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Render unto Caesar: Sovereignty, the Obligations of Citizenship, and the Diplomatic History of the American Civil War

by

Samuel David Negus

Under the Direction of Glenn T. Eskew

ABSTRACT

In scholarship on the Civil War there is generally a lack of emphasis placed upon the significance of transatlantic diplomacy. However, much of the literature that is devoted to this subject does little to draw the importance of diplomatic and domestic histories together. This thesis uses British Foreign Office papers to discuss the role of Her majesty's consuls, and the importance of resident persons of British nativity, especially within the Confederacy, during the war. It argues that the struggle between the Union and the new Confederacy affected diplomatic relations not only in the geo-political sense, but directly and personally through the fate of foreign individuals residing within America. Political theory and the semantics of ideology will be cross-examined against British, Confederate and Union government documents and correspondence in order to develop a deeper understanding of the flexibility and malleability of the concept of sovereignty, and its role in Civil War diplomacy.

INDEX WORDS: American Civil War, Diplomacy, Britain, Consuls, Sovereignty, State Rights.

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by

Samuel David Negus

A Thesis Submitted in Partial Fulfilment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

2005

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Render unto Caesar: Sovereignty, the Obligations of Citizenship, and the Diplomatic History of the American Civil War

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Office of Graduate Studies
College of Arts and Sciences
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December 2005

Soli Deo Gloria

Acknowledgements

Academically Dr. Glen T. Eskew's jovial and 'cordial' guidance, encouragement and infectious enthusiasm for the field have been vital to me. I am also grateful for Dr. Wendy Venet's input as a teacher and second reader. Thanks also for Dr. Ian Fletcher's words of friendship, and for going ridiculously easy on me as his research assistant. I will forever be indebted to Dr. Charles Steffen for calming me down and teaching me that academia is not impossible and shouldn't be too stressful. Thanks also to the British National Archives, the Georgia Department of Archives and the Special Collections staff at Emory University.

The history department staff and faculty at GSU are all to be commended for their openness, availability and, almost universally, their humility. Paula Sorrell is a miracle-working woman with the patience of an Olympian. How many sad and helpless academics she digs out of holes in any given year no man can tell. Dr. Hugh Hudson, our department chair, deserves the OBE for his willingness to dirty his hands with the troubles of mere student minnows. My thanks go to him.

Among my peers in Atlanta my colleague in the 'Eskew school', Casey Cater, his lovely wife Ewa, but not his cat, have been a growing support and comfort academically and personally. Along with the Caters, Hal Hansen, Jan Massengale, Brian Miller (and Bourbon), April Kreigbaum, Jan Saathof and Jessi, Gens and Lena, and Herr Florian Swieger all played greater or lesser roles in making Atlanta first bearable, then memorable and soon enough quite wonderful. Thank you Hal, Jan and Brian for your warm hospitality and your patience. Thank you Jan and Jessi for all the food and crash I bummed from you. Thank you Flo for your charming friendship, for introducing me to the Dead, and for three excellent and significant weeks on the West Coast.

Thanks to Justin Oliver for helping me settle in and make Atlanta home. And to the men of Delta Upsilon at Georgia Tech for welcoming me and giving me a truly random place to live.

Most of all I thank my family; my mother, father and sisters for supporting my desire to leave our island to study. Their encouragement through the hard months and joy at my successes means the world to me, as does their acceptance and love of Laura. Laura herself, my best friend and ally, has been a joy and great support since the Lord brought her into my life. Laura's family deserve many thanks and all my love for welcoming me and loving us both. The friendship, love and grace extended by the Stuarts (Dan, Jana, John, Dinah, Aaron, Laura-Jean and the wider family) are a blessing and a great example of the institution of marriage as it was designed to be. Love and thanks to my family on both sides.

Above all, my thanks and praise to God who gives life. He is the source and purpose of all work and creativity. He is maker and sustainer. May He guide and keep Laura and me in the good works He has prepared for us in advance.

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Introduction: "In a multitude of people is the glory of a king, but without a people a prince is ruined"[1]

Scholars of Civil War diplomacy generally begin their books with introductions highlighting the staggering enormity of published literature on the Civil War, and commenting on the relative under-emphasis on questions of diplomacy. America as a nation has tended to view itself as exceptional and set apart. Likewise, American historians have often been guilty of divorcing American history from wider trends in world history, as though 'the last best hope of mankind' truly has evolved in a vacuum. It is no surprise therefore that the central, most dramatic event in the American narrative, a war of Americans, by Americans, for Americans, has rarely been placed in any international context. With equal consistency, scholars of Civil War diplomacy have divorced the international context of the war from its national significance. This thesis places the Civil War in its rightful framework in American history, as an 'irrepressible conflict' between political economies for control of the expanding nation state. It also highlights the importance of transatlantic geo-politics and the recognition issue.

However, the international context of the war involves significantly more than simply the diplomacy of recognition. This thesis will argue that the national meaning of the war and the significance of transatlantic diplomacy were concurrent. The Republican controlled Federal Government and the Southern Slavocracy fought for authority over individual citizens, while, as every

[1] Proverbs 14: 28 (ESV).

diplomatic history of the war tells, the British Crown was determined to maintain neutrality. If government authority is a question of individual citizens, then British neutrality could not merely be a matter of direct intervention from without, because the British Crown was present within America itself in the form of Her Majesty's subjects. This thesis will use consular correspondence to analyze the ground-level reality of diplomacy in the Civil War, arguing that the struggle for governmental hegemony over persons was far from an all-American affair.

Writing at the height of the geo-political impact of aggressive nationalism, Carlton Hayes dismissed much myth and jingoism surrounding national identities (such as geographical integrity, collective 'soul' or 'national character'). Hayes argued that languages create spaces for 'social communication', thus encouraging unique identities to develop. As languages change, nationalities wax and wane. However, through the nineteenth century, nationalist movements had unnaturally manipulated transient nationalities to,

> systematically indoctrinate with the tenets that every human being owes his first and last duty to his nationality, that nationality is an ideal unit of political organization as well as the actual embodiment of cultural distinction, and that in the final analysis all other human loyalties must be subordinate to loyalty to the national state.[2]

Oskar Janowsky followed Hayes' work with analysis of the problem of minority nationalities in European states, concluding that the idea that nation states need borders matching lines of cultural homogeneity is flawed and dangerous. Multi-ethnic states and empires are the norm in history, being empirically more logical and natural. Janosky believed, "national federalism offers a means of harmonizing the otherwise contradictory requirements of

national freedom and economic unity". He warned that conflict invariably results from attempts by one 'cultural nationality' to seize and dominate the state to the exclusion of minorities.[3]

Karl Deutsch built upon Janosky's arguments in his work, *Nationalism and Social Communication*. Deutsch argued that nationality is comprised of culturally based 'communities' within which ideas and experiences are more easily shared and understood between community members than with outsiders. In contradistinction, 'societies' are areas of interdependent labor and economic exchange and can include multiple 'communities'; no state is by any means dependent upon concurrent borders for 'societies' and 'communities'. Nationalism is therefore an attempt by a narrow leadership class, an external 'community', or a single internal 'community', to gain ascendancy in a 'society'.[4]

Hans Kohn argued that the individualistic, humanitarian revolutions responding to men of letters like Rousseau created liberal states. However, Central European movements of dominant principalities or ethnicities, in which group identity and exclusivism surpassed individual rights in national state ideologies, corrupted these ideas of nation. Nation states therefore came to depend for their force upon, "nationalism… a state of mind in which the supreme loyalty of the individual is felt to be due to the nation state".[5]

K R Minogue considered Nationalism to be largely comprised of attempts to turn manufactured states (especially postcolonial states) into nations by emulating

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[2] Carlton Hayes, *Essays on Nationalism* (NYC: MacMillan, 1941), p. 6.
[3] Oskar Janowsky, *Nationalities and National Minorities* (NYC: MacMillan, 1945), p. 166.
[4] Karl Deutsch, *Nationalism and Social Communication: An Inquiry into the Foundation of Nationality* (Boston: MIT Press, 1953). See introduction and chapter 1.
[5] Hans Kohn, *Nationalism: Its Meaning and History* (NYC: Van Nostrand Reinhold, 1965), p. 9.

the relatively homogeneous imperial states of France and England. Minogue argued that since the Treaty of Versailles, leaders of new governments have sought to establish hegemony through superimposed or manipulated identities. Though he referred to a much later period, Minogue's conclusions cannot but evoke memories of the American Civil War; "The most obvious feature of Nationalism in the Afro-Asian world is very often at that there is no nation at all…. Arrived at independence, such countries are in danger of falling apart".[6]

Benedict Anderson's resoundingly influential study *Imagined Communities* placed intellectual changes in post-enlightenment Europe and the advent of print culture at the center of national identity. A reconceptualization of time as linear allowed people groups to see themselves as unique sub-histories in the human progression, while print culture increased the use of vernacular thus creating culturally centered spaces for the exchange of ideas. Newly perceived communities then gradually became tied to government apparatus and territories, to the exclusion of communities imagined to be 'foreign'.[7]

Finally, Montserrat Guibernau differentiated between state nationalism, which uses culture and mythology to create authority based on citizen participation, and minority nationalism, comprised of ethical counter claims of homogeneous sub-cultures for their own states.[8]

These scholars each share a fundamental understanding that the ebb-and-flow of history makes, unmakes, and remakes the distinct cultural groups which we call

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[6] K. R. Minogue, *Nationalism* (NYC: Basic Books, 1967), 29.
[7] Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism.* 2nd ed. (NYC: Verso, 1991).
[8] Montserrat Guibernau, *Nationalisms: The Nation-State and Nationalisms in the Twentieth Century* (NYC: Polity press, 1996).

‘nations’. Such groups have often co-existed within empires or states, but through activist, aggressive and ideological processes they can assert themselves over and against others to dominate existing states, or create new breakaway ones. Such movements provoke conflicts over governments which culture alone rarely creates. Nationalist movements are therefore struggles for or between ‘political-economies’.

In 1990, Richard Bensel authored *Yankee Leviathan*, a history of the Republican-led, activist growth of centralized authority through the Civil War and Reconstruction. Leading Republican William Seward coined the term ‘irrepressible conflict’ in 1858. Seward did not mean certain war but that, “by continued appliance of patronage and threats of disunion (Southerners) will keep a majority favorable to their designs in the senate… annex foreign slaveholding states… and repeal the Act of 1808”. Bensel traced Republican anti-slavery ideology from the party’s inception, through speeches, motions and congressional bills of an increasingly assertive and threatening (towards the Southern slave-economy) nature. With revealing statistics on voting trends in the 36th Congress (the last antebellum Congress) and the 1860 census, Bensel went farther than most similarly minded scholars to argue that secession was essentially rational. It was, from the Southern perspective, a wholly justified last option for survival. Bensel denied that the vast areas of unexploited land in the Deep South meant that slavery did not need to expand. He emphasized the importance of the inter-state slave

trade, without which slavery on the seaboard "would soon have developed pathological traits".[9]

Bensel highlighted the complex and intricate divisions woven by slavery that went beyond cotton economies. America's largest free black populations lived in the cities of the Chesapeake. Where industrial development and Northern investment were highest, the rigid racial mores and boundaries of slave society were most blurred. Southerners knew that if slavery could not extend west, and industry continued to extend south, the South would become full of cities, which in turn would be full of Free Blacks. Of the six major platforms for development in the 36th Congress (the Union-Pacific Railroad, waterway improvement, Morrill's college land grant, water traffic reform, tariff walls and a Homestead Act) five took the vast majority of their support from Northern Republicans. No other party proved as able to commit to the defense of a clear and strong program. Partisan splits between Northern and Southern Democrats, Union Party men and the dying American Party nullified any attempts at opposition compromise. Southern Democrats resisted these platforms, almost all of which waited until after secession to pass, but they could not form a coalition to oppose the Republicans who held the largest minority. The South was doomed to defeat against the central plank of Republican American Nationalism: "the ideologically justified insistence that the resources of the central state be mobilized in support of the dominant group".[10]

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[9] Richard Bensel, *Yankee Leviathan: The Origins of Central State Authority in America 1859-1877* (Cambridge: Cambridge University Press, 1990), p. 21; Ibid., p. 27.
[10] Ibid., p. 63.

Eugene Genovese's seminal text *The Political Economy of Slavery* captured this sense of panic, and explained the innate need of the slave economy to expand ever westward to virgin lands in an economic vacuum, where dynamic competing economies would be excluded. As the less progressive, less powerful economy, slavery could not afford to take the back seat in the national political state.[11] Allan Nevins' *War for the Union* described in detail the results of the war which had placed these two political economies in direct conflict. By the end of the war, an extensively centralized Union depended upon extended communications networks, benefited from expanded government agencies, and had a united economy of industry and urbanization. This Union secured the confidence of the world through the established "perpetuity of its government and institutions". Through triumph in war, the national narrative was born and projected back onto history.[12]

Kenneth Stampp argued in his book *The Era of Reconstruction* that the historiographical view of the Dunning school, which called Reconstruction a travesty and inhumanity, was grounded in nationalism. The religiously motivated Radicals who demonstrated faith in black self-government and urged continued support for reconstruction of Southern race relations became a disruptive force to the mainstream of accommodationists, who only wanted to secure economic

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[11] Eugene Genovese, *The Political Economy of Slavery: Studies in the Economy and Society of the Slave South* (NYC: Vintage Books, 1967).

[12] Allan Nevins, *The War for the Union: The Organized War to Victory 1864-1865*, His *The Ordeal of the Union*, 8 vols. (NYC: Charles Scribner's Sons, 1959-1971), 8 (1971); James Wilson argued that expansion and imperialism were woven innately into the fabric of the American republic. He wrote of President James Polk, "Polk did not care about the North's caution and humanitarianism; nor was he worried about… protecting slavery. He simply wanted as much land as possible". James Wilson, *The Imperial Republic: A Structural History of American Constitutionalism from the Colonial Era to the Beginning of the Twentieth Century* (Burlington, VT: Ashgate, 2002), p. 199.

priorities in the former Confederacy. The tide of Anglo-Saxonism dominated the late nineteenth century, glorifying both Blue and Grey and thereby necessitating a vilification of agitators. “In an era of intense nationalism, both Northerners and Southerners agreed that the preservation of the Union was essential to American interests”. Such views depended directly upon the ascension of one political economy to the national throne.[13]

The view that the Civil War allowed an industrial economy which had been gathering momentum for decades to control the nation state was first clearly articulated by the anti-Trust, Progressive historians Charles and Mary Beard in the inter-war era. Beard saw Lincoln’s 1860 platform as the culmination of the antebellum competition between the sections. Having learnt in 1856 that merely guaranteeing the expulsion of slavery from the territories could not secure election, the Republicans expanded their platform to include greater tariff protection for Eastern industry and a Homestead Act for Middle-Western agriculture. According to the Beards, these policies aimed to establish one section of the nation as the dominant, definitive one.[14]

The Beards’ work was added to by Charles’ protégé at Columbia, Louis Hacker, who became progressively more Marxist in his determinist reading of the class-based structure of US history. Both scholars praised the anti-industrial tendencies of agrarianism, and for two decades, aided by the Depression, the focus of American history became the defeated Jeffersonian-Jacksonian-Democrat progression, rather than the Whiggish-Republican paradigm, which had dominated

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[13] Kenneth Stampp, *The Era of Reconstruction 1865-1877* (NYC: Alfred A. Knopf, 1965), p. 14.
[14] Charles Beard and Mary Beard, *A Basic History of the United States* (NYC: Garden City books, 1944), chapters 16-17.

since the Civil War. In the Beard-Hacker thesis, the Civil War is a 'second American Revolution'. The first rejected mercantilist suppression of industry; the second overthrew the agrarian bloc, which had prevented unrestrained growth.[15]

There are many other aspects of causality worthy of consideration in the Civil War era, and historians have placed morality, race, gender, pure political theory, and many other forces at the center of the debate. However, the expansion and 'irrepressible conflict' of competing political economies is impossible to ignore. The Republican Party was itself formed from reactions to the 1854 Kansas-Nebraska Act. Just as the shock of Lincoln's election precipitated secession, it had been the shock of Kansas-Nebraska which had led Lincoln to re-enter public life. Southern abandonment of the Clay-Webster compromise brought a realization that slavery was not a benign, fading institution, but a malignant, aggressive political force. Ever since the war sealed complete victory for the North and the destruction of the political economy of slavery, the idea of competing economies has been a perennial tool for analyzing the Civil War and Reconstruction.

As well as indirect assaults from historians who do not consider the Civil War to have been a fundamentally economic conflict, the Beard-Hacker thesis faced direct assault from the 'New Economic Historians' of the 1960s and1970s. In Ralph Andreano's edited collection of essays Victor Clarke claimed that the increased growth of the war era was merely the cyclical economy, "rallying from the 1857 depression" and that war production was barely above normal level. Stanley Coben had previously questioned the Beardian view of a united,

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[15] Thomas Pressly, *Americans Interpret their Civil War*, paperback edition (NYC: Freepress, 1964; Origional edition Princeton: Princeton University Press, 1954), pp. 227-226, "The Second American Revolution".

unwavering Northern program of exploitation. He highlighted divisions between heavy industry in the mid-Atlantic, exporting industries in New England, commerce in New York, and the agrarian West over tariff barriers, specie payment and various other issues. Later, Susan Lee and Peter Passall placed emphasis on the masses of unexploited Southern land, arguing that Slavery was far from moribund. They called secession, "hardly justifiable". They also cited extensive statistics to prove that industrial output had declined in the war. They argued the war had been essentially pre-modern and "was not fought with iron and steel".[16]

However, revisionist criticisms that the Beards' lack of sophistication and the narrow prominence of their anti-trust Progressivism met with plenty of sophisticated counter-critiques. Jeffery Williamson highlighted the post-war policy of prioritizing bondholders with government specie payments, to the exclusion of retiring greenbacks. Combined with a tariff wall, protecting heavy industrial produce, and a regressive tax structure, which "shift(ed) the costs from the producers to the consumers", this allowed peacetime growth and output to quickly exceed 1850s levels. Concurrently, real wages remained static, as price rises and wage-increases kept parity.[17]

Ultimately however, the debates inspired by the New Economic Historians proved only that statistics can be creatively interpreted and are rarely conclusive.

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[16] Victor Clarke "Manufacturing development during the Civil War," in *The Economic Impact of the Civil War*, ed. Ralph Andreno, (Cambridge, Mass: Schenkman, 1962), p. 41-48; Stanley Coben, "Northeastern Business and Radical Reconstruction: A Re-examination," Mississippi Valley Historical Review, 46 (June 1959): pp. 67-90; Susan P Lee and Peter Passall, *A New Economic View of American History* (NYC: W. W. Norton and Co., 1979), chapter 10 "Economics and the Coming of the Civil War", and chapter 11 "The Economic Impact of the Civil War".
[17] Jeffery Williamson "Watersheds and turning points: Conjectures on the long-term impact of Civil War financing," Journal of Economic History 34 (September 1974): pp. 636-661.

While the Beards certainly were no economic statisticians, their identity as Progressive thinkers remains the strength of their work. In the long view, the most crucial fruit of the war was the exclusion of the political economy of slavery from the expanding nation. This sectional victory of centralization paved the road for the all-powerful Trusts of the Beards' day. The growth of a strong central government is certainly a well-corroborated idea.

In *Lincoln and the War Governors*, William Hesseltine compared the growth of Federal power in the war with contrary patterns in the South concluding, "State Rights crippled the Confederacy… while Lincoln's government effectively crippled the states". The war was not only a matter of Federal victory over the Southern States, but over the idea of state sovereignty absolutely. Raoul Berger argued in *Government by Judiciary* that the Civil War amendments were in no wise motivated by concerns for black citizens, but rather by Radical Republican determination that, "the Constitution be amended… as to secure permanent ascendancy" for themselves. Taking a more positive view of the 13th amendment, Herman Belz claimed that, the establishment of dual Federal and State citizenship, though limited, was an exercise of "concurrent sovereignty". It was the first time since ratification that the federal machinery had acted as sovereign within the states.[18]

Scholars of nationalist movements invariably emphasize the centrality of imagery, emotional appeal, myths, and historical interpretations in national

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[18] William Hesseltine, *Lincoln and the War Governors* (NYC: Alfred A Knopf, 1948), p. 274; Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Boston: Harvard Press, 1977), p. 16; Herman Belz, *A New Birth of Freedom: The Republican Party and Freedmen's Civil Rights 1861 to 1866* (Westport, Conn: Greenwood Press, 1976), p. 133.

struggles. Unsurprisingly, the ideological substance of the Civil War provides strong support for the conclusion that the war was fundamentally a battle of political economies. David Potter, in his book *Lincoln and his Party in the Secession Crisis*, shifted the focus away from Southern responses to the Republican Party, towards Republican responses to secession. He argued that secession was a shock because Northerners, including Lincoln, had believed national unity to be stronger than it had proved. This shock allowed the Radical, centralizing ideological platform to answer the need that secession revealed. Leonard Curry, discussing the 37th Congress in *Blueprint for Modern America*, highlighted the social and political fluidity of American civilization as it moved steadily westward. However, he pointed out that while many antebellum Senators represented States they had not been born in, "the line between the slave and non-slave areas had become an impassable barrier" in this regard. After decades of standoff between two mutually isolated blocs, the Civil War Congress, free of the Slavocracy, took upon itself powers which, according to Senate leader Fessenden, were "possessed by no other (government) on earth short of despotism".[19]

Eric Foner described how each conflicting sectional ideology had, by 1860, come to view itself as "fundamentally well ordered, and the other as both the negation of its most cherished values and a threat to its existence". Discussing Lincoln's reverence for 'the American dream' Gabor Boritt went a step further and claimed that Lincoln viewed the Union not as an end, as is generally asserted by historians, but as a vessel. The Union was a ship carrying the economy of

[19] David Potter, *Lincoln and his Party in the Secession Crisis* (New Haven: Yale Press, 1967); Leonard Curry, *Blueprint for modern America: Non-Military Legislation of the First Civil War Congress* (Nashville: Vanderbilt Press, 1968), p. 23; Ibid,. p. 251.

opportunity. It was an America where a frontier log-splitter could earn the highest office. Contrasting the ideology of 'free labor' with 'the menace of labor in chains' Boritt claimed that Lincoln was personally committed to emancipation. Boritt believed Lincoln would even have abandoned a Union which threatened 'upward mobility' by nationalizing the political economy of slavery.[20]

The Civil War was therefore an intensely ideological struggle, but one over a very real power. Lincoln infused his speeches with this ideology, but they were not abstract. The real focus of reasserting the central authority of a nation over its reluctant peripheries was always visible behind the romantic rhetoric of unity and freedom. Before the New Jersey House of Representatives February 21 1861, Lincoln referred to himself as "the representative of the majesty of the people of the United States". Furthermore, he committed himself to, "take the ground I deem most just to the North, the East, the West, the South, the whole country".[21] As a lawyer, Lincoln was keenly aware of the necessity of majority rule, and the acceptance by minorities of laws they opposed in principle. "Unanimity is impossible", he declared in his first inaugural address, "Rule of the minority as a permanent arrangement, is wholly inadmissible; so that rejecting the majority principle, anarchy or despotism in some form is all that is left".[22]

Lincoln's differentiation between despotism and majoritarianism is interesting and the concept is central to the philosophy of 'authority', which is the necessary force behind every sovereign government. Speaking at the White House April 11

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[20] Eric Foner, *Free Soil, Free Labor, Free Men: The ideology of the Republican Party before the Civil War* (NYC: Oxford Press, 1970) p. 9; Gabor Boritt, *Lincoln and the Economics of the America Dream* (Memphis: MSU Press, 1978), chapter 13 "In the Shadow of Slavery", and chapter 19 "Watchman, What of the Night?"

1865, in his last public address, Lincoln summed up the whole purpose of the war and his simple priorities for reconstruction. He stated, "we all agree that the seceded states, so called, are out of their proper practical relation with the Union, and the sole object of government… is to again get them into that proper relation". According to nationalist thought, this proper state was one in which majority laws, though hated, resented and rejected in principle by every man of the minority, are internalized and justified simply by being. Destroying a rebellion of states was obviously the first necessary step in establishing this state of affairs, but majority rule truly depends upon the authority of sovereign governments over citizens as individuals, not sections.[23]

In his classic treatise on the political science of sovereignty, Bertrand de Jouvenel argued that the origination of sovereignty is personal. It is inherent in even the smallest, most isolated society, for true 'authority' is simply the ability to convince others to follow. Sovereign governments rest not on the idea of social contract and complicity in every act of government, but on a majority acceptance of the right to rule, thus making citizenship obligatory. "Nothing matters more to the well being of states", Jouvenel summated, "than that there should be unchanging agreement as to the identity of the sovereign". Sovereign governments need a measure of co-operation, or at least majority goodwill and minority acceptance. Here the lines of contractual theory and authoritarianism meet, because, "the capacity of an authority to work injury to some of its subjects rests

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[21] *Abraham Lincoln: His Speeches and Writings*, ed. Roy Baker, (NYC: World Publishing co., 1946) p. 576.
[22] Ibid., p. 585.
[23] *Abraham Lincoln: Selected Speeches, Messages and Writings*, ed. Harry Williams (NYC: Holt, Reinhart and Winston, 1957), p. 288.

wholly and exclusively on the essential advantages conferred upon an aggregate". True sovereignty needs to establish individual complicity even to the extent that citizens willingly accept programs which are to their personal detriment, such as unequal taxation or tariff walls. This was exactly the kind of internalization the antebellum South lacked.[24]

Linda Kerber's book, *No Constitutional Right to be Ladies*, argued for five fundamental, contractual obligations of citizenship in a modern state: to be loyal, to not be vagrant, to pay taxes, jury duty, and military service. Kerber defined obligation as, "the means by which the state can use its power to constrain the freedoms of individual citizens". She argued that there is no admittance to the rights and blessings of a state without an active, participatory discharging of citizens' duties. "In this book I use ('obligation') in its primary sense- to be bound, to be constrained, to be under compulsion".[25]

John Simmons stated in the 2002 *Blackwell guide to Social and Political Philosophy* that, "States claim rights over their subjects, … rights against aliens, … and rights over a particular geographical territory". It was over these three central rights of states that the Civil War was fought, in order to decide absolute and final sovereignty in America. Secession was an attempt to resist the dominance of the political economy of freedom. It was not however a negation of the principle of governmental authority or the obligations of citizenship.[26]

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[24] Bertrand de Jouvenel., *Sovereignty: An Enquiry into the Political Good.* trans. J. F. Huntington (Chicago: University of Chicago Press, 1957), p. 5; Ibid., p. 24.
[25] Linda Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (NYC: Hill and Wang, 1998), p. xxi.
[26] Robert L. Simon, ed. *The Blackwell Guide to Social and Political Philosophy, Blackwell Philosiphy Guides* (Malden, Mass: Blackwell, 2002), chapter 1 "Political Obligations and Authority" by John Simmons.

In her consideration of *The Dynamic of Secession* Viva Bartkus argued that 'distinct communities' continually measure the fluctuating costs and benefits of 'membership' in the original state, and of secession from it. Bartkus claimed that distinct communities are not invariably set upon independence, but upon defense and perpetuation of their integral community identity. Secession results when a community feels it can no longer defend its identity within a state. Allen Buchanan's summary of the morality of secession and subsequent counter-secessionist coercion similarly concluded that secession is drastic, rare, and even more rarely logically justifiable. Occasions where there are no realistic alternatives to secession are not common. Buchanan viewed the American Revolution and Southern secession as alike, stating that in both cases, "the rules of the political game, particularly the rules governing representation, worked to the groups' disadvantage" with no likelihood of change outside of secession.[27]

Both Buchanan and Bartkus viewed secession as a last measure, when all attempts to preserve a group's interests *within* a state have failed, to create a *new state*. It is therefore very rare for secession to be the end of a revolution because both external coercion and internal crisis of identity are likely to result. The original state usually resists the denial which secession makes of its sovereign status, while secession itself creates a void and must go on to replace the government that has been rejected, to literally *re-place* sovereignty.

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[27] Viva Bartukas, *The Dynamic of Secession* (Cambridge: Cambridge Press, 1999); Allen Buchanen, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder: Westview Press, 1991), p. 70. Buchanan argued that the South could never again have become the dominant section in any but its own nation state. Therefore, from the Southern perspective, secession was politically justifiable and intelligible.

Emory Thomas' study of *The Confederate Nation* viewed the histories of the war and the Confederate counter-state as concurrent. Confederate leaders at Richmond sought to manipulate antebellum sectional identity by using military songs, stories of battles and myths of hero-generals as the short lived icons of an abortive national identity. George Rable recounted the history of *The Confederate Republic* in terms of its political culture. He viewed the Confederate Constitution as innovative, springing from Southern anti-party political ideology. A six year, one term executive office, divorced from patronage; presidential authority to originate financial bills; and allowing the cabinet to participate in Congressional debate aimed to create truly national, non-partisan leadership and embody a new nation. Prohibitions on the fanfare of political campaigning resulted partly in confusion and isolation of the masses from politics, but also created a distinct national ideology lending much valuable cohesion to the Confederate experiment.[28]

Other commentators have viewed the Confederate glass more as half empty than half full. Paul Escott argued that the elitist class structure of Southern society was incapable of sustaining revolution and providing the stable basis of an alternative nation state. The disfranchised yeomanry, who had enjoyed great personal freedom in the antebellum upcountry, soon came to resent the unequal burdens of war; "Planters had no unifying goal in mind and little inclination to seek one". Many other historians view the root cause of Confederate failure to be their inescapable Americanism. Kermit Hall and James Ely argued that innovations in the Confederate Constitution were actually part of established

[28] Emory Thomas, *The Confederate Nation 1861-1865* (New York: Harper & Row, 1979); George

American trends, and were often prophetic of future change. The Cold War for example, "perpetuated fascination with the idea of a patriot President… pursuing national interests". Desire for a one term President, the necessity of increasing executive fiscal power, and disgust with corrupt pork-barreling and partisan patronage, were all prominent ideas in American politics both sides of the war.[29]

Whether Confederate nationalism had any genuine appeal and why exactly it failed is relatively unimportant. What is significant is the observation that secession and war inspired the same trends of centralization and an ideologically imperative quest for sovereignty over the individual citizen in both sections. These imperatives were grounded in the nature of the American Revolution and the Constitution, which removed sovereign rule from its center in London, without conclusively reestablishing it in the Union's new federal apparatus. Conflict can never be resolved without an unquestioned arbitrator, a sovereign force of law. Due to the ambiguous constitution both secession and the federal reaction were reasonably justifiable and legally grounded.

Gordon Wood's history of *The Creation of the America Republic* discussed at length the process of deciding the rightful, sole sovereign of the colonies. The Lt. Governor of Massachusetts Thomas Hutchinson, said in 1773, "I know of no line that can be drawn between the supreme authority of parliament and the total independence of the colonies; it is impossible that there be two legislatures in one and the same state". Many colonials who distrusted of British rule shared this

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Rable, *The Confederate Republic: A Revolution Against Politics* (Chapel Hill: UNC Press, 1994).
[29] Paul Escott "The failure of Confederate Nationalism: The Old South in the crucible of war," in *The Old South in the Crucible of War*, eds. Harry Owens and J. Cooke (Jackson, Miss: Mississippi Press, 1983), p. 26; Kermit Hall and J. Ely, *An Uncertain Tradition: Constitutionalism and the History of the South* (Athens: University of Georgia Press, 1989), p. 209.

conviction. Whig leader James Wilson said in 1776, “The same collective body cannot delegate the same powers to two distinct representative bodies”.[30]

The colonies successfully rejected British sovereignty, but no sooner had one unpopular government been cast off than the people began to lose faith in their own representatives. Wood described a period of mass unrest in which many States experienced animated public activity. Radical mobs would gather at legislative sessions, or in county conventions, and give direct instructions, issue by issue, to their representatives. Responding to such radical interference in Massachusetts in 1778 the Worcester committee asserted, “It is as wrong to refuse obedience to the laws made by our representatives as it would be to break laws made by ourselves”. Of necessity, America eventually established these principles in Constitutional government and representative authority. The rule of law came to define the republic. What was less clear was to which governmental authority a citizen owed his final loyalty; his state, or the Union beyond it?[31]

In 1860 debate on the perpetuity and purpose of the Union was as old as the Union itself. Every argument for or against perpetuity had an obvious, equally constitutionally grounded counter argument. Kenneth Stampp pointed out the dangerous ground upon which Lincoln stood when he claimed the Constitution had superseded the Union of the Articles by making it ‘more perfect’. The Articles had also claimed perpetuity. Could not now the Confederates claim that their new Union surpassed the United States Constitution in perfection, thereby nullifying it? Stampp claimed that even national politicians had hesitated to view the Union

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[30] Gordon Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: UNC Press, 1969), p. 344.
[31] Wood, *American Republic*, p. 373

as an end in itself before the infusion of rising European nationalist ideology in the1830s. Most viewed it rather as John Randolph did, as "the means of securing the safety, liberty and welfare of the confederacy".[32]

Harold Hyman, the prolific constitutional historian, quoted many British commentators on the Constitutional crisis of Civil War. Notably Walter Bagehot, editor of the *Economist*, felt that, "the framers should have adopted Hamilton's idea and made the states mere municipalities…(making) war by secession impossible". Though Hyman believed the Constitution proved itself adequate to defend and maintain national life, he admitted that the Civil War was necessary in order to finish the work of the Philadelphia Convention.[33]

In Arthur Bestor's analysis, constitutional conflicts are deeper than ordinary politics. "Controversies begin to cut deep, therefore, the constitutional legitimacy of a given course of action is likely to be challenged". Through the 1850s-1870s American politics went beyond disputes between opposing programs and redefined American government entirely. Bestor argued that due to America's deep commitment to the Constitution, many of the options other nation states might have chosen to prevent sectional conflict were simply unavailable. The American Constitution allowed for blocks and checks which would prevent either a simple majority vote to enact abolition or violent the violent prohibition of an expansion of slave territory. Against the grain of most scholarship, Bestor argued that the Free Soilers were not proposing any expansion of the scope of the Constitution. The Constitution gave Congress absolute power over 'interstate

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[32] Kenneth Stampp, *The Imperilled Union: Essays on the Background to the Civil War* (NYC: Oxford Press, 1980), pp. 1-31, chapter 1 "The Concept of Perpetual Union".

commerce', which logically included the internal slave trade. Therefore, in not simply banning slave movement across state boundaries outright, Congress had always acted conservatively.[34]

Bestor concluded that there were four constitutional schools of thought on slavery. Firstly, the Clayite compromisers, who backed congressional authority in the territories but advocated using it for compromise along the line of the 1820 compromise. Secondly, there were the Douglas Democrats who practically denied congressional authority and left sovereignty in local hands, even in the Territories, which had no logical claim to state sovereignty. Then there were the Free Soilers, who proposed positive use of Congressional authority to back territorial exclusion. Finally, the Fire-Eaters of the Robert Barnwell-Rhett School advocated a positive use of Congressional authority to defend and extend slavery. The Civil War was a constitutional conflict between the latter two of these schools. Bestor believed that constitutional questions formed the substance of this conflict, "This brings us face to face with the central paradox of the Civil War crisis. Slavery was being attacked in places where it did not, in present, actually exist". Further, the Constitution created the parameters for war. When the South seceded, thanks to American constitutional framework, the states had intricate and developed governmental machinery with which to unite in a new confederacy, and to utilize in the coming struggle.

In the antebellum Republic, there was a marked failure by both the political economies of slavery and freedom to gain the full and final authority theoretically

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[33] Harold Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (NYC: Alfred A. Knopf, 1973), p. 107

granted by the Constitution. This absence of ascendancy, and the resultant controversies between the Free-Soil and Fire-Eater schools, proves that the Constitution was a national space waiting to be filled. It was the spoils of victory in a conflict with a continuous history reaching back to the Hamiltonian-Jeffersonian paradigm.

However, if the Civil War was a constitutional struggle for authority and sovereignty over individual citizens, it was complicated further by America's large population of non-native born residents. Large numbers of people migrated to America for work and land, and when the Civil War gripped the continent, it inevitably swept thousands of these men up into its course.

Table 1: Figures from the Eighth United States census for all persons giving their nativity as British[35]

State	English	Scots	Welsh	Irish	British America	Total Britons	Total State (free white) population
Alabama	1174	669	11	5664	239	7757	256081
Arkansas	375	131	10	1312	154	1828	324143
California	12227	3670	1262	33147	5437	55743	358110
Connecticut	8875	2546	176	55445	3145	70187	451504
Delaware	1581	200	30	5832	39	7682	90589
Florida	320	189	6	827	77	1419	77747
Georgia	1122	431	56	6586	178	8373	591550
Illinois	41745	10540	1528	87573	20132	161518	1704291
Indiana	9304	2093	226	24495	3166	39284	1338710
Iowa	11522	2895	913	28072	8313	51715	673779
Kansas	1400	377	163	3888	986	6814	106390
Kentucky	4503	1111	420	22249	618	28901	919484
Louisiana	3989	1051	97	28207	830	34174	357456
Maine	2677	759	88	15290	17540	36354	626947
Maryland	4235	1583	701	24872	333	31724	515918
Massachusetts	23848	6855	320	185434	27069	243526	1221432
Michigan	25743	5705	348	30049	36482	98327	736142

[34] Arthur Bestor, "The American Civil War as a Constitutional Crisis," American Historical Review 69 (January 1964): pp. 327-352.

[35] United States Census Office, *Population of the United States in 1860: compiled from the original returns of the eighth census, under the direction of the Secretary of the Interior*, ed. Joseph Kennedy (NYC: Ross Publishing, 1990). See statistical recapitulation.

Minnesota	3462	1079	422	12831	8023	25817	169395
Mississippi	844	385	21	3893	184	5327	353899
Missouri	10009	2021	305	43464	2814	58613	1063489
New Hampshire	2291	741	14	12737	4468	20251	325579
New Jersey	15852	3556	371	62006	1144	81785	646699
New York	106011	27641	7998	498072	55273	649995	3831590
North Carolina	729	637	20	809	48	2243	629942
Ohio	32700	6535	8365	76826	7082	131508	2302808
Oregon	690	217	32	1266	663	2868	52160
Pennsylvania	46546	10137	13101	201939	3484	275207	2849259
Rhode Island	6356	1517	19	25258	2830	35980	170649
South Carolina	757	502	11	4906	86	6262	291300
Tennessee	2001	577	86	12498	387	21811	826722
Texas	1695	524	48	3480	458	6205	420891
Vermont	1632	1078	384	13480	15776	32350	314693
Virginia	4104	1386	584	16501	389	22964	1047299
Wisconsin	30543	6902	6454	49961	18146	112006	773693

Historians often note that many immigrants, especially Irish and German, fought in Union colors. It is less often remembered that many foreign-born men also fought in Grey. In 1940, Ella Lonn, the first female president of the Southern Historical Association, published a tirelessly researched work, *Foreigners in the Confederacy*. Lonn's research found many Southern companies serving either as Confederate, State or Home Guard troops which were entirely or majority foreign born, the majority being British (including Irish) or German. Her appendix listed 25 companies in Alabama, 8 in Georgia, 48 in Louisiana (and 15 more formed only for local defense of New Orleans), 4 in North Carolina, 15 in South Carolina, 5 in Tennessee, 48 in Texas (mostly local guards), and 11 in Virginia. Companies usually ranged from 40-120 men on paper. Whatever the statistics might have been in the remaining Confederate states Lonn's figures are surprising. Many foreign-born volunteers provided useful service to the Confederacy. As the war drew on, many such volunteers became reluctant to re-enrol after their terms

ended. Many others who had not enrolled at all resisted Conscription on grounds of alien exemption. Such unwillingness to defend the besieged South from long-term residents caused deep frustration, and looking at the population figures in Table 1, it is easy to see why. Since immigrant populations tend to consist of a higher percentage of working age males than in the native population, conscription exaggerated the proportional significance of these foreign-born populations. In Virginia for example, the census records 22,000 British-born persons in a state population of 1,047,300 free whites. Even if the gender and age ratios among these Britons were identical to the native born population the figures still indicate 10,000 fighting age men who could claim exemption. This represented a significant number to the desperate Confederacy.[36]

When Her Majesty's Government in London gave notice of British neutrality early in 1861, the Foreign Office instructed all personnel in America to act according to The Crown's stated position and maintain the neutrality of every British person. This meant securing the exemption of every non-naturalized Briton, and keeping Her Majesty's subjects from volunteering. In Union States, it was possible for the Foreign Office to intervene in behalf of Britons through Her Majesty's ambassador to Washington, Lord Lyons. Her Majesty's consuls, stationed in various major port cities along America's waterways and coasts, made appeals for Britons locally to American military and political officials. Within the seceded states however, matters were more complicated. Writing to John Slidell on October 8th, 1863 Judah Benjamin, the Confederate Secretary of State, explained the status of foreign consuls in the Confederacy thus,

[36] Ella Lonn, *Foreigners in the Confederacy* (Chapel Hill: UNC Press, 1940), appendices pp. 496-

> When the Confederacy was first formed there were in our ports a number of British Consuls… who had been recognized as such, not only by the government of the United States, which was then the authorized agent of the several states for that purpose, but by the state authorities themselves. Under the law of nations these officials are not entitled to exercise political or diplomatic functions…[37]

The British consuls and vice-consuls in the new Confederacy were located at Richmond, Norfolk and Fredericksburg in Virginia, Charleston and Wilmington in the Carolinas, Savannah, Mobile, New Orleans and Pensacola in the Deep South, Key West Florida, and Galveston Texas. Their functions were to take inventories of British vessels entering ports, to register goods, to hold the Captains register, to see that proper duties were paid, to issue passports for ships and private persons to leave, and to generally care for British persons and property in their constituencies. As Benjamin pointed out, they were in no wise diplomatic officials, having only commercial responsibilities. Since Britain intended to remain neutral and would not recognize the Richmond government, but desired some mediating voice for Her Majesty's dispersed subjects, the Consuls within Confederacy acted for much of the war beyond their strict legal limits, or as private persons making bold personal appeals for British interests. In 1918, Milladge A. Bonham published *British Consuls in the Confederacy*, a study of the consuls' struggle to carry out Foreign Office instructions in an ill-defined and unprecedented diplomatic position. Bonham's study charted the decent of the consuls from their initial position as welcome and honored guests, to that of troublesome, odorous and affronting agitators against Confederate Sovereignty. In October 1863 the Davis administration took decision to expel the consuls, their

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[37] Confederate Department of State, *Correspondence of the State Department to the British Consuls* (Richmond, 1863), p. 31.

continual protests against the drafting of British-born residents of the Confederacy having become intolerable to the manpower-starved South.[38]

Concurrently, by 1863 Union authorities were consciously strengthening provisions to respect the neutrality of resident Britons. These contrasting developments in official attitudes reinforce many of the central lessons of the war. Firstly, the loyal states were able to raise more troops with greater ease and had less need of conscripting persons they had a debatable legal right to conscript. Secondly, Seward's Department of State, by threat and by reason, succeeded in isolating the Confederate States and sinking their foreign policy. Therefore, despite the bitter aftertaste in Northern popular memory, European 'neutrality' emphatically favored the Union. Thirdly, the Confederacy became a truly military society in the later years of the war. Borders were continually receding, and the government was increasingly concerned with nothing beyond the war effort. Isolated in the world, and with absolutely no mediating voices of protest coming from outside the Confederacy, Confederate authorities looked to tap any and every source of manpower, no matter how small and insignificant it might have seemed.

[38] Milledge Bonham, *The British Consuls in the Confederacy* (NYC: Columbia University, 1911), pp. 210-258 chapter 12 "The Expulsion of the Consuls".

Table 2: Persons of Foreign nativity as a percentage of electorates by state

State	Total Foreign	Total population	Total Males	Males over 20	Presidential votes polled-1860	Votes polled-last pre-war gubernatorial election
Alabama	12350	256081	270190	118589	90122	72534
Arkansas	3740	324143	171477	73994	54152	61017
California	146077	358110	259923	206942	119812	102443
Connecticut	80556	451504	221851	77313	74819	88378
Delaware	9160	90589	45940	22429	16115	15312
Florida	3280	77747	41128	19250	13301	13184
Georgia	11643	591550	301066	132499	106717	105614
Illinois	324573	1704291	898941	439503	339631	164290
Indiana	118170	1338710	693348	316804	272146	263503
Iowa	106070	673779	353900	164650	128739	109834
Kansas	12690	106390	106390	78621	NA*	13249
Kentucky	59792	919484	474193	217883	146216	143470
Louisiana	80603	357456	189648	101499	50510	41041
Maine	37731	626947	316527	131229	100918	245168
Maryland	77443	515918	256829	128371	92502	85822
Massachusetts	259503	1221432	592231	339059	169548	169534
Michigan	148609	736142	388036	200504	154758	121268
Minnesota	58716	169395	91704	43186	34787	35499
Mississippi	8556	353899	186273	85838	69095	44867
Missouri	160525	1063489	563131	337125	165563	158138
New Hampshire	20933	325579	159563	88509	65493	71581
New Jersey	122701	646699	322733	167479	121215	105029
New York	997568	3831590	1921311	883124	675156	672925
North Carolina	3290	629942	313670	143443	96712	112622
Ohio	328125	2302808	1171698	562901	442730	355768
Oregon	5117	52160	31451	19736	14758	9347
Pennsylvania	430163	2849259	1427943	702316	476442	492666
Rhode Island	37322	170649	82294	46417	19951	23018
South Carolina	9981	291300	146160	68154	NA**	NA
Tennessee	21218	826722	422779	189470	146106	144110
Texas	43401	420891	228585	109625	62855	63727
Vermont	32718	314693	158406	88230	44644	148656
Virginia	35035	1047299	528842	246006	166891	113538
Wisconsin	276901	773693	406309	198914	152179	112538

* Kansas did not take part in the 1860 election.

** South Carolina had no popular poll for its Electoral College votes or its gubernatorial races until after the war. Popular vote decided only the House, all other elections being decided in the state legislature.

By 1860, the United States was a maturing nation state coming of age in power and reach in the world. However, its population was still growing and its demographic trends were constantly subject to change as the tides of migration shifted. The complex and controlled legal processes of immigration and citizenship, which are at the center of population control for developed nation states in our times, were not in place in mid nineteenth century America. Consequently, it was possible to exist in an ambiguous position between alien and native status. Many states were desperate for new blood. Iowa for example, shows a foreign born population of 100,000 out of a total white population of 500,000 in the 1860 census. It was certainly not necessary to take any oath of citizenship in order to remain resident indefinitely, work and often even own land in the states. In cities such as New York and Boston, there were very large populations of foreign-born workers not on record at all.[39]

Although it was not legal for non-citizens to own land in American states, in reality it was often possible to acquire titles without going through the actual process of legal naturalization. Many of the Britons within the Confederate States were commercial traders or maritime workers temporarily resident in port cities. Many more were skilled laborers in these maritime cities, and many more came as manual laborers, either migrating for seasonal work or working as farm hands until they could gain their own property. For this reason there were large numbers of poor laborers who had no intention of returning to Britain and had expressed

[39] Michael J Dubin comp., *US Gubernatorial elections, 1776-1860: The official results by state and county* (Jefferson, NC: MacFarland and Co., 2003); Idem, comp., *US Presidential elections, 1788-1860: The official results by state and county* (Jefferson, NC: MacFarland and Co., 2002); Russell Wright comp., *Presidential elections in the United States: A statistical history, 1860-1992* (Jefferson, NC: MacFarland and Co., 1995).

intentions to naturalize, but had not by 1861 found it immediately necessary to do so. Such persons lived in a status between British and American citizenship, neither one nor the other fully, but in the de facto sense, partly both. When the war began, the legal status of such persons became a major point of contention and a flash point in the diplomatic struggle between consular personnel and the Confederate States.

The election returns listed in table 2 demonstrate the significance of foreign-born persons who lived permanently in an ambiguous citizenship status. The Presidential election of 1860 enjoyed the second highest turnout of American electoral history, 82% nationally. Without examining electoral records county by county it is difficult to know how many foreign-born persons voted without having been naturalized. However, the differences from state to state are interesting and make a number of important suggestions.

New York	997568	3831590	1921311	883124	675156	672925
North Carolina	3290	629942	313670	143443	96712	112622

In 1860, New York was a populous free state with a large immigrant population. North Carolina was a slave state with a much smaller population and little immigration. From these two examples, it is clear that in North and South alike, it was possible for non-native persons to live almost indefinitely in an ambiguous state of citizenship. We assume that the population of persons of foreign nativity was, at least, equal to the native population in percentage of males above 20 years of age. In that case, New York's population of non-native born men of voting age was around 225,000, and North Carolina's, just 740. The Eighth Census gives New York's total number of males over 20 as 883,124, while

the electoral returns for the presidential election that year showed 675,000 voters. Almost 100% of the native-born population would have had to turn out to vote if the every one of the 225,000 foreign-born males over 20 had been unable to vote. This is most unlikely. Of course many foreign born men would have been naturalized, but since naturalization entailed a trip to the court house when a circuit judge was available, and was unnecessary for work and residency, many simply never bothered. It therefore seems likely, even from such bare statistics, that there were many non-naturalized foreign-born residents in New York voting in 1860.

In North Carolina, a mere 740 men are less visible in general trends. Even without these men, the number of men over 20 was 141,000 and votes polled in the 1860 presidential election numbered only 96,000. This was easily below the national turnout of 82%. However, in the gubernatorial election the electoral votes polled numbered much higher, 112,622. Again, it is unreasonable to expect a small number of foreign-born voters to be visible in such general statistics, but states were frequently more lax with the franchise at state and local elections than for US elections. In Tennessee, the difference between total male population above 20 years old and votes polled in 1860 was about 40,000 while the foreign born population of voting age males was around 10,000. In Virginia, there was a difference of 80,000 and with 15,000 voting age males of non-native birth.

What is clear from these tables is that in all states in 1860 the foreign born populations, of which the British usually constituted the majority, represented large portions of the work force and the potential or actual electorate. They represented large numbers of residents who produced and consumed, paid taxes,

and benefited from state expenditure. Courts, land, military forces, state railroads and other infrastructure, ports etc. were facilities which states or the federal government maintained that necessarily benefited, directly or indirectly, foreign and native born alike. On the other hand, the process for acquiring citizenship was loosely defined and largely unnecessary to daily life. Therefore, it was easy for individuals to exist without the locus of their final and absolute sovereign being indisputably certain. More than one reasonable claim to loyalty could easily exist over a single person.

These foreign born persons had major significance for the diplomacy of the Civil War, but they also reveal much that is of significance about the domestic issues of the war. Chapter 1 will establish the context within which Civil War diplomacy has its greatest significance by examining the growth of constitutional ideological struggles regarding sovereignty and centralization within the early republic. Through analysis of opposition made to conscription by Governors Joseph Brown of Georgia and Horatio Seymour of New York this thesis will argue that latent within all federal machinery there is the tendency towards centralization. This need of governments to assert the sovereignty of the center over the resident citizenry caused increasing tension between British consular officials and secessionist governments. Chapters 2 and 3 will go on to examine that process. Firstly, Chapter 2 will place the presence of large foreign-born populations within the context of transatlantic diplomacy and the recognition issue. The conflict between Confederate desire to secure recognition, and the need to enlist all available manpower meant that in the early years of the war Confederate political leaders were keen to recognize and accept the neutrality of

Britons. However, difficulties arose from the zealousness of enroling officers who were conscious of the need to draft them. Chapter 3 will go on to show however that many resident Britons had acquired de facto citizenship by their residency. As British willingness to entertain the idea of recognition dwindled, Confederates lost patience with their uncooperative foreign-born population, and their troublesome consular protectors. This process, and the concurrent softening of Union attitudes, provides a domestic, smaller scale dimension to the more commonly repeated themes of the transatlantic history of the Civil War.

Chapter one: The constitutional framework of an 'irrepressible conflict'

In the twilight hours of July 3 1826 at Monticello, Virginia Thomas Jefferson clung frailly to the last drops of his life, determined to see his fiftieth and final Independence Day. As his last surviving daughter Martha Jefferson Randolph nursed him through his final trial, the family of second President John Adams watched as their own Patriot legend saw out his last hours, also clinging tenaciously on for the Fourth. The story goes that Adams' last words were "Jefferson is yet alive" while Jefferson triumphantly whispered "Independence forever!" Jefferson biographer James Parton wrote in 1874,

> When it became known that the author of the Declaration and its most powerful defender had both breathed their last on the Fourth of July, the fiftieth since they had set it apart from the roll of common days, it seemed as if heaven had given its visible and unerring sanction to the work they had done.[40]

Jefferson's daughter Martha often sat by the old man, comforting him, talking and reading, while many miles to the north the Virginian's old friend lay talking to his young grandson, Charles Francis Adams. Forty years later the Republic these two Patriots had fought to establish would be guided through its direst crisis partly by the skilled and invaluable diplomacy of C. F. Adams, by then a full-fledged statesman in the family tradition. The symmetry of the last hours of Jefferson and Adams is so well scripted as to defy belief, and so often repeated as to have lost its significance. However, Parton was wrong in supposing that the significance of this passing was as a poetical echo of history alone. Though Jefferson was dead, the unresolved conflicts of his republic had many more years

[40] James Parton, *Life of Thomas Jefferson: Third President of the United States* (Boston: James R. Osgood and co., 1874), epilogue: The Death of Thomas Jefferson.

left to live, and the following generations of the Adams dynasty would play leading roles in deciding them.[41]

In 1790, during the debate over assumption of a national debt the Virginia Legislature issued Patrick Henry's Virginia resolutions. Henry warned of the creation of an executive authority, "pervading every branch of government". Repeating the Constitutional maxim that power not specifically granted to congress resided in the states, Henry asserted that he could, "find no clause in the Constitution authorizing Congress to assume the debts of the states". Virginia insisted that, "the rights of the states as contracting parties be considered as sovereign". These resolutions were the first overt, concerted attempt in the decades between ratification and the Civil War to establish the states as the proper and final arbiters of the constitutionality of congressional or executive acts.[42]

In February 1971, Thomas Jefferson argued in a letter to President Washington that the Federalist proposed national bank did not fall under the expressed authority of Congress to lay taxes. Neither was it covered by the authority to borrow money, "to regulate commerce with foreign nations and among the States". Jefferson emphasized that Congress could only regulate commerce between the states. Internal regulation of a state's commerce, "remains exclusively with its own legislature". The Constitution established in Congress only the powers 'necessary' to carry out its prerogatives, not the authority to do whatever is 'convenient'. "Nothing but a necessity invincible by any other means, can

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[41] Pressly, *Americans Interpret*, pp. 221-226, "The Nationalist Tradition". Pressly argued that after reconstruction a new 'nationalist' generation of American historians began to view the war as a heroic, American affair on both sides. Parton was one such historian.
[42] Richard Hofstadter, *Great Issues in American History 1584-1981*, 3 vols. (NYC: Vintage Books, 1958-1982), 2:152.

justify such a prostitution of the laws which constitute the pillars of our whole legal system." Jefferson clearly believed that not only did true sovereignty lie in the states, but that any sovereignty allowed to Congress was regrettable and ought to be carefully limited.[43]

Alexander Hamilton's response one week later defended the bank with the explicit commitments to national sovereignty he had been too cautious to make during the ratification debates. He stated that it was an essential "general principle" of government necessary, "to every step of progress to be made by the United States", that every authority placed in the national government was sovereign. Furthermore the government had the, "right to employ all the means requisite and fairly applicable to the attainment of the ends of such power, which are not precluded by the restrictions and exemptions specified in the Constitution, or not immoral, or not contrary to the essential ends of political society".[44]

Hamilton commented that in common use the word 'necessary' meant 'requisite, incidental, useful to' and 'conducive'. He postulated the hypothesis that the United States might acquire territory by force from a neighboring state. In such a case would Congress govern this land by specifically enumerated laws, or by 'the nature of political society'? Hamilton's arguments rested on the principle of implicit authority and he came very close to stating that the Constitution effectively granted Congress all powers not specifically withheld, rather than the other way around.

In 1798, the Federalist controlled Congress passed the Alien and Sedition Acts granting federal powers of coercion over individuals in order to silence spoken or

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[43] Hofstadter, *Great Issues*, 2:163.

written criticism from the pro-Jacobins factions, potentially including the Jeffersonian republicans. In response, the Kentucky legislature issued resolutions on November 16 stating, "that the several states composing the United States of America are not united on the principle of unlimited submission to their general government". One month later, the Virginia resolutions, while affirming a continued commitment to the idea of the Union, protested that the Acts would, "consolidate the states, by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system... into an (absolute monarchy)".[45]

Jefferson and Madison would not live to see the State Rights principle as a tool of political opposition violently crushed forever. However, their Virginia-Kentucky resolutions were effectively rendered useless only five years later, when Marbury vs. Madison laid the juridical groundwork which made eventual federal sovereignty every bit as inevitable as Virginia feared.

In Marbury vs. Madison 1803, Federalist Chief Justice Marshall threw out William Marbury's suit demanding that Madison validate the judicial appointment which the outgoing Adams administration had issued to him, but which the President had not had time to sign. Marshall asserted that the 1789 Judiciary Act to which Marbury had appealed was unconstitutional, saying, "(Congress cannot) give the court appellate jurisdiction where the Constitution has declared that it shall be original".[46]

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[44] Hofstadter, *Great Issues*, 2:165.
[45] Ibid., 2:177; Ibid., 2:184.
[46] Ibid., 2:193.

Marbury vs. Madison was beyond a mere refutation of the Virginia-Kentucky claim that the states were the appropriate arbiters of constitutional matters. It was a foundational philosophy for sovereign federal government which would eventually dominate the national political economy. Marshall asked to what purpose limits to power are committed to writing, “if at any time these limits may be passed by those intended to be restrained?” This query might appear to be a case for the limitations of constitutional government, but Marshall went on, “It is emphatically the province and duty of the juridical department to say what the law is”. Moreover, when it came to the nature of the law, Marshall was clear that as the final law of appeal, the Constitution was the single irresistible force in America, the sovereign law![47]

Despite these early signs that Constitutional law contained an innate need for final authority over individuals, the ideas of state sovereignty, nullification and secession remained constant themes in American political discourse. Thus, in his Fort Hill address on July 26 1831, John C Calhoun asserted that sovereignty emanated from the people of the states as, “distinct political communities” representing, “particular local interests”. He defended the necessity of divided sovereignty and warned, “it is not possible to distinguish practically between a government having all power, and one having the right to take which power it pleases”. In response, President Jackson called nullification undemocratic because it, “made state law paramount to the Constitution”. Jackson certainly did not believe in unlimited appeal. Sovereignty must rest somewhere, and supreme law must bind all lower legal authority to its protection. South Carolina was only a

[47] Hofstadter, *Great Issues*, 2:195.

minority section contending against the national political community for the right of sovereignty and Jackson was explicitly clear that the government, as sovereign, rested its appeal on the obligations of its individual citizens. "On your individual support of your government depends the great decision it involves; whether your sacred union will be preserved and the blessing it secures for us as one people shall be maintained".[48]

Responding to Lincoln's election, Georgia's secessionist governor Joseph Emerson Brown issued an address on November 7 1860, articulating his philosophy on the disruption of the Union. Brown believed the Constitution to be a contract in which the states were the contracting parties, and that Northern denials of Southern rights had negated this contract. Brown attacked Northern states for having passed state laws inhibiting the universal rights of the citizens of other sovereign states; rights guaranteed by the compact between the states.[49] The sovereign states of the South had only signed the Constitution on the understanding that it recognized slave property. Brown believed that democratic governments were as much obliged to protect their citizens, as the citizenry was to obey their government and that, "the duties and obligations of the state and citizen are reciprocal"[50] Robert Barnwell Rhett had previously expounded on his views as to the extent of this relationship saying, "(state sovereignty) secures to each state

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[48] Hofstadter, *Great Issues*, 2:281; Ibid., 2:286; Ibid., 2:288.
[49] Brown was referring especially to the 1855 Massachusetts Personal Liberty Act which used state courts and civil rights guarantees to make federal attempts to secure the return of fugitive slaves very difficult.
[50] Speech by Joseph Emerson Brown, November 7th 1860. Allen D. Candler, *The Confederate Records of the State of Georgia*, 5 vols. (Atlanta: C. P. Byrd, 1909-1911), 1:33.

the right to enter the territories with her citizens. The ingress of the citizen is the ingress of his sovereign, who is bound to protect him in his settlement".[51]

Brown shared Rhett's views on state authority, believing that the Constitution had no value outside of its usefulness to states in the pursuit of their prerogatives. Although this outlook dated back to Jefferson's republicans and had once been entirely mainstream political faith, it seemed increasingly radical as the republic matured. As the United States became more fluid, gaining the social and economic cohesion of a developing nation state, this extreme form of State Rights ideology was increasingly found only on the lips of fire-eaters. On the national political landscape by 1860, Southern-rights advocates seemed parochial, partisan and backward looking. Denying any measure of self-justified identity and purpose to the Union, they believed that even through the operation of federal machinery, it was the state level at which authority, and guarantees of individual rights lay. Brown argued that the federal government had no authority to proscribe slave owners from carrying their personal property, as guaranteed by their states, into the territories, because the citizenry to which the sovereign states laid claim were the embodiment of their prerogatives. Brown's message, issued from Milledgeville like a modern-day Caesar from his tiny Rome, eloquently expounded the virtues of republican authority.

> The state has the right to require from each of her citizens prompt obedience to her laws, to command his services in the field of battle against her enemies, whenever in her judgment it may be necessary for her protection, or the vindication of her honor; and to tax him to any extent her necessities may at any time require.[52]

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[51] Arthur Bestor, "The American Civil War as a Constitutional Crisis," American Historical Review 69 (January 1964): 351.
[52] Candler, *Records*, 1:33.

In return the Georgian was, “entitled to demand and receive full and ample protection of his life, his liberty, his family his reputation, and his property of every description”. Through his entire message, which served both to defy the Northern majority and galvanize the jealousy of Georgians for their rights, Brown set the tone both for the coming war between the sections, and his own personal battles with Richmond and the British Consul at Savannah. Brown astutely stated, “A sovereign state should either protect her citizens or cease to claim their allegiance, and their obedience to her laws”. He hereby made explicit that which is so often left implicit in government during times of peace. The very existence and justification of a nation state, the vindication of its life and the substance of its claims outside its own borders, are all contingent upon that state’s authority over, and absolutist claims upon, the individual citizen.[53]

The themes of Brown’s romantic yet aggressive speech found much resonance when the Georgia secession convention gathered on January 16 1861 to reassert the independence of the sovereign state of Georgia. On January 22 the convention issued an ordinance stating, “The people of Georgia in convention assembled, do hereby ordain that all white persons residing within the limits of this state at the date of the ordinance of secession, are hereby constituted citizens of the state without regard to place of birth or length of residence”.[54] Three days later the convention clarified the wider significance of this ordinance. Foreign persons residing permanently in the state but not wishing to be citizens were required to attain papers confirming their nativity with a view to repatriation. Persons born in Georgia, or of a Georgian father, were to be Georgia citizens. US citizens settling

[53] Candler, *Records*, 1:34.

in Georgia within a year of secession would be considered Georgian. Thereafter, naturalization procedures would be in place. Persons becoming citizens would be required to pledge an oath of allegiance and renounce previous loyalties by saying, "I do swear that I renounce and forever abjure any allegiance and fidelity to every Prince, Potentate, or Sovereignty whatever, except the State of Georgia."[55]

These ordinances demonstrated an acute awareness among the convention delegates that independent government rested fundamentally on loyalty and concurrent hegemony. Regarding the relationship between citizenship and militia service the convention dictated that non-citizens would not be permitted to serve, while every eligible male would be obligated to serve. Thus the convention revealed its awareness that without a studiously guarded connection between government protection and citizens' obligations, Georgia's bid for independence would fail. With this reciprocal relationship in mind, the convention followed in American legal and tradition by adding a Bill of Rights to the new state constitution. The bill enshrined essential rights such as government by consent, property protection and due process, the right of petition, the right to bear arms, and the right to legal counsel. In re-placing these federal guarantees at state level, Georgia claimed extensive powers as the sole protectors of its citizens, and demanded obedience in return.[56]

A special session of the constitutional convention meeting at Savannah on March 7 proclaimed that US government office holders not resigning within ten

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[54] Candler, *Records*, 1:277-8.
[55] Candler, *Records*, 1:306-308.
[56] Candler, *Records*, 1:338-342.

days would be declared alien, never to be Georgia citizens again. Furthermore, any office holders remaining loyal to the US in 'hostile demonstration' would have their property confiscated. Clearly no state seriously claiming independence can give acquiescence to a foreign government holding final authority over its own citizens, or inside its territory. Although secessionists claimed that the states had always been sovereign and were simply taking up their rights again, these ordinances radically shifted authority. Individual states had never previously cared who moved in from other states, or held office under the auspices of the United States within Georgia's borders.[57]

Joseph Brown's career as war governor demonstrated the impossibility of maintaining final state sovereignty within a federal system. According to William Harris Bragg,

> A showdown over the issue of troops for Georgia's defense became unavoidable even before the firing on Sumter. In February 1861, while Georgia was still an independent republic, the Provincial Congress had given President Davis "control of military operations" in the Confederate States, control which the state secession convention ratified.[58]

Throughout the war Brown attempted to operate within the Confederate framework as though Georgia retained the sovereign right of choice in each matter, and as though every authority the Confederacy exercised was merely borrowed. In December 1861 a bill was organized in the state legislature to relieve Georgia of the cost of coastal defense by transferring state troops at Savannah into Confederate service. Brown, who was determined not to see the domination of

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[57] Candler, *Records*, 1:390-1.
[58] William Harris Bragg, *Joe Brown's Army: The Georgia State Line 1862-1865* (Macon, GA: Mercer University Press, 1987), p. 4.

Washington, rejected in secession, replaced by a new imperial authority of Southern making, resisted the bill.

> Do we get rid of the expense by the proposed transfer? I maintain that it does not… save the state one dollar. If the troops are transferred then the Confederacy will pay the expenses and Georgia, as a member of the Confederacy, will have to meet her part of it.[59]

Brown made very clear in speeches and writing through the early years of the war, exactly what kind of revolution he believed secession to be. He began his special message to the Georgia legislature November 6 1861 with a brief history of the early American Republic. He referred to the 'diversity of opinion' at the Philadelphia Convention, calling those debates the beginnings of the Federalist-Republican conflict. Brown believed that the Jeffersonian view had triumphed in the Constitution, a document which went to lengths to only grant specified powers, thus enshrining state sovereignty. But no sooner was the Constitution ratified than did Jefferson's opponents begin undoing its work.

> The statesmen of the original federalist schools have, however, with the assistance of the tariff laws, navigation acts, fishery laws and other legislation intended to build up and foster Northern interests… succeeded in directing the Northern mind into the consolidation channel. By the instrumentality of these laws the government of the United States has poured the wealth of the South… into the lap of the North.[60]

Brown called the doctrine of State Rights, "(the) only security against encroachment of haughty and unrestrained imperial power". Secession, according to Brown, was unquestionably a reaction to the national dominance of an opposed and malignant political economy which was directly abusing southern rights and wealth. But neither in these early months of defiance, nor in the death throws of the Confederacy did Brown ever subscribe to a philosophy of independence and

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[59]Candler, *Records*, 2:153.

any cost. He continued his special message by turning from the early Republic, to the nature of the new Southern Republic, highlighting the sixteenth item of the eighteenth section of the Confederate Constitution which authorized the Confederacy to discipline and equip the state militia, but not to raise troops or appoint their officers. He lambasted the Military Provisions Act of May 8 1861, which gave elective power over state officers to the President, saying,

> I am not aware of any case in which the government of the United States prior to its disruption, ever claimed or exercised the power to accept volunteer troops, commission their offices, and order them into service, without consulting the executive officer of the state from which they were received.[61]

The underlying argument of Brown's opposition to Confederate aggrandizement was a belief that all federal machinery must grow into nation states unless sovereignty is actively and jealously reserved elsewhere. While he professed faith in Davis' character, Brown warned of 'some future Napoleon' less virtuous and wise. Yet, Brown frequently appeared to have little active faith in Davis' virtue or wisdom. Brown has always been named in the historical record as chief among the 'obstructionists'. He often attempted to prevent Confederate details from returning impressed goods from Georgia to their government. With each revision to the Conscription Act he reorganized the militia accordingly to exempt the maximum number of men and keep the largest state force for local defense. He encouraged the Georgia legislature to attempt obstruction or nullification of conscription and Confederate authority to declare martial law and suspend habeas corpus. He raised a storm when General Bragg took control of the state railroad in 1864. Finally, in the last years of war he spoke out for peace

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[60] Candler, *Records*, 2:80.
[61] Ibid., 2:82; Ibid., 2:86.

agitating for an offer of 'peace on the principles of 1776'. Georgia historian T. Conn Bryan wrote that, "when the second (Conscription Act) passed on September 27 1862… Brown became defiant. He refused to allow the new Act to be enforced in Georgia until the legislature had deliberated upon it".[62]

It is arguable however, that Brown's historical reputation as an obstreperous and difficult governor is largely due to misunderstandings concerning the complex Civil War processes of getting troops into the field. Brown never failed to answer calls made to Georgia for volunteer troops, as long as they entered national service as Georgia troops. In the summer of 1861, when Confederate authorities requested Georgia to raise a further state army than the one Brown had already voluntarily submitted, he sent the 2500 men of the 4th State Brigade under General William Phillips. Jefferson Davis however, insisted that under the Confederate law passed that May, he could accept no troop units larger than a regiment, and ordered the brigade to be broken up and submitted to national service piecemeal. This allowed the President to appoint new commanding officers, and he demoted Phillips to a mere Colonel. The following spring, Brown's friend and ally Henry Roots Jackson suffered the same fate. After a standoff between Davis and Brown, who insisted that Jackson receive a General's commission, Roots Jackson resigned his Confederate commission to become a Brigadier-General in the state forces.[63]

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[62] T. Conn Bryan, *Confederate Georgia* (Athens: UGA Press, 1953), p. 87.

[63] Candler, *Records*, 2:84; Bragg, *Joe Brown's Army*, p. 8; Berringer, Hattaway, Jones and Still questioned Brown and Vance's reputations, highlighting the fact that over 40% of all conscripts and volunteers east of the Mississippi came from Georgia or North Carolina. Provisions these governors made for their own troops were provisions the Confederacy did not then have to worry about. Berringer et al., *The Elements of Confederate Defeat: Nationalism, War Aims, and Religion* (Athens: UGA Press, 1988), pp. 92-95; Escott argued elsewhere that the success of State Rights governors such as Brown and Vance in providing relief for their citizens gave them popular appeal. By contrast the Jefferson administration never aimed to create genuine popular appeal and the Confederacy became by comparison offensive to the common citizen. Escott, *After secession:*

Brown was in his fifth term as Georgia's governor when Georgia was finally defeated. The constant support from Georgia's troops played a large role in his electoral dominance. On December 3 1861, the Georgia volunteers, which the legislature proposed to transfer to Confederate service, issued a set of resolutions in defiance of their state officials. They remonstrated, "We are not the property of the general assembly of Georgia to be sold and transferred… like a promissory note". This statement highlighted a conviction among Georgia volunteers that citizenship was a contractual matter of mutuality.[64]

Brown consistently lauded the spirit of volunteerism, and always claimed to share it. In a message to the legislature January 1 1862, he argued that accepting volunteers under state authority for stated terms of service created 'an implied contract', which would be broken if Georgia, "(transferred) them to another government without their consent…. It would be as much a breach of contract and a violation of good faith on the part of the state as it would be a breach on the part of one of the troops to desert". This statement appears to reveal a belief that the nature of volunteer-soldiers' citizenship was entirely contractual. However, the emphasis Brown placed on state sovereignty in his dealings with Confederate authorities shows that even this most ardent of State Rights advocates did not reject the principle of absolute governmental sovereignty over the individual. He merely held a different view on its locus. In fact, Georgia's leaders took state authority and responsibility very seriously, seeing Georgian's welfare in the war as entirely a state responsibility. Brown made sure that Georgia cared for and

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Jefferson Davis and the Failure of Confederate Nationalism (Baton Rouge: LSU Press, 1992), pp. 135-167, chapter 5 "Leadership and Loyalty- Jefferson Davis, Joseph Brown, and the Common People".

defended, as far as possible, the rights of its troops. Further, Georgia also provided food relief, supply of state sponsored cheap salt, and tax exemptions for poor soldiers and their families. By 1864, fully 51% of state expenditure went on welfare, as against 43% on military spending. "Brown and the legislature raised the budget and enlarged expenditure tremendously, spending in 1863 an amount in excess of all the state appropriations for the 1850s".[65]

In bitter defeat after the Old South was dead, the 'Lost Cause' became the civil religion of the New South, the glass through which all history was remembered and by which all reputations were warped. Davis, who had been widely disrespected and had proved an inept judge of men, became a noble, tragic hero. Brown, a leader loved in his own state, and possibly the truest defender of the philosophy that inspired secession, has been remembered as troublesome and traitorous. In hindsight, it is clear that only in the shared experience of war, defeat and retrospect did the South enjoy any marked level of 'national consciousness'.

Frank Owsley, a priest of the Lost Cause, wrote *State Rights in the Confederacy* in 1925. He lamented the localism and parochial short-sightedness of Civil War military strategy, and blamed governors of Brown's ilk for sabotaging the Confederacy and crippling the South before the Northern war machine. Writing from a generation of bitterness with a view perverted by defeat Owsley famously eulogized over the Confederacy that it had "died of State Rights". W. J. Cash in 1941 referred to the South as, "not quite a nation within a nation- but the next thing to it". Much later, Emory Thomas wrote that Southern nationalism was ironically incomplete and un-cohesive until the shared experience of defeat

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[64] Candler, *Records*, 2:169.

created a collective memory in the postbellum era. Regarding the necessity of wartime centralization Drew Faust stated, "For all its initially reactionary designs, for its dedication to preserving the rights associated with its peculiar species of property, the Southern elite was from the outset of the war pushed into mediating every aspect of its rule". During and after the war, many Southerners seemed to forget the anti-federal philosophy of secession, desiring independence at any cost.[66]

Joseph Brown never lost sight of the South's reactionary designs, and he was no traitor to the cause. He followed the logic of localism and secession to its end and insisted, as far as possible, that the South fight for independence in the spirit of the citizen-soldier and 'the several states'. By mid-1863 the Conscription Act had been in operation over a year and Brown had been forced to acquiesce, though he never missed an opportunity to dispute it with Confederate officials. By the time Union armies were pressing in at Georgia's borders, Brown's prerogatives as 'commander in chief' of Georgia had been reduced to organizing volunteer units for local defense against Yankee raids. Nevertheless, Brown did not miss good opportunities to preach the lost gospel of volunteerism. On June 22 he issued an appeal to the people of Georgia for 8,000 six-month volunteers for Confederate service in local defense. He stressed categorically that authority to muster, organize, appoint officers, and direct the service of these units lay with him alone. Brown called for 'promptness and devotion to the state', and urged militia officers

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[65] Candler, *Records*, 2:174; Berringer et al., *Elements*, p. 102.
[66] Frank Owsley, *State Rights in the Confederacy* (Chicago: The University of Chicago press, 1925), p. 1; W. J. Cash, *The Mind of the South* (NYC: A. A. Knopf, 1941); Emory Thomas, *The Confederate Nation 1861-1865* (NYC: Harper & Row, 1979), p. viii; Drew Gilpin Faust,

to be ready to show mustering men their own names on the volunteer rolls. Brown's romantic, republican rhetoric was a stark contrast to the anger and cynicism with which he routinely addressed Confederate authorities,

> Will Georgians refuse to volunteer for this defence? (sic) The man able to bear arms who will wait for a draft before he will join an organization to repel the enemy, whose brutal soldiery comes to his home to destroy his property and insult… his wife and daughters, is unworthy of the proud name of Georgian and should fear lest he be marked as disloyal… to the government that throws its protection over him.[67]

Volunteerism was therefore the necessary response of the free citizen, but it was also a matter of obligation, a response to protection. In a further call for volunteers following the fall of Vicksburg Brown threatened, "We are determined to be a free people, cost what it may, and we should permit no man to remain among us and enjoy the protection of the Government who refuses to do his part to secure our independence". Here Brown revealed the contradiction in his opposition to Richmond, the same contradiction undermining the Confederate reaction to Washington. The nobility of volunteerism was an attractive carrot, but it was not without its stick. Brown promised he would fill his quota and "that such requisition (will) be responded to, if need be, *by draft*". It seems that no matter whether citizenship centered on Washington, Richmond or Milledgeville, a citizen could only ever be 'free' to choose *for* his government. Choosing against any government that claimed him, or choosing to claim no government was not an available option.[68]

Confederate Nationalism: Ideology and Identity in the Civil War South (Baton Rouge: LSU Press, 1988), p. 83.

[67] Candler, *Records*, 2:458.

[68] Candler, *Records*, 2:465.

Brown determined from the beginning of Georgia's secessionist experiment that the state would be the sovereign to which each individual within Georgia's borders would answer. Certain that secession was imminent, Brown encouraged the legislature on December 6 1860 to prepare for independence with 'speedy and direct' communication with Europe aimed at securing Southern merchant vessels. The South needed to take control of its own shipping and mails and to achieve this Brown proposed a steam liner company, guaranteed by the state, paying 5% annually on capital investment. More than merely commerce and mail, Southern liners would secure, "a large portion of the immigrant travel of continental Europe". Brown thereby proposed a direct state investment of wealth for a return of individuals. On numerous occasions Lincoln asserted his conviction that, "Labor is superior to capital and deserves much higher consideration". Brown demonstrated an equal conviction that a state's wealth rests upon citizens.[69]

On January 2 1861, Brown ordered state troops to take Fort Pulaski at Savannah from federal control before Georgia had officially seceded. Brown justified this highly unconstitutional act by saying, "I did not doubt that the state would secede, and I therefore considered the question one of greatest importance".[70] Questions of constitutionality and even consent were evidently secondary considerations to the imperative needs of sovereign Georgia, and in the following year Brown continued to wield the authority of this sovereignty over Georgians in the state's defense. On April 22 1861, he issued an order prohibiting state citizens from paying any debts held in enemy states. Rather, they were to

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[69] Candler, *Records*, 2:7; Leonard Curry, *Blueprint for modern America: Non-Military Legislation of the First Civil War Congress* (Nashville: Vanderbilt Press, 1968), p. 246.
[70] Candler, *Records*, 2:12.

transfer debt payments to the state of Georgia, which would hold the money at interest for state funding until after peaceful separation. This would, "enable (citizens) to perform a patriotic duty and to assist the state, and *through her* the Confederate States…"[71]

The qualification, 'through her' accurately summated the Joe Brown philosophy of the secessionist struggle. Though few men were more fervent in their desire for independence, Brown would never cede the point that any government above Georgia had the right to take from the state what had not been voluntarily submitted. However, he was always very willing to provide men and arms for the struggle at sovereign Georgia's cost. In all his correspondence with Richmond protesting Conscription, he continually reminded the Davis administration that Georgia had never failed to fill a requisition for troops made of it. On April 22 1861, Brown ordered Captain Hardman's Macon 'Floyd Rifles', Captain Smith's 'Macon volunteers', Captain Doyal's Griffin 'Spalding Gray's', and Captain Colquitt's Columbus 'City Light Guards' into Confederate service at Norfolk, Virginia. However, only two months later, on June 13, he disciplined Captain Lamar of the Newton County volunteers for leaving Georgia with 80 state rifles without having executive department instructions to do so. [72]

In February 1863, after months of refusing to relinquish his militia officers to Confederate Conscription, Brown surprisingly ordered all of his officers into service with Beauregard to defend the threatened coast. Although the emergency quickly passed and the officers were called home, Brown demonstrated continuing willingness to contribute. Where necessary he would even do so through

[71] Candler, *Records*, 2:36. Author's italics.

Confederate machinery, as long as Georgia retained the final word of authority over state troops. It was the insistence that Confederate prerogatives only be pursued with explicit acknowledgement of authority granted from the states in every instance which made conflict between Brown and Richmond inevitable. [73]

Constitutional objections to federal governments usurping the prerogatives of the States in the persons of their citizens in order to fight the war were not limited to the Confederate States. It was not only reactionary Southerners in their desire to completely reject the federal center in Washington who struggled with the question of where the locus of sovereignty over the individual in America truly lay. On Saturday July 11 1863, Union Provost Marshall General Jams Fry drew names for the draft in New York City. When the Sunday papers published the lists, the city, whose population was already alienated by emancipation and the $300 exemption clause, exploded. In five days of unrest, anti-black mobs of poor white workers attacked the Provost Marshall's office and centers of New York's black community such as the Negro Children's Orphanage. During the riots, the conservative Democrat Governor, Horatio Seymour made numerous speeches in the city appealing for calm. He was crucified in the Republican partisan press, such as Horace Greeley's *Tribune*, for addressing his audiences, supposedly rioters, as "my friends", and was blamed for exciting a spirit of rebellion. Like Brown in Georgia, Seymour is remembered by history as an obstructionist. He was wrongly called a Copperhead and the steadfastness with which he met New

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[72] Candler, *Records*, 2:33; Ibid., 2:43.
[73] Bryan, *Confederate Georgia*, p. 88.

York's quotas of troops was overlooked in the excitement of his opposition to Lincoln.[74]

In his annual message to the state legislature on January 6 Seymour, like Brown, had espoused a philosophy of liberty, State Rights and strict constitutionalist Union. He stated, "Slavery has been the subject of the conflict, not the cause…. The cause was a pervading disregard of obligations of laws and constitutions". Seymour referred as much to Radical Republicans as to Rebels in this statement. Unsurprisingly for the son of a New York banker, he had initially advocated peaceful settlement. However, after Fort Sumter Seymour proved himself an active and committed loyalist who rejected secession as a right. Nevertheless, he also rejected extensive federal rights and authority. He believed that governments are, "entitled to deference (only when) acting within the limits of their jurisdictions, and representing the interests, honor and dignity of the people". He referred to usurpation, whether by the executive of judicial prerogatives, states of national policy decisions, or federal government of state rights, as 'revolution'. Seymour condemned Lincoln's policy for suspending *habeas corpus* and carrying citizens beyond their home states to try them in military courts when the states already had perfectly adequate court systems in place. He labeled such excesses, "a body of tyranny which cannot be enlarged" and lamented the surrender of the rights of liberty for the expediency of war. Seymour denied categorically, "that this rebellion can suspend a single right of the citizens of loyal states". He reminded the state of New York that while a three quarter vote of the states could add to or remove authority from the body they had

[74] Stewart Mitchell, *Horatio Seymour of New York* (Cambridge: Harvard Press, 1938), pp. 298-

created, “the General Government can in no way touch one right of the states and in no way invade their jurisdiction”. Seymour firmly believed that governments took their strength from their integrity and faithfulness to legal limits. “Government is not strengthened by the exercise of questionable laws, but by wise and energetic exercise of those that are incontestable”.[75]

The *New York Times* editorial on the address largely accepted Seymour’s concerns but believed that faced with such imminent “impending peril” he should be, “(willing) to make temporary sacrifices required to overt it”. However, Seymour and Brown were both acutely aware that the federal aggrandizement inevitably produced by great wars rarely proves temporary.

On July 4 1863, Seymour used the language of liberty on the national anniversary to accuse the Lincoln administration of being, “hostile to our rights”. He warned, “My Republican friends, there is a way by which the life of this nation can be saved… we only say to you who hold almost all political power, to exercise it according to our chartered rights”. Seymour appealed for a suspension of the draft in New York and requested a Supreme Court ruling. He made his distaste for conscription known and a week later, with the city’s troops sent to Gettysburg, the riots exploded. Seymour urged upon peace and order from the civic mobs but was not at odds with their sentiment. He wrote to Lincoln in early August complaining that the draft quotas fell disproportionately against the favor of Democratic wards. Seymour requested an adjustment of quotas, a suspension of the draft in advance of a Supreme Court ruling, and a return to constitutional

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liberty. New York's 300,000 military casualties, and thousands of war industry laborers, had, according to Seymour, "cheerfully made these sacrifices because they saw in the power of laws not only obligations to obedience, but also the protection of their rights, persons and homes". Without supplying guarantees to liberty, Seymour believed no government could demand the kind of sacrifice that loyal states were making. To compel such sacrifice was to nullify such guarantees and this loss of constitutional government was a disaster. Such disasters Seymour believed were, "produced as well by bringing laws into contempt, and by the destruction of respect for the decision of the courts, as by open resistance". 'Open resistance' of course referred to the rebellion, which Seymour held in equal contempt with Radical centralizers. Seymour and Brown were both Isaiah-like figures, prophesying against their governments that they were doing the enemy's work for him in the name of liberty. Like true prophets, both were ignored.[76]

On August 7 Lincoln replied that he would order the quotas reviewed and redrawn fairly if found to be unequal, but he would not suspend the draft. "While I should be willing to facilitate the obtaining (of a Supreme Court ruling), I cannot consent to lose time while it is being obtained. We are contending with an enemy who drives every able bodied man he can reach into ranks…"[77]

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[75] Governor Seymour's annual address to the State Legislature, January 6 1863, *New York Times*, January 8 1863. For commentary on links between New York banking and commerce and the South see Bensel, *Yankee Leviathan*.

[76] *New York Times*, July 6, 1863; *New York Times*, August 10 1863. According to Seymour, eight Republican congressional districts averaging 120,000 in population with an average of 21,000 total voters of drafting age in 1862 were required to draft an average 2,200 men, whereas the five Democratic wards of New York and Brooklyn, with average populations of 130,000 and an average of 14,000 conscription eligible voters, were each required to draft an average of 4,000 men.

[77] Lincoln to Seymour, August 7 1863, *New York Times* August 10.

Lincoln never did facilitate a ruling on conscription in the Union's highest court. The Confederacy did not even have a Supreme Court. It was not until 1918 that conscription came before the Supreme Court and in that case Chief Justice White quoted the Fourteenth amendment as making citizenship of the United States "paramount and dominant". Stewart Mitchell wrote, "(this amendment), it will be remembered, was added after the Civil War"! Replying to Lincoln on August 8, Seymour commentated that driving every able-bodied man into ranks would be preferable to the unequal, partisan draft unfairly initiated in New York.[78]

William Hesseltine argued in *Lincoln and the War Governors* that 'the War Between the States' is not a Constitutionally correct alternative title for the Civil War. It was rather, "a war between the Federal Government and the authority of all the states, North and South". Brown and Seymour both saw that federal authority was innately prone to growth and would inevitably usurp state sovereignty without diligent care being taken to avoid such. In this, their views of State Rights were almost identical and Lincoln's struggles against Copperheads and Conservatives demonstrate clearly the centrality of Federal maturation in the Civil War era. It is a result of the triumph of federal sovereignty that these governors both suffered abuse in their terms, and were consigned to history as troublemakers. On October 8 1863, the *New York Times* editorialized against Seymour and his outspoken line. The paper hoped that the state's electorate would return Lincoln in 1864 charging that, "while other states have only heard the hiss of Copperheadism, we in New York have felt its sting". Referring to the draft riots the editorial continued, "Having known what it is to be without law, we should

[78] Mitchell, *Seymour*, p. 313; *New York Times*, August 11 1863.

strike a blow for law. The spirit of faction that has effected New York is effectively the same as that which seeks to rend the Union".[79]

From the outset of preparation for war Governor Brown was determined to not allow Georgia troops to be mustered into Confederate service in any manner detrimental to state sovereignty. On March 1 1861 Secretary of War Leroy Pope Walker requested that Brown turn over state troops to the provisional Confederate army at Savannah and Pensacola, quoting the recent Act of Congress passed on February 28 for provision of national forces. Section three of the Act authorized the President to receive, "such forces as may now be in the service of said states". Section four stipulated that while troops could be accepted as organized by the states, general officers would be appointed by the President. These two provisions thus created a limit to the size of organization the Confederacy could accept directly from state authority. When Brown replied on March 12 requesting clarification as to how the troops would be received his language resonated with the ideal of the citizen soldier, an ideal he believed was to be defended by state authority. "I cannot, in justice to privates who have enlisted, tender the regiments unless they are received with the officers which I have appointed, as the recruits have nearly all been obtained by the officers appointed from civil life, with the understanding that they are to go under them".[80]

Here Brown defended the old republican notion of the local militia as a vital political community organization for both peacetime and war. The Civil War, as the first large-scale modern war in American history, allowed the federal government to finally establish a monopoly on violence. Neither the Union nor the

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[79] Hesseltine, *War Governors*, Introduction; *New York Times*, October 8, 1863.

Confederate government could wage large-scale warfare while leaving community defense in local hands. Thus, when Brown insisted that the February 28 Military Organization Act was illegal based on the Constitutional reservation of the states' right to elect officers for their troops, even in national service, he was subtly resisted. Brown requested that Walker accept Georgia militia officers representing regiments which could be quickly mustered, but were not actually in existence in the field. Responding on May 15 Walker assured Brown that any troops in existence would be received in whatever form Georgia held them, but that, "(receiving) officers without men would not be… within the scope of the law". Troops mustered after the Confederate requisitions upon the states were made would enter Confederate service as Confederate troops. Brown could not reserve the right to appoint every single officer over every single Georgian in the field in whatever organization.[81]

This correspondence revealed a subtle but radical difference in state and Confederate understandings of sovereignty in the earliest stages of the war. Brown would have preferred for Georgia to have the final right of instruction over every Georgian troop, whether in local or national service. Confederate authorities however believed that troops surrendered to Confederate service were under direct Confederate authority, and that even a governor's right to direct internal state defense depended upon Confederate sanction. Section one of the contested Act began, "that to enable the Government of the Confederate States of America to maintain its jurisdiction over all questions of peace and war… the President be authorized and directed to assume control of all military operations in every

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[80] Candler, *Records*, 3:24.

state…". Thus the very first Confederate Act for defense demonstrated that 'irrepressible conflict' over citizens and sovereignty was as deeply rooted in the fabric of the revolution against the Union as it had been within the Union itself. Confederate tendentiousness towards centralization did not develop gradually out of the imperative needs of war, but was innate.[82]

The issues of conscription and officer commissions were directly linked by the question of whether the Confederacy had the authority to access Georgia's citizens through any channel other than the state of Georgia itself. Even Brown admitted that if individual Georgians volunteered directly for Confederate service then it was Richmond's right to organize and direct them. Up to the Conscription Act of April 16 1862, most Confederate troops were raised through the states, but once in 'common service' they were accessible to Confederate authority. On January 1 1862, Congress passed an Act for provision for the Confederate Army which also allowed for the direct re-enlistment into Confederate service of state armies, and volunteer units whose six month terms of service had finished. Brown wrote to Judah Benjamin, then serving as Secretary of War, asking if the Confederacy would,

> …draw any distinction in reference to authority to commission between those troops who entered the Confederate service through state authority, bearing commissions from the executives of their respective states, and those who entered independent of state authority.[83]

Brown also asked Benjamin what he took the Constitutional reservation of the states' right of commission to mean. Benjamin replied February 16, "Whether the

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[81] Candler, *Records*, 3:26.
[82] Candler, *Records*, 3:18; For the best historical analysis of the gradual growth of the Confederacy as a nation state see Emory Thomas, *The Confederate Nation 1861-1865* and *The Confederacy as a Revolutionary Experience*.

troops originally entered the Confederate service through state authority, or independent of it, they now re-enlist under the provisions of a law of Congress". He argued that the Constitution referred only to the militia and not to troops organized by the Confederacy itself. While Benjamin assured Brown that he preferred to take in this case troops as organized and officered by the state, Georgia had no absolute right to insist upon such. This legislation therefore signaled the direct transfer of significant numbers of Georgians from state to Confederate sovereign authority.[84]

Two months later Brown's worst fears were confirmed when the first Conscription Act was passed and the new Secretary of War, George Randolph, immediately began using its provisions to transfer all troops in national service directly into the Confederate Army. All twelve-month volunteers of conscription age were to be forcibly re-enlisted upon the completion of their original term. Furthermore, although Randolph guaranteed their right to elect their own officers, the president was to grant the commissions for those officers and not their governors. Brown felt as though the revolution the South had so optimistically entered into was slipping away, and the guilt for its failure lay with men claiming to fight for it. He later protested to Secretary of War James A. Seddon in 1864 that, "Our people have become accustomed to Imperial utterances from Washington, but such expressions are so utterly at variance with the principles on which we entered into this contest in 1861".[85]

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[83] Candler, *Records*, 3:150.
[84] Candler, *Records*, 3:161.
[85] Brown to James A Seddon, Secretary of War, January 1864, *Confederate Imprints 1861-1865*, Lyle Crandall and Marjorie Harwell comps. (New Haven: Research Publications, 1970-72); Randolph's telegram to Brown, April 15 1862, Candler, *Records*, 3:185.

Brown, who had been in the process of re-enlisting such men to state service, responded that he would cease his operations, hand the troops over to Confederate authority and co-operate. This initial spirit of accommodation was based on the hope of convincing Davis to allow sovereign Georgia to retain the right of commission. It soon became clear however that Confederate authorities had no such intentions. From that point onward, Brown refused his co-operation to conscripting officers and openly condemned Confederate aggrandizement at every opportunity. He directly raised no further troops, except for state defense. Brown considered the Confederacy to be Georgia's agent, not Georgia's sovereign. Since Confederate authorities had made clear that they did not consider state acceptance and support to be necessary in every act of government, Brown refused to allow usurping centralizers to use the state apparatus of sovereign Georgia to access Georgia's citizenry. Brown insisted on exemption from conscription for his militia officers, viewing them as essential for the life of the state. He also took every chance to withdraw troops, which he considered Georgia's servants, from Confederate authority. On September 10 1864, he ordered all furloughing militia back into service, instructing officers to bring any men presently at home on Confederate exemption. This action provoked hot protests from James Seddon, which Brown ignored.[86]

On April 22 1862, Brown wrote to Davis the first of many letters attacking Conscription. He believed the Act to be absolutely unnecessary since the states themselves were capable of providing the Confederacy, their agent, with more than enough troops for war. According to Brown if, "permission were given to

[86] Bryan, *Confederate Georgia*, p. 90.

(state) officers to fill up their ranks by recruits there would be no doubt of their ability to do so, and I think they have the just right to expect this privilege". Brown felt that usurpations were an injustice to Georgia's individual citizens and through them, the state itself. By empowering the President to call Georgia's white males aged eighteen to thirty five into the field the Act, "(placed) it in his power to destroy (Georgia's) state government by disbanding her law-making power".[87]

Because Georgia permitted any white male over twenty-one to sit in the legislature, the Confederacy had the power to conscript many members of the state government, causing Georgia great loss. Similarly, railway workers on the vital state road, engineers and workers in state war industries, and students in the state University, were alike at Confederate mercy. Davis could conscript any Major General from state forces and, "treat him like a deserter if he refuses to obey the call and submit to the command of the subaltern placed over him". Whether or not Davis chose to act on these powers was irrelevant, for conscription gave the Confederacy effective sovereignty. Richmond had the right at its own time and choosing to take the best of Georgia's citizens. Every time the Confederacy expanded the range of conscription the Georgia legislature, always over Brown's protestations, turned the militia over to national service. In February 1864 Conscription age was lowered to seventeen and raised to fifty. Brown lost a large portion of his militia for the fourth time and again had to reorganize: "Brown succeeded in organizing another militia, composed largely of old men and boys,

[87] Candler, *Records*, 3:193.

by June 1864".[88] The implication of this state of affairs was that Georgia existed as a state only by the continued good will and provision of the Confederacy, rather than vice versa.[89]

Having failed to persuade the Secretary of War of his understanding of State Rights in Confederate military organization, Brown took his case directly to President Davis. He again attacked the Conscription Act as unconstitutional and suggested that Davis had been unwise to sign it and act upon its powers. In a private letter dated May 8 1862, Brown reiterated his conviction that conscription was unjustifiable on 'the higher law of necessity' since the states remained ready to furnish the nation with men. Further still, conscription was an extra-constitutional usurpation. Section VIII of Article I stated in paragraph XII, "Congress shall have power to raise and support armies", then paragraph XV gave Congress the power to call up the militia to repel invasion, while XVI reserved the right of officering them to the states. Brown argued that if paragraph XII gave to Congress any power it might deem necessary, the reservations stipulated later were a thoughtless waste of ink.[90]

According to Brown, the framers of the Constitution had intended the Confederacy to have power to raise armies only through calling up the militia. He traced this condition back to the original Philadelphia convention, the work of which the Confederacy had largely retained. Madison had proposed an article

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[88] Bryan, *Confederate Georgia*, p. 89.

[89] Ibid., pp. 197-198; Brown later condemned the Exemption Act which accompanied the Conscription Act under these very terms. "It must be borne in mind that this very act of exemption by Congress is an assertion of the right vested in Congress to compel them to go…. All the state officers, therefore, are exempt from Conscription by the *grace and special favor of Congress*, and not by *right*, as the Government of the independent States whose agent, and not master, Congress has been erroneously supposed to be. If this doctrine is correct, of what value are state rights and state sovereignty?" Brown to Davis, June 21 1862, Candler, *Records*, 3:269.

allowing Congress the power to elect the Generals of the militia, but no officers below, and even this suggestion was considered too fearsome a grant of federal power. The proposal was defeated, while the reservation of the states' right to appoint all officers was unanimously accepted. Brown quoted Oliver Ellsworth of Connecticut's caution, "That the whole authority over the militia ought by no means to be taken away from the states, whose consequence would pine away to nothing after such a sacrifice".[91]

Compared to Madison's proposal, the Conscription Act was a virtual revolution. All the Georgia twelve-month men then in the field were, according to it, subject to forcible re-enlistment and presidential appointment for vacancies arising in the ranks of their officers. Brown was jealous to protect not merely the right of Georgian's to elect their officers, "but the Government which has, under the Constitution, the right to issue the commission". Knowing that Georgia's sovereignty depended categorically on its position as final judge and arbiter in any case regarding its citizens, Brown informed Davis that he could, "consent to do no act which commits Georgia to willing acquiescence in (conscription's) binding force upon her people". [92]

President Davis' response on May 28 was chilling and ominous. Moreover, it proved again the ultimate futility of such attempts to divide final sovereignty as had caused the war in the first place. Firstly, Davis defended the Act on grounds that the Attorney General and Congress of the Confederacy believed it to be

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[90] Candler, *Records*, 3:214.
[91] Candler, *Records*, 3:216.
[92] Candler, *Records*, 3:218; Ibid., 3:220. Brown actually made frequent threats to arrest any Confederate enrolling officers found to be taking State militia officers, thus placing Georgia State machinery in direct competition against Confederate counterparts.

constitutional. Like the Virginia and Kentucky legislatures over sixty years before, Brown learned that federal governments could not accept arbitration on the legality of their acts from lower tiers of government. Davis reminded Brown that the section of the Constitution he so often quoted gave Congress war powers over any revenue necessary for common defense, declaration of war, raising and supporting armies and a navy, as well as, "rules for the government and regulation of the land and naval forces". Not only had the states given Congress control of, "the whole war power of each state", but "they went further and actually covenanted themselves not to 'engage in war, unless actually invaded, or in such imminent danger as will not admit of delay'".[93]

Davis argued that the Act was necessary, because the Confederacy could hardly be expected to allow state-raised twelve-month men to return home in the face of the enemy while the states mustered re-enforcements. The mere possibility of this occurring demonstrates the absolute importance to the life of the Confederacy of establishing control over the individual persons in its service. Thus, Davis could not accept that Confederate armies were in every case comprised of militia. In response to Brown's assertion that the Constitution only permitted the Confederacy to carry out war using state militia, Davis pointed out that according to the Constitution, all arms bearing citizens were liable to serve as militia, but that no state could keep troops in time of peace. Therefore, the militia could only exist in actuality when called forth by law and that in peacetime, "the men of a state… are no more militia than they are seamen".[94]

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[93] Ibid., 3:234-6.
[94] Ibid., 3:240.

Davis believed that the war making powers of Congress were exclusive and intended for more than defense in times of peril, whereas the right to call militia was not exclusive but divided. Congress had power to call militia to national service, whereas the states retained the right to call them out for local defense. In cases where Congress asked the states to organize local units, such as six-month home guards, these Confederate troops were accepted, employed and returned as militia. However,

> Armies raised by Congress are of course raised out of the same population as the militia organized by the states; and to deny to Congress the power to draft a citizen into the army… because he is a member of the state militia, is to deny the power to raise an army at all; for, practically, all men fit for service in the army may be embraced in the militia.[95]

Brown and Davis were both acutely aware that their respective governments depended upon loyalty from and authority over the very same individuals. Of course, the same controversy stood between Washington and Richmond. Brown's endeavors to maintain a sphere of authority for Georgia were often criticized, even by some within Georgia. The *Southern Confederacy* editorialized on June 20 1862 that militia officers had been, "retained to enrol militia, with no militia left to train".

Like Brown, Davis knew that a government's sovereignty rested upon the power to pursue its prerogatives. The constitutional clause concerning the employment of militia was limited to defense. If the Confederacy could not call state citizens except to defend the states, then it was not a sovereign but a mere agent. America had already proved that federal centers could not function as agents for regional sub-units. "If this government cannot call on its arms bearing

[95] Candler, *Records*, 3:242.

population except as militia, and if the militia can only be called on to repel invasion, then we should be utterly helpless to vindicate our honor and protect our rights". [96]

Brown's final extended reply to Davis paid detailed attention to the fact that two governments cannot both pursue the vindication of honor and the protection of rights, calling on a single, shared citizenry. Brown contested Davis' point that the Constitution separated war powers for the raising of regular armies from the calling forth of militia. If Congress were entitled to call the men of the states as regular armies, why would it ever call them as militia, as the Constitution supposed it must do? Brown was also skeptical of Davis' claim that the states could call forth the militia for state defense, and the Confederacy for national needs. "If the Conscription law is to… order every man composing the militia out of the state… how is the state to call forth her own militia… to execute her own laws?"[97]

When defending the imperative need of a Conscription Act, Davis had said the Confederacy was in dire peril and needed, "not any militia, but men to comprise armies for the Confederate States". Brown wondered as to the difference. Were men granted from states a lower caliber of recruit? "Conscription gives you the very same material". Was it so Davis could be selective? "The Conscription Act embraces all, without distinction".

You do not take the militia? What do you take? You take every man between certain ages of whom the militia is composed. What is the difference? Simply this: In one case, you take them with their officers appointed by the states, as the

[96] Bryan, *Confederate Georgia*, p. 86; Ibid., p. 245.
[97] Brown to Davis, June 21 1862, Candler, *Records*, 3:273.

Constitution requires…. In the other case you take them all as individuals- get rid of the state officers- and appoint your own officers.[98]

According to Brown, Conscription was a flagrant usurpation of state authority. The Constitution itself stated that state militia was to be officered by their governor, "while employed in Confederate service", not merely at the point of muster, thereafter to be governed by the President, as established in the Conscription Act. However, Brown went further than mere analysis of constitutional language to undermine Davis. He continued a theme from his first letter, and traced the issue back to the early republic. Brown appealed again to the Founding Fathers to answer the question of whether the states or the Union was the rightful judge of constitutional construction and practice?

Brown was in no doubt that, "the Constitution is a league between sovereigns". The framers of the original Constitution had not conceived of the Union as a replacement for state sovereignty; "The agent was expected to be rather the servant of several masters, than the master of several servants". Nor did the original Union have any Conscription Act, since the British model had proved such unnecessary to the war making powers of liberal governments. Furthermore, "those who established the government of our fathers did not look to it as a great military power whose people were to live by plundering other nations". If the Union were threatened, the Founding Fathers had supposed the same force that had created the Union would defend it: the people of the states. Likewise Brown believed that freeborn Confederates needed no compulsion to defend the republic, rather that they would compel their government.[99]

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[98] Ibid., 3:274.
[99] Candler, *Records*, 3:251-259.

Brown quoted at length from Madison's warning that, "War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created, and it is the executive which is to direct it. In war, the public treasures are to be unlocked, and it is the executive hand which will dispense them…" Such warnings were as pertinent in 1862 as ever and Brown placed the secessionist experiment in the very center of the early conflicts between opposing ideologies of the early republic. "You enunciate a doctrine… first proclaimed, I believe, almost as strongly, by Mr. Hamilton in the *Federalist*". Because of the longevity of efforts to increase federal authority, Brown claimed no surprise at hearing such doctrines. His surprise was, "because it found an advocate in you (Davis), whom I had for many years regarded as one of the ablest and boldest defenders of the doctrines of the State Rights school".[100]

Brown reminded Davis of the doctrines of Jefferson's Republicans whose 1798 Virginia resolutions declared,

> The powers of the Federal Government result from the compacts to which the states are parties, as limited by the plain sense and intention of the instrument containing that compact…. In the case of *deliberate, palpable* and *dangerous exercise of other powers* not granted by said compact, *the states*, who are the parties thereto, *have the right*, and are in *duty bound to interpose for arresting the progress of evil*, and for maintaining within their respective limits the *authorities, rights and liberties appertaining to them*.[101]

Jefferson had called the federal union, "a General Government for special purposes" with only, "defined powers" delegated to it. "The Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to it". The Virginia and Kentucky resolutions had been clear that provisions of Congressional authority to, "enact whatever legislation be

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[100] Candler, *Records*, 3:261.

deemed necessary…" were, "words meant only to be subsidiary to the execution of the limited powers (and) ought not to be construed, as themselves to give unlimited powers, nor… to be taken as to destroy the whole document".[102]

By 1860, questions as old as the republic itself had created sufficient momentum and division to provoke secession. By 1862, they were recreating the same crippling ideological rifts within the new Confederacy. If the constitutional clause granting Congressional authority to 'raise armies' justified conscription, argued Brown, then it justified Lincoln in arming freed slaves against the South. Furthermore, because, "it follows that Congress has absolute control over every man in the state…",

> It was only necessary to pass a Conscription Law declaring every man in (the seceding states) to be in the military service of the United States, and that each should be treated as a deserter if he refused to serve; and that Congress, the Judge, then decided that this law was "necessary and proper"…. This would have left the states without a single man at their command.[103]

The logical conclusion of such admission of authority would have been to accept that "peaceful secession… the right as revolution for which we are fighting" was truly an illegal revolution.

Answering the inherited assumptions of the Lost Cause school that Brown and other defenders of State Rights had fatally wounded Confederate efforts towards independence, Berringer et al. highlighted the fact that the Confederacy conscripted a much larger percentage of its population than did the Union. Furthermore, Brown's protests did not indicate that Georgians were universally anti-administration.

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[101] Ibid., 3:262.
[102] Ibid., 3:264.
[103] Candler, *Records*, 3:266.

> Despite his troubles with Governors Vance and Brown, Davis managed to win most of his struggles with the internal governmental structure both on national and state levels…. Even the Georgia Supreme Court ruled that that draft was constitutional, whereas the Pennsylvania Supreme Court rejected the Union draft as unconstitutional.[104]

By 1860, an expanding and increasingly powerful national political economy was producing an expanding and increasingly powerful modern nation state. To resist this force, Southern states attempted to revert to state sovereignty, retaining the rights and powers of nation states in local apparatus. This failed because the need for federal machinery produced a concurrent necessary and inevitable tendency towards centralization in the Confederacy. Moreover, the new counter-federal state failed, and the crucible of civil war revealed the dominance of the senior American republic against the atrophy of the challenger.

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[104] Berringer et al., *Elements*, p. 98.

Chapter Two: Maintaining Her Majesty's neutrality in the persons of her subjects[105]

On February 6 1861, three weeks after Georgia seceded, the British merchant vessel *Kalos* was at port in Savannah. For some reason, Captain Vaughan allowed a black ship hand to eat dinner at his table in the captain's cabin. When word got out via the first mate, a local mob led by a Savannah secret society called the 'Rattlesnake club' quickly formed. Fearing that Vaughan was of abolitionist leanings the mob dragged the Captain from his ship. They severely beat him, tarred and feathered him, and hung him up to learn that free Georgians would not suffer themselves to entertain abolitionist rabble-rousers of any nationality. Of course, Vaughan's nationality was of major significance. The case was discussed in parliament where Mr. Thomas Duncombe MP and Lord Palmerston debated whether or not Her Majesty's consul had done as much as possible in defense of this distressed Briton. Duncombe was under the mistaken impression that the consul, Edward Molyneux, a veteran of the Foreign Office resident in Savannah almost a decade, had been openly supporting secession in speech and dress and was not committed enough to Her Majesty's subjects.[106]

Either Duncombe was misinformed, or he had misunderstood the incident. He was certainly wrong about Molyneux. The consul was as loyal a servant of the Crown as ever in 1861, and had written to Brown urging intervention and justice for Her Majesty's subject. However, both Duncombe and Palmerston were clear on the significance of the incident. If it had, as Duncombe had understood, taken

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[106] Milledge Bonham, *The British Consuls in the Confederacy* (NYC: Columbia University Press, 1911), p. 139.

place after secession, it potentially signaled unwillingness in the secessionist governments to recognize and protect the rights and prerogatives of the sovereign Crown as represented in the persons of Her Majesty's subjects. Such attitudes would produce disruptive and, for the Confederates, disastrous effects on diplomatic relations. They would severely undermine the possibility of British recognition. Lord Lyons informed Molyneux by telegram the day of the disturbance, "The powers of Europe will be little disposed to look with favours upon governments which allow such lawlessness"[107]. However, secessionist governments, state and federal, needed to be jealous for more than simply recognition and acceptance of their independence and sovereignty on the world stage. Primarily, it was imperative to establish Confederate sovereignty and authority over individuals within Confederate territory. The dual needs of domestic, internal sovereignty on one hand, and recognition and external sovereignty on the other, would ultimately prove irreconcilable. Confederates faced a choice between hoping for international goodwill, and maintaining domestic governments in their own sphere. On December 10 1861, Brown wrote to Molyneux, who protested whenever necessary if the neutrality of Britons was not respected, informing him that,

> It will at all times be most agreeable to the authorities of Georgia to afford the same measure of protection, and relief to any of Her Majesty's subjects, who may be insulted or injured within the limits of this state which our laws afford the citizens of this state, but it is not in my power to apply a rule of relief in their favor which does not apply in favor of the of the citizens of Georgia.[108]

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[107] Lord Richard Pemmell Lyons to Edward Molyneux, February 6th 1861, Foreign Office series 115, Embassy and Consulates, United States of America: General Correspondence 1791-1967, 4636 vols., British National Archives, London , (Hereafter referred to as FO 115).

[108] Brown to Molyneux, December 10 1861, Great Britain: Consulate, Savannah, papers 1859-1866, Emory Manuscript Collection 15. Box 1, folder 2, Emory University, Atlanta. (Hereafter, Emory Consular Papers).

Sovereign states require loyalty, obedience and internalization of their right to rule from their citizens. They also need other states to accept them as fellow nations and to recognize their sovereign right to protect and judge the citizens they claim, wherever they may be. The innate tension between these prerogatives was clear in the case of Captain Vaughan. If foreign citizens resident in a state claim rights and privileges that interfere with their host state's sovereignty, there must be a compromise. The process of compromise between sovereign governments is called diplomacy. The diplomatic history of the Civil War played no small part in the crisis of the American republic, and the final and full establishment of Union sovereignty. In the Civil War the states struggled over whether federal machinery above them had a right to access their citizens directly and not through the states. Likewise, the European powers struggled to protect their citizens and prerogatives. They felt their way carefully through the war, looking to compromise with the fellow sovereign state most able to satisfactorily guarantee their rights.

In the standard setting early work on Civil War diplomacy, *King Cotton Diplomacy*, Frank Owsley claimed that the British government never responded favorably to Napoleon III's desire to recognize the Confederacy because the war was too profitable for the empire. Northern grain was as vital to England's industrial centers as Southern cotton. Also, war profits from exporting arms, heavy goods, leather, salt, and wool, combined with the increasing dominance

Britain's Atlantic shipping fleet gained from Confederate destruction of "Yankee Clippers", made Palmerston disinclined to look for an early end to conflict.[109]

Subsequent writers argued that the relationship between Britain and its former colonies was not so simple. British political and public opinion was markedly ambiguous, and often uninformed. Harold Hyman explained in *Heard Around the World* that Britons tended to view America in European terms, as a national unit with its center in Washington. As British trade with, and investments in, America continued to increase, American stability became vital. Walter Bagehot editorialized consistently in the *Economist* against the principle of divided sovereignty. His ideas found many other subscribers, such as Robert Lowe MP, who stated in 1866 that it was in America's interest to have, "(as few) obstacles interposed between the good sense and will of the nation and the action of the government (as possible)". Blockade-runners kept supplies of Southern goods just high enough to avert unbearable crises in British industry, thus making Pro-Southern spokesmen like John Roebuck MP appear too personal in their agenda. On the other hand, the Union cause had more consistent mass appeal. Pro-Union leader in the commons John Bright MP said, "There is nothing more worthy of reverence and obedience… than the freely chosen magistrate of a free people".[110]

D. P. Crook believed that, "(William) Gladstone personified (British) ambiguity, wanting an armistice to save the remnants of American liberty but believing that, "a unified Republic best suited British interests". Crook argued that

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[109] Frank Owsley, *King Cotton Diplomacy: Foreign Relations of the Confederate States of America* (Chicago: University of Chicago Press, 1931), chapter 18 "Why Europe did not Intervene".
[110] Harold Hyman ed., *Heard Around the World: The Impact of the Civil War* (NYC: Alfred A. Knopf, 1969), p. 38; Ibid., p. 75.

on the one hand Victorian commitments to humanitarian concerns (at least in 'civilized' countries) gave real impetus to the conviction that the South could not be forced to reunify and should be peaceably released. On the other hand, the days when European powers hoped to gain direct influence in North America were long gone. There had been a European disengagement from American affairs due to "American national maturation". A separation of North and South would destabilize North America and cause the powers of Europe, who were increasingly engaged elsewhere in the world, to have to compete for influence in an area which had, for over half a century, been seen as America's sphere.[111]

Howard Jones followed Crooks' conclusions with his study, *Union in Peril*, emphasizing the importance of Victorian, "expressions of concern for others- including Americans on both sides of the conflict- (which) were not uncommon on all levels of British society". Jones focused on the British cabinet under Palmerston, arguing that Russell and Gladstone were the most active leaders seeking intervention, always on humanitarian grounds. The counterweight to humanitarian interest was self-interest. Britain ultimately failed to commit because the Confederacy failed at crucial moments, like Antietam, to prove itself on the field, thus making the intervention recognition would necessitate too costly. Such involvement would be at odds with Britain's other prerogatives. "The likelihood of conflict with the North outweighed the attraction of intervention. Not only was

[111] D.P. Crook, *Diplomacy During the American Civil War* (NYC: John Wrigley and Sons 1975), p. 188.

Canada indefensible, but Palmerston feared an outbreak of war in Europe caused by its own set of problems".[112]

Frank Merli concluded that one of the most important factors deciding against intervention was the fact that, "the rise and fall of Davis' government depended more than he knew on the way the British government perceived his efforts". Davis sent inexperienced, ill-chosen representatives to England, such as James Murray Mason, the ultra fire-eater author of the Fugitive Slave Act, whose uncouth ways were intolerable to Victorian, abolitionist London society.[113]

The British government was more directly involved in the Civil War than many Americans realized, both at the time and subsequently. Indeed, the interests of Britain and other European powers in America's domestic war were not limited to the diplomacy of recognition. The recognition debate boils down to an international dialogue committing Europe to self-interested neutrality that ultimately favored the Union (though Lincoln's administration and Northerners in general showed only bitterness towards the Crown). The concurrent process was a ground level diplomacy carried on by Lord Richard Bickerton Pemell Lyons, the British ambassador at Washington, and the British consuls throughout both the United and Confederate States. This diplomatic history, which may be called the diplomacy of sovereignty, was part of the history of recognition, since the representatives of the Crown worked to maintain relations with local authorities according to Foreign Office instructions. It was also part of the history of the

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[112] Howard Jones, *Union in peril: The Crisis Over British Intervention in the Civil War* (Chapel Hill: UNC Press, 1992), p. 4; Ibid., p. 228.
[113] Frank Merli, *The Alabama, British Neutrality, and the American Civil War*, ed. David Fahey (Bloomington, IN: Indiana Press, 2004), p. 14.

rising nation state and the battle for governmental authority over persons in America.

In 1954, against the backdrop of McCarthyism Harold Hyman published *The Era of the Oath*, a history of the cynical and invasive use the federal government made of loyalty oaths in war and Reconstruction. Hyman demonstrated the radical growth of coercive power gained by the Union from the oath. Congress first extended the employment of the traditional civil service oath (which pledged obedience and protection to the Constitution), and then in 1862 introduced the 'iron clad oath' swearing loyalty to the constitution both future and past! Senator James A. Bayard Jr. of Delaware opposed the oath, claiming that Senators were officers of the states, not the federal government, and stating that the Constitution only demands future loyalty from its servants. "Qualifications for (the Constitution's) servants" were established, said Bayard, "to exclude all others as prerequisites".[114]

Oaths were demanded of Americans abroad through US consuls, often provoking protests from host nations. They were demanded of foreign citizens in front line areas of America like New Orleans. They were tied to the most basic daily events in Border States like buying food from government stores. Ultimately the purpose of oaths was to allow greater punishment for traitors since Confederates captured with certificates of oath on their person frequently faced death. As Linda Kerber highlighted, loyalty is ultimately only a negative obligation to refrain from treason. A government's integrity depends upon its ability to prevent disloyalty and compel support. Governments must also be able

to always guarantee the former, and if necessary the latter, from foreign residents. Thus, in the persons of British subjects, Her Majesty's government was directly involved in the conflict over hegemonic sovereignty in America.

When C. F. Adams arrived in London on May 13 1861, he discovered that Her Majesty's government had that very day declared Britain to be neutral. The North viewed the act as anti-Union since it conferred upon the Confederacy the status of neutrals, guaranteeing trading rights and safe harbor in Britain's ports. It also left the door open for recognition later. The Confederates welcomed the move, naturally hoping that it would be the first step towards recognition. Neutrality, combined with the Foreign Enlistments Act of 1819, proscribed British subjects from building and equipping ships of war for belligerents, committed Britain to not break any effective blockade, and established by royal decree that Britons were not to take part in the conflict.[115]

Although the US State Department urged Britain to rule out future recognition of the South, Russell refused. Neutrality was essentially a waiting game. Intervention and recognition were not clear-cut questions and the mind of Palmerston's administration would be made up by the course of events. What was certain of course was the Crown's commitment to British national interests. British trade, property and persons had to be protected and diplomatic relations maintained as openly and favorably as possible. And Britain's independence of action had to be maintained without any course of action being forced upon the Crown. Nation state sovereignty depends upon complete control and authority

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[114] Harold Hyman, *The Era of the Oath: Northern Loyalty Tests during the Civil War and Reconstruction* (NYC: Octagon Books, 1954), p. 27.
[115] Jones, *Union in Peril*, p. 28.

over a territory, but the justifying ideology for this territorial hegemony is a philosophy of personal, individual loyalty and possessive state authority. The Foreign Office was forced to defend an absolute ideology and standard, individual neutrality, when reality and absolutes were shifting and volatile. Therefore Civil War diplomacy (as all diplomacy) was characterized by the coexistence of ideological language and pragmatic reality. Rules were bent, laws and treaties liberally applied. Ultimately, British claims to sovereignty over Her Majesty's subjects had to bend in compromise against the claim of territorial sovereignty established by the Union.

The continued presence of British Consuls within the Confederacy constituted something of a dilemma. Sovereign governments cannot entertain foreign agents operating without their authorization, but the European nations would not immediately recognize the Confederacy and could not therefore request new consular exequaturs from Richmond. On the other hand, Confederates needed to maintain good will with the powers and therefore wished to accept consular officials within their borders. The theory of state sovereignty and the pre-secession agency of Washington provided a justifying philosophy which allowed consuls to stay without openly denying that the new government was the final authority over all persons within its bounds. Their presence provided the closest thing Richmond could attain to normative diplomatic discourse. With Confederate hospitality assured, the consuls proceeded to communicate on political and diplomatic matters with Confederate authorities, despite such actions being beyond the limits of their legal roles.

After serving briefly as Confederate Attorney-General and later Secretary of War, a task for which he was ill prepared, Judah Benjamin became Secretary of State in February 1862. It was he who reviewed appeals from foreign consuls to Richmond for the protection of their national citizens and interests. With his ally and friend President Jefferson Davis, Benjamin was responsible for Confederate policy regarding the status of the consuls. He began life in the British West Indies, the son of London Jews and was a British subject until his family migrated to Charleston in 1816, where his father took American citizenship. Benjamin therefore had personal experience of the fluidity of citizenship, and the changeable nature of sovereignty and loyalty. However, Benjamin was also a lawyer and a former US Senator and therefore understood the contractual nature of citizenship and the fundamentality of the integrity of the internal rule of law to nation states. Benjamin kept patience with the consuls and was lenient towards resident aliens longer than many critics thought wise, but he did not acknowledge any rights of foreign governments to dictate policy or law to the aspiring Confederacy.[116]

In September 1861, Consul Robert Bunch at Charleston sent Robert Mure to New York with a bag, sealed with the consular seal, containing correspondence of private British individuals for England and official consular correspondence for London. Union Secretary of State William Seward had made clear that no person would be allowed across Union lines without a passport countersigned by him. Since Mure was carrying letters appertaining to British attempts to secure Confederate commitment to the 1856 Treaty of Paris, Bunch had not sought the signature. The Paris Treaty, which America had never signed, abolished

[116] Eli Evans, *Judah P Benjamin: The Jewish Confederate* (NYC: The Free Press, 1988).

privateering and guaranteed protection of ships under neutral flags in all maritime commerce, excepting contraband of war. It also established that nations claiming blockades and requesting neutrals to refrain from commerce with the blockaded enemy must legally prove the blockade effective for it to be recognized. Bunch had sent WH Trescot, assistant Secretary of State for President Buchanan, to Richmond to appeal to Jefferson Davis' government for informal commitment to these principles, and the correspondence Mure carried attested to this dialogue. The Foreign Office defended Bunch and claimed he was forced to transmit British mails privately due to disruption to Federal mails and the blockaded ports. However, by thus approaching Richmond, Bunch blurred the lines between recognition and diplomatic silence, and in requesting that the Union abide by the treaty, Britain asked Lincoln's government to implicitly acknowledge that the Confederacy was a de facto national state, subject to treaties and rules of warfare, rather than a localized insurrection.[117]

Union officers arrested Mure in New York and the bag sparked heated exchanges between Seward and Russell. Seward quoted US laws stating that no person below the office of President may engage in unauthorized diplomatic relations with a foreign state. Like Her Majesty, Seward was attempting to serve national prerogatives as best possible, guarding against unauthorized movement and discourse, maintaining territorial and diplomatic integrity. C. F. Adams, the United States' envoy to Her Majesty's Government, complained to Russell that, "Her majesty's Government may be relied upon not to complain at one and the same time of the breach of an international Postal Treaty… and of our resort to a

[117] Bonham, *The British Consuls*, p. 29.

measure which is indispensable to complete the ability to fulfill it".[118] Adams knew that before nation states take concern for diplomacy, they must secure the integrity of their internal sovereignty, even if they have to bend some ideological rules in so doing. Russell accused Seward of, "(going) farther than any acknowledgement of those states which Her Majesty's Government has made" because the law proscribing citizens from unauthorized diplomacy as quoted by Seward could only logically apply if, as Seward denied, the Confederacy was 'an enemy state'. To this suggestion, Adams saw no contradiction or inconsistency in answering that, "The Government of the United States declines to accept any such interpretation as modifying in the least degree its own rights and powers"[119]

The Bunch affair was the more interesting for the fact that Mure was of British birth, cousin to consul William Mure at New Orleans, and a naturalized American. Bunch informed Lyons that, "He was a Scotchman born and a British subject in loyalty and feeling, although he had done what numbers do to enable them to hold property in this country". Mure claimed both British and American citizenship, and naturally both Britain and America claimed certain loyalty from him. The process of discussion and comprise worked out diplomatically resulted in Bunch's exequatur being revoked at Washington, although he continued to reside at Charleston, acting as consul without requesting a new exequatur from Richmond and taking direction from Lord Lyons. The Confederates accepted this arrangement until the continued presence of consuls without the extension of recognition became so odious an affront to its internal integrity that they expelled

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[118] Bonham, *The British Consuls*, p. 35.
[119] C. F. Adams to Lord Russell, 21November 1861, quoted in Bonham, *The British Consuls*, p. 38; Ibid., p. 39.

all the consuls. The British continued pursuing their own agenda with whatever personnel, authority and certainty they could. Most importantly this meant maintaining national interests in neutrality.[120]

Facing the uncertainty of events in America after secession, Britain's consuls sought direction from Lyons in Washington as to how they might continue to serve Her Majesty, protecting her subjects from unrecognized authorities with very real power over them. Lyons' answers to the troops on the frontline of this diplomatic cold war were invariably pragmatic in tone, despite the presence of ideological language regarding citizens and loyalty, nationality and sovereignty. He informed Molyneux to proceed according to a 'principle' to not, "meet any such questions as may arise out of the present difficulties with reference to political considerations, but merely with a view to facilitate as far as possible the continuance of peaceful commerce". In order to achieve this, Lyons authorized consuls to deal carefully but openly with the de facto authorities controlling the seceded states. In this pragmatic vein Lyons instructed Fredric Cridland, vice-consul in Richmond, to, "bear in mind that the government at Richmond has not been recognized by The Queen… consequently your relations with it must be unofficial. Transact business with the de facto authorities by personal communications rather than by writing".[121]

The Foreign Office demonstrated consistent desire to maintain the appearance and form of appropriate legal and diplomatic status in relations with the Union and Confederate governments, while naturally seeking to pursue national goals as far as possible. For example, Lyons reminded Bunch in September 1861 that

[120] Bunch to Lyons, September 30 1861, FO 115.

Royal Navy vessels were not permitted to break a recognized blockade and enter port at Charleston. Instead, Bunch was to send correspondence for Washington and London out by boat to Men of War anchored off the coast. It might be wondered what exactly the difference was between waiting off shore and entering port when the same diplomatic business would be done either way. Nevertheless, the Union needed to maintain the form of a blockade while the Crown had committed to being seen to recognize it.[122]

Although the Foreign Office explicitly forbade any incursion of naval vessels into blockaded ports, consuls were to be somewhat more flexible regarding private shipping. In this question, Lyons took his lead from the Union government itself. He quoted the decision of Supreme Court, delivered by Chief Justice Roger Taney on May 15 1858, concerning American shipping entering the Peruvian port of Iquique while it was in the control of revolutionaries. The Peruvian government accused the United States of allowing its citizens to break a legal blockade but Taney asserted,

> Nothing can be clearer than that the conquest of a country, or part of a country, by a public enemy, entitles such enemy to sovereignty and gives him civil dominion so long as he retains his military possession…. It cannot call the citizens of a third country to account for obeying the authority which was contemporarily supreme.[123]

These instructions were given to Mure at New Orleans in the early days of secession and set the tone for British attempts to continue normative commercial activity. British neutrality aimed to secure neutral shipping rights, avoid war and maintain good relations with Washington by ensuring that naval vessels observed

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[121] Lyons to Molyneux, February 4 1861; Lyons to Cridland, July 13 1861, FO 115.
[122] Lyons to Bunch, September 19 1861, FO 115.
[123] Lyons to William Mure, January 30 1861, FO 115.

the blockade. These measures, combined with official instructions for consuls to deal unofficially with Confederates, were attempts to secure British property, trade, wealth and persons in the face of potential disruption and destruction. The first prerogative of The Crown in this process was to know which individuals were claimed as British and ensure that American authorities respected these claims.

From the very beginning of the secessionist experiment, consuls went to lengths to claim the primacy and finality of British authority over non-naturalized Britons in America. All governments recognize the neutrality and foreign allegiance of non-naturalized aliens. However, controversy arose during the Civil War in the process of discerning which individuals were or were not naturalized, and how and by whom this was to be decided. On November 28 1861, Edward Molyneux wrote to Lyons pleading him to 'interfere' on behalf of a Briton, Charles Green, who for a reason unknown to Molyneux Union forces were holding prisoner at Fort Warren in Boston Harbor. Green had been a resident of Savannah and a merchant with the House of Andrew Low and co. for thirty-five years. Molyneux assumed Northern authorities had taken him for some kind of Confederate, but despite his long residency in Georgia Molyneux claimed him firmly for the Crown.[124]

The Foreign Office also insisted upon an official policy of claiming Britons who had intended to naturalize, but had never actually done so. After Russell and the law officers considered the question, Lyons issued a circular to the consuls on August 3 1861. Russell insisted of such persons, "He remains always an alien,

[124] Molyneux to Lyons, November 28, 1861, FO 115.

owing none of the duties and entitled to none of the peculiar protections of allegiance". The circular instructed that issuing passports to persons claiming British citizenship was, "a matter for your discretion and not one of strict legal right". Thus, it maintained Her Majesty's claim to be arbiter of the rights and status of Britons in the world.[125]

The affidavits of citizenship that aliens needed to procure in order to gain passports and/or protection from the Crown's representatives in America were simple. A small one-page certificate attesting to the fact that the individual had sworn to their citizenship, signed by a Justice of the Peace, was sufficient. An affidavit for Leonard Gibson of Macon, Georgia signed on January 21 1863 by the honorable A. H. Wayne simply stated that Gibson had been resident in Macon since 1858 but was not naturalized. It read that Gibson, "says on oath he is a British Subject and citizen and owes his allegiance to and claims the protection of the English Government". A similar document for John Burke of Bibb County, Georgia, signed on March 6 1863 by the honorable A. H. Wyche, made clear that Burke, though present in America since 1850, both North and South, "does not now intend to reside in either government permanently".[126]

Such claims of obligatory, reciprocal loyalty from subjects bound the Crown to interpose and were the basis of Britain's sovereign claims to rights in America. The certificates functioned as contracts of ownership. Their diplomatic significance was that such ownership was frequently contested. Her majesty's government rendered the royal proclamation of neutrality in absolute terms. Britain and all under the Crown were entirely neutral in all questions relating to

[125] Lord Lyons' circular to the consuls November 18 1861, FO 115.

the American conflict. Of course, Her Majesty could proclaim whatever she might choose. Words mean nothing without authority to see them fulfilled. It therefore fell to the consuls to be the defenders not simply of Her Majesty's subjects, but of the very integrity of her rule.

> I transmit to you a copy herewith of a proclamation the Queen has been pleased to give warning to Her Majesty's subjects against taking part in the hostilities which have broken out in the United States. I have to instruct you to exhibit this proclamation in your consular office and to take suitable steps for (the protection) of Her Majesty's subjects residing or entering within your jurisdiction, taking care however to do so in a manner best calculated to avoid wounding the sensibilities of the authorities in the place where you reside.[127]

It was therefore, a priority of the highest order to keep Britons from bearing arms, willingly or otherwise. Consuls were entrusted with the responsibility of warning Britons against volunteering, especially in Confederate service, which would leave them liable to treatment as traitors not enemy prisoners if captured. Consuls also had to seek justice for Britons wrongfully treated with imprisonment or forced enrollment, if necessary at the risk of affronting the assumed rights of Confederate authorities.

The conflict between governments for claims to citizens began with the first mobilization for war. The states, Confederacy and Union all made claims to the same individuals, and matters were complicated further when governments ostensibly foreign to the war could also claim those individuals. On August 3 1861, Lyons wrote to Allan Fullarton, who was acting consul at Savannah with Molyneux in England for reasons of health, requesting that he inquire into the fate of Mr. Patrick Walsh's son who, while working in a shop in Macon, had been forced into the Floyd Rifles. These were the very same Floyd Rifles Brown had

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[126] Emory Consular Papers, folder 2.

submitted to Confederate service in Virginia that April. In all his attacks upon Confederate conscription Brown argued that the independence struggle needed no more access to men than the states were able to guarantee. However, in many cases attempts to make such provision provoked diplomatic counter-claims to the individual citizens governors were depending upon to fill their ranks.[128]

On July 28 1862, Fredrick Cridland, wrote at length to William Stuart, British chargé d'affairs in Washington, with details of the status of Britons in Virginia. Stuart was pursuing the release of William Keith, a Briton captured in Confederate service before Richmond who claimed to his Union captors to have been serving against his will. Cridland informed Stuart that in the first week of June the Confederate conscription office had opened in Richmond and patrols had begun stopping and arresting men thought to be liable for enrollment. Cridland accused enrolling officers of being, “perfectly ignorant of all law” and informed Stuart that, “In consequence of these outrages the applications of British subjects at the consulate daily were so innumerable (as to cause) an entire suspension of business”. Keith, who had been resident in Richmond five years but had not naturalized or married, had been arrested and enrolled on June 19. Cridland had written to Confederate war secretary Randolph the following day regarding the case. Randolph replied eight days later promising to look into the case, but could only inform Cridland of his discovery that Keith had been captured.[129]

Lyons also received many similar complaints from his consuls resident within the loyal states. As Northern authorities struggled to find men to put into the field,

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[127] Russell to Molyneux, April 29 1861, Emory Consular Papers, folder 4.
[128] Lyons to Fullarton, August 3 1861, FO 115.
[129] Cridland to Stuart, July 28 1862, FO 115.

inevitably Britons were swept up with the tide. On October 23 1862 E. M. Archibald, Her Majesty's consul at New York, informed Lyons that three men, Edward Quinn, John Sheppard and Michael Hopkins, all resident in Pennsylvania, had been drafted into US service and issued papers of American citizenship. Archibald assured Lyons, "I have ascertained that these parties are subjects who have not been naturalized in this country… and have not exercised the peculiar privileges of American citizenship". In issuing these men with a piece of paper, Union authorities were claiming a right over them which implicitly had not existed previously. As Britons, the men were not liable for conscription, but once the United States claimed them, the very same men, regardless of protest, were taken into service for 'their' government.[130]

Throughout America, men claiming British protection, either from a simple desire to avoid active service, or from genuine loyalties, must have shared the dread Thomas Hogan of Augusta expressed to Fullarton in July 1863. Hogan complained that the Adjutant General of Georgia Henry Wayne had published a letter in the Augusta paper stating that foreigners were liable for draft. Hogan cynically commented, "I suspect this (article) is the only authority they have to take us if they will". Hogan claimed he had tried to leave the state and had a passport for Richmond from the consul's office. However, after Henry Wayne's letter, the city passport office had shut down and refused to issue passes for resident aliens. "So now I and a great many others who was ready is disappointed

[130] Archibald to Lyons, October 23 1862, FO 115.

(sic)…. I am in great dread that I will be drafted, and so are all the other British subjects".[131]

Although many Britons expressed fear, and encountered actual abuse from enrolling officers, overall the goodwill of Confederate and state authorities in the South lasted through the first half of the war. The desire of Confederates to maintain relations with Britain as close as possible to amicable and normative despite the absence of full recognition, ensured that Her Majesty's consuls were able to find favorable responses to most of their appeals. They continued to use the opportunities Confederates allowed them to act as pseudo-ambassadors for Her majesty to the un-recognized republic.

Cridland wrote to William Stuart on October 16 1862, regarding British subjects who had joined Confederate service on an initial twelve-month service as volunteers without naturalizing. "I can state that to my certain knowledge hundreds of British subjects have of late obtained their discharge from the said army on proving their nationality and of their having no domicil in America". Two days later Cridland followed up on the case of William Keith informing Lyons that Keith, along with some other men, had escaped Union captivity and upon appeal being made to secretary Randolph, had been released from Confederate service. Cridland assured Lyons that Confederate authorities generally released Britons without paperwork when he, as consul, presented proof of their citizenship. Cridland assured, "The secretary of war seems determined not to allow any violation of the rights of aliens". Cridland also repeated his commitment to, "at all times be directed against the pretensions of the so styled

[131] Hogan to Fullarton ,July 22 1863, Emory Consular Papers, folder 6.

Confederate government to exact military service from British subjects domiciled or not domiciled in the South."[132]

Despite such bold and increasingly aggressive pursuit of the rights of Her Majesty's subjects abroad, the consuls enjoyed continued shows of goodwill, from government officials at least, well into 1863. Fullarton assured Lyons in December 1861 that when Britons sought militia exemption at his office, "my advice has invariably been to make the affidavit prescribed by law. In no case has complaint afterwards reached me"[133]

In September 1862 James Randolph replied to concerns voiced by James Magee at Mobile by repeating to the consul instructions that he had sent Major Swanson, commanding officer at Camp Watts, Alabama. Randolph directed Swanson, "Instruct your enrolling officers and especially those at Mobile, not to enroll foreigners unless they are permanent residents of the Confederate States, and that the oath of the party… is usually deemed by the Department as sufficient proof in such cases". Randolph insisted that his department had, "never yet failed to discharge a foreigner when the consul, after examination, found that they were not domiciled in the Confederate States". Randolph's reiteration of Confederate restraint and goodwill only met with further complaints from Magee who highlighted the case of John Martin, J. B. Reid and Michael Slattery. These men, he had learnt that very day, were, "thrown into a filthy jail and confined at Major

[132] Cridland to Lyons, October 16 and 18 1862, FO 115.
[133] Fullarton to Lyons, December 10 1861, FO 115.

(William) Clarke's convenience…. I am also informed that they are prevented from corresponding with their consul".[134]

Following up on this case on September 24 1862, Magee complained, "I must lodge a complaint against this Major Clarke for such unwarrantable proceedings contrary to the usage of any government". The language of the complaint was significant and telling. Magee subtly demanded that the Confederacy behave the way Her Majesty's government expected civilized nations having dealings with the Crown to behave, while refusing to recognize and treat it as any such state. Again, a British consul was going beyond the limits of commercial employment, acting as a diplomatic official, and unofficially making official requests of Confederate authorities for British prerogatives to be respected. Again, Confederate authorities showed willingness to entertain such actions.[135]

Magee and Randolph continued to correspond through late 1862, with Magee making constant complaint against Clarke and his activities as enrolling officer. On October 10, Clarke conscripted William Hensbury, confiscated his British passport and even released a Frenchman and an Italian in Hensbury's presence! Earlier that day Randolph had sent Magee a copy of War Department General Order 30, April 28 1862, which directed department personnel as to how they were to implement the Conscription Act. Section XI of this order stipulated that taking an oath before enroling officers and presenting a certificate was sufficient for exemption. Randolph had reminded Clarke of the Order and stated, "All enrolling officers are hereby prohibited from enrolling, as conscripts, foreigners

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[134] Randolph to Magee, September 13 and 16 1862, Ibid.; Magee to Randolph September 16 1862, Ibid.
[135] Magee to Randolph, September 24 1862, FO 115.

not domiciled in the Confederate States". A few weeks later, Randolph wrote assuring Fullarton in Savannah that, "certificates from the consuls of foreign governments have been, and will continue to be, treated with due respect by the department, and all enrolling officers are required to exempt non-*domiciled* foreigners from conscription. Mistakes will occur however…"[136]

Confederate officials were eager to appear to be accommodating British requests and acknowledging the prerogatives of the Crown, even at the expense of their own struggle. Her Majesty's officials couched the claims they made in pursuit of those prerogatives in absolute terms of rights, as though Her Majesty's sovereignty literally extended into America with her subjects. As the war progressed, Confederate needs grew direr and their revolution more desperate, and the claims of the consuls became more offensive and unbearable. However, careful analysis of the language used by state and Confederate officials concerning foreigners and the right of exemption reveals that even when secessionists were co-operating with Her Majesty's claims, they always made reservations. These reservations implied that Her Majesty could have no access to her subjects within the Confederacy except through Confederate governments, and with their blessing.

The Confederate counter-revolution certainly did, as Merli argued, depend more than Davis realized upon British recognition. However, it depended more immediately upon the establishment of complete and final Confederate authority within the seceded States. Union forces captured Fort Pulaski on April 13 1862 and began to range heavy siege fire upon Savannah from Tybee Island. Georgia

[136] Magee to Randolph, October 22 1862 and Randolph to Magee October 10, FO 115; Randolph

military authorities responded by enlisting all Savannah's able-bodied men to defend the port city. Molyneux requested that British subjects be exempted from such service but,

> Upon remonstrating with (the general commanding the state forces) in favour of British subjects, on the grounds that the law in question was framed to meet the case of foreign invasion and not civil war, he replied that any application of such a course would practically concede that the Confederacy was still a part of the United States and not an independent nation as it claims.[137]

The 'law in question' referred to was the law of exemptions from Georgia militia duty. Adjutant General of Georgia, Henry C. Wayne, wrote to Molyneux on February 26 1862, and somewhat unreassuringly reassured him that, "should any alien be drafted, (the governor) will immediately, *in his discretion*, on the representations of his consul, direct his relief from military duty". Wayne claimed recourse to, "the recognized international principle that in cases of invasion aliens may be required to take up arms". This international principle had been established in Georgia law by the 1824 Militia Act which stated, "All aliens residing or at any time being within the State of Georgia shall be exempt from the performance of all ordinary militia duty, except parole duty, alarm duty and duties required for the suppression of insurrection, invasion or conflagration". The Act also stipulated that aliens must register with an oath taken before a Justice of the Peace who must then sign an affidavit attesting to said alien's exemption. Combined, these two principles, established decades before the war, amounted to an exemption of aliens from militia duty unless the State of Georgia felt that such service was necessary. They also made qualified alien citizenship dependent upon the agreement and signature of a state official. In other words, the 'rights' of

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to Fullarton November 11 1862, Emory Consular Papers, folder 5.

citizens of foreign sovereigns were not really rights at all, but privileges guaranteed by Georgia, which could be revoked at the state's pleasure.[138]

On May 22 1862, the Confederate Attorney General, Thomas Watts, issued general order 38 stating, "the question of domicil, or permanent residence is, however, a question of law and should be determined from the facts of the case and not by the opinion or oath of the party". *Domicil* was a contemporary concept of international law functioning as a kind of forerunner to modern immigration proceedings. The term meant permanent residence and could be established in a variety of ways, including property ownership, exercising the franchise, militia enrollment, or, more obviously, by taking a naturalization oath. As General Order 30 rightly established, *domicil* was a matter of international law. The United States Constitution was also matter of law, but when one law affects more than one government claiming to be the final and sovereign judge of that law's meaning and usage, conflict is inevitable. The question of who was *domiciled*, and what could be claimed from such persons, was as much a necessary constitutional struggle as the Civil War itself.[139]

Cridland complained to Randolph on June 25 1862, of the unreasonable trials Britons would be subject to if secessionists insisted upon forcing them into the conflict against their sovereign's stated will. "Supposing that they should not return to their native country, is it just by the exercise of the power complained of to compel them to lose Her Majesty's protection through her official agents in this

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[137] Molyneux to Lyons, April 14 1862, FO 115.
[138] Henry Wayne to Molyneux, February 26 1862, Emory Consular Papers, folder 5. Author's italics; William Dawson, *A compilation of the Laws of the State of Georgia from 1819 to 1829* (Milledgeville, GA: Grantland and Orme, 1831), p. 321.
[139] Quoted by Cridland to Stuart July 28, FO 115.

country?" Cridland went on to argue that International law, "condemns the enforcement of conditions hostile to the interests of foreigners or different from general usage unless it may be specified before immigration". This argument went as far as claiming for Britons an absolute right to inconvenience their host government to any necessary length in order to ensure continued maintenance of the conditions for which they migrated. It attempted to bind the Union and Confederacy both in a contractual, obligatory relationship to alien individuals, without even the suggestion of mutuality. It hardly needs stating that any self-respecting sovereign state can never accept such claims; Britain included.[140]

British consuls committed themselves to appealing to local authorities on behalf of any distressed Britons. However, despite these appeals being couched in the language of absolute allegiance of British subjects to their final and only sovereign, the Foreign Office had to accept that host governments do have some rights over *domiciled* foreigners. Obviously the Crown would never operate under restraints on internal British affairs placed upon it by foreign states jealous for their citizens resident in Britain. Lyons consistently instructed the consuls to appeal for release of Britons in every case, and always argued that the Civil War was not a foreign invasion, therefore Southern states were wrong to impress Her Majesty's subjects into service. He did however admit, "there is no rule or principle in international law which prohibits the government of any country from requiring aliens resident within its territories to serve in the militia or police the country, or to contribute to the support of such establishments".[141]

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[140] Cridland to Randolph, June 25, FO 115; Cridland referenced De Vattel, *The Law of Nations* (Philadelphia, 1855).
[141] Lyons to vice-consul Fredrick Bernal, Maryland, April 26 1861, FO 115.

The political philosophy of final sovereignty is the basis of all modern nation states, and this sovereignty theory rests on authority over individuals, which produces hegemonic rule within a given territory. Migration is the remainder to this equation of political science. When individuals migrate, claims of multiple sovereigns are active in the same sphere and regarding the same persons. As of the histories of the early American republic and the State Rights battles of Confederate politics demonstrate, conflict, compromise and submission must result from such questions. The diplomacy of the Civil War demonstrates that for their own integrity, sovereign governments must ultimately be willing to concede some authority over their claimed citizens abroad, in order to protect the ideology of internal hegemony in international law. In the Civil War, diplomacy was uncertain and cautious because official dialogue with the Confederacy was impossible, and Her Majesty's government was depending largely on diplomats who were only legally empowered to act commercially. Further difficulties existed because Britain's legal rights in America were debatable, being subject to interpretations as to the nature of the war. This of course guaranteed that South and North would see each question in lights as contrary as they were predicable. When Foreign Office policy was to request the neutrality of Britons because the Civil War was not a foreign invasion, Confederates could not accept such claims. Therefore, success was always dependent upon the good standing and persuasive skills of the consuls and continued Confederate goodwill.

Cridland admitted these host government rights over *domiciled* aliens to Randolph on June 25 1862, but continued to press for favor toward Britons anyway,

> I am informed that while Her Majesty's government might well be content to leave British subjects voluntarily domiciled in a foreign country, liable to all the obligations incident to such foreign domicile, including… service in the militia, or national guard, or local police, for the maintenance of internal peace and order, or to a limited extent, the defence of that territory from foreign invasion, it is not reasonable to expect that Her Majesty's government should in the present state of things in this country remain entirely passive under the treatment to which it appears British subjects are actually exposed…[142]

Fredrick Cridland continued to support Britons. He used his influence and long held respect in Richmond society to act in a personal political way where absolute rights did not exist. He and other consuls continued to see success well into 1863, at least with government officials, if not always enrolling officers. However, local authorities always reserved their rights to internal sovereignty. On October 13 1862, Cridland wrote to Lyons complaining of increasing difficulties faced in Richmond by Britons due to section I of article III of the March 1862, "Act imposing taxes for the support of the Government". The Act read, "Be it enacted that no license shall be granted to any person except a citizen of the Confederate States and except to such a person who shall have declared an oath… to become a citizen". The licenses the Act referred to were for any kind of merchant conducting business in Confederate towns, and the oath mentioned demanded that persons swearing, "renounce forever all allegiance and fidelity to any foreign prince".[143]

Cridland was convinced that, "the principle object in view (with the Act) was to test the loyalty of unnaturalized aliens- who without in any way identifying themselves with the country, were enjoying many privileges and could carry out every act of trade while the citizens of Virginia were compelled to enroll

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[142] Cridland to Randolph, June 28 1862, FO 115.
[143] Cridland to Lyons, October 13 1862, Ibid.

themselves in defence of their homes". According to Cridland, many Britons had had to leave Virginia after experiencing unfair pressure to renounce their native citizenship due to conditions not in existence when they settled in America. However, the Foreign Office could do very little about it. Objections could be registered, but how could a mere consul demand that a government staking a claim to sovereignty and seeking internal hegemony change its very laws?[144]

The legal status of minor children was another question of significance in which American law made certain that America's residents would answer to American government. Unsure of his rights and prerogatives in cases where migration blurred the boundaries of citizenship, Cridland wrote to Lyons in August 1862 requesting a decision on the legal relation of the Crown to minors of British parentage, resident in America. He quoted from the Yate's Digest laws of Virginia to show that American states considered,

> The children of any person duly naturalized under the laws of the United States… being under the age of twenty one years at the time their parents naturalized, or admitted to the rights of citizenship, shall, if dwelling in the United States be considered as citizens; and the children of persons who are now, *or have been*, citizens of the United States, though born out of the limits and jurisdiction of the laws of the United States, be considered as citizens….[145]

In American law therefore, children of foreigners settling in America were claimed as American, even if their parents might cease to be American citizens. Concurrently, minors of American birth remained American citizens even overseas. In October 1862, Cridland wrote to Lyons regarding the case of Thomas Atkins, a Richmond man with a British father who had naturalized while Thomas was a minor. Lyons informed Cridland that he would not be able to help the man

[144] Cridland to Lyons, October 13 1862, FO 115.

escape military service as a British subject. “Although he would have no difficulty in being recognized as such in Great Britain yet by the laws of the United States you apprehend that he may be claimed as a citizen thereof and duties required of him accordingly”. Stuart followed this correspondence with an opinion in advance of the law officers’ official ruling, stating that, “(minors) brought to this country be considered, as between the United States and British governments to belong during their minority to the adopted country of their father”. This opinion reaffirmed the importance of the government claims therein referred to. If governments can claim individual citizens, and justify such claims, they become sovereign over their future generations, and ‘in a multitude of people is the glory of a king.’[146]

During the long Canadian winters the scarcity of work frequently pushed many British Canadians south down the Mississippi valley in search of casual, seasonal occupation. 1861-62 was no exception. Despite the war, many Britons moved south assuming their foreign citizenship would keep them free of the conflict, and hoping that labor shortages would allow their work to fetch high prices. John Robertson and Samuel Armstrong were among these migrants. While in the seceded states however, both men were arrested, and impressed into Confederate service. The men met at Camp Douglas in Illinois, having become Union prisoners of war. Armstrong wrote an appeal to Her Majesty’s consul at Chicago, Edward Wilkins. He declared, “the cause of my enlisting was compelled, that is to be pressed, which I consider not lawful…”. Robinson, who had fled his

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[145] Cridland to Lyons, August 25 1862, FO 115. Author’s italics.
[146] Cridland to Lyons, October 17 1862 FO 115; Stuart to Cridland, October 22, Ibid.; Proverbs 14:24 (ESV).

Confederate unit and surrendered to captain T.G. Pitcher of the 22nd Illinois in Tennessee, similarly protested against his treatment. He informed Wilkins, "I have gone south and as I would not join the Confederate army I was imprisoned on suspicion of being an abolitionist. I was afterwards forced into the Confederate army…"[147]

Colonel James A. Mulligan of the 23rd Illinois, the Union hero of Lexington, commanded Camp Douglas. Mulligan was a second-generation Irish immigrant, raised in Chicago. Being not far removed from British subject status he understood very well the conflicts of mixed or uncertain citizenship. Wilkins wrote a letter of appeal for Johnson and Robinson to Colonel Kelton, acting commander of the department of the Mississippi head quarters, on April 26 1862. He requested favor and apologized that, "it would be next to impossible to obtain satisfactory legal evidence as to the truth of the statements of such persons… it might be well that some rule should be adopted by the department". Although Wilkins desired a general principle for such cases, he knew his only real recourse was to personal politics. He referred to his 'personal connection' with Colonel Mulligan from the Irishman's time as district attorney of Northern Illinois, and expressed confidence that co-operation would be forthcoming. Co-operation was certainly necessary as month by month the number of Britons facing such dire circumstances increased. Wilkins informed Lyons that in November 1861 he had traveled to Cairo, Illinois to meet with British prisoners and discovered them all to

[147] Johnson to E. Wilkins, April 14 1862 FO 115; Robinson to E. Wilkins, April 18 1862, Ibid.

have been volunteers. As the war progressed into 1862 however, many Britons were being forced to serve an increasingly desperate Confederacy.[148]

Earlier in May 1862 Lyons had corresponded with Cridland in Richmond over the issue of volunteers. Their letters demonstrated the limits of sovereignty over individuals, which rested upon the obedient fulfillment of basic obligations of loyalty. While the jealous servants of the Crown were determined to defend even *domiciled* Britons mustered to serve in a war they refused to accept as 'foreign invasion', they could not defend Britons who had rejected Her Majesty's protection voluntarily. Lyons instructed Cridland categorically, "You cannot be expected to take part in any dispute or discussions between men so enlisted and the 'confederate' government". Foreign Office policy was made explicitly clear: "British subjects who have disobeyed the law of England and the Queen's proclamation are not entitled to the same consideration… as those who have faithfully adhered to this duty and allegiance". Some months later William Stuart informed Cridland that Northern consuls were not interceding on behalf of Britons who had volunteered for Union service for specified terms when Union conscription subsequently extended those terms. Stuart referred to such arrangements as contracts, and since Britons had voluntarily removed themselves from neutrality, Her Majesty's government was no party to such. All Cridland could do was request that Randolph treat British subjects 'in good faith'. For cases such as William Keith however, Stuart reiterated, "It is most unjust to subject

[148] E. Wilkins to Kelton, April 26 1862, FO 115; Wilkins to Lyons, April 28 1862, Ibid.

foreigners who have acquired this domicile with a very different understanding of its obligations, to violate the neutrality required upon them…"[149]

In the same month that Lyon's sent these instructions to Cridland, he wrote similarly to acting consul Francis Wilkins at St. Louis. Lyons told Wilkins that, "British subjects enlisting or taking part in any warlike or military operation, without the Royal license, forfeit, while so enlisted or serving, right to British protection". Lyons made clear that it would not be reasonable to attempt to pursue British rights so blindly as to trample on the sovereign rights of the United States. He stated that, "the United States government is entitled *prima facie* to respond as enemies, and treat as prisoners of war, all persons whom it finds in arms against it". The United States was a government recognized by the Crown, a fellow sovereign state with its own claims within its territories. Her Majesty was bound by honor to recognize such rights, even over her own subjects. Since the Union might gain prisoner exchange or other advantages from such prisoners it would be unfair to demand their release and expect the US government to disadvantage its pursuit of a war which Britain recognized its right to wage. Therefore Lyons instructed, "You should abstain from making any formal official demand for the liberation of such prisoners, *as of right*- and you should not call upon United States authorities to lay down any general rule…"[150]

The Foreign Office did however, authorize the consuls to continue exerting personal influence and requesting unofficially that Britons be shown favor. In a letter dated May 19, Brigadier General W. S. Ketchum, acting inspector of prisoners for the department of the Mississippi, wrote to Major General H. W.

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[149] Lyons to Cridland, May 15 1862, FO 115; Stuart to Cridland, August 28 1862, Ibid.

Halleck, commander of the Union army in Missouri. Ketchum instructed Halleck to use his 'discretion' in matters of Britons captured while serving the Confederacy against their will. Wilkins then informed Lyons, "In exercise of the discretion given to Major-General Halleck in that letter he has caused an order to be issued for the release of the prisoners referred to (in my previous letter)".[151]

Shortly after this triumph however, Francis Wilkins received a list of some three hundred British prisoners, all claiming to have been serving against their will, being held as prisoners at the Chicago and Alton military prisons. Wilkins attempted to secure their release by quoting the order issued by Halleck under the authority granted to him from Major-General Buckingham, Ketchum's superior at the department, but this appeal failed. Colonal William Hoffman was now controlling the fate of these men as the Commissary General of Prisoners. Wilkins traveled to Chicago to meet with Hoffman but was not allowed access to the men without permission from Washington. The matter was finally concluded when, after personal appeal, General Halleck released several of the prisoners, under instructions that they not return to the Confederacy. Halleck further informed Wilkins that he was not authorized, "to interfere further on behalf of unfortunate persons included in the list".[152]

Throughout the first two years following secession, British consuls acted however possible to keep Britons from undermining royal neutrality and to defend Britons who had been forced into belligerent status. The diplomacy of this individual-focused ideological sovereignty was bound up with the diplomacy of

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[150] Lyons to F Wilkins, May 3 1862, FO 115. Author's italics.
[151] F Wilkins to Lyons, June 17 1862, FO 115.
[152] Wilkins to Lyons, July 8 1862, FO 115; Wilkins to Stuart July 21 1862, Ibid.

recognition. It was also limited and defined by the laws of territorial sovereignty and nation state authority. While Confederates desired friendly relations with Britain and were eager to appease and please the Crown, British demands, which denied Confederates valuable men and mocked Southern claims to national independence and self-government, were increasingly unbearable. On the other hand, while Britons serving the Union in arms were just as un-neutral as those serving in the South, the Foreign Office was bound by international law, and a need to recognize the absolute rights of all national governments to control of their own internal affairs, to concede to the Union many of the rights over individual Britons which it vehemently denied the pretending Confederates. Although, sovereignty theory appears initially to have two parts: state authority over individual nationals, and governmental territorial hegemony. However, analysis of the nature of diplomacy, especially in the American Civil War, demonstrates that foreign states cannot defend their citizens abroad without the blessing and goodwill of the sovereign government hosting them, unless by force.

Chapter Three: "Instructions issued from hence to Her Majesty's Consuls would produce an irritating effect upon the Confederate authorities"[153]

William Treen left Britain as a sailor aboard the commercial vessel *Bellwood* on October 3 1862. Shortly after he stepped ashore in New York on November 8 a press gang seized and arrested the unfortunate sailor. They took him to a hotel and presented him to enrolling officer Captain Gormon and although Treen produced satisfactory proof attesting to his nationality, "said Captain Gormon disregarded all testimony". Gormon sent Treen to a jail for four days and charged $5 for the privilege of his upkeep. He was then sent to Newport News, Virginia, undressed, given military uniform, and taken to the commanding officer, Brigadier General Michael Corcoran. According to Treen, Corcoran told him, "that he would make (Treen) serve in ranks in defiance of Her Majesty and all her damned forces". Officers relieved Treen of his money although he managed to escape before they could force him into active service. He managed to make his way across the lines to Richmond, from whence he appealed to Consul George Moore for assistance. Before his case could find justice however, Treen decided of his own volition to earn his living in Confederate service and withdrew his appeal lest he be captured and suffer worse treatment on its account.[154]

William Treen's story was a bizarre case of a Briton swept into the war on his first day in America. Within three months he had been in the military charge of both contending sections. Like many others, he freely chose to remove himself from Her Majesty's protection, intending to seek his own revenge. He literally

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[153] William Stuart to Lord John Russell, August 29 1863, FO 115.
[154] Treen to consul Moore, January 7 1863, FO 115.

became personally involved, while Her Majesty's government worked to keep Britain as a nation uninvolved. While Treen's story is somewhat remarkable, his experience of impressment was not. George Moore, Her Majesty's consul and head of the consular office in Richmond, forwarded Treen's letter to Lord Lyons in Washington. He had received many reports of Britons enrolled against their will at Fort Monroe, Virginia after New York press gangs had filled them with drink, or simply coerced them. Similar or worse outrages were even more common in the South. James Clarke, who had arrived in New York on the British packet ship *American Congress*, and William Gibbon, who had been a seaman aboard the *Great Eastern*, escaped to Richmond on foot after such an ordeal, penniless and distressed. Clarke wrote to Moore from Lybee prison's hospital, where was convalescing having his arrest in Richmond as a potential Union spy. He complained that the officers at Camp Monroe had told him they would make a soldier of Queen Victoria if she were there![155]

Moore complained to Lyons that Britons held both in New York and Newport News were often brutalized, stripped and robbed, and urged Lyons to exert pressure against such practices. He also informed Lyons that, "A movement is being made within the (Confederate) Congress now assembled here for the enrollment of all foreigners". While Moore was confident that it would not pass, he requested that Her Majesty's government send ships to Richmond to bring Britons home should such a measure be adopted. As Moore believed, the move did fail, but this was of little comfort. In early 1863 the Confederate government still held out hope of recognition and appeared eager to treat resident Britons

[155] Clarke to Moore, December 6 1862, FO 115.

according to Her Majesty's neutrality. In reality however, the Confederacy's plight was growing ever grimmer and official commitments to protect aliens were becoming half-hearted. Moore informed Lord Russell that,

> Of late the exercise of arbitrary power has been more vexatious than ever…. It appears that enrolling officers in different parts of these states are exacting an oath from every foreigner that he has not exercised any rights of citizenship… and that it is his intention to return to his own country, otherwise he is liable for conscription.

Ostensibly, such requirements of domicile and citizenship were little different than any previously demanded. Moore claimed though, that interpretations of domicile were increasing in harshness, even to the point that some enrolling officers were considering the purchase of salt procured by the government as exercising rights of citizenship.[156]

Moore was convinced that the recognition issue and the treatment of Britons within the Confederacy were directly connected. He informed Russell in January that he was certain the South could never be forced back into the Union. He also highlighted the detrimental effects he believed reunion along pre-war lines of tariff protection would have on British interests. Opinion in the South was, according to Moore, "estranged from England, but not lost". Southerners looked more hopefully to France, but would welcome recognition from England. This would bring trade, ship building contracts, and commercial dominance to Britain. Moore even believed the Confederates could be persuaded to enact gradual

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[156] Moore to Lyons, January 16 1863, FO 115; Moore to Russell, January 11 1863, Ibid.; A further attempt to make the outright conscription of all foreigners resident in the Confederacy was made on April 4 by Senator Clay of Alabama. This bill also failed but the situation was increasingly desperate. As Union lines tightened and Confederate authorities withheld passports to cross, leaving the Confederacy became harder and the classification of 'resident' became much broader. Representatives such as Clay felt that simply remaining implied residency, though often Britons had little opportunity to leave. See Ella Lonn, *Foreigners in the Confederacy* (Chapel Hill: UNC Press, 1940), chapter 13.

emancipation. However, in the *status quo* Britons were unlikely to meet kindness from frustrated and desperate Southerners. Congress was considering the question of enrollment and it was, "proposed to bring a more stringent measure to make all residents of the Confederate States liable to military duty".[157]

As Moore predicted, this movement failed for the time being, but Moore, a experienced diplomat serving with the Foreign Office since 1836, had judged the climate of opinion correctly. Confederates were certainly feeling resentful at the cold, dispassionate neutrality of the Crown. They were desperate for recruits and frustrated at the refusal of foreigners to support a nation they benefited from. More importantly, such unwillingness signalled an implicit refusal to acknowledge the Confederacy as a nation state with any integrity of internal authority. Numerous British consular officials had already been forced to withdraw by Washington or their health and could not be replaced with full consuls unless exequaturs were sought from Richmond. Through 1863 Confederate objections would force other leading consuls to withdraw, until finally Davis expelled all foreign consuls accredited to Washington. As British diplomatic manpower grew thinner, and restrictions placed upon consuls by increasingly agitated Southern authorities grew more oppressive, Britons in the South enjoyed shrinking protection while being subject to increasing abuse. When the Davis administration realized that Britain would not extend recognition, they finally cast off the offense of unauthorized foreign officials, refusing to allow them to continue acting beyond their legal limits and affronting Confederate sovereignty. The apparatus of Southern governments were closed to Britain and

[157] Moore to Russell, January 15 1863, FO 115; Moore to Lyons January 23 1863, Ibid.

the sovereign Crown was left without access to subjects of whom it claimed to be the final and only judge.

As Confederate forces in the field became more depleted and available manpower for drafts dried up, enrolling officers squeezed the population of the ailing republic with renewed vigor and harshness. As Southern courts issued increasingly stringent and ungenerous rulings on questions of foreign exemption British consular protests rose in response.

A War Department special order on February 7 1863 placed General John Winder in charge of issuing passports to persons wishing to travel beyond Confederate lines to the United States. Winder promptly instigated a policy of sending Britons who had served any term in Southern forces to Moore in order to have this fact, and the details of such terms, written on their passport. Moore expressed a hope that United States authorities would treat these men generously since they had generally been forced into service. However, he was concerned because, "a peril is incurred by these discharged soldiers, in having my endorsement (of the fact of their service) on their certificates". Of course Winder aimed to make it as difficult as possible for men who, to Confederate minds, had entered into *de jure* citizenship from leaving the Confederacy when the new nation needed their service most.[158]

By early 1863 harsh treatment of Britons was increasing at a pace. Moore complained, "Justices of the peace in different parts now refuse to give affidavits to British subjects living at a distance from consular assistance, in order to prevent them from obtaining their certificates of nationality". The neglect of the courts

[158] Moore to Lyons, February 15 1863, FO 115.

Justices of the Peace then left Britons at the mercies of enrolling officers, of whom Moore complained, "Their cruelties of enrolling officers are beyond any precedent"[159]

Acting Consul George Coppell at New Orleans reported the case of one James Nelson who had been arrested and taken to a military camp where he claimed exemption as a British subject. Major General R. Clarke, of whom Consul Magee had so often complained, issued Nelson with a certificate of exemption that referred to him as, "a nuisance to the Southern Confederacy" and urged all persons to refuse him employment. Nelson had enough money to reach New Orleans but told Coppell that many other Britons were trapped without financial means to travel, "and are compelled to take up arms". According to Coppell, if state forces did not coercively muster men into service, Confederate forces would do so. He requested reports from Magee's districts, "in order that I might take steps to prevent the enforcing of these illegal acts".[160]

Coppell's language was interesting because he was not referring to abuses of Britons as 'these illegal acts' but Acts passed by the Louisiana Legislature on January 3, and in Mississippi later that month. These Acts were for the enrollment of all men aged 17 to 50 able to bear arms, "whether citizens of the state or residents thereof, temporarily or permanently…." Coppell's determination to resist the laws indicated a denial of the rights of Louisiana and Mississippi to pass whatever laws their legislatures saw fit. Of course, such opposition to state

[159] Moore to Lyons, April 8 1863, FO 115; Moore to Lyons, March 5 1863, Ibid.
[160] Coppell to Lyons, March 10 1863, Ibid.

sovereignty was understandable coming from the consuls, considering the abuses Britons suffered in the Confederacy by 1863.[161]

On April 4 1863, Representative Caleb Claiborne Herbert of Texas requested a House committee of the Confederate Congress to investigate rumored atrocities at Castle Thunder. Thunder, located on Carey Street in Richmond, was a high security Confederate prison for political enemies such as spies and traitors. Moore had heard appeals from many Britons incarcerated at Thunder, "constantly suffering misery untold, the effects of which many of them will carry to their graves". Such torture was not confined however to jails for political enemies. R. N. Belshaw, a British gentleman of Montgomery, was arrested and taken to Tullahoma, Tennessee where he was abused, despite ill heath, for refusing to be conscripted. Apparently, Confederates hung Belshaw from rafters by his thumbs, his feet only touching the ground by the toe-tips. Only the constant appeals of his sister at the War Department in Richmond and intervention by Moore secured his release. The slowness of Assistant Secretary of War Judge John Campbell to act indicated one of two things. Either enrolling officers were frequently able to secure conscripts through inhumane acts without the War Department's knowledge, or worse still department officials were only willing to act on behalf of distressed aliens after consular protest. Moore leaned towards the former conclusion and expressed faith that Adjutant General Samuel Cooper was 'indignant' at the case. He hoped that the government would effectively curb the enrolling officers' powers. These hopes were never fulfilled.[162]

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[161] Magee to Coppell, March 18 1863, FO 115
[162] Moore to Lyons, April 7 1863, Ibid.; April 9 1863, Ibid.

In the same letter that he reported the Belshaw case, Moore named two other distressed Britons, Mr. J. Kelly and Michael McNamara. Officers at Tullahoma suspended Kelly by his heels with his head in water and one gashed McNamara with an axe. Mr. McNamara had, "defended himself with repeated blows to the enrolling officer's head", and was now in hiding in the Virginia borderlands, pursued by cavalrymen with a warrant for his arrest for the charge of assault. Consul Magee reported the case of one J. P. Turner, who had served as a twelve-month volunteer and been released with consular papers of British nationality. Turner was arrested and sent to Tullahoma where he too was abused and relieved of $699 in cash and $120 in 'notes of hand'.[163]

Cases of this nature were too common and by the spring of 1863, the frustrated consuls were losing faith in Confederate goodwill. The vociferousness of British consular protests and demands for official protection increased dramatically. However, Her Majesty's diplomatic frontline was more isolated and powerless than ever. Russell glumly summated,

> There can be no doubt that the representations of Mr. Consul Moore with respect to the treatment of British subjects in the so-called Confederate States call for the interference of this government, but in the current state of affairs and in the absence of all diplomatic means of communication it is difficult to determine in what manner or through what channel interference can most effectively be extended.[164]

In June 1863 Peter McKinn, William Wing, and Joseph Goodsir filed suit in Alabama for military exemption based on certificates of nationality issued by consul Magee. When the case came before the Confederate district court, the honorable W. G. Jones' opinion asserted Confederate claims over domiciled aliens

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[163] Moore to Lyons, April 9 1863, FO 115; Magee to Coppell, March 18 1863, Ibid..
[164] Lord Russell to Lyons, May 9 1863, Ibid.

and undermined many arguments of non-domicile. Jones quoted De Vattel on international law, stating that aliens are obliged to act out of gratitude in response to the blessing and protection of host governments. De Vattel, and all other accepted legal commentaries of the day, agreed that citizenship always bears an obligation of defense. Domicile, according to Jones, was residence with the intention to remain indefinitely. However, Jones stated that actions alone demonstrate intent, not oral declaration. A vague statement of intent to relocate was not actual relocation. Thus if a man demonstrated no active intent to move, he was domiciled. Peter McKinn, William Wing and Joseph Goodsir had been in Alabama fourteen, twelve and five years respectively. They carried on trades, held no property back in Ireland and one had even married. While refusing to comment on whether the Confederate government should allow consuls to remain without exequaturs from Richmond, Jones did condemn the consuls for issuing certificates of nationality based only on the verbal testimony of the individual. A War Department order of August 1862 to the Commandant of Conscripts in Alabama had instructed, “enrolling officers (to) not enroll foreigners unless they are permanent residents. The oath of the party supported by the oath of one credible witness is deemed to be sufficient proof in such cases”. Jones lamented that this order had been, “the prolific parent of much oath swearing”. He believed that many hundreds had consequently made such oaths, and blank affidavits had even been printed. His ruling instructed enrolling officers at least to investigate the certificates and cases of persons claiming exemptions, rather than allowing consuls to exempt whomsoever they chose. He encouraged enrolling officers by

stating, "I know of no law or treaty which authorizes foreign consuls to exempt any person domiciled in this country from obedience to our laws"[165]

Fredric Cridland, who had moved to Mobile from Richmond, forwarded a copy of Jones' decision to Russell. Cridland confessed that Britons in Alabama and Mississippi were, "(in) constant fear of new orders which may bring them within the Confederate conscription law". Cridland succinctly captured the grave reality that Britons in the South were entirely at Confederate mercy.[166]

Jones' decision was one of many Confederate court rulings adding up to a growing weight of precedents stripping Britons of legal shelter. The South Carolina court of appeals had ruled in Ainsley vs. Timmons in December 1861 that while host states could only exact military service from residents, alien residents could leave any time. Those who did not leave were demonstrably domiciled and therefore liable for service. In the spring of 1862, the Confederate circuit court in Atlanta provided another important decision. Judge Hill established his belief that foreign-born persons who had exercised rights of citizenship should receive penitentiary sentences if they attempted to evade their duties of service. The following year in February 24 1863, District Court Judge Meredith decided in Richmond that any aliens who had enrolled as volunteers had borne the obligations of citizenship, assumed nationality and were liable for conscription. In July 1863, Judge A. G. Magrath handed down the most important decision in this growing body of precedents. Mr. H. Spinken was a German man resident in America for seven years. He had not naturalized but had enrolled in his

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[165] McKinn, Wing and Goodsir v. Alabama (9th Cir. Confederate States of America, 1862), reported in *Mobile Tribune*, June 10 1863.
[166] Cridland to Russell, July 13 1863, FO 115.

local militia before the war. Spinken's defense council argued that the recent Act of Congress declaring aliens liable for service in exchange for the protection they enjoyed from their host government could refer only to domiciled aliens. Magrath ruled however that he could not lay aside an Act of Congress for a general principle of international law. If the Confederacy needed to defy the law of nations to protect its community, it had the right to do so. There were, according to McGrath, three classes of alien: *residents*, *domiciles*, and *itinerants*. War Department orders of May 1861 and the Conscription Act of April 1862 had not included domiciled aliens, but not because the Confederacy did not possess such a right. The Confederacy alone would judge which of its residents were or were not domiciled. Judge McGrath ruled that it had become necessary to ask aliens to pay obligations due to their host.[167]

The Foreign Office had consistently presented appeals on behalf of British interests in terms of rights and international law. However, British and Confederate authorities alike knew that Her Majesty's protection of her subjects depended upon the cooperation of local authorities. The growing body of judicial rulings unfavorable to the neutrality of resident Britons, and the increasing desperation of enrolling officers, was matched in 1863 by a shift in the attitudes of Confederate officials towards the consuls. As the Confederacy's plight worsened, the pragmatic and tentative but firm approach of the consuls, who overstepped their legal limits of operations by addressing diplomatic matters and cases beyond their constituencies, met with resistance. The Davis administration was

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[167] Milledge Bonham, *The British Consuls in the Confederacy* (NYC: Columbia University, 1911), pp. 223-226. The three leading experts on international law in the mid 19th century, Vattel,

decreasingly tolerant of the extra-legal, pseudo-diplomatic roles the consuls had played. In 1863 the Confederate State Department prevented Lord Lyon's from appointing new, unauthorized consuls, banned direct communication between consular agents and Washington, and finally expelled foreign consuls entirely.

On November 11 1862 Charles Walsh, President of the Bank of Mobile, requested Magee's assistance with the transfer of specie repayments for Alabama's state debts in London. Magee sent the specie out of Mobile on a British Man of War in January 1863. When Her Majesty's government learned of this, Russell withdrew Magee because, "This transaction had the character, in the eyes of Her Majesty's government, of aiding one of the belligerents against the other". Writing to John Slidell in Paris on October 8 1863, Judah Benjamin recounted in turn the progression of offensive acts the Foreign Office had committed against the Confederacy. Benjamin felt that under international law Russell was not justified in viewing Magee's transfer of specie as favorable to one belligerent. He believed that Magee's real offense had been to aid Alabama in honoring its debts, a necessary duty of sovereign and independent states, "which happened to be displeasing the United States".[168]

Benjamin had written a similar letter to James Murray Mason in London on June 11 1863. In it he complained that the Foreign Office pursued inconsistent and hypocritical policies damaging to the Richmond government, which Her Majesty did not recognize, motivated by a commitment to maintaining friendly relations

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Bluntschli, and Story and Wheaton did not agree on what circumstances constituted *domicil* and what obligations it brought. Interpretations generally varied according to circumstance.

[168] Walsh to Magee, Confederate State Department, *Correspondence, pp.* 24-25; Russell to Mason, ibid. p. 29; Benjamin to Slidell, ibid. p. 33.

with the Washington government, which it did. In Benjamin's mind this amounted to neutrality that was far from neutral.

> The British Government could regard Alabama only as part of the United States in rebellion or as an independent state waging a lawful war: if the former, then the United States was bound to aid neutral nations in the collection of just claims; though it could not compel payment, it should interpose no obstacles thereto; accordingly the consul's action should have been approved by both Washington and London. If the latter hypothesis were the correct one, as he maintained it to be then the action of Lord Lyons savoured on this occasion rather unfriendly cooperation with an enemy than of just observation of neutral obligations.[169]

British neutrality had always been a tentative waiting game. Refusing either to rule recognition out or commit to supporting the United States' claims to the seceded states, the Palmerston administration had determined only to defend Her Majesty's interests. As the war progressed however, it was increasingly clear that those interests would be best secured through cooperation with the Union.

Following secession, Jefferson Davis had faced consistent pressure to force British recognition by expelling the consuls. On July 26 1861, Senator Louis Wigfall of Texas had introduced a resolution for the Committee on Foreign Affairs to demand that consuls accredited to the United States cease their functions in Confederate ports. Numerous leading Southern papers such as the *Richmond Whig* and the *Charleston Mercury* followed editorial lines extremely hostile to the favor and liberality Davis extended the consuls. However, Davis remained resolute. His administration interpreted state sovereignty theory generously to allow consuls to continue their functions without new exequaturs, despite the fact that their refusal to seek new exequaturs implicitly denied Confederate legitimacy.

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[169] Confederate State Department, *Correspondence*, p. 19.

After Magee's departure the French consul Louis Portz acted as British consul. This was an inconvenience at best and although Portz was able to register and clear British shipping passing through Mobile, as a Frenchman he could hardly be trusted with correspondence regarding national policy. Russell wrote to Lyons in March directing him to appoint an acting consul to replace Magee. Lyons sent Fredric Cridland from Richmond to Mobile in May. On May 18 1863, the *Richmond Whig* reported that Cridland was preparing to leave the city with a full consular appointment and an exequatur from Lincoln's government. The *Whig* lamented, "This intelligence… will not give pleasure to anyone in the South. To be sure, we know that we have no national existence outside of our own fond imaginations and that in the eyes of Great Britain we are still a part of the United States".[170]

Cridland assured the State Department that he had not received an exequatur from Washington. The following day the *Whig* corrected its statements and reported that Cridland was departing for Mobile as a private citizen to act unofficially to defend British interests. Something the Confederacy could prevent that only by expelling all Britons from the South. However, on June 6 1863, Admiral Stephen Mallory, the Confederate naval secretary, telegraphed Richmond informing the State Department, "The French Consul, Mr. Portz, in his official capacity as acting English Consul, introduced me to Mr. Cridland, who has shown me an official document, signed by Lyons, appointing him the acting English Consul at Mobile. Am I to recognize him as such?" On June 2, the Commanding Officer at Mobile, Dabney Herndon Maury, had accepted Cridland as acting

[170] Bonham, *British Consuls*, p. 158.

consul. However, on June 7 Benjamin issued an order for Cridland to leave Alabama and instructed Maury not to accept any official actions from him. Cridland then wrote to Benjamin stating that he had denied only having received an exequatur from Washington, not that he would be acting as consul in Mobile. Cridland requested permission to remain in Mobile and take care of the consular archive until the Foreign Office could secure its safety.[171]

Cridland hid his actions from Confederate authorities with deceptive half-truths because his directions to act as British consul in Mobile were coming from Her Majesty's delegation to Washington. Confederate officials understandably insisted that diplomatic appointments not predating secession required new commissions from Richmond. In his letter to Mason on August 18 1863, Russell acknowledged that Confederate officials were in no way bound to accept any consuls accredited to Washington. However, he reiterated, "It is very desirable that persons authorized by Her Majesty should have means of representing, at Richmond and elsewhere in the Confederate States, the interests of British subjects who may be, in the course of war, grievously wronged by the acts of subordinate officers". Russell expressed no sense of shame at having affronted Confederate pride and sensibilities and he offered no apology. He made clear that Her Majesty's government would continue as long as possible to do whatever was in its power to pursue British prerogatives by whatever means were necessary.[172]

Unsurprisingly, the Confederate State Department was tiring of such tactics. Benjamin was certain that as long as consuls were under the guidance of Lyons they would actively resist Confederate authority, cause unrest within the

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[171] Confederate State Department, *Correspondence*, p. 27; Bonham, *British Consuls*, p. 160.

Confederacy's resident population, and shamelessly affront Confederate self-respect. Therefore, on June 10 1863 Judah Benjamin sent a circular to all foreign consuls stating that the President would no longer permit direct communication between, "consular agents of foreign countries residing within the Confederacy, and the functionaries of such foreign governments residing in the enemy's line". Henceforth consuls were to, "communicate with their governments only directly or through neutral countries". [173]

Davis and Benjamin consistently expressed a desire to act as a respectable and mature nation, not employing dishonorable tactics such as forcing the hand of other governments through aggression. These desires encouraged them to entertain foreign consuls far longer than many observers thought wise. In the end, events proved the critics right. The June 10 circular demonstrates the State Department's growing frustration with the British consuls' stubborn and ungrateful treatment of the Confederacy. Unfortunately for the Confederacy, simply acting like an honorable and legitimate government could not convince the Crown to recognize it as one.

Since Her Majesty's government witheld recognition from the Confederacy, Britain's consuls could hardly be surprised if secessionist authorities ceased to recognize them. As numerous full consuls were withdrawn or retired due to ill heath, the Foreign Office was forced to replace them with acting consuls. Initially Confederate authorities accepted the acting consuls with little fuss. Allan Fullarton became acting consul in Savannah in June 1862, but Judah Benjamin did

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[172] Confederate State Department, *Correspondence*, p. 26.
[173] Ibid., p. 28.

not request proof of his authority until June 1863. Increasingly however, the State Department was reluctant to accept the authority of consuls it could not regulate.

In late January 1863 Commodore Duncan Ingraham attacked the blockading fleet at Charleston and declared the blockade there lifted. On January 31, consul Bunch and Captain J. S. Watson of the British man of war *Petrel*, who had apparently gone five miles out of the harbor without seeing any Union vessel, affirmed Ingraham's claim. Admiral Samuel Dupont of the Union Department of the Navy was assured that the reports were untrue, and the *New York Times* called Ingraham's claims, "Rebel fabrication". Whether the report was given in good faith at the time or not, it proved overstated. The blockade was successfully re-established and, fearing an attack on the city, the Foreign Office withdrew Bunch, who had been ordered out of Charleston by Lincoln's government almost two years earlier. Russell could not risk the displeasure of the United States should Union forces find him there.[174]

Vice-consul H .P. Walker became acting consul in his place, and was immediately challenged by cautious authorities. Russell wrote to Walker on April 4, directing him to appeal on behalf of Richard Wightman to the Confederate military authorities at Wilmington who had interned Wightman's British registered schooner the *Harkaway*. The ship had originally been called the *Victoria*, being registered to a Wilmington merchant from whom the United States Navy had captured it and put it up for auction in Nassau, New Providence. Walker's letter to Brigadier General W. H. C. Whiting demanding release of the vessel met with a vitriolic and curt response. Whiting informed Walker on May 11

[174] Bonham, *British Consuls*, p. 119.

that he would await direction from Benjamin. “In the meantime,” Whiting teased, “as Her Britannic Majesty’s government does not recognize the jurisdiction of the Confederate States here, and the United States government claims it, perhaps it would be as well to apply to the latter”.[175]

Whiting’s sarcasm was most astute. He and Walker both knew that Her Majesty’s consuls had no hope of protecting British property in the South without the blessing and goodwill of the *de facto* authorities. Walker was reminded of this dependence in his first correspondence with Benjamin when, some weeks later, he appealed on behalf of James Hurley. Hurley was a British subject who had previously served twelve months as a Tennessee volunteer and recently been re-enlisted against his will at Knoxville and sent to serve in Mississippi. Benjamin replied that he would not answer the plea because the Charleston exequatur, which predated secession and upon which consular activities in Charleston depended, “was supposed to have reference solely to consular functions in Charleston or at furthest, the state of South Carolina”. Benjamin requested proof of Walker’s commission and right to act as consul in Charleston and would correspond no further with him until he saw such.[176]

Walker forwarded his original vice-consular commission from 1860 to Moore in Richmond, along with the correspondence from the *Harkaway* case, as evidence for Russell’s approval of his assumption of consular responsibilities in the Carolinas. He asked Moore to show these to Benjamin and to make appeal for Hurley, “…for whom any day may be the last”. Walker was willing to do whatever necessary to serve British interests, providing it was within the limits of

[175] Whiting to Walker, May 11 1863, FO 115.

Foreign Office policy. He stated to Moore on May 13, "frequent applications must be made to the *de facto* government at Richmond, and it does not seem unreasonable that the chief officer of that government enquire by what authority the advocates of those persons who claim to be exempt… undertake to act". Walker had little choice. The complaints he had to present to Benjamin were often from, "British subjects… within bordering states having no British consular representative". He needed Benjamin's goodwill if the State Department was to allow him to act beyond South Carolina.[177]

Unfortunately, Moore was in no position to help. Benjamin had recently requested to see papers regarding Moore's consular appointment but he had refused to present them. He could hardly appear in person with Walker's papers but not his own. Moore informed Lyons that he would write independently to Benjamin in appeal for Hurley without mentioning Walker and simply hope for mercy. He then advised Walker to appeal on the *Harkaway* case in person, since it was within what the Foreign Office considered his consular constituency. Walker therefore traveled to Richmond and gained a personal interview with Benjamin on June 8. Contravening State Department instructions, Walker sent a dispatch to Lyons on June 22 that included a letter for Russell, and a copy of a letter he had independently sent to Russell on June 13. He told Lyons that he had assumed the responsibility of corresponding with Richmond from Moore, whom Benjamin had recently expelled, and hoped that he had not overstepped his authority in so doing. Walker also told Russell that he had chosen to submit his papers to Benjamin

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[176] Benjamin to Walker, May 7 1863, FO 115.
[177] Walker to Moore, May 13 1863, ibid.

because, “it seemed to me highly important that my privilege of communicating with the *de facto* government should not be interrupted”.[178]

In the letter to Russell, Walker recounted his appeal on behalf of Hurley. Benjamin had informed the consul that, “it was not intended by the President that the powers of the consuls be in any way extended”. Walker did express faith in Benjamin’s unwillingness to allow injustice and a conviction that the State Secretary would continue to be “glad to redress” any case that came to his attention. Walker continued, “I will take the liberty of adding that the open manner in which I have approached Mr. Benjamin appears to give him much satisfaction”.[179]

In contrast to Walker’s willingness to cooperate as far as possible with Confederate authorities, consul Moore reacted with rising frustration to the changing climate within the Confederacy. He found the State Department to be insincere, claiming a commitment to defend the personal liberty of alien guests while in reality responding to consular appeals reluctantly, lethargically and with decreasing favor. He reported to Lyons on February 26, “pressure against foreigners under the Conscription Act is such as to render the position of the consuls untenable”. What Moore meant by ‘untenable’ was that consuls were forced to act with increasingly pronounced aggression and assertiveness in order to protect Her Majesty’s neutrality in the persons of her subjects. Such a course was bound to provoke a negative response from Confederate authorities. Moore complained vehemently about Judge Meredith’s decision that British volunteers were liable for reenlistment through conscription. He also reported that alien

[178] Walker to Russell, June 13 1863, FO 115.

persons having worked on public works, such as earth works defending Richmond (a duty the Foreign Office acknowledged aliens were liable to render) were being deprived of their certificates of nationality and called citizens for having rendered such basic obligations. The vital protective covers of consular certificates, even in Richmond under Moore's watch, were removed from Britons, "under every imaginable pretext".[180]

Away from Richmond things were even more difficult for Her Majesty's beleaguered subjects. Moore informed Lyons on March 5, that Justices of the Peace were refusing affidavits for Britons living away from consular assistance, "in order to prevent them if possible from obtaining certificates of nationality". Moore continued revealing his complete exasperation and disgust; "I have lived thirty two consecutive years in despotic countries (1826 to 1858) without ever witnessing to so much frightful, unmitigated and remorseless tyranny".[181]

On February 16 1863, with Magee withdrawn, Moore presented an appeal against the new Mississippi draft law, which covered all white males aged eighteen to fifty, including non-resident aliens. Moore requested to know how a law conflicting with the laws of Congress could stand. He also appealed for Thomas Jones of Rankin county Mississippi whom officers had jailed, beaten and abused for resisting the draft. Benjamin ignored these questions, responding only with a demand for proof of the authority vested in Moore by Her Majesty to act in such cases arising beyond the Virginia. Naturally, Benjamin would only accept evidence pre-dating secession, and since Moore's Foreign Office mandate to

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[179] Walker to Russell, June 22 1863, FO 115.
[180] Moore to Lyons, February 26 1863, ibid.
[181] Moore to Lyons, March 5 1863, ibid.

intercede when and wherever necessary for distressed Britons was a circumstance of the war, he could not comply. Benjamin instructed Moore to cease interfering in affairs beyond his legal constituency until such papers could be provided.[182]

By the early summer of 1863, the web of consular protection and assistance available to Britons was thinner than ever. Poor health forced Richard Mure to leave New Orleans in the spring of 1862, and by now it was a Union controlled island in which Acting Consul George Coppell was isolated. The Foreign Office had withdrawn Bunch and Magee, and Molyneux had returned home with ill health. State Department opposition to Cridland's move to Mobile had rendered him impotent. Moore and Arthur Lynn (cut off from the rest of the Confederacy in Galveston) were the only full consuls remaining. Communication beyond the South with the Foreign Office was harder than ever, and independent actions by the desperate cadre of consular representatives were decreasingly likely to find favor. Moore had little choice but to continue representing cases of abuse against Her Majesty's subjects, but was not optimistic about the likelihood of cooperation because Benjamin was still waiting for proof as to the extent of his consular mandate.

On May 5 1863, Moore sent an appeal to the Department of State on behalf of two British residents of Virginia, whom enrolling officers had drafted against their will. Irishmen Nicholas Malony and Eugene Farrell had appealed to Moore on the ground that they held certificates of British citizenship. Moore forwarded the case to Benjamin without further investigation. Unfortunately for Moore, State Department inquiries revealed that the men were far from non-domiciled aliens.

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[182] Confederate State Department, *Correspondence*, p. 8-9.

Captain R. H. Catlett, Adjutant General of the 1st battalion of the Army of Western Virginia, reported to Lieutenant Colonel George Edgar on May 25 that both men had been in Virginia eight years. Both owned and cultivated farms and had families residing thereon. Both had voted, and maintained no property back in Ireland. Benjamin summated to Mason on June 6, "it is difficult to conceive a case presenting stronger proofs of the renunciation of native allegiance and of the acquisition of *de facto* citizenship…. It can scarcely be expected that we should, by our own conduct, imply consent to the justice or propriety of (this) refusal of recognition".[183]

Moore's implication that the Confederate State Department place higher onus on a consular certificate of nationality than on an assumption of the privileges of Virginian citizenship was exactly that; a refusal of recognition. Benjamin could certainly not assent to it. On June 5, he revoked Moore's exequatur and ordered him out of the Confederacy. Although Moore acknowledged, "the law officers of the Crown admit that Mr. Benjamin's objection to my non-diplomatic charter, however harsh in the circumstances, is legally sound" he insisted that Benjamin had acted unfairly. Moore complained that he had been in correspondence with the State Department since April 8 1863, when Congress had updated the Conscription Act, making its provisions for aliens more stringent. Why had Benjamin waited until June to make this, "unprecedented and unprovoked (act of) aggression against the comity of nations if not against international law"?

Here again, a consular agent of the Crown criticized Confederate unwillingness to act as a responsible nation, despite the fact that Her Majesty did not recognize

[183] Confederate State Department, *Correspondence*, pp. 10-12.

them as such. Moore however, saw no hypocrisy in his criticism. He claimed England had, “made great sacrifices to recognize the Confederacy as neutral”, and blamed Davis’ government for undermining, “the sanctity of personal freedom” by its, “merciless career of compulsory enlistment for its armies”. By these acts they, “compel(ed) men to act in direct opposition to the proclamation of their sovereign”. Moore informed Lyons that there were many Britons in workshops in Virginia who were eager to leave, but to whom the Confederacy denied passports. He requested that the Royal Navy send gunboats up the James River to rescue them. Little wonder that Benjamin, after two years patiently hoping for recognition, should react with anger to such overt denials of Confederate legitimacy from within the fledgling republic’s own borders![184]

The differences between Moore and Walker’s approaches to diplomacy in 1863 demonstrated the often personal and always uncertain nature of consular relations with Confederate authorities. Within limits, consuls were forced to make choices about their own courses of action. Corresponding with Washington across Confederate lines, or London through the blockade was difficult. Problems frequently demanded action more promptly than consuls could expect to wait for instruction to arrive. The best they could do was try to balance the imperative of protecting British interests with the necessity of maintaining amicable relations with local authorities. Individual consuls frequently failed to keep that balance and upset the Foreign Office, Lincoln’s government or the Confederacy. By mid 1863, even Walker could not go as far as was necessary to please Benjamin. He was unable to extend recognition. Benjamin repeated instructions to Walker not to

[184] Moore to Lyons, June 9 1863 and June 6 1863, FO115.

correspond with Lyons, and to limit his appeals to cases arising within his constituency. Thus, as the dangers facing Britons in the Confederacy grew more threatening, the noose around consular necks grew tighter.

From the outset of the secessionist experiment Governor Joseph Brown of Georgia was fastidious in his insistence upon Georgia's right to draft men from its resident citizenry according to the state's own needs. Brown's instructions for the Georgia draft of 1862 stated clearly, "If he is an un-naturalized foreigner and he is living under the protection of our government and laws, in these and all cases he is bound to defend his domicile, and liable to be drafted by the state and compelled to do so". On July 17 1863, responding to Davis' call for 8,000 Georgia troops to be organized for local defense, Brown called for volunteers and threatened a draft if necessary. Fullarton responded with letters challenging not only Georgia's right to muster Her Majesty's neutral subjects, but the legitimacy of secessionist governments and their right to wage war at all.[185]

Fullarton wrote to Brown on July 22 stating that Her Majesty admitted the rights of host governments to claim service for internal order and, "to a limited extent to defend against local invasion by a foreign power". However, due to the nature of this conflict, Her Majesty could not accept the right of Georgia to compel service from Britons against the United States. Firstly, the Union would treat captured Britons as traitors and rebels, not prisoners of war. Secondly, such service would be, "disobeying the order of their legitimate sovereign". Her Majesty considered the conflict to be a civil war, and by implication, the Confederate struggle was not a repulsion of foreign invasion. The British

government could not accept any foreign state interposing its judgments between the Crown and British subjects. On the contrary, Fullarton subtly asserted the rights of Britons themselves to judge over Georgia. He argued that service was unreasonable since the commercial reasons for which Britons had settled in Georgia were undermined by secession and war. Georgia had therefore denied resident Britons the lifestyle they had sought and come to expect.[186]

Brown responded on August 8 with a protest that the regiments being formed were specifically for the purpose of local defense and police work, and that international law admitted Georgia's right to demand such service of alien residents. Brown was no more able to accept a rejection of the obligations of citizenship by Georgia residents than Fullarton was able to acquiesce in the usurpation of British subjects. He argued that Britons had an equal obligation in this and all such matters of citizenship.

> Many who claim to be Her Majesty's subjects in this state are large slaveholders, whose danger of loss of property… is as great as… to the citizens of this state…. We cannot afford to maintain among us a class of consumers… who refuse to take up arms for interior and local defense.

Such property, and the life and freedom of all Britons in Georgia, was protected and extended by Georgia's grace. Georgia gave protection to Britons. Furthermore, Georgia allowed the consuls to remain, granting Britons double protection. Brown made clear, "less than the service now demanded will not in future be demanded in case they choose to remain in the state and enjoy its protection".[187]

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[185] Brown to Fullarton, August 8 1863, Allen D. Candler, *The Confederate Records of the State of Georgia*, 5 vols. (Atlanta: C. P. Byrd, 1909-1911) 3:376.
[186] Ibid., 3:372-4.
[187] Ibid., 3:383-8.

Brown argued further that it was not secession which destroyed 'the commercial reasons' that had attracted Britons to Georgia, but Her Majesty's failure to recognize the Confederacy. Under international law, no country could blockade its own ports against neutral commerce. By refusing recognition, Britain implied that the South remained part of the United States. Recognition of the blockade was therefore inconsistent, arbitrary and self-serving. Brown refused to allow resident Britons to follow the national example. He was adamant that, "no self-imposed obligation can free the subjects of Her Majesty who choose to remain from the higher obligation which… they are under to the state for protection while they remain".[188]

In his second letter on August 17 1863, Fullarton found it necessary to make explicit what he only implied in his first appeal. Her Majesty could not accept the service of her subjects, "in a civil war like that raging on this continent". Fullarton informed Brown that he was issuing instructions to Britons forced to face United States troops to throw down their arms and refuse service. These subjects did not have any part in deciding secession and could not be expected to bear its burdens. Fullarton admitted that any Britons owning slaves, as forbidden to aliens by the laws of Georgia, had forfeited their neutrality. However, he insisted that cases of residency not made clear by property were a matter for Her Majesty's judgement, depending upon testimonies of individual Britons, not a matter for Georgia.[189]

Naturally, such open denial of Georgia's sovereignty provoked Fullarton's displeasure. He responded on August 26 in a suitably round manner complaining, "you virtually deny that the United States is a foreign power, and claim that

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[188] Candler, *Records*, 3:390.

Georgia is still a component part of (that) government". Such insinuations were not the best way to curry favor with local authorities, and Brown made clear that he was tired of the consuls. He wondered to Fullarton whether, "(you have) been influenced in your persistence of this error by the forbearance of the Government… of the Confederate States in permitting Her Majesty's consuls to remain among us". Brown was frustrated at this graciousness, which implied a lack of conviction by the Davis administration in its own sovereignty and legitimacy. He sarcastically instructed Fullarton to follow the logic of his offensive insinuations to their end. "If your pretensions be correct then your appeal for protection of British subjects resident within this state should have been made at Washington and not to me". Brown refused to allow Britons to remain in Georgia and "exempt themselves" from performing the obligations of citizenship. Only Georgia itself could admit or exempt residents from contractual citizenship. He therefore warned that Britons throwing down their arms in state service, "will be promptly dealt with as citizens of this state would be should they be guilty of such dishonorable delinquency". Brown reminded Fullarton that Georgia's courts were as open to resident aliens as to citizens, and that any who refused to accept Georgia's protection were free to leave.[190]

On September 12 1863, Fullarton wrote to Brown again on behalf of two British brothers, J. D. and F. M. Keily, enrolled in the state draft. He requested they be discharged and given thirty days to remain in Rome while tying up their

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[189] Candler, *Records*, 3:391-4.
[190] Candler, *Records*, 3:404-9. The fact that neutral shipping was prohibited from entering ports which Lincoln claimed remained part of the United States made British recognition of the blockade, but not the Confederacy, seem biased and contradictory. Under such circumstances, the sarcasm and frustration Brown displayed was understandable.

affairs before departing the state. Two days later Brown responded, "This permission will be granted cheerfully upon the production of sufficient evidence to me that such persons are British subjects". Just as Brown refused to acknowledge Confederate rights to access Georgians except through state authority, he accepted no representation for aliens within Georgia not coming through full, legitimate and honorable relations with the state. Brown always presented himself as a constitutionalist and a conservative. He was jealous for Georgia's rights and sovereignty and took every opportunity to defend them from usurpers, and to attempt to take back any rights previously eroded. Brown and other State Rights ideologues such as the Robert Barnwell-Rhett faction argued that they were the only true and fair defenders of the letter of American constitutional law. They seem radical in hindsight not because they were revolutionaries advancing a radical change, but because they resisted the tide of history. Brown asserted that Georgia had final authority over all persons within its borders. Conflict with Fullarton was as much the result of his extreme conservative-constitutionalist views as were his struggles with the Davis administration.[191]

In light of the open contempt that Fullarton had shown to Brown and secessionist Georgia, the public disgust at his continuing presence in Savannah was unsurprising. Southern newspapers led the outcries against the consuls. The *Richmond Whig*, an organ favoring Confederate centralization, reminded readers that states were not constitutionally able to make treaties or engage in diplomacy and that, "The whole difficulty in this matter arises from the failure of the

[191] Office of the Governor, *Letter Books 1786-1897*, 51 vols.

Confederate Government to vindicate their sovereignty by a withdrawal of (the consuls') exequaturs". The *Southern Recorder* of Milledgeville, Georgia commented, "The letters show some temper on both sides; but those of Mr. Fullarton are insulting. He not only ignores the existence of the Confederate Government… but he decides that this is a civil war and incidentally that the authorities with whom he does communicate are rebels and traitors". Henry Hotze's London *Index* blamed Fullarton for being rash and practically ensuring that, "the Confederate Government will refuse to allow any British consuls to reside within its jurisdiction". Hotze asked, "Who is to be responsible for (British subjects') protection? Mr. Lincoln? Mr. Lincoln has no power to protect them". Here Hotze captured the deep frustration of Southerners that London continually turned its face at the flagrant reality of *de facto* Confederate sovereignty.[192]

Fullarton soon discovered that the State Department resented his sentiments as strongly as Brown. He wrote to Benjamin on October 1 protesting the Georgia draft, and raising the case of, a Briton resident in Columbus, J. C. Peters. Fullarton had issued Peters papers of nationality, but state officers had regardless forcefully enrolled and sent him to Braxton Bragg in North Georgia. A further letter two days later added Alexander Pratt, Anthony Cadman, Michael Riley, Henry Stephenson and William Gray to the appeal. Instead of responding with the courtesy and ostensible compliance of earlier years, Benjamin issued an order on October 8 revoking the exequaturs of foreign consuls, expelling them from the Confederacy. With accusatory tones Benjamin opined, "it appears that the consular agents of the British government have been instructed not to confine

[192] *Richmond Whig*, July 11, 1863; *Southern Recorder*, October 10, 1863; *Index*, October 29, 1863.

themselves to an appeal for redress, either to the courts or to this government… but they assume the power of determining for themselves whether enlisted soldiers of the Confederacy are properly bound to its service". Benjamin called this, "an assumption of jurisdiction by foreign officials within the Confederacy". Yet despite the deep and obvious offense Fullarton had caused, he, like Moore, remained unrepentant. Fullarton had complained to Russell on August 22 1863 that the draft was unnecessary since Georgia had enough native manpower. He believed that leaving the state was not a realistic alternative in most cases due to the blockade and Union lines. Brown had no right to demand Britons either perform service or choose an unavailable alternative. Following the revocation of his exequatur Fullarton waxed lyrical against Brown, accusing him of, "determination not only to force all British subjects into service but also to compel the greater number now in this state to become citizens against their will".[193]

The consuls' constantly implicit and occasionally explicit denials of Confederate legitimacy were so odorous for being immediate, continuous reminders of Her Majesty's refusal to recognize the hopeful republic. James Mason had been in London nearly two years when Benjamin issued orders for his withdrawal on August 4 1863. Historians have often commented on the obvious irony that he was nearer to successfully gaining recognition by not arriving there than he came subsequently. The Union naval captain Charles Wilkes of the *San Jacinto* captured Mason and John Slidell under the British flag leaving Havana in October 1861. The angry clamors for vindication of national honor in Parliament and the British Press seemed for a moment to point to war, but Russell was wiser

[193] Fullarton to Benjamin, October 1 1863 and October 3 1863, FO 115; Benjamin to Fullarton,

and more cautious than most. After some months of tension he accepted a half-apology from Seward along with the release of the Confederate envoys. When Mason arrived in London he was granted his first and only private interview with the Foreign Secretary. At his private residence, Russell coolly told Mason that Britain would have done the same, "for any two Southern Negroes" taken under the national flag.[194]

Mason and Slidell had been presented to the captain-general of Cuba by the British consul there as 'gentlemen of distinction', not Confederate officers. London society regarded and treated Mason only as a private individual, tolerated at dinner parties and social occasions. Never once did Her Majesty's government acknowledge him officially or allow him into any government premises. In March 1862, Parliament debated a motion supported by William Gregory, the Conservative Anglo-Irish magnate, to declare the blockade ineffective. Russell and Palmerston however, knowing that this would be a major step towards recognition, recoiled from such precipitousness. In a February 15 dispatch to Lyons reprinted in the *Times* Russell argued,

> (if) a number of ships is stationed and remains at the entrance of a port, sufficient really to prevent access to it or to create an "eminant danger" of entering it or leaving it, and that these ships do not voluntarily permit ingress or egress, (the blockade is legal). [195]

This doctrine of "eminant danger" was upheld by parliamentary ballot and Mason and his friends in parliament never again came so close to securing recognition. In

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October 8 1863, FO 115; Fullarton to Russell, August 22 1863 and October 15 1863, ibid.

[194] Frank Merli, *The Alabama, British Neutrality, and the American Civil War*, ed. David Fahey (Bloomington, IN: Indiana Press, 2004), p. 19.

[195] *Times*, February 10 1862. British opinion and interest in intervention waxed and waned according to events on the field, with humanitarian arguments always having the strongest appeal. Mason's presence was barely a factor.

August 1863 the *Richmond Whig* lamented, "How humiliating it must be to every citizen of the South now in England, to witness the contrast in official standing presented by Mr. Adams and Mr. Mason"[196]

In 1863 Mason was finally withdrawn, as frustrated, bitter and desperate as the South to which would return. Mason received Benjamin's instructions for his withdrawal in late September and immediately wrote to Lord Russell quoting Benjamin's statement that Britain clearly, "has no intention of receiving you as an accreddited minister of (the Confederacy) near the British court". Benjamin complained that Her Majesty had declined recognition despite offers of treaty and efforts towards, "friendly relations between the two governments". Reprinting this letter, the *Southern Banner* celebrated Mason's withdrawal, beginning its editorial, "At last after suffering humiliation and deep mortification…" [197]

Mason's withdrawal was quickly followed by the expulsion of the consuls. When Fullarton's dispatches of October 1 and 3 reached the State Department in Richmond, President Davis was en route to Atlanta to visit General Bragg. Benjamin was finally out of patience with the consuls and called the cabinet together. He proposed taking exectutive action for this strong diplomatic move. Although the President was unreachable, Benjamin knew Davis would support him. The two men had grown close and the President trusted Benjamin as a competant and loyal ally. Accoridng to Bonham, "It was probably an easy matter for politicians and journalists to induce the majority to think a good way of securing recognition, as well as a proper assertion of self-respect, would be to dismiss the consuls". Benjamin and Davis expressed consistant desire to act

[196] *Richmond Whig*, August 3 1863.

honorably. They sought recognition through diplomatic entreaty, not coercion or ultimatum. Many critics of the Davis administration in the Senate, such as the pro-peace Henry Foote faction, and the ultra-nationalist Louis Wigfall faction, opposed State Department policy towrads Europe as an embarrasing waste of energy. With their friends in Richmond growing scarse, and the military situation worsening, recognition had continued to offer one glimmer of hope.[198]

Benjamin and Mason had held that hope longer and more passionately than anyone. Benjamin's family had arrived in the South as recently as 1816. He had been born a British subject on Saint Croix, where his parents had moved from London. He maintained an awareness of his British origins his whole life, and fled to London after the war. It is little wonder that Britain's stand-offish caution caused such heartache, bitterness and embarrasment for the would-be-nation which had embarked upon its revolution with such arrogant confidence of England's dependence upon its wealth.[199]

On August 28 1862, a motion was sent to the Confederate Judiciary Committee to inquire whether consuls were legally entitled to extend exemption from military service. Such actions, it was said, allowed exempted aliens freedom to aquire property, "to the demoralization of adopted citizens". A bill introduced on January 17 1863 to enroll persons of foreign birth to the army was considered until March 30, when it was killed in the Judiciary Committee. Another bill to conscript aliens was considered from April 4 until April 24 1863 , with Virginia representative

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[197] *Southern Banner*, October 21 1863.
[198] Milledge Bonham, *The British Consuls in the Confederacy* (NYC: Columbia University, 1911), p. 230.
[199] Eli Evans, *Judah P Benjamin: The Jewish Confederate* (NYC: The Free Press, 1988), Introduction.

John Baldwin complaining that Richmond was becoming, "a city of refuge for foreign adventurers". Consular protests and the hope of recognition barely held back this rising tide of pressure. After the expulsion of the consuls there was no court of appeal beyond the secessionist governments open to anyone within the sovereign Confederacy. In December 1863, Senator Albert Brown, former governor of Mississippi, introduced a motion for a Presidential decree giving all foreigners of conscription age sixty days to choose military service or leave the Confederacy. Finally, on February 17 1864, a revised Conscription Act passed covering white males eighteen to forty-five making no arrangements for alien exemption.[200]

In stark contrast to the troubled plight of aliens stranded in the South, Her Majesty's subjects within the United States benefitted from improving relations between Washington and London. Confederate fortunes on the field proved to Palmerston's ministry that only the sovereign government at Washington could guarantee and extend protection for British interests in America. Recognition was out of the question and as a result, the US War Department issued an order requesting from consuls the names of exempt Britons in each enrolling district. The order began,

> As complaints have been made that errors have occurred in enrolling the national forces, by ommision of persons whose names should have been enrolled, and addition of persons who, for reasons of alienage and other reasons, should not have been enrolled, it is desireable that this department should have such information as may be necessary in order to do justice to all parties.[201]

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[200] Ella Lonn, *Foreigners in the Confederacy* (Chapel Hill: UNC Press, 1940), pp. 391-4
[201] James Fry, Provost Marshal, US War Dept., Circular 101 November 17 1863, FO 115.

Directing consul Wilkins' continued efforts to secure the release of British prisoners from the Department of Mississippi on December 4 1863, Lyons recounted a personal meeting with William Seward. Seward continued to refuse any absolute right to the Foreign Office because of the, "large number of such cases", but he had assured Lyons of Union commitment to justice. Lyons therefore encouraged Wilkins to continue making personal requests when he was certain of the appealant's subject status. On December 9, Lyons wrote to Russell regarding a Canadian man, Peter Anderson, being held as a prisoner after being forced into Confederate service. Lyons expressed a lack of confidence in this case, despite the injustice of Anderson's treatment at Confederate hands, because there was insufficient proof available as to his status. Lyons told Russell, "I have informed Mr. Wilkins that I deem it avisable to abstain from sending in to the Federal Government applications resting only on the assertions of the prisoner". Such willingness to accept Union rights and legal authority over British subjects was dramatically at odds with the British attitude to Confederate rights and authority.[202]

Ella Lonn summarized the development of alien conscription in the Confederacy thus, "The Secretary of War interpreted the (Conscription) Act to mean to include among the conscripts all who had aquired domicile in the Confederate States. The whole issue then turned on the definition of domicile". Through War and State Department orders, personal decisions of military and enrollment officers, judicial decisions, state militia legislation, national policy and finally Confederate legislation, the South steadily closed the loop holes of

[202] Ibid.; Lyons to Wilkins, December 4 1863, FO 115; Lyons to Russell, December 7 1863, ibid.

exemption for aliens. Furthermore, as the Confederate States became a military society the war effort dominated economic, political and social life in every way. Life for unenrolled men of fighting age became very difficult. After a long battle against conscription William Watson, a Scotsman who had volunteered for twelve months immediately after secession, was discharged in July 1862. He returned to civilian life to find most ordinary business suspended and employment scarce. The skepticism and contempt he received, combined with a lack of alternative employment and the difficulty of leaving the Confederacy led Watson to realize, "that under a military despotism the safest and best place was in the army". After only two months of freedom he rejoined his regiment.[203]

Many Britons left the seceeded states when the war began. Others found their way out across the lines or through the blockade. Many however were trapped or chose to play a dangerous waiting game, hoping to avoid the war. These men then called upon consular protection when conscription became a reality. The consuls never failed to represent cases of abusive acts they considered to be illegal against persons they considered to be subjects. However, Her Majesty could not interpose British sovereignty in cases of persons whom the Foreign Office knew to be domiciled. Magee was instructed in August 1862 that he could not appeal for compensation for British owned cotton destroyed by the *de facto* government in pursuit of the war. In July 1864 Britons living under martial law in Memphis were informed that Her Majesty's government could not interfere in the operation of laws of foreign states, and that persons wanting British protection should discontinue residence in areas under such military control. When Joseph Hansard,

[203] Ella Lonn, *Foreigners*, p. 388.

resident twenty-five years in Georgia, was preparing to leave London and return to the South he asked Russell what protection he could hope for from Her Majesty if threatened with conscription upon his return. Russell told Hansard he was returning to Georgia completely at his own risk.[204]

Her Majesty's consuls in the Confederacy, guided by the Foreign Office, defended British subjects and property as well as could have been expected. They demonstrated flexibility, wisdom and courage in an increasingly violent military society. In Union territory, consuls communicated openly and directly with local authorities without worrying that their wording or manner might cause major offense. Ultimately however, in the North or South could consular or diplomatic officials act on any right that was not recognized and conceeded by the government claiming internal hegemony and authority in that territory. British sovereignty could not be vindicated, or individual subjects accessed, unless through the apparatus of a recognized fellow sovereign state. The only suitible state with which to deal proved to be the Union. In the end, the diplomacy of the Civil War proved just as firmly as its domestic context, that the federal authority created by the constitutional convention at Philadelphia had come of age on the American continent. These United States became this United States, plural became singular; '*e pluribus unum*'.

[204] Ella Lonn, *Foreigners*, pp. 409-10.

Epilogue

By May 1865 the Confederacy had crumbled to absolute chaos. Richmond was taken, the Carolinas had been burned and, according to Judah Benjamin, the total number of troops the Confederacy could have mustered was (an optimistic) 30,000. Davis' cabinet was riding fugitive along the back roads, making for Texas in the hope of redeeming the East from the Trans-Mississippi Confederacy. Benjamin, saddle-sore and bereft of hope, decided to bid his chief and friend a sad goodbye and headed south, alone, for Florida. Benjamin had a small amount of gold, which he sewed into his coat, and traveling in the disguise of a destitute farmer he slowly wound his way southwards. Some Confederate sympathizers aided him onto a boat taking Florida's waterways towards the Gulf. At one point of this journey the boat's ex-Confederate Captain hid Benjamin in the kitchen, disguised as a Jewish cook, when federal troops came aboard looking for Confederate fugitives. Benjamin, who was by that point under suspicion of complicity in the Lincoln assassination, had quite a price on his head and his flight was, as he later recorded in a letter to his sister, a nervous and desperate trial.[205]

From South Florida Benjamin and two guides headed to the Bahaman island of Bimini in a "small boat". There he boarded a cargo sloop which soon sank, leaving him and two black seamen to cross 35 miles of sea in a skiff with one oar and only a pot of rice to eat. From Nassau, Benjamin took a schooner for Havana which caught fire within ten hours of its departure. When Benjamin finally reached London his ordeal had lasted four months and cost him $1,500 in gold. He

[205] Evans, *Judah Benjamin*, chapter 17.

was down, but not out. Benjamin had always had an astounding work ethic and took to learning law in London as vigorously at fifty-five as he had as a young man in New Orleans. He learned the Barrister's profession at Lincoln's Inn and gained admission to the Bar in 1866. He published a treatise on the law of sales in 1868, which is still studied by law students today. He was admitted to the Queen's council in 1872, which allowed him to argue cases in the Privy Council and House of Lords. Less than a decade after arriving broken and destitute, a refugee from the South's failed attempt to grasp sovereignty, Benjamin was a wealthy, influential and celebrated lawyer. In 1879 Benjamin, by then retired in Paris with his long estranged wife and daughter, Natalie and Ninette St. Martin, told a *New York Times* reporter that, "he was born what he was now- an Englishman"! He died in 1884 and was buried in the Parisian, Catholic, Pere Lachaise cemetery where only a plaque added to his grave by the United Daughters of the Confederacy in 1938 marks the site as worthy of memory.

Benjamin biographer Eli Nevins wrote that Benjamin was a gambler and a tireless worker. Always busy, always composed, and always at his best with his back against the wall. He had risen as a lawyer to the top of Louisiana politics and had served in the United States Senate against the odds. He stuck out as a foreign born Jew in a nativist, Christian South. Like many Southerners, he opposed secession publicly as late as ten days before Louisiana left the Union. However, with the decision made, Benjamin threw his chips in with the Southern cause. He gambled and labored with full strength for independence. He told the Senate on January 26 1861,

> When history shall have past stern sentence on the erring men who have driven their unoffending brethren from the shelter of their common home… your children shall hear repeated the familiar tale… and will glory in their lineage from men of spirit as generous and of patriotism as high hearted as ever illustrated or adorned the American Senate.

After his flight and fresh start in London Benjamin sent for his personal papers and burned them, fearing harsh treatment in the court of history. He never spoke or wrote of the South and he never went back. The Civil War forced the former Confederate States to swallow their pride, re-enter the Union, and accept the sovereignty of Washington. At the same time, Benjamin also took on new nationality. His personal reconstruction, his new identity and new history, and his fresh start from poverty after the failed gamble stand as a metaphor for the Confederacy. It is especially pointed and ironical that the very man who expelled Her Majesty's consuls for their defiance of Confederate citizenship and sovereignty should revert to his British citizenship. The legal profession accepted his admission to the Bar because his American citizenship was conferred upon him in his minority at the will of his father. His father's naturalization thus, "entitled him to all the rights of a citizen of the United States without abjuring his native allegiance". Now that Benjamin was willing to bow the knee to the Crown, Her Majesty was happy to accept and claim this one-time adversary as a subject.[206]

The Civil War was a conflict made of claims, contested claims and counter-claims to the loyalty and allegiance of the citizenry of eleven states. Its origins were fundamentally constitutional and legal, and its substance was equally legal-constitutional. Behind the guns and warfare, there were battles of political will

over conscription and civil liberties in both the United and Confederate States. In the same way the over-arching diplomatic struggle over European recognition was underpinned by a concurrent debate over the allegiance and legal-constitutional status of individual persons. In the end, militarily, politically and diplomatically, the forces of centralization dominated the conflict. In both sections, the federal centers grew to control mobilization, economics and national politics. Lincoln and Davis alike corroded the prerogatives of the states in the name of freedom and victory. Similarly, both Confederate and Union administrations demanded the agents of foreign governments residing within their territories represent their interests and protect their dispersed citizens through a recognition of the dominance and sovereignty of the federal center over its territory.

Benjamin was one of those contested citizens and he claimed Confederate and Southern citizenship. He rendered the services this citizenship obliged of him with all his available energy. Ultimately however, the fledgling nation state for which he so tirelessly labored was unable to vindicate its own claims or reciprocate the loyal service of its would-be citizens. The Fourteenth Amendment is therefore the truest, most profound out-working of that conflict. One of the first lasting alterations to the national government upon cessation of the war was an unequivocal assertion of authority over all citizens of every state by the federal center. Never again could any opponents of Washington claim to be the true heirs of the Constitution. Benjamin's defection to a new life under Her Majesty's sovereignty in England demonstrates the limits to that part of sovereignty ideology which states that individuals are the subjects of their 'legitimate

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[206] *The Black Books of Lincoln's Inn*, vol. 5, 1845-1914, pp. 133-41, quoted in Evans, *Judah*

sovereign' wherever they go. In time, movement will always erode the visible and legal ties of sovereignty. The Britons who resided within America could only remain legally 'British' if American governments chose to allow them to do so. Likewise, Benjamin's flight from the South was necessarily a flight not only from America, but also from American citizenship and into the British citizenship of his birth, which time and space had made so distant.

For years after the war, the State Department attempted to press the British for compensation for damage done by the English built CSS Alabama. There can be no doubt that if evidence had surfaced linking Benjamin directly to Lincoln's death that extradition proceedings would have followed. Benjamin himself might have become a personal battleground in a microcosmic struggle of sovereignty between London and Washington. Fortunately for him, he was able to live out his days in peace. Like all gamblers, he must often have re-lived that one game in which he seemed to have so strong a hand, decided to bet it all but contrived to lose. The British had waited, hedging their bets, holding their chips until the game's course became clear. They bet, in the end, on the winner. Lincoln, though he himself did not outlive the war to see old age as Benjamin and Davis did, was the real winner. In a war that cost America over half a million lives and countless dollars of wealth, the very life of the Union was collateral in a high-stakes hand that finally earned Washington undisputed hegemonic sovereignty within the United States. No other sovereign on earth, external or internal, historic or pretender, can have any claim on any resident in these states, even its own

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Benjamin, p. 334.

citizens, without first approaching the throne of the great American empire at Washington.

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