



The first Confederate Cabinet in Montgomery. From left to right: Attorney General Judah P. Benjamin, Secretary of the Navy Stephen R. Mallory, Secretary of the Treasury Christopher G. Memminger, Vice-President Alexander H. Stephens, Secretary of War Leroy Pope Walker, President Jefferson Davis, Postmaster General John H. Reagan, and Secretary of State Robert Toombs

By Jabez Lamar Monroe Curry

From chapters 2 and 3 of his book "Civil History of the Government of the Confederate States", Richmond, Virginia, 1901.

Jabez L.M. Curry was born in Georgia on June 5, 1825. His family moved to Alabama in 1837. He was educated in private schools, graduated from the University of Georgia in 1845 and was admitted to the Talladega bar in 1846. During the Mexican War he served briefly in the Texas Rangers. In 1847, 1853 and 1855 he served terms in the Alabama legislature and was elected to the U.S. House of Representatives in 1857 and 1858. Ardent secessionist, he was a member of the provisional Confederate Congress and the first Confederate House. In the provisional Congress, he was active in the constitutional debates. In the house, he served on the Commerce, Elections, Rules, and Conference Committees. In 1863, he became critical of Jefferson Davis's conduct of the war. In 1864, he served in the army as lieutenant colonel of the 5th Alabama Infantry. After the defeat of the Confederacy he was president of Richmond College from 1868 to 1881. From 1885 to 1888, he was minister plenipotentiary to Spain, and in 1891, he published a biography of William Gladstone. From 1881 until his death, he was an active Democrat and was also an agent for the Peabody Fund for aid to Southern education. He died in 1903, in Asheville, North Carolina.

From Jon E. Wakelyn, "Biographical Dictionary of the Confederacy", Greenwood Press, 1977.

The Convention of Deputies from six States met in Montgomery, in the State Capitol, on February 4, 1861. Each of these States had, of necessity, seceded separately in reclaiming its original sovereignty, but with the expectation and purpose of forming a new and closer bond of union with sympathizing sisters, thus ensuring domestic tranquility and securing the blessings of liberty to themselves and their posterity. Their object was pacific and protective, and in no sense or manner to interfere with any right or privilege of the North. One recalls how quiet, orderly, dignified, with a deep sense of responsibility, was the assemblage. There were no array of armed battalions, no glittering uniforms, no blare of trumpets, no military means, no offensive display of appeals to passion or pride. Men not unknown in Federal and State councils came together, not as conspirators, or anarchists, or disturbers of the peace, or aggressive violators of law, but as accredited representatives of sovereign States. Of necessity prompt action was demanded for concert and strength. The proceedings were deliberate, conservative, in accordance with established parliamentary precedents, and with what had been consistently and uninterruptedly claimed from the origin of the Federal Union.

The Provisional Congress was composed of men seriously and assiduously seeking the public weal and the discharge of solemn obligations. The discussions, mainly in secret session, were able and instructive, and in the most friendly and patriotic spirit. While many participated in debates and all were actuated by an unselfish purpose, it is not invidious to mention Stephens, Toombs, Howell Cobb, Hill, T. E. E. Cobb, Rhett, Memminger, Smith, Walker, Harris, Campbell and Conrad, as among the chiefest contributors to the work of framing the constitutions. In addition to these and recognized for wisdom and experience should be mentioned Barnwell, Withers, Nisbet, Chilton, Harrison, Kenner, and others.

The Congress and the cause brought to Montgomery a large number of interested visitors, many of whom were women of culture and refinement and gushing patriotism. The Capitol was crowded every day with persons watching the proceedings with anxiety and subdued earnestness, and sharing with joy in everything that promised a peaceful and successful issue of the novel experiment. An illustrative incident may be pardoned.

Years preceding 1861 there occurred in Tennessee a controversy and collision between two young lawyers, Anderson and Taul, which resulted in the death of the latter. The fatal dispute, with tragic termination, created an inextinguishable hostility between the two families. One day Mrs. Bradford, a friend and constituent of mine, was sitting on a sofa in the lobby, in conversation with Governor Morton, of Florida, and myself. After awhile the Governor arose and asked permission to introduce a colleague.

Consent being given, he withdrew to the chamber, separated from us only by an iron chain between the columns. I was astounded to see him returning with Colonel Patton Anderson, the brother of the man who had killed Taul. Familiar from many recitals with the sad occurrence, I could not imagine how the matter would end, but the Governor, ignorant of the antecedents, said: "*Mrs. Bradford, I have pleasure in presenting my friend and colleague, Colonel Anderson*". The lady, small of stature, drawing herself up to fullest height and with her large, brown eyes looking Anderson square in the face, said: "*I am the sister of Thomas Taul*". Anderson, with utmost calmness and chivalrous courtesy, replied: "*I am aware of it, Mrs. Bradford, and no one can regret more than I that unfortunate affair. We are entering upon a struggle the end of which the wisest cannot foresee. It will require the united strength and wisdom of every man and woman in the Confederacy. I should greatly prefer, if you are willing, to let bygones be bygones*". The little woman, with a nobility that elevates the whole sex, extended her

hand, and the two sat down and talked, without a shade of ill feeling, upon the events of the hour.

Howell Cobb was, on motion of E. Barnwell Rhett, of South Carolina, elected President of the Congress. This tribute to high character and great excellence was paid to the most popular member of the body without a dissenting vote. At the bar, on the hustings, in Congress, as Speaker of the House of Representatives, as Secretary of the Treasury, as Governor of his State, he had been trained in schools which fitted him for wise statesmanship. In 1851, against many of his party associates, he resisted the attempt to make the "*Compromise Measures*" the occasion for a disruption of the Union, and was elected Governor by an unprecedented majority. When ten years later there seemed no hope of protecting the interests and honor of his State against powerful and unreasonable aggression, he resigned the portfolio of the Treasury Department and threw himself with impetuous ardor and courage into the contest for the preservation of the Constitution and for State equality. Governor Cobb had a noble, generous, affectionate nature, shrewdness, sagacity and common sense, a real and sincere judgment to lean on, was unselfish to an extreme degree, and few public men had a larger group of devoted friends. In his remarks accepting the place of presiding officer, he said the separation was "*perfect, complete and perpetual*", and that it was the duty of Congress to "*provide a government for our future security and protection and maintain with our late Confederates in the Union friendly relations, political and commercial*".

On the same day, on motion of Mr. Stephens, a committee on rules was appointed. He soon reported a code which very much simplified parliamentary procedure and facilitated business. Mr. Stephens was proud of his connection with the improvement, and published in his work the whole report. The simplification of the artificial "*previous question*" has been adopted by legislatures and is incorporated into many codes. On the second day Mr. Memminger was appointed chairman of the committee to report a plan for the formation of a provisional government. He had published, in advance of the meeting of the body, a scheme for a provisional government, and was, therefore, prepared to act without delay.

Mr. Memminger was of German origin, and being left an orphan at an early day, was indebted to generous friends for his education. This experience made him an active friend of public schools, and he remained connected officially with the system until the day of his death, one of the leading schools in Charleston still bearing his name. Thoroughly religious in conviction and habit, his influence was always on the side of virtue and temperance, and in law and politics he never severed himself or his conduct from the strictest standard of integrity and truthfulness. He became Secretary of the Treasury when the first Cabinet was appointed, and filled the difficult, one may say impossible, post until July, 1864, when the heavy duties had so affected his health that he was compelled to resign. Mr. George A. Trenholm, his fellow townsman, became his successor.

The adoption of a temporary general government being a most urgent step, allowing no time for delay unless each State was to remain separate, the committee reported a constitution for a provisional government, which on February 9th had unanimous approval. The transition was easy and orderly. It was not a revolutionary procedure, for the South in her whole history had never disregarded just obligations nor failed to perform her constitutional duty. As the Duke of Wellington said of the Reform Act of 1832, "*it was a revolution by due course of law*".

At one time it was proposed in one of the States to adopt a rattlesnake, couchant and ready to strike, with the motto, "*Do not tread on me*", or "*Noli me tangere*", as

indicating a wish to be left alone. The new government sprang forth as by magic. No large degree of statesmanship was required in this hasty organization. Identity of conviction and community interests made a pro hoc vice government an obvious need.

The seceding States had prescribed conditions and restrictions as to conformity to the Constitution of the United States with which the deputies and their constituents were so familiar. South Carolina, Alabama, and other States, in their suggestions for a convention to frame a new government, required that the Constitution should be "*upon the principles of the Constitution of the United States*". There was a marked and purposed agreement with the Constitution of the United States, as in this authoritative exposition it was the intention to reenact what the people approved, thereby vindicating the oft-repeated declaration that the States withdrew not from the Constitution, but from the wicked and injurious perversions of the compact. The changes were only such as the urgent necessity of the peculiar occasion demanded.

The Constitution of the United States was copied with almost literal fidelity, differing from that of the fathers only in so far as it was explanatory of their well-known intent. There was little departure from the text beyond what was made necessary by a single legislative body and the guarantees which the novel situation required. While some of the constituent parts were slightly altered, the system remained.

In his inaugural President Davis said: "*The Constitution formed by our fathers is that of these Confederate States, in their exposition of it; and in the judicial construction it has received we have a light which reveals its true meaning*".

With the opinions and traditions held by all, the first step was to organize a united government with a written constitution, so that the States which had severed their ties with the old government might safely be confederated into a union for the common defense and general welfare. The strife, which began in the convention of 1787 and had been continued with increasing bitterness and danger, until it reached its culmination in the dominance of a party with its chosen President committed to hostility to the institutions of the South and unmindful of checks and guarantees which had been precautionously provided for the protection of minorities, left the States no alternative but to disrupt their former relations with the Union and to bind themselves in harmony and concord for liberty to themselves and their posterity.

Prompt action was required to make a national organization with requisite powers to sustain the government, to command respect and obedience at home, to secure recognition abroad, and to guard against any possible attacks or interference.

Following the adoption of the Provisional Constitution on February 9th, came the election of a President and Vice-President, who were to hold their offices for one year, or until the nascent government should be succeeded by one more stable. These officers were elected by ballot, each State casting one vote. There had been no electioneering, no management, no bargaining, no promises. Who should be President engaged earnest attention, and there was naturally some difference of opinion as to the fittest person for the high office. The qualifications of Davis, Cobb, and Toombs were quietly canvassed, but the differences were not so pressed as to cause delay of action or any ill feeling. Some deputies favored Cobb, some Toombs, but Davis received unanimous and cordial support. Besides large civil experience as Secretary of War and member of Congress, in which positions he had won merited distinction for scholarship, ability and integrity, Davis had had military experience in the Mexican War, where he had distinguished himself for courage and tactical skill, and it was known that his tastes and preferences were for military station. Mississippi, immediately on her withdrawal, had made him Commander-in-Chief of the forces the State was raising in anticipation of a possible

conflict, and he was engaged in their organization, when by a special messenger dispatched for the purpose he was informed of his elevation.

His journey to Chattanooga, Marietta, Atlanta and Montgomery was a splendid ovation. At every point on the railway, until on February 15th he reached the Confederate Capital, he was greeted by thousands. On the 18th he was inaugurated, delivering his address and taking the oath on the steps of the Capitol building, in presence of a great assemblage, which, in hushed and reverent silence, had been led in a prayer, impressive and comprehensive, by Dr. Basil Manly, formerly the president of the University of Alabama, in which he said : "*We appeal to Thee to protect us in the land Thou hast given us, the institutions Thou hast established, the rights Thou hast bestowed*". The ceremony completed, cannon were fired, the first by a granddaughter of ex-President Tyler. The city was illuminated at night and the President gave a reception.

The inaugural was marked by simplicity, directness and frankness. Neither seeking nor desiring the exalted position, the President expressed, in strongest terms, the wish of his country for peace. It is an absurd fallacy that destruction or injury of those from whom the Southern States had separated was intended or desired.

The Northern States were at undisturbed liberty to retain their union and their government. These were not in any way threatened.

The utter unpreparedness of the seceding States and of the Confederacy for war is the demonstration, absolute and impregnable, of the purpose and expectation of peace. There was an absence of establishments for manufacture or repair of weapons and of arsenals with supplies of arms and munitions. The seceding States sought only to erect a government of their own. That it was the perversion of the ends of the Union, and not the Union itself, which had caused the regrettable separation, is made clear by the adoption of the organic law and the early legislation of the Confederate Congress, most of which was limited to putting upon the statute books such laws of a general and necessary character as had become imperative by the withdrawal from the Union.

On February 12th, the Confederate Government took under its charge all existing questions between the two governments relative to occupation of forts, arsenals and other establishments, and the States were requested to cede forts and other public property of like character to the Confederate Government. The very first enactment after the adoption of the Provisional Constitution was the continuance in force, until altered or repealed, of all United States laws not inconsistent with the laws of the Confederate States, and very soon afterwards, February 25th, the free navigation of the Mississippi was declared and established. All the expressions, all the acts, all the laws of the Confederate Government show an earnestness of desire and purpose to separate peaceably from those with whom they could not live on terms of equality and amity.

On Thursday, the 11th, Mr. Stephens accepted in open session the Vice-Presidency. Excusing himself from any elaborate presentation of his views, as it would be indelicate to anticipate what the Chief might say, he suggested several matters of general interest which required attention. Among these were the transfers of customhouses from the jurisdiction of the separate States to the Confederacy, the imposition of duties to meet present and expected exigencies, and the adoption of a permanent constitution, which, in fact, was one of the leading objects of Congress.

One might travel far and see many thousands without finding counterpart or parallel of Alexander H. Stephens. His life amid difficulties and dangers appears like a miracle. Tall, spare, not weighing over one hundred pounds, nearly bloodless, with a feminine voice and appearance, he seemed incapable of physical labor or fatigue, and during the war, when many fled from districts exposed to incursions from the enemy, he was often

jocularly spoken of as "*a refugee from the graveyard*". Of parentage of moderate means, he was educated up to graduation from the University of Georgia by some generous and sympathetic women, who discovered in him personal virtues and mental precocity. Afterwards, when he decided on a profession different from what the ladies desired, he returned in full measure, with interest, what had been advanced in his behalf.

His own generous nature and grateful sense for what had been done for him in poverty, made him through life a benefactor of young men, and more than a hundred were aided by him in academy and college. "Liberty Hall", where he lived, was an open and hospitable home, where thousands, rich and poor, distinguished and obscure, were gladly entertained. At the bar Stephens attained exceptional success. His legal knowledge, diligently acquired, his disciplined faculties, his marvelous eloquence, were the elements of his professional distinction.

In the Legislature and in Congress he found a fit and congenial arena for his tastes, studies, ambition and patriotism. In all stations, private and public, as Representative, Vice-President and Governor, he discharged his duties fearlessly, conscientiously and ably, and died without a stain upon his reputation, the idol of friends and constituents. As a stump speaker he had few equals. His remarkable physique, his penetrating voice, lucid statements, ingenuous frankness, humor, satire, repartee, eloquence, made him a great favorite. In the House of Representatives in 1859 he achieved a grand triumph when the admission of Oregon as a State was under consideration. For many reasons it was opposed, and the Southern members were unwilling to have the predominance of the North increased by another State.

When Stephens arose, writing at desks ceased, newspapers were laid aside, and every person, on floor or in gallery, gave undivided attention. In clear, incisive style, by strong argumentation and earnest appeal to rise above unjust sectionalism, he pleaded for the new State. Drawing illustration from Ezekiel's vision of wheel within wheel as typical of Federal and of State governments, he closed with a burst of eloquence that thrilled every hearer and made the admission no longer one of doubt or hesitation.

Soon after his inauguration, the President proceeded to the selection of his Cabinet, the Congress having authorized the departments of State, Treasury, War, Navy, Justice and the Post Office. This executive duty, now so much discussed, with suggestions of innumerable persons with varying degrees of fitness, causing much sectional and personal disappointment and ill feeling, was discharged with ease and to the general satisfaction. The unanimity of the people, their unselfish devotion to the country's interests, the absence of cliques and personal rivalries and party claims, enabled the President to look only to capacity. The departments, in the order mentioned, were filled by Robert Toombs, of Georgia; C. G. Memminger of South Carolina; L. P. Walker, of Alabama; S. E. Mallory, of Florida; J. P. Benjamin, of Louisiana; and John H. Reagan, of Texas. Mallory, Reagan, and Benjamin remained as the President's advisers during the life of the Confederacy, the first two in their original places, the last transferred first to the War and afterwards to the State departments. R. M. T. Hunter, of Virginia, was for a time in the State Department; G. W. Randolph and James A. Seddon, of Virginia, and John C. Breckenridge, of Kentucky, in the War; Trenholm, of South Carolina, in the Treasury; Watts, of Alabama, and Davis, of N. Carolina, in the Department of Justice.

Texas seceded on February 14th, but her delegates, not having arrived until after the adoption of the Provisional Constitution and the election of the President, were authorized by a special vote of Congress to sign the Constitution, and on March 2d they affixed their signatures to the instrument. Much necessary legislation and departmental work were accomplished to adapt the new government to environments, to prevent

inconvenience and friction from suspension of federal laws, and to supply the necessary equipments.

Agents, among whom was Raphael Semmes, afterwards the brilliant commander of the "Alabama", were sent abroad and to Northern cities to make all possible preparation for the deprecated contingency of war.

The Provisional Constitution and Government were temporary and tentative expedients to meet emergencies, and it was understood that a permanent government should supersede the temporary within a year or perhaps sooner. Time was taken from necessary legislation to devise, consider, discuss and adopt for State ratification a permanent constitution.

This was a more serious matter than had been the transient and ephemeral scheme under which the Confederacy was bravely meeting heavy responsibilities. In the deliberations were exhibited the powers of the best minds, the learning of juriconsults, the legislative experience of the members, and the convictions of what the history of the United States had shown to be weaknesses or failures in the old system. On the day of the election of President and Vice-President a committee for framing a constitution for a permanent government, composed of two members from each State, was appointed, with R. Barnwell Rhett, of South Carolina, as chairman. This committee was in permanent session, and made its report on the 26th of February. The final unanimous vote on adoption was taken on the 11th of March.

The debates on the Constitution, frequent, sparkling, earnest, learned, were conducted in the best spirit, and there predominated the one controlling desire to devise a system which would stand the test of antagonism and result in the welfare of the people and the safeguarding of human rights. It cannot be considered invidious, when, with due and strong acknowledgment of general and special merit, it is stated that Rhett, Cobb, Stephens, Toombs, Hill, Smith, Walker, Campbell, Conrad, Withers, were the men who did most towards suggesting and enforcing the changes which were adopted. The difficulties were much minimized by the attachment to the old Constitution, to which the South from the beginning of the government had given a consistent, cordial and loyal support. The South had relied on a faithful adherence to the Constitution as the surest security of the rights of the States, as the guardian of what she held most dear, and as the only bond and assurance of the Union, as framed by the fathers.

The main features of this model were readopted, and only such changes were made as were explanatory of the well-known intent of the authors, remedial of the evils which had provoked secession, purgative of the vicious interpretations of selfish majorities, and to secure the accomplishment of the true ends of the Confederacy. To build up with greater security and permanence a constitutional confederacy commanded the energies and patriotism of a body of men of whom Mr. Stephens, with his large experience, said he had never associated with an abler. *"They were men of substance, of solid character, of moral worth, versed in the principles and practice of government, and some of them amongst the first men of the continent"*.

Reformation of the Union was the cardinal object. Many of the changes were verbal, introduced for clearness, to prevent ambiguity and to settle controversy. The work of their hands refutes the common charges of unholy ambition, conspiracy, preference for a monarchy; and unprejudiced critics should accept it as a most trustworthy exposition of the opinions and principles of those who did it.

The framework of government, adopted unanimously by the Congress on March 11th, and ratified promptly by the seceding States, asserted the derivative character of the Confederacy, the equality and sovereignty of the States, the limitations upon the

powers of the General Government, and devised such restrictions as to make almost impossible future aggressions and usurpations.

These specific enumerations and reservations were made necessary by the action of the Federal Executive and Legislature, and have been justified by the claims put forth by writers on constitutional law. A well-known writer on "*Constitutional and Political History*" ventures on the singular statement that the States had no existence anterior to the formation of the Constitution, apparently heedless or ignorant of the fact that the Declaration of Independence recognizes their sovereignty and independence, and that treaties with France, the Netherlands and Sweden during the Revolution, and with Great Britain at the close of that war, enumerated the States by name and treated with them as such. As so much misapprehension and misrepresentation becloud the American mind in reference to the Confederate Constitution, it may be well to present anew some of the more important changes. When such men as Edward Everett and Motley affirm that in the Constitution of the United States the States are not named, one can hardly be astonished at the gross ignorance of the Confederate Constitution.

In the appendix to this volume the two constitutions have been published in parallel columns, with changes in italics, so that at a single glance the similarities and differences may be seen. In *The Southern States of the American Union*, pages 191-213, a full analysis and comparison of the two instruments are made.

The convention of 1787 submitted for the ratification of the States the articles of union known as the Constitution. The parties to which this Constitution was submitted were the several sovereign States, with undoubted power to accept or reject. In the event of the favorable action of nine of the States, the compact was to be binding over those concurring, and the Federal Government, as the common agent, was to be invested with the delegated powers. North Carolina and Rhode Island declined for a time to accede, and until after the inauguration of Washington continued in the exercise of functions as separate, independent, sovereign nations, and no one had the temerity to propose their coercion into the Union.

By the Constitution, as ratified and made "*the supreme law of the land*", certain duties were recognized as obligatory on the States, and the exercise of certain powers was restrained. This necessarily implied the continued existence of the States, as retaining, or reserving as sovereigns, all the powers and rights which they had not prohibited to themselves nor delegated to the USA. The Federal Union became a government with defined objects and powers, limited to the express words of the grant, or what was a necessary implication. This determination left the residuary mass of powers in the hands of the States, or the people thereof, and rendered unnecessary any specifications of what was reserved. There are no vagrant powers, no "derelicts", subjects of wind and wave, seeking a resting place. In the Union, as creatures of the Constitution, are three divisions of powers :

- (a) A grant to the Federal Government.
- (b) Prohibitions on the exercise of certain powers by the Federal Government, by the States, or by both these agencies, and
- (c) The retention of the remaining mass of power in the States, or in the people of the States.

Freeman says: "*The American Constitution, with its manifest defects, still remains one of the most abiding monuments of human wisdom, and it has received a tribute to its general excellence, such as no other political system was ever honored with*".

The copying by the Confederate States of this model to which the English historian refers, was none the less an honoring tribute, but the more because the contention was

that the Constitution had not been observed, and that its guaranties and provisions had been disregarded for sectional and selfish purposes.

The seceding States were not dissatisfied with the Constitution, but with its administration, and their avowed and manifest purpose was to restore its integrity and secure in the future its faithful observance. The permanent Constitution was framed on the State Rights theory, to take from a majority in Congress unlimited control, and to give effective assurances of purity and economy in all national legislation. A careful examination of its features will demonstrate that the seceding States were deeply attached to the plan and principles of the old Constitution, which is so often eulogized as the palladium of American liberties. The wisdom and conservatism of the framers of the new Constitution will be amply vindicated by a consideration of the reforms which were attempted. No subject proved more perplexing than the mode of electing a President. Fortunately, there have been preserved for our instruction records of the proceedings of the Constitution of 1787, so faithfully made by Madison and others.

The members of that remarkable body of patriots seem to have had no clear convictions as to the best method of choosing an executive. They were harassed by fears of a monarchy. The election by Congress came near adoption. Various other plans found partial favor. The plan ultimately incorporated into the Constitution found, late in the session, strange to say, a nearly unanimous vote. This doubtless proceeded, in a spirit of compromise and as a tentative plan, from the contrariety of views which had been expressed, and from the apparent impossibility of harmonious agreement.

The experience of the convention of 1787 found repetition in that of 1861. No proposed change of the organic law, which was adhered to as a model, excited more discussion than what was suggested in reference to the election of a President. What is now in force in the United States had few, if any, friends. The fathers provided an electoral college, each State choosing as many electors as it has representatives in Congress, and it was hoped that these electors would be an independent reality, exercising an unbiased judgment, in selecting the best man with an eye single to the public interest.

They were expected to stand between the office and the people, to study the fitness of men and select according to fitness. While the letter of the law remains, the intent has been entirely frustrated, as the intermediate electors have no independent opinions and are pledged agents to vote for a chosen candidate on a prescribed "platform".

What was meant as a check, a restraint, upon party control and excess, has become its most efficient instrument. An elector, disregarding the will of his party, as expressed in the national caucus, would be ostracized as a traitor. Practically dispensing with the intermediary agency and exalting power and influence of a national caucus have made a presidential election the main object of political management, absorbed public opinion, and dominated all other elections from that for a constable to those for governors or senators. The election is now a gigantic party struggle, never ceasing, and determines in its result the policy of the administration and the distribution of offices. Hence, party organization is compact and despotic, heartless and resistless; is controlled by manipulations of a few bosses; a place as delegate in a nominating caucus is greedily sought for; a campaign fund, aggregating millions of dollars, spent without audit or accounting of any kind, is secured by assessments or voluntary contributions, to be reimbursed by offices, contracts, appropriations, or legislative discriminations; and every neighborhood, from the Atlantic to the Pacific, is stirred to its depths by these quadrennial agitations.

Mr. Teller, in the United States Senate, June 1, 1900, "*felt that he was justified in saying that the tactics of 1898 consisted in levying assessments upon any manufacturing institution in the country, and that it was notorious that the national banks were assessed for that purpose*". Machine politics control nominations. Availability is more sought after than merit. In a party caucus everything is "*cut and dried*" in advance, the presiding officers, the speakers, and the platform. "*Bosses*" are referred to in all things.

To reform a system essentially vicious commanded serious effort, and numerous proposals were debated and referred and voted upon. While all favored some change, it was not found possible to agree upon any scheme which was free from objection. The condemned mode was retained with the hope that some of the evils of the old system might be remedied. I remember well that the reluctant acquiescence in the retention of what none favored was in the strong hope that what was temporary might be adjusted under more favorable conditions. Hence, in the Executive Department were some radical changes, made so as not to deprive the country too soon of the experience, ability and services of the President just when they were most needed.

The tenure of the office was fixed at six years, and the President was made ineligible for a second term. President Hayes, after expiration of his term of office, being asked to suggest needed changes in the Constitution, mentioned only these two. All the great movements of freedom, wrung from the grasp of tyrants, have been protests against the arbitrary exercise of executive power. By a wise jealousy of executive usurpation, the people have sought protection in a written constitution and in specific guarantees.

As under our system, the President is practically an appointee of irresponsible bodies of men, and the triumph of a party is of more consequence than the public welfare, and the patronage of a President is used as spoils of office for rewarding partisans or silencing free thought, and the halls of legislation have become arenas for personal disputes and disgraceful strives, it was deemed wise to make these great changes.

When the Chief Magistrate is a candidate for a second term, he is tempted to use the immense patronage and influence of his high office to secure a re-nomination and success at the polls. Nearly everything is made to bend to that one ambition. The weaker or more pliable the President is the greater the possibilities of evil. He may forget the good of the country in his candidacy and yield to persuasions or motives which may make him the instrument of those who are ambitious, or designing, or self-seeking.

Every one familiar with Federal legislation knows how common it is to load bills with objectionable items. "Log-rolling" has become so frequent as to have assumed a distinct legislative, or political meaning. Combinations of interested persons and interests succeed in fastening upon the treasury bad schemes which singly could not pass either house of Congress. Upon the Confederate Executive was devolved largely the responsibility of estimating and asking for appropriations with a view to an economical administration and to a better guardianship of the treasury.

Unless asked and estimated for by the heads of the departments through the President, Congress could not make an appropriation, except by a vote of two-thirds of both houses, taken by yeas and nays. For its own expenses and certain judicially determined claims this restriction did not apply. Further to secure the people against extravagant, corrupt and illegitimate expenditures, the President was empowered to veto particular clauses in an appropriation bill and to approve others. By several devices, power and responsibility were lodged in the same hands.

The initiative in disbursing revenues was placed, in a large degree, in the hands of the President, who, with his official advisers, became a kind of legislative committee, as

in the House of Commons, to watch receipts and expenditures and make broad suggestions for raising necessary revenue or lessening taxation.

Every law must relate to but one subject, which must be expressed in the title.

The treasury was required to publish at stated intervals its receipts and disbursements by items. These precautionary measures, with others to be mentioned, limiting the power and objects of taxation, were in accordance with the history of public men at the South. In his *Twenty Years in Congress* Elaine says: "*The Southern leaders were especially careful of the public money. They believed in an economical government, and throughout the long period of their domination they guarded the treasury with rigid and increasing vigilance against every attempt at extravagance and every form of corruption*".

As corroborative of this just compliment, an anecdote may be related of the Hon. Elihu B. Washburne, long a distinguished member of Congress and our most excellent Minister to France during the Franco-German war. In the autumn of 1865, I called on President Johnson to obtain a pardon. He promptly granted my request. Having some hours of leisure before the departure of the Southern train, I visited the Capitol. Discovering from the gallery where Mr. Washburne was sitting, I descended and sent him my card. He came out immediately and gave me a most cordial reception, as our relations before the war as fellow-members were very friendly. After some minutes pleasant interchange of civilities and opinions, on extending my hand to take leave, he begged me to remain, as he desired much conversation in relation to the condition of affairs at the South. Soon I proposed, a second time, not to detain him from his duties, and he most kindly expressed a desire to do anything for me he could.

Holding my hand, he said, with warmth: "*I wish you fellows were back here again*". "*That is a singular wish*", I responded, "*after the last four years experiences*". "*Yes*", he said, "*you gave us a great deal of trouble, but the fact is, you wouldn't steal*".

No more demoralizing policy of our government has been developed than that which has grown out of Executive patronage. Within the appointing power of the President are over one hundred and seventy thousand officers, and the power of removal, a supposed incident of appointment, has enlarged Executive influence and created an evil which the efforts of the wisest and best have so far been unable to arrest or eradicate. Civil service reform, incorporated into creeds of parties, and with much gush reaffirmed in letters and speeches of candidates, has proved to be a jugglery of words, a vain delusion and a snare. The spoils system cannot be exaggerated in its baleful influence. It debauches the national conscience, lowers the standard of public morals, destroys the idea that public office is a public trust, and makes it a means of private aggrandizement, an object of prey and booty for the individual office-holder and for a party. Demoralizing, corrupting elements are introduced into political life.

Continuance in office is no longer dependent on fidelity to duty. Men are put in official position, Federal, State, municipal, as a reward for partisan service, or with the full expectation that favors will be done; and these services have not the remotest relation to official duties.

Federal officers are active in nominations, in campaigns, in assessments, in partisan activities, in elections. "*Workers must be rewarded and the emoluments of office are the corruption fund for the payment*". It is an "*open secret*" that places are apportioned among senators and representatives, who thus usurp the functions of a President. The power and responsibility of a President are surrendered, at dictation or for a purpose, to congressional delegations. Pressure of political influence for patronage sets aside merit and qualification. Time and talent due to public duties are given to spoils.

In the Confederate Constitution an attempt was made to restrict Executive power. Officers of the Cabinet, or those engaged in the diplomatic service, could be removed by the President at his discretion, but in all other cases removal from office could be made only for cause, and that cause was to be reported to the Senate.

No person nominated for civil office and rejected by the Senate could be reappointed in the intervals of the session of Congress.

One of the anomalies of the British Government is that while it has no written constitution, there has grown up an unwritten or conventional constitution. There may be no trace of this in any page of the written law, but it is universally accepted and is as authoritative as the written law itself. One of the most remarkable facts in English polity is the exemption of the Crown from all personal or political responsibility, and instead thereof there is the responsibility of the ministry. Their recommendations and acts can be discussed in Parliament and a vote of disapproval or censure may result in change of the ministry or the government. As the government is parliamentary, and a large portion of the power is practically transferred to a cabinet or ministry, each one must be a member of Parliament and have the right of initiative, even of chief management, of legislation, and to appear and be heard in defense or otherwise.

Anyone familiar with public life in Washington knows that, under some administrations, there has been an injurious lack of sympathizing intercourse between the Executive and Legislative departments, and especially between members of the Cabinet and committees of Congress, concerned in matters of mutual interest. The absence of facility of communication often proves a bar to the easy and better working of the government. Hence, as far as the wide difference between a presidential and a cabinet government would allow, there was in the Confederate Government an initiation in modified form of an essential feature of the British Constitution, so far as to allow the President to be heard on the floor of the two houses through his constitutional advisers.

As a member of a cabinet could not be a member of Congress, the body was authorized "*by law to grant to the principal officer in each of the executive departments a seat upon the floor of either house, with the privilege of discussing any matters appertaining to his department*". The provision respecting the appropriation of money upon estimates from the Executive, thus making him responsible to the popular representative body for an economical administration, combined with other advantages which the English system enjoys, caused the adoption of this experiment. The necessary legislation for this judicious reform was never put into execution, but the restricted privilege worked well while it lasted, and the occasional appearance of Cabinet officers on the floor of Congress and participation in debates worked beneficially and showed the importance of enlarging the privilege.

Certain legislative restrictions have been mentioned in connection with the Executive. A plethoric treasury is a source of corruption, of legislative favoritism, of unrepugnant paternalism, and with some of our wisest statesmen it has been a cardinal maxim to keep the government poor. Under the vague clause of "the general welfare", the Government of the United States has been guilty of using assumed powers for personal and party and sectional advantage, and the unjust discriminations have aroused bitterest discontent and hostility. Subsidies, bounties, partnerships with corporations, trusts, "*vast plutocratic combinations of incorporated wealth*", fostering favored branches of industry, purchase of seats in nominating caucuses, labor troubles, communism, anarchy, are all, more or less, traceable to the collection and disbursement of taxes by the General Government. As these injustices and discriminations were among the chief causes of Southern discontent, the Constitution forbade Congress to

levy and collect taxes, duties, imports and excises, except for discharging the debts and carrying on the government; and from granting from the treasury bounties or extra compensation to employees or contractors ; and from promoting or fostering any branch of industry. Closely connected with this was the establishment of courts for the adjudication of claims, the power of Congress over which was strictly limited.

From the frugality and economy of the better days of the republic, the government, by extravagant expenditures, has lapsed into "billion-dollar Congresses", and States, corporations and individuals habitually look to a paternal government for protection and support. It is easy to see how such a system grows and that dependents are ready in return for class legislation to be "bled" to any extent "bosses" may require. Favored corporations and businesses, as a mere investment, can give prodigally for the success of a party, on the assumption that the partnership with, or favor or "protection" of, the government would bring an early and adequate remuneration for the out lay. However wide may be the differences with administration or party on questions of great moment, they are subordinated to the personal benefit of "protection".

The precautions against governmental wrongs were justified by the history of all governments. Error and falsehood and wrong and corruption die slow deaths when they have fastened themselves upon and draw vitality from governments. We have copious and harmful illustrations of this in the abuses which are inseparable from an alliance of Church and State. Abuses are more tenacious of life and prejudicial to the people when they are intertwined with private interests. Government partnership, direct or by legislative fostering, in business has become apparently an incurable evil in our Federal and municipal governments.

The General Government is habitually impeded by private cupidity. The welfare of the country and great constitutional and economic principles are habitually and successfully resisted when they stand in the way of the monopoly of a few favored trades. The shrines of Diana must be sold if those who make them belong to the "protected" classes.

When protection of a favored interest is involved in an election, all other issues sink into insignificance. Senator Teller has been already quoted as saying that the tactics of one of the parties in 1896 consisted in levying assessments upon manufacturing institutions.

On another occasion he publicly said that the Sherman Silver Purchase Act of 1890 was the result of an agreement with certain silver senators as an inducement to them to support the McKinley tariff. Tariff reform seems to be one of the impossibilities under our present system of government.

Plutocracy and bossism have become too powerful to leave any hope of a scientific and just system of tariff revenue.

Selfish aggrandizement, controlling press and parties, puts contempt on reformers, and through a resistless political organization and the corrupting spoils system pushes far into the future the prospect of an enlightened fiscal policy.

Facilities granted in one place give preferential advantages and consequent disadvantages. The Confederate Congress was therefore denied the right to make appropriations for any internal improvement, even to facilitate commerce, except for the purpose of furnishing lights, beacons, buoys and other aids to navigation upon the coasts and the improvement of harbors and removing of obstructions in river navigation; and the costs and expenses of even these objects must be paid by duties on the navigation facilitated. A State was, however, allowed, under certain conditions, to accomplish the work within her borders by levying a duty on the sea-going tonnage

participating in the trade of the river or harbor improved. Any two or more States were authorized to enter into compacts with one another for the improvement of the navigation of rivers flowing between or through them.

The franking privilege is greatly abused, and during a presidential campaign both parties send free tons of pamphlets under the flimsy and deceptive pretense that they are public documents.

The printing and carrying of much trash entails a heavy burden and creates an annual deficit in the department. To correct such and other abuses, the Constitution provided that after the 1st of March, 1863, the expenses of the Post Office Department should be paid out of its own revenues.

Changes were made in reference to amendments of the Constitution; to admission of new States, a two-thirds vote of each State being required, the Senate voting by States; to bankruptcy laws, jurisdiction of suits between citizens of different States being withheld; to citizenship, Federal courts and territories; to correct abuses and give greater clearness. To prevent alien suffrage, voters were required to be citizens, and senators were to be chosen at the session next immediately preceding the beginning of the term of service.

What was provided for the protection of property in slaves is omitted as of no practical value, as African slavery has fortunately ceased to exist. It is almost the only instance of want of foresight and courage in the authors of the Federal Constitution that slavery was thrust as far as possible out of sight and a euphemistic paraphrase avoided the frank naming of what portended future trouble. The timidity was long afterwards one of the causes, or the occasion, which brought forth bitter fruit in a terrible war.

Mention of the slave trade is made because on that subject there has been a persistent misrepresentation of the action of the Confederacy and of Southern sentiment. A modern writer of high character and of much ability affirms that *"the reopening of the slave trade was a recognized feature of the scheme of the leaders of the Confederacy"*. What was in the minds of the leaders, *"unavowed and as yet carefully disavowed"*, I have no means of knowing any more than I have knowledge of the purpose or acts of *"the large number of slavers for the Cuban slave trade"*, fitted out in New York and suffered to depart unmolested.

Two grossly absurd and wicked attempts were made by desperate and lawless adventurers in 1859 or 1860 to bring some Africans into Southern ports or land them on the coast. These violations of the law had no sympathy from Southern people, and were regarded as at least semi-piratical. Speaking for the Confederate Congress, I wish to testify in the most explicit manner that no proposition was made in that body to open or connive at the slave trade, nor did a single member favor such an infamous scheme. The convention of Alabama, January 28, 1861, adopted, Mr. Yancey voting for it, this resolution: *"That it is the will of the people of Alabama that the deputies to the Southern Convention be, and they are hereby, instructed to insist on the enactment by said convention of such restrictions as will effectually prevent the reopening of the African slave trade"*.

The Constitution for the provisional government reads: *"The importation of African negroes from any foreign country other than the slave-holding States of the United States is hereby forbidden, and Congress is required to pass such laws as shall effectually prevent the same"*.

Section 9, Article I., of the permanent Constitution reenacts almost in *ipsis simis verbis* the same prohibition. *"Negroes of the African race"* is used for *"African negroes"* and *"or territories"* is inserted after *"United States"*.

These articles were adopted without a dissenting voice. The Confederate Government, in organic law, by most positive prohibitions and injunctions, left no room to question its opposition to the slave trade.

Mr. Stephens said that the Constitution was not only a monument of the wisdom, forecast and statesmanship of those who constructed it, but an everlasting refutation of the charges which have been brought against the framers "*as conspirators overthrowing the Constitution of the United States and erecting a great slavery oligarchy*". Armies sometimes crush liberty, but they cannot conquer ideas. The prejudiced views of the vital principles of the Confederate Government blind many to what is worthy of adoption and prevent all the beneficial interest that might be gained from the knowledge of the theories and views of those who are condemned without examination. In the instrument prejudged there is not a single ambiguous clause, not a novel application of an old principle, not a possible encroachment upon the right of a Northern State.

Every possible infringement upon popular liberty, or upon State rights, every oppressive or sectional use of the taxing power, was carefully guarded against, and civil service reform was made easy and practicable. Stubborn and corrupting controversies about tariffs, post office, improvement of rivers and harbors, subsidies, extra pay, were avoided. The taxing power was placed under salutary restrictions.

Responsibility was more clearly fixed. Money in the treasury was protected against purchasable majorities and wicked combinations. Adequate powers for a frugal and just administration were granted to the General Government. The States maintained their autonomy, and were not reduced to petty corporations, or counties, or dependencies.

The study of the Confederate Constitution would be useful at present, as there never was a time when the need of restrictions and guarantees against irresponsible power was more urgent. The public mind has been schooled against any assertion of State rights or of constitutional limitations, and taught to look with aversion and ridicule upon any serious attempt to set up the ancient landmarks. The abeyance of State authority, reliance in actions and opinions upon Federal protection and aid, the vast accumulation of power and influence at Washington, the supposed necessary supremacy of the Central Government, have caused a wide departure from the theory and principles of the fathers. It is not easy to think of the present government as being the same simple, frugal, limited, constitutional government of the earlier and better days of the republic. In addition to old and familiar questions we have new ones of fearful import.

Expansion, militarism, colonizing, lifting up semi-savages, maintaining a position of influence among the great powers of the world, extension of laws and administration without constitutional grants and inhibitions over territory and people acquired by purchase and conquest and treaty, are of such vast concern and so unprecedented as to require the best minds of the country and the highest wisdom and integrity.

Unless we are safeguarded by the best precedents and the purest ship, we shall drift entirely away from the hopes and purposes of our ancestors.

With the Constitution as it was construed by Marshall, Taney, Woodbury, Nelson, with a government administered by such men as Washington, Jefferson, Madison, Polk; with such statesmen as Calhoun, Clay, Wright, Wythe, our country could cover North America without sacrifice of personal liberty, without peril to representative institutions, and with unbounded prosperity. It was of "*our confederacy*" thus administered that Mr. Jefferson wrote to Mr. Madison in 1809: "*I am persuaded no constitution was ever before so well calculated as ours for extensive empire and self-government*".