does not represent us... While we are not ashamed of our great-great-grandfather, we are ashamed to benefit from white supremacy while our black family and friends suffer. We are ashamed of the monument.”⁷¹⁴

With this letter written by descendants of one of the most revered military leaders of the Confederacy, to the contemporary leaders of the former Capitol of the failed government, as well as in an age where protection of the monuments and symbols commemorating the CS is significantly prevalent, one would be led to believe that a barrage of negative feedback would be perpetuated on Jack and Warren Christian. According to Warren Christian, the majority of the feedback was positive towards the two brother’s epistle.⁷¹⁵ As a professor at the University of

⁷¹³ Christian and Christian, 48.

⁷¹⁴ *Ibid.*, 47-48.

⁷¹⁵ *ibid.*, 49. “While I have received lots of feedback, the overwhelming majority has been positive. The few negative emails I have received have been mostly cordial, and none has come close to bordering on threats.”

North Carolina, Warren Christian has the opportunity to observe a statue of his great-great grandfather on a near daily basis. He related in an interview with *Democracy Now!* that he is troubled that the memorial exists, but few on campus are aware that he is a descendent of Jackson.⁷¹⁶

As unusual as it would seem to be to have descendants of such an iconic Confederate general call for the removal of their progenitor's statue, the Christian brothers are not alone. Robert E. Lee V and Tracy Lee Crittenberger, the great-great-grandchildren of Robert E. Lee, have stated that they would not protest the removal of their ancestor's statue in Charlottesville, Va. "If it can avoid any days like this past Saturday in Charlottesville, then take them down today."⁷¹⁷ The two descendants of Lee additionally added that the proper placement for the statue, as well as other types of Confederate remembrances was in a museum. "Both Lee and Crittenberger agreed that a museum might be a better place to house such statues honoring Confederate leaders, where they can be placed in context."⁷¹⁸

Lost Cause Resurgence and Politics

It must be acknowledged that there are individuals in the US that believe if the monuments and memorials are removed, the nation will be harmed by obliterating a significant portion of American history. It must be further understood that recommending retaining the Confederate remembrances is not an automatic adherence to white supremacy. It must also be

⁷¹⁶ Tanasia Kenney, "Descendants of 'Stonewall' Jackson, Gen. Lee Join the Chorus of Voices Seeking Removal of Confederate Statues," August 18, 2017, *Atlanta Black Star*, <https://atlantablackstar.com/2017/08/18/descendants-of-stonewall-jackson-gen-lee-join-the-chorus-of-voices-seeking-removal-of-confederate-statues/>. "During a recent interview with Democracy Now!, Warren Christian, who works at the University of North Carolina, said he always feels somewhat disgusted when he walks past the campus statue of his great-great-grandfather. He said it's not common knowledge among his peers that he's related to the Confederate leader."

⁷¹⁷ *Ibid.* Note: Quote taken from *Washington Post*.

⁷¹⁸ *ibid.*

made clear that most conservatives are not white supremacists. What has occurred among those who have been vehemently vocal on their desire to keep the monuments are also politically conservative and have the unfortunate situation of being accused of aligning themselves [conservatives] with white supremacists. This situation has drowned out the conservative voices of those who are not radical in their thinking or actions. The overwhelming majority of conservatives have been fraudulently associated with the groups that desire all who are not white to be removed from the US or be subservient to the white race.

In an *Economist/YouGov* poll taken just days after the violence in the Unite The Right rally in Charlottesville, the results revealed that a significant majority of Americans polled were not in favor of removing Confederate memorials. Four categories were given as respondent, Republican, Democrat, black and white. The highest individual respondent of retaining the monuments were Republicans.⁷¹⁹ This statistic is important to note when researching the politics of the Lost Cause resurgence and the confused association with liberalism, conservatism, and the existence of white supremacy.

In investigating the activities of white supremacy in the US, the shift in the policies of the Democrat and Republican parties is imperative. The great shift in the political party dominance in the South can be found in the election of 1980. The conservative movement was becoming more and more relevant in the South when the Republican's chose Ronald Reagan over the party front runners such as former president Gerald Ford and George W. Bush. Reagan handily won the nomination with over ninety-seven percent of ballots cast. In one of Reagan's first campaign speeches, given in Mississippi at the Neshoba County fair on August 3, 1980, he gave the

⁷¹⁹ Kathy Frankovic, "Trumps Domestic Crisis: Charlottesville and White Nationals," portions of *Economist/YouGov* poll, *YouGov*, <https://today.yougov.com/topics/politics/articles-reports/2017/08/16/trumps-domestic-crisis-charlottesville-and-white-n>.

conservative leaning South the words that they had been longing to hear since the origins of the Lost Cause movement began; the issue of state's rights.

“I believe in state's rights; I believe in people doing as much as they can for themselves at the community level and at the private level. And I believe that we've distorted the balance of our government today by giving powers that were never intended in the constitution to that federal establishment. And if I do get the job I'm looking for, I'm going to devote myself to trying to reorder those priorities and to restore to the states and local communities those functions which properly belong there.”⁷²⁰

Furthermore, white supremacy has additionally been invigorated by a misplaced notion of patriotism that hates all people who are not of Anglo descent. The new enemy is the illegal aliens traveling from Mexico as well as from Central and South America. Nearly as loathed as the persons from the Mideast, the Latino and Latina immigrants seeking a better life in the US infuriates the members of white supremacy groups and the tragic consequence in this situation is that many people confuse conservatism with white supremacy.⁷²¹ It is not veiled that the majority of conservatives and white supremacists are against the influx of illegal and legal Latinos coming into the country for the purpose of race-mixing, changing political and social demographics as well as taking jobs away from Americans.⁷²² One cannot see that the

⁷²⁰ “Transcript of Ronald Reagan's 1980 Neshoba County Fair Speech,” November 15, 2007, *The Neshoba Democrat*, <http://neshobademocrat.com/Content/NEWS/News/Article/Transcript-of-Ronald-Reagan-s-1980-Neshoba-County-Fair-speech/2/297/15599>.

⁷²¹ David French, “The White Supremacy Surge,” November 15, 2018, *National Review*, <https://www.nationalreview.com/magazine/2018/12/03/the-white-supremacy-surge/>. “Moreover, you’re likely also rightly tired of having the mainstream conservative movement tied to the old-school hate groups, such as the Ku Klux Klan, or to various other fringe racist extremists. When you condemn Antifa mob violence or Black Lives Matter riots, you’re condescendingly told that “the Right” has a far worse problem with domestic terrorism. White supremacists, after all, murder more people than left-wing radicals.”

⁷²² “White Supremacists Anti-Immigration Rhetoric Echoes Comments from Public Figures,” August 8, 2019, *Anti-Defamation League*, <https://www.adl.org/blog/white-supremacists-anti-immigrant-rhetoric-echoes-comments-from-public-figures>. “White supremacists in both the U.S. and Europe believe that they are under siege, and that changing demographics and increased immigration are destroying white European culture. They assert that whites will soon be minorities in traditionally white nations and immediate action is needed to stop these ethnic and

politicians in the state and federal governments do not have a strong hand in the perpetuation of the confusing alliance between conservatism and white supremacy. What could control this confusion, however, could be the separation of conservative politicians from other elected members of the state and national governments as well as political pundits who spew the hatred of white supremacy.

“Both Laura Ingraham, a Fox news host, and Anne Coulter, a conservative writer and pundit, often make strident anti-immigrant statements. The two have argued that immigrants are replacing Republicans at the polls. In October 2018, on ‘The Ingraham Angle,’ Ingraham said, ‘Of this my friends you can be sure, your views on immigration will have zero impact and zero influence on a House dominated by Democrats who want to replace you, the American voters, with newly amnestied citizens and an ever-increasing number of chain migrants.’”⁷²³

Lost Cause Resurgence and Domestic Terrorism

As has been mentioned at the beginning of this chapter reporting the violence that occurred in Charlottesville, one of the by-products that have been associated with the resurgence of the Lost Cause has been the activities that surround the behavior of white supremacist groups. These types of events by the groups are disturbing examples of a form of domestic terrorism in the US. Domestic terrorism is a difficult subject to address when considering the uncomfortable notion that groups who consider themselves fervent patriots of the nation are targeted as significant contributors to this type of threat to the safety of the populace. Furthermore, there are benign actors in these groups that simply spew hate yet would never contribute to the violence that is perpetrated by extreme members of these organizations.

cultural changes. And these anxieties are expressed and amplified by mainstream politicians and pundits who also believe that Europe and the U.S. are being overrun by immigrants, particularly Latinos and Muslims, who refuse to assimilate into “Western” culture and are “destroying” the culture and cohesiveness of the countries.

⁷²³ *Ibid.*, “A month later, Coulter made a similar statement in a November 2018 interview on the ‘Breitbart News Daily’ show on Sirius XM Radio, telling the host, “Every day, more and more immigrants turn 18 and start voting, canceling out all of your votes... Trump will be the last Republican president.””

It must be understood that the predominant amount of white supremacist groups is not organized into one large organization that could be more easily monitored by state and federal law enforcement agencies. Although one could believe that focusing on the Klan would be enough in targeting smaller groups, unfortunately for law enforcement, there are many cells that adhere to a common cause that do not hold open or active allegiance to the Klan. These small groups, however, do clandestinely communicate with each other as well as attempt to recruit new members. The overwhelming avenue of communication is employed through the internet and social media. One of the largest organizations of online influence and communication is through Stormfront.org.⁷²⁴ Stormfront is a white supremacist website that openly proclaims their white supremacist propaganda.

“We are a community of racial realists and idealists. Black, Hispanic, Asian and Jewish Nationalists openly support their racial interests, with American taxpayers even required to support the Jewish ethnostate of Israel. We are White Nationalists who support *true* diversity and a homeland for all peoples, including ours. We are the voice of the new, embattled White minority!”⁷²⁵

When considering the opportunity for foreign and domestic terrorist organizations to apply the internet and social media, that provides clandestine and speedy communication, Professor Gregory D. Miller makes it abundantly clear that this form of communication is the most dangerous situation regarding the safety of the populace.⁷²⁶ Dylan Roof, the perpetrator of the murder of nine members of the Emanuel African Methodist Episcopal Church was believed

⁷²⁴ Gregory D. Miller, “Blurred Lines: The New ‘Domestic’ Terrorism, *Perspectives on Terrorism* 13, no. 3 (June 2019), 68. “The Stormfront forum online is a haven for those sharing beliefs in white supremacist ideology.”

⁷²⁵ “Welcome to Stormfront,” <https://www.stormfront.org/forum/index.php/>.

⁷²⁶ Miller, 68. “The internet and social media enhance the ability of all terrorist groups to spread their message and potentially recruit on a global level. What the internet does is further blur the lines between domestic and international terrorism because more attacks can take place, carried out by perpetrators that never leave their home country, yet become radicalized online by a cause foreign to their home country.”

by law enforcement to be radicalized in his racist views by nearly exclusively following white supremacist organizations online.

“Roof’s manifesto referred to the Council of Conservative Citizens website, which often cites black-on-white crime, to suggest that whites are under attack. In one passage, he wrote, ‘We [South Carolina] have no skinheads, no real KKK, no one doing anything but talking on the internet. Well someone has to have the bravery to take it to the real world, and I guess that has to be me.’ And, ‘this [the shooting of Trayvon Martin] prompted me to type in the words ‘black on White crime’ into Google, and I have never been the same since that day.’ The Southern Poverty Law Center also suggests that Roof was a reader and commenter on the white nationalist news website, *The Daily Stormer*.”⁷²⁷

It cannot be denied that the activities of radicalized white supremacy is a threat to the safety of the populace of the US. With the easily attained availability of online and social network sites that spew hate and attempt to cause violent activities towards African Americans in the age of the resurgence of the Lost Cause mentality, state and federal law enforcement will be overwhelmed in attempting to protect all citizens and inhabitants of the US.

PART III Summary

Following the fall of the Confederacy a movement was instigated to protect the memories of the “heroic” attributes of the Confederate officials and military. The Lost Cause movement was designed to bring a quixotic remembrance to the antebellum and Confederate south. This activity produced a horrible existence for the freed slaves and their descendants for one hundred years until the Civil Rights movement took shape and brought some elements of equality to the black race. This activity was abruptly confronted with the election of Barack Obama in 2008. The closeted white supremacists were released upon the nation spewing hate and performing violent acts towards African Americans. This activity intensified with the election of Donald Trump in 2016, with the apparent thought of being vilified, to act more openly with vicious demonstrations and activities. To combat the white supremacists, those opposed to their

⁷²⁷ *Ibid.*, 69.

behavior set their sights on the most offensive of symbols to African Americans, the removal of the monuments and memorials dedicated to the Confederacy. The failed government whose dedication was to enslave their race in perpetuity.

The contemporary devotion to the Confederacy is in direct correlation to the Lost Cause movement that gave hero status to the persons involved in the antebellum and war years in the South. The perpetuation of an idea that all the southern heroes lead or fought to bring safety and security to the South through fighting the Yankees in politics as well as on the battlefield. The members of the Lost Cause movement viewed the defeat of the Confederacy as simply; the North did not win the war, the South just failed to win the war. The Union generals and soldiers were inferior to the heroic southern leaders and fighters. The North simply had more men and material and merely held out long enough to starve the Confederacy into submission. The northerners were godless people who desired to rule over the God-fearing southerners. The true nature of American Federalism was violated on the southern states by the radical slave loving northerners who were enticed to steal all the rights and liberties from the South guaranteed in the US Constitution. The South deserves the admiration of all Americans and the memorials and monuments dedicated to the Confederacy should be revered and left alone.

The country had experienced the wanton oppressive behavior towards African Americans following the demise of slavery just as it experienced identical attitudes and conduct prior to emancipation. The slave was supposed to be freed, however, the defeated South could not stand the thought of being forced to live as equals among a race that they had believed was inferior. To combat the harsh feeling of defeat and subjugation, the former members of the Confederacy were forced to recreate the romantic notions of the antebellum South as well as commemorate the brave souls who fought and died to secure a revolution from the government of the US. The

Lost Cause was born from the ashes of the Confederate defeat and monuments were built for commemoration, and more diabolically, to remind the former slaves and their descendants that racial equality is impossible in the former Confederacy. The situation that faces the US in the aftermath of the civil rights movement, is what is to be done with the monuments dedicated to the failed government of the Confederacy and is it Constitutional to retain or remove these remembrances.

CONCLUSION

“The historic record is clear: Robert E. Lee, Jeff[erson] Davis, P.G.T. Beauregard statu[es] were not erected to just honor these men, but as part of the movement which became known as The Cult of the Lost Cause. This ‘cult’ had one goal and one goal only: through monuments and through other means to rewrite history, to hide the truth, which is that the Confederacy was on the wrong side of humanity, First erected 166 years after the founding of our city, 19 years after the Civil War, these monuments that we took down were meant to rebrand the history of our city and the ideals of the Confederacy.”⁷²⁸

----Mayor Mitch Landrieu
New Orleans, La.
May 19, 2017

“If the South has a symbol, it is the statue of the Confederate soldier which stands in the county seat. Hands resting on the barrel of his grounded rifle, knapsack and blanket roll on his back, he stares in stony silence to the north whence came the invading Yankee armies.”⁷²⁹

----John Fraser Hart
1976

In Charles Dickens’ famous work, *A Christmas Carol*, he states to his audience that “Marley was dead to begin with... This must be distinctly understood, or nothing wonderful can come of the story I am about to relate.”⁷³⁰ Applying this example of understanding provided by Dickens, it must be distinctly understood that declaring independence in 1776 did not definitively settle the problems of autonomy between Great Britain and the rebellious colonies. Prior to the Treaty of Paris in 1783, the British holdings in North America were still hers and the inhabitants were still *Englishmen*. Following the results of the treaty in 1783, the former English colonists were then officially *Americans* attempting to construct their own idea of what the

⁷²⁸ Mitch Landrieu, “On the Removal of Four Confederate Monuments in New Orleans,” May 19, 2017, *American Rhetoric: Online Speech Bank*, <https://americanrhetoric.com/speeches/mitchlandrieuconfederatemonuments.htm>.

⁷²⁹ John J. Winberry, “‘Lest We Forget:’ The Confederate Monument and the Southern Townscape,” *Southeastern Geographer* 55, no. 1, Special Issue: in Memory of John J. Winberry (Spring 2015), 19. Note: quote taken from John Fraser Hart, *The South*, (New York: Van Nostrand, 1976), 1.

⁷³⁰ Charles Dickens and Cynthia Brantley Johnson, ed., *A Christmas Carol*, kindle location 10 & 22, (New York: Atria, 2015).

proper understanding of sovereignty between the states and the national confederacy should be in the first government of the US under the Articles of Confederation. Thus, the history of the American people could only be truly observed as commencing with the ratification of the Treaty of Paris in 1783. Up until that point, the Americans were merely traitorous Englishmen.

Furthermore, it was not until the conversion from a confederacy to a democratic republic in 1787 with the creation of American Federalism in the US Constitution that the issue of sovereignty between the individual states and the federal government would require further interpretation. It was clear that the Constitution had circumvented a portion of the sovereignties of the states that the replaced Articles of Confederation had guaranteed, such as each state having one equal vote in legislative matters in Congress. It is an unequivocal certainty that this example of state sovereignty was damaged with the structure of the legislative branch of the government under the Constitution. The Senate with each state retaining two senators is the closest example of retaining the statutes for voting privileges under the Articles. In the House of Representatives, the equality of sovereignty among the states was destroyed with the size of the state's population determining representation.

Unlike the English, the Americans had no ancient unwritten constitution to adhere, as well as no customs and traditions from time immemorial to ensure their constitutional rights and liberties. The Americans would be forced to look to their ancestral legal, political and social foundations; the history of the English people. The construction of the second government of the US embodied in the Constitution was a new experiment of governance for the Americans that had strong ties to the foundations of English authority in areas such as liberty and the practice of the common law. It can be observed that the US Constitution is the continued governmental

product of Western Civilization, however, it seems to be more accurate that the basis of the US government is overwhelmingly British in its foundations.

The same social and political situation of attaining independence from the US held true for the states who determined to secede from the nation in 1860-61. The people residing in the seceded southern states were still citizens of the US until their independence could be secured. The history of the CS could not begin until their revolution was decided, however, the result of the separation from the US was an unequivocal failure. Following the fall of the Confederacy, there arose a problematic issue. The defeated states in the South felt that the necessity of holding on to the memory of the lost rebellion was paramount to accepting defeat and reconciling with the US.

Without understanding the events that took place in the British colonies from its inception at Jamestown to the Treaty of Paris in 1783 that converted rebellious Englishmen into Americans, to the proceedings that inspired the transformation of the national governance in the US from a confederacy of independent states from 1776 to a “more perfect Union” of states governed by a democratic republic established by American Federalism in 1789, continuing with the frequent difficulties of interpreting the roles of sovereignty between the national and state governments that led to secession and war beginning in 1860, to the embrace of the failed experiment of governance in the North America from 1865 to the present, is ultimately as important as Dickens informing his audience about the condition of Jacob Marley. In considering the information provided in the previous chapters of this work, the final pages of the thesis will determine the proper fate of the Confederate memorials in the US. The road to discovering the impetus and continued devotion to the Confederacy has been established. If this

thesis is unsuccessful in responsibly determining the fate of the memorials through scholarly and academic research...then nothing meaningful has come from the work of this thesis.

Honor to the Dead of Dixie?

There can be no argument that the existence of memorials dedicated to the Confederacy has sparked instances of outrage in the country. From the establishment of cemeteries, the creation of monuments and memorials, the changing of state flags, and to the rallies and marches of organizations that perpetuate hate and violence towards anything or anyone who has the audacity to speak against them or their objects and beliefs, the romantic notions of the Confederacy are ever present and idolized in the US. Prior to investigating the difficult question of retaining or disposing of these remembrances to the Confederacy, an explanation into questioning why the reverence to the memorials in the contemporary age in the US exists. This will be accomplished by presenting three separate instances of questioning; why are we still honoring the dead of Dixie?

Firstly, there are those who feel that it is inappropriate to honor the participants of the Confederacy in the public arena. Chapter nine presented information that a few of the direct descendants of significant members and contributors of the Confederacy have observed that the monuments are not suitable for public display. These individuals hold that the proper location for these memorials are in places such as cemeteries and museums. Additionally, there is recognition by these individuals that the monuments to their ancestors are overwhelmingly offensive to a great portion of the American citizenry. African Americans are forced to view these items in their everyday lives to be reminded of slavery, Jim Crow, black codes, past racial violence and the present movement of white supremacy. It is a difficult notion to accept that a significant portion of white persons in the US, especially those who claim that they are not

aligned with white supremacists or their ideology, cannot understand and feel compassion for their fellow black citizens in considering the offensive message of retaining memorials to a government who intended to perpetually enslave their race.

Secondly, chapter seven traces the last days of the Confederacy and assists in looking to the question; what is the purpose of retaining the memorials commemorating a group of persons who failed at securing the Confederate government through military and political action? The military leadership, although revered in the South from the war years to the present, could not sustain any successful campaigns for any substantial period before being defeated in just only a little over three years.⁷³¹ The government of the Confederacy was in dire straits as well. Although the two governments of the Union and the Confederacy held nearly identical ideas in terms of freedoms and liberties guaranteed to white men embodied in both their Constitutions, the Confederacy was constantly under fire from governors of the individual states claiming the Confederate government was ironically trampling on their state's rights.⁷³² Additionally, when Lee surrendered his Army of Northern Virginia, the Confederate government could not sustain itself for more than a few weeks before finally capitulating.

Finally, the existence of an overwhelming number of memorials dedicated to the Confederacy, rather than to the American Revolution and other conflicts that experienced loss of American lives is disturbing. To present some statistics on this fact, a comparison of the existence of memorials to the Confederacy and the American Revolution shows some troubling

⁷³¹ McPherson, *Battle Cry of Freedom*, 855-856.

⁷³² *Ibid.*, 855. "...internal divisions fatally weakened the Confederacy: the state-rights conflict between certain governors and the Richmond government; the disaffection of non-slaveholders from a rich man's war and poor man's fight; libertarian opposition to necessary measures such as conscription and the suspension of habeas corpus; the lukewarm commitment to the Confederacy by quondam Whigs and unionists; the disloyalty of slaves who defected to the enemy whenever they had a chance; growing doubts among slaveowners themselves about the justice of their peculiar institution and their cause."

conclusions. In considering the Revolution, which includes monuments and memorials as small as plaques and as large as buildings, the total amount of these types of remembrances to the founding generation, as well as to the domestic and foreign militaries that assisted in securing independence from Great Britain; there are four hundred forty-eight remembrances located in the US.⁷³³ In regards to the Confederacy, in only applying the criteria of the number of free standing statues or monuments only,⁷³⁴ with the statistics updated on July 28, 2019, the number of memorials dedicated to the unsuccessful experiment of governance and its military that failed to win the war of southern independence; there are seven hundred seventy-seven monuments in existence.⁷³⁵

In considering the three previously mentioned subjects, which attempt to question the requirement of memorializing the Confederacy, there must be serious inquiries into why these commemorations continue to exist. When a portion of the descendants of significant former Confederates hold that the monuments must be removed or placed in museums, the opinion of the thesis that the failed military and government of the Confederacy lacked the credibility to be honored with memorials and that the Confederate monuments have a staggering predominance of existence over memorials dedicated to the war that established the US, it seems obvious that the commemorations to the failed government in North America should be removed or placed in cemeteries, battlefield parks or museums. With this observation being presented, however, there exists significant difficulties in removing the Confederate memorials. Do the proponents of

⁷³³ "U.S. Revolutionary War Memorials," Waymark, <http://www.waymarking.com/cat/details.aspx?f=1&guid=a68f3667-029b-4644-afff-34110a193b4e>.

⁷³⁴ Note: this statistic excludes schools, roads, towns, and all other items that were named after Confederate military or governmental participants.

⁷³⁵ "Whose Heritage? Public Symbols of the Confederacy," *The Southern Poverty Law Center*, <https://docs.google.com/spreadsheets/d/17ps4aqRyalfp7KdGsy2HRZaaQiXUfLrpUbaR9yS51E/edit#gid=222998983>.

retaining the monuments have a constitutional basis to prevent their removal? The short answer is; yes. The existence of the constitutional right of free speech and expression is one of the greatest liberties enjoyed in the US, and everyone in the country is entitled to their Constitutional guarantees, whether the speech or expression is comfortable or uncomfortable in its presentation and subject matter.

“One man's vulgarity is another's lyric”

During the height of the Vietnam conflict in 1968, a young man was sitting in a courtroom in California. While awaiting the session to begin, he was holding in his lap a garment that contained a message of protest against the war and the draft that was sending young men to fight in a controversial southeast Asian battleground that many in the US could not definitively understand or explain. The nineteen-year-old department store employee's jacket had the words “F**K THE DRAFT. STOP THE WAR” inscribed on the back.⁷³⁶ It should be noted that the young man was not shouting the slogan stitched on his jacket nor attempting to bring attention to himself in any way.⁷³⁷ A nearby police officer told the judge about the young man's message on his jacket, but the reaction of the judge was to ignore the situation and not give the man the attention that he apparently was craving. This type of protest of the war was too much for the police officer to accept, and against the judge's wishes, apprehended the protestor citing a California law that stated that all persons in the state were prevented from, “maliciously and willfully disturb[ing] the peace and quiet of any neighborhood or person [by]

⁷³⁶ “Cohen v. California,” *Oyez*, <https://www.oyez.org/cases/1970/299>. George Anastaplo, *Reflections on Freedom of Speech and the First Amendment* (Lexington, KY.: University Press of Kentucky, 2007), 133.

⁷³⁷ Justice John Marshall Harlan II, “Opinion of the Court,” *Cohen v. California*, 403 U.S. 15 (1971), *Justia: United States Supreme Court*, <https://supreme.justia.com/cases/federal/us/403/15/>. “The defendant did not engage in, nor threaten to engage in, nor did anyone as the result of his conduct in fact commit or threaten to commit any act of violence. The defendant did not make any loud or unusual noise, nor was there any evidence that he uttered any sound prior to his arrest.”

offensive conduct." Paul R. Cohen was later found guilty of the statute and was sentenced to thirty days in jail.⁷³⁸

Cohen appealed his conviction of the Los Angeles County Court, but his case was upheld by the California Court of Appeals. When the case was brought to the California Supreme Court, the court declined to consider Cohen's conviction. The United States Supreme Court, however, had determined that the case warranted their consideration and was sent to the high court to be heard in February 1971.⁷³⁹ In a five-four decision, the US Supreme Court reversed the verdict of the courts in California. In the majority opinion, Justice John Marshall Harlan wrote:

"...the State certainly lacks power to punish Cohen for the underlying content of the message the inscription conveyed. At least so long as there is no showing of an intent to incite disobedience to or disruption of the draft, Cohen could not, consistently with the First and Fourteenth Amendments, be punished for asserting the evident position on the inutility or immorality of the draft his jacket reflected."⁷⁴⁰

Justice Harlan further stated that the F-word on his jacket may be offensive, but it is protected speech.

"How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual."⁷⁴¹

⁷³⁸ "Cohen v. California," *Oyez*, <https://www.oyez.org/cases/1970/299>.

⁷³⁹ Harlan, "Opinion of the Court," *Cohen v. California*. "We brought the case here, postponing the consideration of the question of our jurisdiction over this appeal to a hearing of the case on the merits."

⁷⁴⁰ *Ibid.*

⁷⁴¹ *ibid.*

With this decision by the Supreme Court, it was determined that using items to protest an event or action by the government is protected free speech and expression. Moreover, using profane words for protest is not to be considered “fighting words” and are protected under the First and Fourteenth Amendments. For opponents of the Confederate memorials being allowed to exist, the argument of offending others due to the text or spirit of the monuments dedicated to an age of protecting chattel slavery is protected speech. The monuments and their message(s) are protected in the US Constitution in the realm of free speech and expression.

In considering the fore mentioned Supreme Court decision concerning free speech and expression, it is surmised that the notion of the constitutional right in having the ability to offend another person proves that uncomfortable speech is protected. There is, however, the decisions of the Supreme Court in confronting “hate” speech that some proponents of the removal of Confederate monuments feel that the memorials are hateful and perpetuate harm to African Americans when considering their [monuments] impetus and perceived message. When considering the subject of hate speech, those who want to remove the monuments for this reason must look to one of the vilest perpetrators of harmful speech in the Supreme Court’s decision in *Snyder v. Phelps* in 2011.

“Including Suits for Intentional Infliction of Emotional Distress”

In 2006, a young US Marine was killed in Iraq’s Anbar province. Lance Corporal Matthew A. Snyder’s remains were returned to his family in the US for Snyder’s services and burial in his hometown. When arriving at St. John’s Catholic Church in Westminster, Maryland, the family and friends of the slain Marine were greeted by a small group of protestors located on

a piece of public land and in the streets approximately one thousand feet from the church.⁷⁴²

“The Rev. Fred W. Phelps Sr. of the Westboro Baptist Church and several of his family members came from Kansas holding signs reading ‘Thank God for Dead Soldiers,’ ‘God Hates Fags’ and ‘You’re Going to Hell.’⁷⁴³ In addition, what would be later discovered concerning the text of the protestor’s signs would be the following:

“The motive behind the demonstration was entirely unrelated to Matthew Snyder or his family personally, other than the fact that he had died while in military service. Rather, the demonstration was inspired by the belief by Phelps and other members of Westboro Baptist that the death of American soldiers as well as other American calamities were the product of God’s vengeance against the United States for its tolerance of homosexuality generally and in the military in particular.”⁷⁴⁴

Albert Snyder, Cpl. Snyder’s father, later brought suit against Phelps and his followers in a diversity action case per a Maryland statute and subsequently filed the action in the United States District Court for the Maryland District. When the court heard the petition several components of the suit were dismissed, however, the complaint of the intentional infliction of emotional distress was upheld and a trial date was set. The jury found for Snyder and assessed a significant sum in compensatory and punitive damages.⁷⁴⁵ Unfortunately for Snyder, Phelps appealed to the Fourth District Court and the verdict was reversed on First Amendment grounds and then the case made its way to the Supreme Court for argument in October 2010.

In an eight to one decision, the high court found in favor of Phelps and the Westboro Baptist Church concerning their mode of protest. The question presented to the court, “Does the

⁷⁴² “Syllabus of *Snyder v. Phelps et al.*,” Decided March 2, 2010, United States Supreme Court, 1. <https://www.supremecourt.gov/opinions/10pdf/09-751.pdf>.

⁷⁴³ Adam Cohen, “Why Spewing Hate at Funerals Is Still Free Speech,” September 29, 2010, *Time*, <http://content.time.com/time/nation/article/0,8599,2022220,00.html>.

⁷⁴⁴ Frederick Schauer, “Harm(s) and the First Amendment,” *The Supreme Court Review* 2011, no. 1 (January, 2012), 88.

⁷⁴⁵ Schauer, 89. “... \$2.9 million in compensatory damages and \$8 million in punitive damages, the latter then remitted by the trial judge to \$2.1 million.”

First Amendment protect protesters at a funeral from liability for intentionally inflicting emotional distress on the family of the deceased,”⁷⁴⁶ was a relatively uncomplicated proposal to decide. Although the mode and message of the Westboro Baptist Church offends a great many people, the constitutional guarantees of speech and expression are entitled to the group. “The Free Speech Clause of the First Amendment can serve as a defense in state tort suits, including suits for intentional infliction of emotional distress.”⁷⁴⁷ Phelps and his group intentionally harmed their target through symbols and actions to create controversy and attention for their cause and the Supreme Court recognized that this type of activity can be offensive, but cannot be prohibited. As the memorials to the Confederacy are odious to a good many Americans, the dedications are entitled to constitutional protection.

Proper Fate of the Confederate Memorials

When the primary purpose of the origins of the placement of the Confederate monuments and memorials is discovered and considered, it is difficult to see a valid reason to allow the memorials to exist outside of battlefield parks, cemeteries and museums. The process of the former states of the Confederacy to augment their state flags and place symbols of the CS on their banners for the purpose of perpetuating the Lost Cause ideology, as well as reminding the African American population in those states that the mentality of the age slavery and Jim Crow is never far away, seems abhorrent when researching the origins and activities in the South, as well as in the entire nation, of the oppressive actions on black citizens of the US from Reconstruction through to the present age. Moreover, when the proponents of the memorials and monuments to the Confederacy claim that the remembrances are an important part of American history that

⁷⁴⁶ “*Snyder v. Phelps*,” *Oyez*, <https://www.oyez.org/cases/2010/09-751>.

⁷⁴⁷ “Syllabus of *Snyder v. Phelps et al*,” United States Supreme Court, 2.

require commemoration, perhaps the assessment of New Orleans Mayor Mitch Landrieu on the historical value of these items should be considered.

“And it immediately begs the questions, why there are no slave ship monuments, no prominent markers on public land to remember the lynchings or the slave blocks; nothing to remember this long chapter of our lives; the pain, the sacrifice, the shame... all of it happening on the soil of New Orleans. So for those self-appointed defenders of history and the monuments, they are eerily silent on what amounts to this historical malfeasance, a lie by omission. There is a difference between remembrance of history and reverence of it.”⁷⁴⁸

It should be noted that this speech delivered by Mayor Landrieu was given at the removal of monuments of Confederate generals in New Orleans, La. in 2017. In addition to the persons claiming that omitting the Confederate monuments is detrimental to their historical value, the political and societal harm that has been perpetuated over the retention of the remembrances has been significant.

Free Speech and Expression Must Be Protected

Notwithstanding the argument that the adherence of retaining the Confederate memorials should be outweighed by the offensive nature of their existence to a large portion of the citizens of the US, both focuses must be circumvented by applying the US Constitution in deciding this matter. As has been previously presented, the history of the Supreme Court has protected the rights of Americans to enjoy their rights and liberties of speech and expression in instances where their message is uncomfortable or offensive to others. Americans are protected in their right to wear garments that display their personal messages or protests of their government or confronting political and social issues. Many are offended and outraged by the burning of

⁷⁴⁸ Mitch Landrieu, “On the Removal of Four Confederate Monuments in New Orleans,” May 19, 2017, *American Rhetoric: Online Speech Bank*, <https://americanrhetoric.com/speeches/mitchlandrieuconfederatemonuments.htm>.

American flags, yet this activity is protected expression.⁷⁴⁹ The right to protest another's actions or beliefs, even at that person's funeral, is additionally protected.

Free speech and expression are not simply guaranteed for popular issues to be celebrated. The liberties of the people in the US supersede the potential of offending another when applying their right of protest or messaging. It would be an incredibly dangerous abyss of oppressive and tyrannical behavior if the government denied the people from using their voices to protest any political or social situations occurring in the US. In what is additionally uncomfortable for many in the US, is that the Confederate memorials are items of free speech and expression. The message may be repugnant to many, however, this activity is constitutionally protected and deserves the same rights of existence as protesting a war by using profane language, burning American flags, disallowing local statutes from using broad language to deny free speech, as well as protesting at a slain soldier's funeral service. Protecting these rights are paramount in protecting the operations of a free society. In considering the uncomfortable fact that the Confederate memorials are constitutionally protected, however, is it possible to still have the memorials removed? Yes.

It is the opinion of this work that there are two instances of the memorials that are to be considered when deliberating the possibility of their removal; their location on public and private properties. In the existence of memorials on public property, there must be a mechanism that can be applied that the people of the community could be responsible for making the decision of retaining or removing the monuments. In terms of these items located on public property, the fate of the Confederate memorials should be left to voter referendum. Let the people decide.

⁷⁴⁹ "Texas v. Johnson," *Oyez*, <https://www.oyez.org/cases/1988/88-155>.

It should be further determined that this solution should not be left to representative bodies of towns, cities, counties, or even states to decide. The people who participate at the smallest level of the memorial's placement should be making the decisions. If a town has a memorial in a public park or publicly operated building, the registered voters at that level are to be tasked for decision. When attempting to accomplish this task, however, the persons responsible for writing the statute to remove the memorials must look to past Supreme Court decisions. The statute of removal cannot be overbroad or contain other aspects of governmental activity that could have the measure struck down. In *R.A.V. v. St. Paul*, a city ordinance was overturned based on its text of being overbroad in its authority and consequence.⁷⁵⁰ If the community desires to remove the memorials, it must be cognizant of the passionate beliefs of both sides of the argument of removal or retention of these items when considering legislation. If it is going to be democratically decided, the legislation must be considerate of all opinions that have a stake in the fate of the Confederate commemorations located in their community. Additionally, the municipality that is deciding this issue must be ready to defend the process and result in the court system. No matter the outcome, the side of the argument that lost in the removal process will be upset and possibly determined to take legal action. Furthermore, the government agency responsible for the process of the voter referendum must perform their duties without reproach, no matter the stance of the government officials on the issue.

⁷⁵⁰ "R.A.V. v. City of St. Paul," *Oyez*, <https://www.oyez.org/cases/1991/90-7675>. "Is the ordinance overly broad and impermissibly content-based in violation of the First Amendment free speech clause? Yes. In a 9-to-0 vote, the justices held the ordinance invalid on its face because 'it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses.' The First Amendment prevents government from punishing speech and expressive conduct because it disapproves of the ideas expressed. Under the ordinance, for example, one could hold up a sign declaring all anti-semites are bastards but not that all Jews are bastards. Government has no authority 'to license one side of a debate to fight freestyle, while requiring the other to follow the Marquis of Queensbury Rules.'

In the issue of keeping Confederate memorials on private property, the same freedom of speech and expression that have been determined in court decisions must be applied. In this instance, however, if the memorials break local statutes due to size, safety restrictions, etc., the remembrances must be brought to code or removed. It cannot be confused that structures of free speech and expression can supersede laws that keep in mind the well-being of a person's neighbors due to "blight" or safety concerns. The size or mode of construction of a memorial could be considered blight if not completed properly through construction statutes or in regulations of size and location on the private property. This can be instances such as too close to a thoroughfare that could block a motorist from seeing on-coming traffic or etc. The memorial itself, such as the symbolism or textual message, is constitutionally protected. The size, location and type of construction does not harm the ability to openly display a person's constitutionally protected beliefs.

Conclusions

Through the work and research of this thesis, the following conclusions have been determined. Firstly, the impetus of the Confederacy is two-fold. The *cause* for secession from the Union perpetuated by the leaders of the future Confederacy were the proposed violations of the rights of the southern states in maintaining their constitutionally protected sovereignties embodied in American Federalism. The *reason* the leaders of the South ultimately decided to leave the US to form the CS was to keep and maintain their economic traditions attached to the requirement of retaining chattel slavery. The purpose of holding on to the southern customs from the antebellum, war, and defeated aftermath of the Confederacy was the fact that the people in the South believed that to combat the reality of their defeat, they were required to search for something or someone to blame for their misfortunes. The South created quixotic idols through

the construction of monuments and memorials to officials and soldiers of the Confederacy, and in the process, created bastions of intimidation to former slaves and their descendants to remind them of the superiority of the white race. Presently, the reminder of slavery and the violence that occurred after emancipation has fueled white supremacy and activities of groups that adhere to the ideologies of white supremacist organizations. Although the message of the memorials to the Confederacy hold offensive messages and reminders to many in the US, the monuments dedicated to the failed government in North America are protected speech and expression in the US Constitution in the First and Fourteenth Amendments.

It must be understood, however, that the thesis is not determining that retaining the monuments is a process of protecting history. The opinion of the thesis holds that public and private items that “Honor to the Dead of Dixie” should be relegated to battlefield parks, public and military cemeteries as well as to various types of museums in the US. The conclusion of the thesis is that the requirement of protecting free speech and expression in relation to removing the memorials without applying a democratic process, is a direct violation of the principles that are held dear in the US. It is impossible for all to agree on this issue, however, being a part of the decision process concerning the memorials is the first step of compromise that has been a factor in determining the course of the political activity of the nation from the establishment of the first government of the US to the present age.

Final Thoughts

As was mentioned in chapter three, James Madison is the author of Section XVI of the Virginia Bill of Rights. Although the main crux of this section of Virginia’s constitution is the freedom of practicing religion in any form that a Virginian chooses, the last part of Madison’s addition to the document is of paramount importance. The future fourth President of the US felt

“... that it is the duty of all to practice Christian forbearance, love and charity towards each other.”⁷⁵¹ Although written for Virginians, it can be easily traced that Madison was communicating to all contemporary and future Americans that it was important to grant patience, affection, and assistance to everyone who comes into their path. Furthermore, this message by Madison should be considered when observing the difficulties of continuing to adhere to a movement, even if the crusade’s impetus was simply to dedicate remembrances to a fallen way of life as well as to the persons who governed and fought to retain the traditions associated with that particular society, has progressed from its innocent origins into intimidation hatred and violence. It cannot be ignored that the existence of the monuments and memorials dedicated to the Confederacy are items that create social unrest and has produced not only violent speech, but violent behavior as well.

This work has also presented the information that the memorials dedicated to the Confederacy are protected speech and expression guaranteed in the US Constitution. The message attached to the memorials of intimidation towards African-Americans and encouragement for white supremacists should and must be protected to secure the liberties of speech for all Americans. This thesis holds that monuments on public property could be removed, but only through voter referendum and memorials on private property can only be removed if the items violate municipal ordinances. Therefore, the memorials should be left alone unless the previous two instances of public and private property retention are addressed.

Yet, there is an additional instance where the memorials could be removed from both public and private properties and relegated to only battlefield parks, museums and cemeteries. It would be in the spirit of Madison’s contribution to Section XVI of the Virginia Bill of Rights. If

⁷⁵¹ “Virginia Bill of Rights,” June 12, 1776, Frohnen, ed., *American Republic*, 227.

everyone in the US looked upon the memorials and deemed them to be too offensive for a great portion of the populace and Americans found that it was their duty to "...practice Christian forbearance, love and charity towards each other," perhaps only battlefield parks would retain monuments of recollection, museums filled with items commemorating, and cemeteries filled with memorials and decorations, dedicated to honoring the dead of Dixie as well as to the failed experiment of governance in North America; the Confederate States of America.

ILLUSTRATIONS

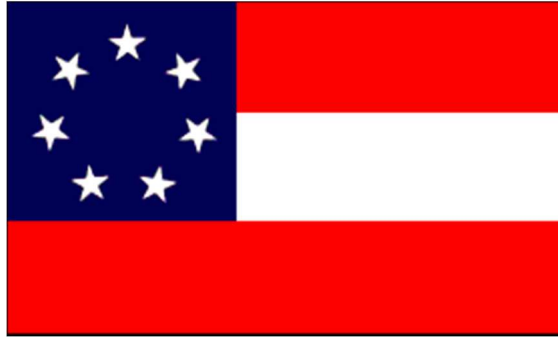


Illustration III:1 – “Stars and Bars,” First National Flag of the Confederacy.⁷⁵²

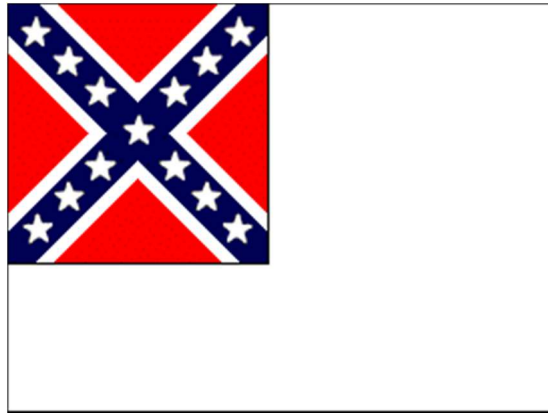


Illustration III:2 – Second National Flag of the Confederacy.⁷⁵³

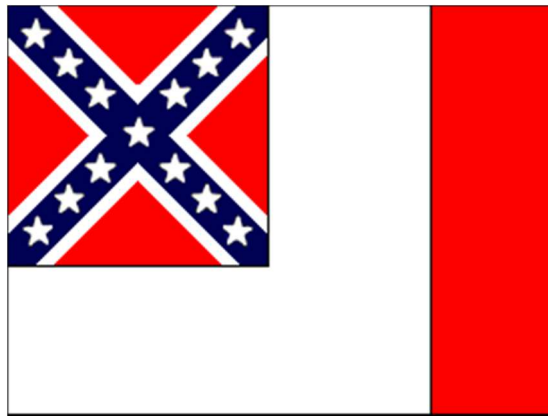


Illustration III:3 – Third and Final National Flag of the Confederacy.⁷⁵⁴

⁷⁵² “First Official Flag of the Confederacy,”
<http://www.usflag.org/confederate.stars.and.bars.html>.

⁷⁵³ “Second Official Flag of the Confederacy,”
<http://www.usflag.org/confederate.stars.and.bars.html>.

⁷⁵⁴ “Third Official Flag of the Confederacy,”
<http://www.usflag.org/confederate.stars.and.bars.html>.

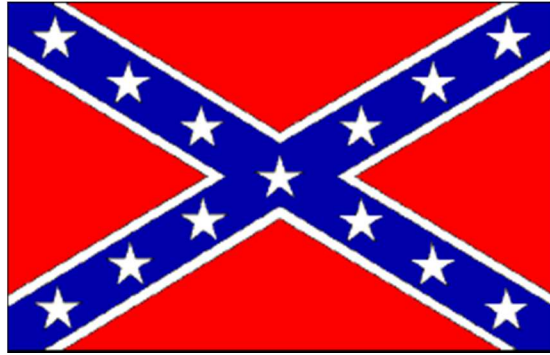


Illustration III:4 – “Southern Cross,” Battle Flag and Navy Jack of the Confederacy.⁷⁵⁵



Illustration III:5 – Unofficial State Flag of Georgia: 1861-1879.⁷⁵⁶



Illustration III:6 – Official State Flag of Georgia: 1879-1902.⁷⁵⁷

⁷⁵⁵ “Battle Flag and Navy Jack of the Confederacy,”
<http://www.usflag.org/confederate.stars.and.bars.html>.

⁷⁵⁶ “Unofficial State Flag of Georgia,” *New Georgia Encyclopedia*,
<https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>.

⁷⁵⁷ “Official State Flag of Georgia, 1902,” *New Georgia Encyclopedia*,
<https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>.



Illustration III:7 – Official State Flag of Georgia: 1920-1956.⁷⁵⁸

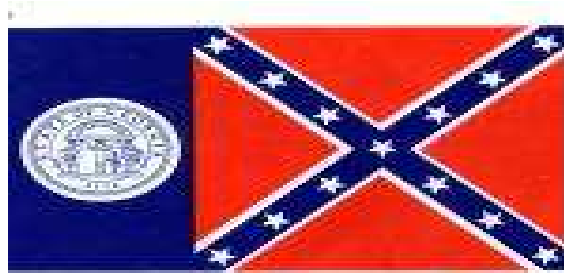


Illustration III:8 – Official State Flag of Georgia: 1956-2001.⁷⁵⁹



Illustration III:9 – Official State Flag of Georgia: 2001⁷⁶⁰

⁷⁵⁸ “Official State Flag of Georgia, 1920,” *New Georgia Encyclopedia*,
<https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>.

⁷⁵⁹ “Official State Flag of Georgia, 1956-2001,” *New Georgia Encyclopedia*,
<https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>.

⁷⁶⁰ “Official State Flag of Georgia, 2001,” *New Georgia Encyclopedia*,
<https://www.georgiaencyclopedia.org/articles/government-politics/state-flags-georgia>.

MAPS



Map I:1 – Results of Treaty of Paris 1763.⁷⁶¹

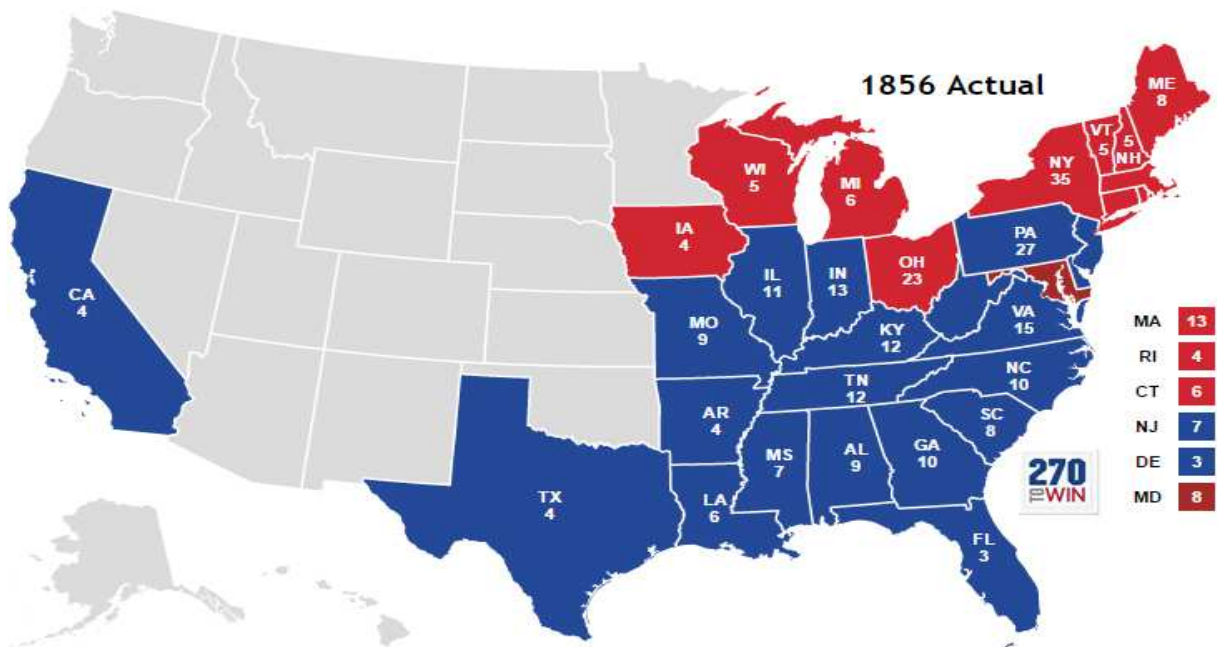
1768 Boundary Line Treaty Map



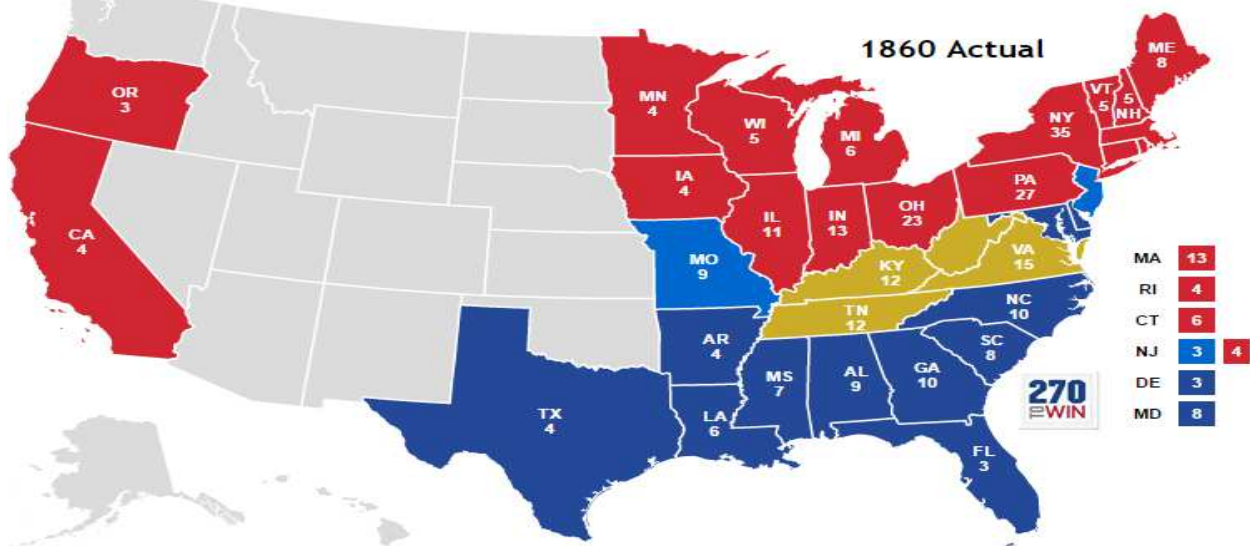
Map I:2 – Results of the First Treaty of Fort Stanwix.⁷⁶²

⁷⁶¹ "Map Showing Territorial Gains," The French and Indian War from 1754-1759 – Beaver Wars. Access Genealogy, <https://www.accessgenealogy.com/military/french-indian-war-1754-1759.htm>.

⁷⁶² "1768 Boundary Line Treaty Map," Fort Stanwix National Monument, U.S. National Parks Service,



Map II:1 – Election of 1856.⁷⁶³



Map II:2 – Election of 1860.⁷⁶⁴

https://www.google.com/search?q=the+first+Treaty+of+Fort+Stanwix&safe=off&rlz=1C1RUCY_enUS735US735&source=lnms&tbm=isch&sa=X&ved=0ahUKEwi6q960p_XfAhUHRyMKHU3mBioQ_AUIDigB&biw=1582&bih=739#imgrc=1ZNWFpRhUF9GuM

⁷⁶³ 1856 Actual, https://www.270towin.com/1856_Election/. States in Blue: Democrat James Buchanan. States in Red: Republican John C. Fremont. State in Maroon: American Party Millard Fillmore.

⁷⁶⁴ 1860 Actual, https://www.270towin.com/1860_Election/. States in Red: Republican Abraham Lincoln. States in Dark Blue: Democrat (southern) John C. Breckenridge. States in Gold: Constitutional Union Party John Bell. States in Light Blue: Democrat (northern) Stephen A. Douglas.



U.S. Territory (Free & Slave) After the Missouri Compromise

Map II:3 – US after Compromise of 1820⁷⁶⁵

⁷⁶⁵ “HIS2213 LU13: Was the U.S. Mexican War an Act of American Imperialism?”

https://www.google.com/search?q=map+of+the+us+after+the+mexican+american+war&safe=of&source=lnms&tbm=isch&sa=X&ved=0ahUKEwj4q86ewe_dAhXn5YMKHd8oAmEQ_AUIDigB&biw=1366&bih=626#imgsrc=wPz7o8qN4awRfM:

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