SUSPENSION OF THE WRIT OF HABEAS CORPUS IN THE CONFEDERACY

DURING THE CIVIL WAR

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by

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Introduction

This subject, while probably not one of the major problems of the Civil War, nevertheless proves in many ways to be highly contributory to the failure of the attempt to establish a Southern Confederacy.

In this brief study I have tried to pay especial attention to the three great acts for the suspension of the writ of habeas corpus for which authority was found in article I, section 9, paragraph 3, of the Confederate Constitution. I have striven to show why these acts were passed at certain times, including enough background facts to make a clear and intelligible narrative.

A bare allusion to the North has been made, and very little to the war itself, for this matter was largely a legislative battle between the President and his Congress. Their great problem was to win the war, but at the same time, not to sacrifice the very rights for which they were fighting.

One of the most interesting things brought out by this study was the way in which Jefferson Davis changed his mind with reference to suspension of the writ of habeas corpus. This is shown by his rabid denunciation of President Lincoln for using such a barbarous method, but later, when he found himself hard pressed in the matter of winning victories, he found it convenient to change his mind. One has only to compare his message to Congress on November 18, 1861, with one of his speeches to his last Congress in 1865, to realize this great difference. He seems to have adopted somewhat the policy of a later President of the
United States when he realized, that it was a condition that was facing him rather than a theory. It is said that a drowning man will grasp at a straw to save himself, and this seems to be what the Confederate President was forced to do.

Some writers have said that the thing which really killed the South, was "too much states rights," and the evidence gleaned in this brief study seems to corroborate this as a fact. Had such men as Alexander H. Stephens, Robert Toombs, William L. Yancey, Joseph E. Brown and Zebulon Vance been able to realize a little more that it was really a condition rather than a theory which faced the South, the Confederacy might at least have come closer to realizing its aims.
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I

CONDITIONS IN THE SOUTH WHICH CAUSED THE
SUSPENSION OF THE WRIT OF HABEAS CORPUS

Before turning to the actual passage of the three Confederate
acts for the suspension of the writ of habeas corpus, it would be well
to review briefly the conditions and events which led to such action.

At the beginning of 1862, the military aspect of the war appeared
rather favorable for the South, as its extreme line of defense had been
unassailed and was believed to be impregnable. In the contests of the
previous year, the Confederate soldiers claimed that victory had
consistently come to their cause and in personal prowess each felt that
he was equal to at least three of his Northern foes.\footnote{1}

But this year opened with a fearful train of disaster, which brought
the Confederates almost to the brink of despair. In the latter part of
1861, while they were inactive, the North was busy sending into camp,
from her great population of about twenty-two million, regiments numbered
by the hundreds; was drilling her men, heaping up ammunition and provi-
sions, building gunboats for the western rivers as well as war ships for
the coast. She was preparing with the opening of the next campaign to
strike those heavy blows in Tennessee and Louisiana which were so
devastating to the Southern cause.\footnote{2}

These disheartening events threw a cloud over the cheering prospects
of the South, for the North was known to be preparing to exert its utmost

\footnote{1}{James Ford Rhodes, History of the United States from the Compromise
of 1850 to the Bryan-McKinley Campaign of 1896, Vol. V, 202, 203.}
Henceforth cited as Jones, Diary.}
strength and it could be clearly seen that a fearful struggle was at hand. Arms and ammunition in sufficient abundance could not be had in the South. The commerce of the Confederate states had already been annihilated, and a most stringent blockade endangered every venture. The luxuries of life had been consumed and even necessary articles were becoming scarce. The Confederacy looked for strong arms and stout hearts to meet the foe, but extortioners thrived, as numerous as "the croaking frogs of Egypt and fully as foul." She found those who would oppress the widow and the orphan, and coin into gold the blood and tears of suffering humanity. The following is one example of the extent to which this evil was thriving during this time.

Last week a pork butcher purchased a stall in the Savannah market and purchased a hog for $185. From this hog he made the following sales: Lard, $450. Head cheese, $150. Bones, $25. Total Receipts, $625. Profit, $440.

The credit of the government was rapidly declining and its obligations depreciated. It was under these conditions that the Federal troops started to march southward, and the strong Confederate positions in Kentucky were either captured or evacuated.

The congressmen in Richmond, however, and the principle actors in accomplishing the secession of the Confederate states, still possessed the same determined purpose. This is illustrated by an address to the people of Georgia by her representatives in Richmond, telling them of the "unparalleled unanimity" existing among the people in this war for

3 Rhodes, op. cit., 365-370.
4 Charleston Daily Courier, (South Carolina) October 18, 1862.
5 Ibid., January 14, 1863.
6 The American Annual Encyclopedia and Register of Important Events of the Year 1862. D. Appleton and Co. (New York, 1871-1903), 241. Henceforth this work will be cited as App. Ency.
independence. It was emphasized that "the enemy had a disregard for constitution and law which we can hardly credit." A realization of the immensity of the Northern army was dwelt upon as well as the lack of progress in obtaining foreign aid in their cause, but the people were exhorted to "frown upon all factious opposition," and "to strain every nerve and muscle to preserve our financial and military healthfulness," for certainly "God was on the side of the South." \(^7\)

The disasters which befell the Confederate cause during the early months of 1862 may be distinctly traced to human mismanagement rather than to the mysterious dispensations of Providence. Rebukes and criticisms by the people were poured in great numbers upon the vainglorious Southern government. The Confederates had been worsted in almost every engagement that had occurred since the Fall of 1861. "Then had come disaster after disaster, culminating in the fall of Donelson, the occupation of Nashville, the breaking of our center, the falling back on all sides, the realization of invasion, the imminence of perils which no one dared to name." \(^8\)

These troubles were not sectional, for the conditions in the interior counties were equally bad. The people feared an immediate advance of the North, and traitors to the South evinced their joy. In many of the counties, Southern Unionists were making demonstrations, and even in Memphis there were exhibitions of joy at the arrival of the news of Federal victories. "In the remotest counties many had been shot, at night in their own houses, who adhered to the fortunes of the South." \(^9\)

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\(^7\) Ibid., 240.
\(^8\) Edward A. Pollard, The Lost Cause, 215. Also found in Rhodes, op. cit., 91, 101, 110, 132, 135, 143.
\(^9\) App. Excy., 1862, 240.
None who lived in Richmond during the war would be likely to forget these gloomy, miserable days. In the midst of them, on Washington's Birthday, was to occur the ceremony of the inauguration of the permanent government of the Confederacy. The Provisional Congress had been in office since February 4, 1861 and it was largely in name that the two governments differed. Mr. Davis had been unanimously elected President, and there was no change in the law or the personnel of the administration. The second inauguration of the President was one of deep interest to the public for he was expected to use the occasion to outline a new policy which would reanimate the entire South.

The day appointed was memorable for its gloom. Rain fell in torrents, yet a dense crowd collected, eager to hear the President's message from the steps of the Capitol. 10

The President reflected in scathing terms on the arbitrary acts and violations of the Constitution by the Lincoln government. He boasted that through all the necessities of an unequal struggle, there had been no act on the part of the South to impair personal liberty, or freedom of speech, of thought, or of the press. He said that the courts had been free, the judicial functions fully executed, and every right of the peaceful citizen maintained as securely as if a war of invasion had not disturbed the land. 11

In his address he offered little encouragement and counsel to his distressed countrymen, and they were sorely disappointed when he failed to announce a new plan for a more aggressive program. These things might

10 Jones, Diary, Vol. I, 111.
President Davis truthfully said on the 22nd of February, but not for many days longer, for the Confederates were to stand adversity no better than the Federals.  

Another condition which led to the suspending of the writ of habeas corpus was the inherent nature of the Provisional Congress itself. This body, according to a contemporary southern writer, was one of the weakest that had ever been summoned in a historical crisis. This was probably true because its members were elected at a time when most of the really able men were enlisted in the army. It was composed largely of cheap politicians who had no resources besides the emoluments of office, and had no higher legislative training than that of a back door communication with the President. Most of the ingenuity of Congress seems to have been spent in making feeble echoes to the Federal Congress at Washington. When the latter authorized an army of half a million men, the Provisional Congress at Richmond replied by increasing its army to four hundred thousand but did nothing whatever to collect such a force, other than to rely upon the wretched plan of twelve months volunteers and raw militia.

The Congress at Washington passed a sweeping confiscation act, and Richmond replied with a sequestration act which by amendments, permitting the "heirs" of alien enemies to rescue and protect the property, worked out very unsuccessfully in practice.

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12 Pollard, op. cit., 216.
13 The War of the Rebellion; A Compilation of the Official Records of the Union and Confederate Armies, (Washington 1880-1901), Ser. I, Vol. XVI, 495, 496. Henceforth this work will be cited as O. R.
14 Rhodes, op. cit., Vol. IV, 60.
15 Statutes at Large of the Provisional Government of the Confederate States of America etc., (Richmond 1864), 260-266. Henceforth this work will be cited as Statutes at Large.
Again, the weakness of this Congress was shown by the passing of the Sixty Days Furlough Act, just a short time (February 3rd) before the expiration of its official life. The purpose of this rather ridiculous law was to persuade the twelve months volunteers to re-enlist; and to do this the law granted to those who pledged themselves for the term of the war, a sixty day furlough. The effect of this legislation was almost to disband the armies in the field, and to put the Confederacy at the mercy of the enemy. This measure, recommended by the President, filled the military commanders with consternation, for the army near the line of the Potomac was "melting like snow." Exemptions from service were provided for and many took advantage of this exception. Some were excused from army service improperly on the score of physical or mental diseases, through the dishonesty of examining physicians; others who had political or social influence obtained appointments to certain governmental offices for the sole purpose of evading active service; and still others sought occupations which permitted them to stay at home. Fifteen generals who were stationed near Chattanooga wrote to the War Department that, "all those vocations are crowded which afford exemption while the ranks of the army are daily becoming thinner; rural post-offices and printing presses" are multiplied; "an enormous disproportion [exists] between the absolute wants of the people and the number of shoemakers, tanners, blacksmiths, wagon makers, millers and their engineers, millwrights, the postal agents and employees of the different bureaus, departments, railroad and telegraph companies," all of

16 Ibid., 256, 257.
17 Pollard, op. cit., 220
which belong to the list of exempted occupations. An example of how some of the men took advantage of these exempted occupations is shown in case of two Confederate soldiers, who were awarded mail routes at the ridiculous salary of one cent and one quarter a year. The officers of the regiment in which the men served, offered to discharge them, because they now were eligible as government employees, but the two men objected to the delay caused by the necessity of getting official permission from Richmond. Through a friend they applied to Judge Fulton of Virginia for release through habeas corpus procedure which would be effective much sooner. The Judge issued the writ and sent an officer all the way to Tennessee, a distance of about two hundred miles, to serve it. The army officer in charge of the men was required by law to return them in person or face a charge for contempt of court. The men were properly surrendered and Judge Fulton promptly discharged them. The principle involved in this incident was the misuse of the writ of habeas corpus by individuals, causing great inconvenience to the military authorities. This example was followed in similar cases by many other judges in most parts of the Southern states.

The Conscription Act caused much trouble because it permitted substitutes to a limited degree; "persons not liable for duty may be received as substitutes for those who are." Those who took the trouble to secure some office or adopt some trade to avoid serving as principal, would naturally go into the army as a substitute, so that practically all men eligible for substitutes were those above the maximum age of thirty-

20 Ibid., Vol. III, 73, 659.
five and, later, forty-five years. Fraud attended the operation of the law. The bounty for substitutes started at one hundred dollars per man but in 1862 it reached as high as two-thousand dollars. In August of this year the Secretary of War reported the procuring of substitutes had become "a regular business" and the men obtained were usually unfit for service or deserted soon after, so a new regulation was passed by the Confederate Congress providing that "every person furnishing a substitute...shall become liable to, and be immediately enrolled for military duty, upon the loss of the services of the substitute furnished by him for any cause other than the casualty of war," but this regulation proved of little help in solving the problem. In some cases fraudulent papers had been used; in others diseased men had been accepted whom it was necessary to discharge and in still other cases "vicious and unprincipled substitutes were bought up who deserted at the first favorable moment. These last frequently sold themselves and a second time evaded service.

In the city of Richmond a "regular traffic" in substitutes developed.

Men undertaking to raise companies for the active volunteer force enrolled their names only for the purpose of escaping service by getting in substitutes, a large portion of whom were vagabond foreigners and other persons of the same stamp who deserted as soon as they were mustered into the service, and played the same game over again and again as often as they had a chance to do so.

The injustice of the law which permitted the rich to buy themselves free rankled with the poor who were forced into the army. This state of affairs was fully appreciated by the Secretary of War and President Davis. Secretary Seddon thought that about fifty-thousand was a low estimate of

23 Ibid., Vol. II, 670.  
24 Ibid., Vol. II, 998.  
25 Ibid., Vol. L, 1098.  
the number of those who had availed themselves of substitution, but according to the belief of the Adjutant-General, the army in the field actually had no more than three or four thousand substitutes who were not themselves liable to conscription.

Another movement which seriously weakened the morale of the Confederacy was the beginning of an organized effort for peace. As early as October 1862, General J. Bankhead Magruder, commanding the Confederate troops in Texas, arrested several officers of his army for circulating peace literature. They were sent in chains to Mobile, tried and finally sent through the Confederate lines into the North, as a punishment. In December of this year the movement had taken definite form. At this time the feelings of many were reflected by the Rebel War Clerk in Richmond when he suggested that the instruments of death be thrown aside, and commodities be exchanged between the warring brothers. "Subjugation," said he, "is an impossibility, then why not strive for the possible and the good in the paths of peace?" Peace societies became more and more powerful during the later years of the war. It was reported that in some communities as many as half of the people were members of these organizations.

In North Carolina the feeling between the "peace at any price" party, headed by W. W. Holden, and the party favoring the continuance of the war, led by Zebulon B. Vance, appeared in the gubernatorial election in 1864 when these men contested for office with a "virulence hardly exceeded by

28 Ibid., Vol. II, 947.
the fury of the mighty contest then raging from the Potomac to the Rio Grande.\textsuperscript{32} The strength of the party was shown by the fact that Holden polled 20,448 votes against 54,323 by Vance.\textsuperscript{33}

In Georgia, the desire for peace became so pronounced that Governor Joseph E. Brown in a letter to Alexander H. Stephens said,

> There seems to have settled upon the minds of our people a sort of feeling of despondency which is stimulated by the constant croaking of a class of speculators who have made money, and are preparing to curry favor with Lincoln if he should ever run the country, with the hope of saving their property... The fear is that they are attempting to form a reconstruction party, by beginning to advocate reconstruction with the Northwest if they will adopt constitutions tolerating slavery...\textsuperscript{34}

At this time, also, the number of peace societies of the South was increasing, one of the largest of which was located in the midland eastern counties of Alabama. Its general designation was the "Peace Society," and it had signs, degrees, pass words, solemn oaths and dreadful penalties. Its professed object was peace. In elections it often succeeded by covert means in choosing men secretly devoted to it. For its chief aims, it was said to encourage and protect deserters, resist conscription and encourage paroled prisoners not to return.\textsuperscript{35} Among its members were some of the soldiers and officers of General Bragg's army, who maintained that the purpose of the organization was not treasonable. After careful questioning, seventy of these men were sent to Mobile for trial but not a single one of them was convicted and punished.\textsuperscript{36}

\textsuperscript{32} The Daily Constitutionalist, (Augusta), July 7, 1864.
\textsuperscript{33} Ibid., January 16, 1864.
\textsuperscript{35} D.R., Ser.IV, Vol.II, 726.
\textsuperscript{36} Ibid., Ser.I, Vol.XXIX, part II, 588.
On November 8, 1864, Secretary of War Seddon sent a letter to President Davis concerning the secret societies in southern West Virginia. He claimed that the organizations there were so powerful that they controlled the administration of law, juries and even the judges. As the suspension of the act was not in effect at this time, he claimed that if it were, it would be all that would be necessary to scare these organizations out of existence.37

The following day the President sent this letter to Congress with the advice that another suspension act be passed as there were other serious troubles of this nature in Wilmington, Mobile and Richmond. These conditions were caused by the inability of the military commanders to hold spies and traitors, even though they were reasonably sure of their guilt.38 These societies would not have been such a menace as long as the army was winning but they could inflict serious damage to a losing cause.

Closely connected with the activities of the peace organization, in its influence and results upon the South, was the matter of trading with the enemy. The Confederate policy with regard to this problem seems to have been rather inconsistent because we find great men on both sides of the question. In March 1862, a Senator from Mississippi declared that he was "in favor of burning all the cotton we now have and planting no more until the world was disposed to do us justice." He was answered by a Senator from Louisiana, who said; "I long since abandoned the idea that cotton is king...We have tested the powers of King Cotton and have found him wanting."39 With opinions as these in official circles at Richmond,

38 Ibid., Vol. III, 819.
trade sprang up with the North, and Nashville, Memphis and New Orleans, after they were occupied by the Federal troops, became important trade centers for this traffic.\(^{40}\) This trade with the enemy naturally gave rise to complaints, some of which were transmitted to the War Department at Richmond, which had itself given authority to certain citizens in Mobile to trade cotton for supplies at New Orleans, then under the command of General Butler.\(^{41}\) The commissary-general reported that the army could not subsist unless some supplies were obtained from the North, and Secretary of War Randolph sanctioned this report, telling Davis on October 30, 1862, that if cotton was withheld from the North, the Southern armies would run the risk of starvation. Randolph believed that the statutes did not forbid the government's trading with the enemy. He realized that it was an evil, but a lesser one than starvation for the armies, therefore he advised that contracts be made with Northern citizens for bacon, salt, blankets and shoes which were to be payable in cotton.\(^{42}\)

Although President Davis did not give his formal consent to making arrangements of this kind, he suffered them to be made, for again on November 12, 1862, the new Secretary of War James A. Seddon entered into contracts "with certain parties expecting to fulfil them by supplies [shoes, blankets, etc.] illicitly drawn from within the Federal lines."\(^ {43}\) The continuance of this commercial relationship was thus winked at for the general good or permitted because officers in charge were secretly interested in the trade. "Imputations upon the integrity of the quartermasters under Pemberton," wrote Seddon to Joseph E. Johnston, "have come

\(^{40}\) Ibid., 765.
again and again to the [War] Department. The story of this traffic is one of corruption and demoralization but the South being the invaded country, the taint there affected the people as well as the officers and soldiers. General Leonidas Polk wrote to the President from Alabama that planters and citizens resorted to all kinds of measures to sell their cotton to the enemy for supplies or money. This "illicit trade" led to "murder and robbery" but to stop it would require his whole force. So bad were conditions that he thought the only remedy was for the government to take possession of all cotton either by purchase or impressment.

F. H. Hatch, a prominent customs collector, wrote to Secretary of the Treasury Trenholme that he thought that all Southern people could be divided into three classes; those who have been directly or indirectly in this trade; those who wished to have been but were unable; and those who abstain because they are loyal and respect the law, an "honored and almost invisible class." He also stated that no law or regulation could be enforced except by exhibition of military force. The major-general commanding the cavalry in Mississippi ordered the confiscation of all wagons and teams "caught carrying cotton into the lines of the enemy" and the destruction of all the cotton that could be got at by the Northerners. General Kirby Smith who had charge of this activity in the trans-Mississippi region said that "the rage for cotton speculation had reached all classes of people." The possession of a large amount of cotton was sure to annihilate the patriotism of the best citizens. They would not admit the necessity of surrendering their property and held on to it

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44 Ibid., Vol. XXIV, part III, 625.
46 Ibid., Vol. XXX, part III, 877.
47 Ibid., Vol. XXX, part IV, 593.
until it was too late to preserve it from the enemy. "Stringent orders," he declared, "have been given to burn all cotton within the enemy's reach." This order was carried out in parts of Louisiana and many men and women in the neighborhood of Baton Rouge took the Federal oath in order to ply the trade. The people became indignant when they saw other cotton going to the enemy for supplies. "The very heavy movement of government cotton" started a large amount of private trading and led some citizens to suspect the honesty of the government agents, believing them to be engaged in a "huge speculation." Community meetings were held and threats made "to burn every bale of cotton in the district." Jones, speaking of thieving quartermasters and commissaries", asserted that "the opulent [are] often those who have defrauded the government" and declared that "official corruption runs riot through the land." The Confederate Congress took cognizance of this evil by passing, on May 1, 1863, an act "to prevent fraud from the quartermaster's and commissary departments." In this same year Jones spoke of the quartermasters as "rogues" and mentioned a grave charge against a commissary; and on March 13, 1865, when the shadow of doom was over the Confederacy, he said that the danger and possible defeat of the South was due to "cupidity, dishonesty and corruption" caused largely by the laxity in the execution of the Southern government. The accounts of many of these abuses reached President Davis and on June 29, 1864, he considered them of sufficient weight to order a general

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48 Ibid., Vol. XXIV, part II, 971, 978, 982.
49 Ibid., Vol. XXIV, part II, 924.
50 Ibid., Vol. III, 214.
52 Ibid., Vol. II, 447.
On September 10, of this year, Adjutant-General Harris, who made a tour of inspection, reported from Jackson Mississippi to General Bragg at Richmond that

Cotton, instead of contributing to our strength has been the greatest element of weakness here. Yankee gold is fast accomplishing what Yankee arms could never achieve - the subjugation of this people. 'A pair of boots and a bottle of whiskey' will scarcely ever fail to secure a passage for a load of cotton through the lines.

During such a period when a class of people was becoming rich almost over night, it is only natural to expect them to use much of their easily attained wealth in gayety, riotous living and extravagance. This was most evident in Richmond where flocked politicians, wealthy planters and army officers from Baltimore and Alexandria. Great dances were given in the ball-rooms of the largest hotels, and ladies appeared in fine costumes. In November 1862, a journalist lamented that in one issue of the paper five balls were advertised while flour was $125. per barrel, adding sarcastically: "On with the dance! Who prates of famine or want?"

Vice and crime increased in the Southern states and it was complained that gamblers and robbers had taken possession of Richmond, the police government having gone to pieces. Among the visitors to the gambling places were quartermasters and commissaries who gambled away the public funds. Intemperance was on the increase and "bar-rooms and faro banks are the popular institutions". Much liquor was drunk and the Richmond Examiner exclaimed that it seemed that "whiskey is to be the master of this Confederacy, not the Yankee." Thieves, garroters and murderers so

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53 Ibid., Vol. II, 517.
54 Ibid., Vol. III, 647.
55 The Richmond Examiner, January 3, 1862.
56 Ibid., November 24, 1862.
infested the city that vigilante committees were formed to remedy the condition and the application of lynch law was publicly threatened.

The gamblers, painted bawds and bedizened strumpets were ugly sights, the drunken brawls and noonday murders an abomination to those who regretted the old Richmond of steady habits, social virtues, generous hospitality and 'old fogey' dinners, when the citizen was safe in the street at midnight and city vices did not flaunt themselves.57

Nor was this true of Richmond only, for Atlanta was called a "fast town," and in April 1864, Charleston complained that thefts, arson and murders were being committed daily.58

Such was the condition of affairs which the President and Congress faced, and it is little wonder that the regular congress contributed very little of value to the history of government. Like its predecessor, the Provisional Congress, it lacked originality. Most of its measures were either recommended by the President or suggested by the newspapers. It produced no great financial measures, neither did it utter any of those "fiery appeals which are so common in revolutions." "It is difficult indeed for a legislative body to preserve its independence, and resist the tendency of the Executive to absorb power in time of war, and this fact was well illustrated by the Confederate Congress."59

These underlying conditions led the President and many Southern people to believe that in order to achieve success, the incorporation into the military program of the suspension of the writ of habeas corpus would be necessary. Throughout the war they claimed that it should be made an integral and vital factor in dealing with these underlying evils

57 Ibid., January 22, 1863.
58 The Charleston Courier, April 29, 1864.
of the Southern cause.

Now, let us turn to the acts themselves; and their relationship to the Confederate fortunes of war.
THE FIRST SUSPENSION ACT AND AMENDMENT
FEBRUARY 27, AND APRIL 9, 1862

The first act passed by the Confederate States of America suspending the privilege of the Writ of Habeas Corpus was passed in secret session on February 27, 1862, and granted the President authority during invasion, to suspend the privilege, and to declare martial law in those cities, towns and districts threatened by the enemy.1

President Davis, realizing the necessity of this law, on the following day suspended this right in the cities of Norfolk and Portsmouth Virginia, including the distance within a radius of ten miles of the cities, at the same time suggesting that the mayors of the respective cities be made provost marshals, in charge of the governments.2 On the fourteenth of the following month he placed the counties of Elizabeth City, York, Mathews, Warwick and Gloucester under this ban and on the nineteenth added ten others. He instituted martial law which suspended all civil officers except those necessary for the settling of wills, estates and other work of a similar nature.3

At about this same time local conditions in Mobile and New Orleans necessitated action, and the President applied the law as in the cases noted above,4 and on the first of March made it applicable to the Confederate Capital of Richmond.5 As in most of the other territories, all civil jurisdiction was suspended except that of the mayor, and it was

2 Ibid., Ser. I. Vol. IX, 45, 46.
3 Ibid., Vol. LI, 502.
5 Ibid., 482.
understood that the provost marshal should abide by the civil laws and ordinances as much as possible, but that he was not strictly bound by them. Brigadier General John H. Winder was put in charge of affairs at Richmond, and he started upon a drastic program of ridding the city of gamblers, vice and other forms of crime. He closed the bar rooms, and within a remarkably short time made conditions livable again for decent people. The necessity for such treatment of the people of Richmond, particularly at this time, was the extremely rapid growth of the city, which naturally attracted a great number of the more undesirable class. Political arrests were made also, because many northern spies made this city their headquarters, and it was this act of seizing people against whom evidence was insufficient to convict in a civil court which later caused the administration much trouble.

In the case of New Orleans, where General Lovell had been appointed, very strict regulations were instituted. All persons above the age of sixteen were required to carry passports to enable them to come into or leave town. They were also required to take an oath of allegiance. On March 8, the writ was suspended in Petersburg and surrounding territory because of the threat of invasion, and civil jurisdiction in general was suspended.

President Davis proclaimed martial law and suspension of the writ on April 8, in the department of East Tennessee and appointed Major

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6 Nathaniel W. Stevenson, Day of the Confederacy, (Vol. 15 of the Yale Chronicles of America Series), 41, 42.
8 Ibid., Vol. LI, 493.
General E. K. Smith as commander. Besides these activities he also prohibited the distillation and sale of spirituous liquors. His program was undoubtedly prompted by the actions of dishonest persons who took advantage of unsettled economic conditions. The Courier in an article entitled, "Horse Leeches," commented as follows:

We learn that some of those poor, mean, sordid and selfish wretches "the speculators" as they are courteously styled, are down on the press for occasionally alluding to their case. We are pleased with the information. No man is to be censured for making money in the way of legitimate way of trade. But if there are any creatures in the world whose enmity and opposition would call down a blessing on ones head, it is those vulpine specimen who are preying upon the times and are coining money out of the sufferings and blood of their country, while their mouths are full of patriotic protestations. Oh! they are rank, and their offenses smell to high heaven as strong as pole cats! and if God's holy word shall stand, money gathered by such means will not only damn the avaricious accumulator, but carry a curse with it to the third generation.10

Another evil which prompted this action was the counterfeiting of Confederate notes. Notices were sent throughout the South warning against strangers with hundreds of thousands of dollars in notes. These were usually used to purchase cattle to be driven northward through Kansas and Missouri. Naturally it was suspected that Northern agents were at the bottom of this scheme, and the South felt called upon to take drastic action.11

The penalty fixed by Congress for altering or passing any altered

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10 Charleston Daily Courier, July 30, 1862, quoting from the Athens Post (Tennessee).
11 Charleston Daily Courier, September 16, 1862.
Confederate treasury notes, was death, and was to be enforced until one year after the ratification of peace.\textsuperscript{12} Nor was this practice always carried on secretly, for one finds advertisements in newspapers reading,

> Confederate Confederate the most perfect facsimile of the last plates that have been made. Warranted to pass any banker in Dixie. $500., for five. Perfect in paper and signatures. Address, Amount inclosed.

> John Seymour.\textsuperscript{13}

The rapidity with which the President suspended the writ of habeas corpus caused much alarm. The governor of Louisiana voiced his objection in a letter to the President in which he said:

> ...it would not be expected that I would ever again consent to the proclamation of martial law by General Lovell after the urgent and consistent complaints I made to you of the action of his provost marshals, which received his silent acquiescence if not his open approval.\textsuperscript{14}

Still greater alarm was felt in Richmond when it was found that Brigadier General Winder had contemplated the discontinuance of the \textit{Richmond Whig} for reasons that amounted to little more than gossip. In a description of the conditions in Richmond at the time, we are told:

> It is indeed a reign of terror. Every Virginian and other loyal sons of the South - members of Congress and all - must now, before obtaining General Winder's permission to leave the city for their homes, bow down before the aliens in the provost marshal's office and subscribe to an oath of allegiance while a file of bayonets are [sic] pointed at his back.\textsuperscript{15}

At first law-abiding citizens were well pleased with Winder's routine, but one morning shortly after the Presidential Inauguration, the walls in

\textsuperscript{12} Charleston \textit{Daily Courier}, August 8, 1862.
\textsuperscript{13} Charleston \textit{Daily Courier}, June 12, 1862, quoting from the \textit{Louisville Journal} (Kentucky).
different part of the city were scrawled over with inflammatory and treasonable mottoes.\textsuperscript{16} They attracted little attention at first, but upon further investigation it was found that these mottoes were displayed all over the city with a consistency that showed a purposeful organization. In large and singularly well-formed letters, and with a literary merit hardly to be ascribed to mere rowdies, the citizens of Richmond read such appeals as, "Nationals, to the Rescue!" "Nationals, Arise and Gird on your Strength!" "Too many Stars on the Flag!" "The South, the Land of the White Man!" This action was declared the work of traitors, and a vigilance committee was appointed to safeguard the "most precious interests of society."\textsuperscript{17}

In less than two months' time, letters bearing pointed criticisms had a decided effect upon Congress, for it too began to see the danger which might result from the use of this arbitrary power, in the hands of a single person. This led to the passage of a supplementary act to the law of February 27.

This amendment was passed by Congress, signed by the President, and became a law on April 19, 1862. It provided that the power to suspend the writ should be limited to arrests made by the Confederate government for offenses against its laws. It also provided that the act should be in force for not more than thirty days after the next meeting of Congress. The power to declare martial law was not mentioned in this act, and it is probable that Congress only aimed at a remedy for the conflict between the military authorities and the civil courts concerning the suspension of the writ.

\textsuperscript{16} Rhodes, \textit{op. cit.}, Vol. III, 488.  
\textsuperscript{17} \textit{App. Recy.}, 1862, 239, 240.  
On May first, President Davis suspended the writ in South Carolina, in the territory which included the city of Charleston, and on June first, in Salisbury, North Carolina. He was contemplating the same action for Augusta and Savannah, but the latter objected so strenuously that he decided to defer further action. At about this same time General Braxton Bragg took the initiative and placed Atlanta under a routine of martial law, while General P. O. Hebert did the same in Texas.

Conditions in Arkansas in the Spring of 1862 were very bad. The state can be said to have been almost without any government because of the antagonistic attitude of Governor Rector towards the President and Congress over the suspension of the writ. The country, ravished by guerilla warfare and infested with bushwhackers, had become a rendezvous for criminals of all classes. So, as in the case of General Bragg in Atlanta, General Hindman shouldered responsibilities, declared martial law, and the suspension of the writ became effective in this state.

Many Southerners realized that the war would last much longer than they had expected for The Charleston Courier claimed that

Whatever hopes may have been indulged in the earlier period of the struggle of a restoration of the Union upon concession of the just demand of the South, those hopes are now as shadowy as the 'baseless fabric of a mid-night vision...'. We are shut up inevitably the irreversible issue of life or death, freedom or slavery. With such an issue before him, 'he who dallies is a dastard and he who doubts is damned.'

On July 4th, 1862, amid bitter opposition, General Van Dorn also

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22 Ibid., Vol. XVI, Part II, 754.
23 Ibid., Vol. IX, 716.
24 Ibid., Vol. XIII, 38, 40, 44.
25 Ibid., 835, 836.
26 Charleston Daily Courier, June 12, 1862.
declared martial law over Mississippi and that part of Louisiana east of the river, for conditions there were almost as bad as they were in Arkansas. He laid down very severe rules, such as provision for a death penalty for anyone trading with the enemy, and fine and imprisonment for anyone who said or did anything to help depreciate the Confederate currency. Probably the measure which caused as much criticism as any of the others was his proclamation curtailing the freedom of the press. It provided:

The publication of any article in the newspaper in reference to the movements of the troops is prohibited, and if the editor or proprietor of any newspaper publishes in any editorial, or copies into his paper any articles or paragraph calculated to impair confidence in any of the commanding officers...such editor or proprietor shall be subject to fine or imprisonment and the publication of the paper shall be thereafter suspended.27

Opposition became bitter and the friends of the administration found themselves in a precarious position. They could hardly justify, on any ground, the attack upon such a fundamental right as this.

On July 20, 1862, Governor Pickens of South Carolina suspended the writ and declared martial law in his state.28 Strong opposition developed here also and the Governor became uneasy. He sent a letter to the President asking him to restore his state to civil jurisdiction.29 President Davis sent an answer to General Pemberton, who was in charge of South Carolina, asking him to restore the state "as soon as it can be done safely." 30

28 Ibid., Vol. XIV, 491, 492.
29 Ibid., 598.
30 Ibid., 593, 598.
General Toombs of Georgia wrote a letter on July 14, severely criticizing "Davis and his Janissaries" for what he thought overzealous selfish action in acquiring power.31 About two weeks later he wrote to his friend, Mr. Burwell of Virginia, that "the real control of our affairs is narrowing down into the hands of Davis and the old army, and, that "the road to liberty for the white man does not lie through slavery." 32 William L. Yancey expressed a similar opinion in the Senate regarding these acts when he claimed that the proper way to develop war spirit among the people was to preserve their pride of citizenship. He said that he had no fears for the people as long as they loved liberty, implying that if they submitted to this act of suspension, they themselves were rapidly becoming slaves.33

Stephen Vice President also delivered an address in the Confederate Congress against the suspension of the writ of habeas corpus as well as martial law. Governor Brown of Georgia sent a letter to the Vice President congratulating him upon the stand taken for the whole South and especially for Atlanta where objection was most extreme. He wrote:

It seems military men are assuming the whole powers of the government to themselves and setting at defiance constitutions, laws, states rights and every principle of civil liberty, and that our people engrossed with the struggle with the enemy are disposed to submit to these bold usurpations tending to military despotism, without murmurs and less resistance... I fear we have more to apprehend

32 Ibid., 628, 629.
33 John Witherspoon DuBoise, The Life and Times of William Loundes Yancey, 628. Henceforth this work will be cited as DuBoise, Life of Yancey.
from military despotism than from subjugation from the enemy.34

In his speech to the Georgia Legislature on November 6, Governor Brown said concerning martial law and suspension of the writ:

It places the liberty of every citizen of the Confederacy at the mercy of the President who may imprison any citizen under this order without legal warrant or authority, and no court may interfere to liberate the captive when the imprisonment is illegal. Atlanta has been placed under martial law with a military governor and this and like proceedings on the part of Confederate officers is not only high handed usurpation depending for authority, upon military power without the shadow of a constitutional right, but which if acquiesced in by this state tends to the subversion of the government and the sovereignty of the state and the individual rights of the citizen.35

Alexander H. Stephens, the Confederate Vice President from this state, voiced his opinions at the time when General Bragg suspended the writ in Atlanta. He claimed that the general had no right to usurp this prerogative and claimed that martial law was unknown to the Constitution. He thought suspension of the writ was purely Congress' business, but was always subject to very strict safeguards.36 He further voiced his antagonism in a letter of October 3, 1862, in which he maintained that no power existed, derived either from the acts of Congress, or the constitution, for the declaration of martial law, and claimed that all punishments inflicted by military governors on civilians were entirely illegal.37

It is only natural that decided opposition, such as this, would be reflected in Congress. Representative H. S. Foote of Tennessee, a

34 T. S. C. Corresp., 605.
37 Jones, Diary, Vol. I, 163.
bitter enemy of President Davis and the administration, offered a resolution in the House, that a judicial committee be appointed and instructed to inquire as to what further legislation was necessary to check the abuse of the law by those entrusted with its enforcement. This resolution, however, was tabled.38

On the following day, Senator Semmes introduced a resolution into the Senate inquiring as to the necessity of passing legislation to restrain military officers in their suspension of the writ of habeas corpus.39 On September 10, Senator Haynes of Tennessee voiced his wish for legislation that would deter military commanders from abridging freedom of speech, and provide that people arrested when the writ was suspended should be tried in civil courts. The arresting officers should make reports of their arrests to the President telling the nature of the accusation, and he in turn, would inform Congress, but this resolution was also tabled for the time being.40

Senator Oldham of Texas voiced the opinion that the War Department had no right to give provost marshals jurisdiction over civilians who were not under the authority of the army. He claimed that the President and his military commanders had no right to police towns, and that the War Department had no right to limit the jurisdiction of the civil courts. All orders doing so were unconstitutional and therefore, illegal.41

The outcome of this whole matter was that a bill was passed in the

39 Ibid., Vol. II, 237, 238.
40 Ibid., 271.
41 Ibid., 325, 326.
the Senate on October 8, which included the ideas of both Oldham and Semmes, by a safe majority of twelve to five. In compliance with this bill, the President, as requested, sent to Congress copies of all war orders for the suspension of the writ. He noted, that in some cases when the writ was suspended, civil jurisdiction was also suspended, but never the criminal jurisdiction of the civil courts. The whole trouble seems to have been due to a lack of understanding of the difference between martial law and the suspension of the writ of habeas corpus. Since the amendment of April 19, 1862 said nothing about martial law, the generals, such as Hindman and Van Dorn, had acted largely from an honest and sincere desire to better conditions.

In order to clear up the misunderstanding, the House instructed its Judiciary Committee to make a special study of this matter. On September 13, a rather lengthy report was made. It said that the suspension of the writ and martial law were old prerogatives of the king "who was absolute in the army...in time of war," and that "absolute power administered by military courts in summary proceedings constituted martial law." Martial law, it claimed, had been superceded, in the case of the army and the navy, by military law, in both England and in America, and military laws were made especially by Congress, applicable only to those two departments. The Constitution of the Confederate States did authorize suspension of the writ of habeas corpus under certain circumstances, but nowhere did it imply martial law. The committee closed its report by advising that a

42 Journal of Confederate Congress, 444.
carefully drawn law should be passed for the old one of February 27, 1862, which had been amended on April 19, and now was to expire on October 12.44

A few days later an animated discussion was led by Mr. Conrad of Louisiana, on a new bill for the suspension of the writ. Conrad favored an early passage. If Congress should fail to pass this bill, he argued, circumstances might compel President Davis to suspend the writ by executive authority, and this certainly would lend further proof to the fears of his enemies like Toombs, Stephens and Foote.45

45 Moore, Rebellion Records, quoting from the Richmond Examiner (Virginia), September 20, 1862.
III

SECOND SUSPENSION ACT
OCTOBER 13, 1862

The proposal to re-enact the suspension of the writ of habeas corpus in the second session of the Congress brought forth decided opposition, which found as its champion in the Senate none other than the Hon. William L. Yancey. "I deny in toto", he said, "that the war power in the government is superior to the civil power...I here assert the war power is of the civil power; a means belonging to it, to be used by it to maintain and preserve and protect the fundamental elements of civil government."

However, in spite of such opposition, an act was passed on October 13, 1862, providing for the suspension of the writ. It was in most ways similar to the preceding one, and also contained a time limit providing for its expiration on February 12, 1863. The President was given authority to suspend the writ, in cases when necessary, in acts committed against Confederate trade or the government in general.

Although President Davis had not suspended the writ under the first law, unless absolutely necessary, he undoubtedly learned by the determined opposition of the people and a faction in Congress, that the use of this right, although necessary, was a dangerous practice. In fact he, himself, was of this opinion as is clearly shown earlier in the war when he criticized President Lincoln for suspending the writ. In a message to Congress on November 18, 1861, he had said:

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1 DuBose, Life of Yancey, 699.
2 C. R., Sec. IV, Vol. II, 121. Also found in Charleston Daily Courier, October 18, 1862.
Our people ... shrink with aversion from the idea of renewing such a friendly connection when they see a President making war without the assent of Congress; when they behold judges threatened because they maintain the writ of habeas corpus, so sacred to free men; when they see justice and law trampled under the armed heel of military authority; and upright men and innocent women dragged to distant dungeons upon the mere edict of a despot.\(^3\)

Again he had stated in his address to the third session of Congress on July 20, 1861, that "the possessing of the Executive of the power of the suspension of habeas corpus and delegating that power to military commanders at his discretion, can not claim equal respect." He rejoiced at the severed connections because the South did not agree with the policy that "some single law made in such extreme tenderness of the citizen's liberty, that practically, it relieves more of the guilty than the innocent, should be to a very limited extent violated."\(^4\)

The Northern newspapers naturally protested against this harsh accusation declaring that the privilege of habeas corpus was really in the interest of no one but quasi-criminals; and what had been esteemed for centuries as the bulwark of personal liberty was really a matter of no great concern to the general public. An apologist for Lincoln wrote,"In such times the people generally are willing, and often compelled, to give up for a season a portion of the freedom to preserve the rest; and unfortunately, again, it is that portion of the people, for the most part, who like to live on the margin of disobedience to the laws; whose freedom is most in danger. The rest are rarely in want of habeas corpus.\(^5\)

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5 Pollard, Lost Cause, 176, 177.
But with his philosophy unchanged, we find President Davis in conjunction with the War Department, very careful to send a special warning to all the generals, notifying them that the provision for suspension in the Act of October 13, did not authorize "military trial for civilians, but only to hold them in duress." The War Department also rebuked such actions as those of Hindman and Van Dorn, and other generals by sending out General Order No. 66, which annulled all authorized proclamations suspending the writ.

Although the generals were rebuked, it was evident that conditions in some of the states were still deplorable. In most cases, it seems to have been a question of either losing the cause to the Union forces, or to the petty citizens of the Confederacy who took advantage of these conditions.

The way in which some Southerners used the writ to serve their own interests and to cause trouble between the civil and military authorities is well illustrated in the case of a soldier named Rhodes. After he grew tired of the routine of the army he wished to be released through habeas corpus procedure. The papers were procured for him by a good friend, the county sheriff. This same sheriff served the papers on the commanding Colonel who refused to honor them. He then tried to arrest the Colonel but the soldiers rushed to his defense. The irate sheriff reported these proceedings to the Judge who had issued the papers and he too became very angry. When the Judge decided to take charge of the matter himself, the

7 Ibid., Vol. II, 35.
soldiers seized him, but later, upon the order of the Colonel, they let him go. The incident closed with the Colonel's determination to carry the case to the Supreme Court of the state.⁹

Nor was this practice limited to citizens of the South. As one might expect, foreigners as well availed themselves of the writ of habeas corpus in serving their selfish interests. Henry Spincken, a German, lived in the South for seven years without becoming a citizen. When the war broke out he enlisted and fought at Fort Sumter. Becoming tired of army life, he decided to apply for habeas corpus and discharge. District Judge McGrath, who heard this case, said in his decision, that if an alien did not go home at the outbreak of the war, but lived in a country, and received its protection, he was subject to the law of that country. He strengthened his position by quoting British Law to the effect that "by the general law, all foreigners resident within the British dominions incur all the obligations of British subjects."¹⁰

In trying to follow out a consistent program in dealing with this evil, the government was liable to make some mistakes. The British Consul at Mobile complained to the President that this decision was not respected. Secretary of War Randolph wrote the Consul alleging that mistakes might happen but that the "Department" had never failed to discharge the foreigner if the consul had reported him as being domiciled in the Confederacy.¹¹ On October 22, 1862, the Secretary of War sent a telegram to Major Swanson carefully instructing him not to enroll any foreigners unless they were permanent residents in the South and, in that case, to

⁹ John Christopher Schwab, Confederate States of America, a Financial and Industrial History of the South during the Civil War, 1861–1865.
¹⁰ The Charleston Mercury, (South Carolina) July 6, 1863.
require of them an oath of allegiance.\textsuperscript{12} Much of this antagonism on the part of individuals and subsequent use of the writ of habeas corpus was caused by the unpopular conscription act passed on April 16, 1862, which placed all white men between the ages of eighteen and thirty-five years and not exempt, liable for active service. Governor Brown of Georgia attacked it first by serious objections to many of its details and, while he promised to throw no obstructions in the way of necessary general enrollment, he declined all connection with it.\textsuperscript{13} Discontent grew generally until conditions got so bad that it became necessary on July 17, 1862, for the Secretary of War to send a confidential communication to the governors of the states saying that the armies of the Confederacy were "so weakened by desertions" that they were unable to follow up their victories on the battle field. The governors were asked to arouse public opinion against this evil, arrest the deserters and return them to their commands.\textsuperscript{14} In Randolph County Alabama, some deserters were arrested and imprisoned, but an armed mob forced the jailer to surrender the keys and the deserters were set free.\textsuperscript{15}

Most decided opposition to the suspension of the writ came from the newly elected governor, Zebulon B. Vance, of the state of North Carolina. On November 11, he wrote a letter to the President concerning a group of about forty people who had been captured by General French in the eastern part of the state, upon suspicion of disloyalty. These people were being held captive at Salisbury. He said that he deemed it his duty as governor of the state to see to it that the rights of the people should be

\textsuperscript{12} O. R., Ser. IV, Vol. II, 70.
\textsuperscript{13} Ibid., Vol. I, 1062, 1063, 1082-1085.
\textsuperscript{14} Ibid., Vol. II, 7.
\textsuperscript{15} Ibid., Vol. II, 258.
protected, and one of the greatest of these rights was the right to a trial. He asked, in his letter, what disposition of the prisoners was to be made, and why this matter should not be investigated.\textsuperscript{16}

A few days later (November 17, 1862), without waiting for an answer from the President, he delivered an address to the General Assembly of his state concerning this matter. He reported that a group of citizens were confined by Confederate authority at Salisbury, and that neither their guilt nor term of sentence was known. He insisted upon the right of trial for them, as well as upon their right to be faced by their accusers. He stated that he had not been officially notified by the President of the suspension of the writ of habeas corpus, and added, "No man is safe from the power of one individual, and willing to see this power entrusted to any living man. "To submit in my opinion would be to establish a dangerous precedent and pernicious in the extreme."

"A free republic that must needs cast off its freedom in any time of trouble will soon cast it off forever." "Freedom can not be embraced today and spurned tomorrow." "The Constitution and laws are our guide and shield in time of peace and also in time of calamity." He went on to say that he saw no need for suspension among a people as loyal as those of North Carolina. He was deeply impressed by this important subject and asked the assembly to take the proper steps to "maintain the law and preserve the rights of the people."\textsuperscript{17} This speech found a cordial welcome in the Assembly.

A few days later an answer was received from Richmond to the Governor's query. It stated that the officials had instructions not to

\textsuperscript{17} Ibid., Ser. IV, Vol. II, 188.
molest anyone unless they had positive proof of the commitment of offenses against the government. It also pointed out that if this proof was lacking, the prisoners, if sent home, would be more embittered than ever, that the North was arresting Confederate sympathizers, and that it would be unfair for the South not to arrest Federal friends. Although pleading for more time he promised to make out charges against the offenders and send the rest to the Governor or to the Commandant at Salisbury.18

The suspension act of October 13, expired on February 13, 1863, and the Supreme Court of North Carolina decided that judges could issue writs of habeas corpus in the cases of those arrested and still held under the expired act.19

A serious conflict between state and Confederate authorities resulted. A soldier who had been discharged from the army at Chambers because of being above military age was arrested by the Confederate army authorities. He was released by the judge by means of a writ of habeas corpus. He was then re-arrested by the Confederate authorities, and the Governor, by this time thoroughly angry, sent troops to recapture the soldier.20

Indignation meetings were held in various sections of the state, and popular opinion strongly supported the Governor and judges in their contention with the military authorities.21

After the expiration of the act on February 13, renewed efforts were made in Congress to pass another law. The purpose of the new bill was "To suspend the writ of habeas corpus in all cases involving the right to subject to military duty, persons who have furnished substitutes to

19 Schwab, op. cit., 191.
20 Ibid.
21 Ibid.
the Army of the Confederate States." In the session of April 13, the discussion on this question was re-opened in the House of Representatives. Representative Garland of Arkansas said that martial law had existed in his state since May 28, 1862, and that all civil tribunals were paralyzed. Even a city magistrate was forced to carry a "pass-port" from his "master to see his own wife." He claimed that all state offenses were tried, many people convicted and executed, by this "non-existing power," and his contention was that Congress should pass a general law in order to fix its position. He ended by quoting Sir Mathew Hale in that "martial law is no law, but rather something tolerated by law."22

Representative Russell of Virginia said that martial law existed in Richmond and in many other portions of the Confederacy. He said that not only the President continued to exercise that power but that it remained delegated to some of the more important generals in the field.

The bill was passed in the House on April 14, 1863, by a vote of forty-five to twenty-seven but was lost in the Senate. After being proposed again and again,23 it was finally defeated, and the South was without this authority during the following year.

22 Charleston Mercury, April 23, 1863.
During the early part of January 1864, the Legislature of Alabama passed a resolution making the denial of the writ of habeas corpus a felony, and provided for a fine of $1000, or imprisonment from one to five years, subject to the discretion of the jury before which the case was tried.\(^1\)

Nor was Alabama alone in her stand against suspension for in a South Carolina newspaper we find such a sentiment as,

> The state of Georgia stands up against the usurpation of the Confederate Government - Will Georgia stand alone? No! The act of Congress suspending the habeas corpus is dead. And that secret Star Chamber, where hundreds of years ago assumed powers were strangled by our English forefathers, will not be built up here.\(^2\)

Deplorable local conditions and the misfortunes of war during the latter half of 1863 made it necessary, as President Davis thought, to pass a law for the further suspension of the act. In his address to Congress on February 3, he outlined the chief reasons for his opinion. He thought this course necessary for dealing with slackers whose disloyalty was having a serious affect upon Southern morale. The organization of the suspicious peace leagues, before mentioned, had been reported to him, and while it was known that the members were guilty of treason, still it was impossible to obtain enough conclusive evidence to carry conviction in a civil court. Davis preferred to catch such traitors before, rather than

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\(^1\) The Daily Constitutionalist, (Augusta), January 6, 1864.
\(^2\) Charleston Mercury, March 25, 1864.
After, serious damage had been done. He noted that suspension was necessary because the government could not afford to permit citizens, who knew too much, a chance to join the North. The suspension of the writ could also be used in dealing with the feared servile insurrection. He pointed out that certain judges might defeat the purpose of the Conscription Law by declaring it unconstitutional and in this way embarrass the Southern cause. In closing he remarked that this "remedy was plainly contemplated by the Constitution for protection" in case of necessity, when the country was in a "state of invasion," and noted that the only objection possible, would come from people who already had been favored too long.3

After this speech, a majority of Congressmen rallied to the President's support and passed a bill for the purpose of suspending the writ in certain cases. The President signed the bill, and it became effective on February 15, 1864.4

The chief features of this bill were that it left very little power in the hands of the President, but suspended the writ throughout the Confederacy for conspiracy, treason, inciting servile insurrection, spying, avoiding military service, unlawful trading with the enemy, bridge burning, etc., and it made provision for the effective enforcement of this law.5

Let us see how this new law was received by the states.

On February 9, five days before the final passing of the act, Governor Vance of North Carolina protested in a letter to the President.

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5 Ibid., 203.
He said that he heard with deep regret that another bill of this nature was pending, and said that if it could be shown that such a bill was constitutional, it would be obeyed, but otherwise it would be resisted. He also noted that he had written the President other letters concerning this matter and had made two trips to Richmond, to notify him that if civil law broke down it would mean revolution. He said:

The truth is as I have often said before...that the great body of our people have been suspected by their government and...the consciousness of their being suspected has been greatly strengthened by what seemed to be studied exclusion of all anti-secession-government, even from the promotion in the army, which many of them have won with their blood.

He went on to make a plea for square dealing, admitting that it was true that "discussion had been unlimited and bitter, and unrelenting criticism of your administration has been indulged in, but where and when have the people failed you in battle or withheld either their blood or resources?" He claimed, "Our success depends not upon the numbers engaged to support our cause, but upon their zeal and affection, hence I have every hope of persuading, not in forcing the sympathies of an unwilling people." He advised the President that in case the bill passed, he should be careful of the use of the power which it granted.6

The President's answer to this letter denied that North Carolina had been treated unfairly. He said that it was his policy not to use the authority granted by the act except in cases of extreme necessity.7

This rather mild answer caused the Governor's anger to rise to a still higher pitch, and he sent President Davis another letter in which

6 The Daily Constitutionalist, June 9, 1864.
he reiterated most of the previous arguments, but this letter was more
vitriolic, insinuating and insulting than the previous one.\textsuperscript{8}

The President answered Vance's second letter and begged him that
"correspondence so unprofitable in its character and which was not initi-
ated by me may end here and that your future communications be restrict-
ed to matters as may require official action."\textsuperscript{9}

Georgia, Alabama and Mississippi had already voted their disapproval
of the suspension act when the bill providing for the strict regulation
and severe punishment for any one who obstructed in any way the serving of
the writ of habeas corpus, was introduced into the General Assembly of
North Carolina. This act was ratified on May 28, 1864,\textsuperscript{10} and virtually
forced judges of the civil courts to issue these writs.\textsuperscript{11}

Judge Pearson, who bitterly opposed the President, issued great
numbers of these writs\textsuperscript{12} upon some of the flimsiest grounds imaginable,
some even to deserters from the army.\textsuperscript{13} On March 4 the Judge granted these
writs, and discharged all who had hired substitutes in the army, on the
ground that the suspension act was unconstitutional. The Governor bound
by his oath of office to sustain the Judge even if it was necessary to
call out the militia to resist the Confederate authority, wished to avoid
such a collision. He thought it would be best to put the matter before
the State Supreme Court, which was to meet in June, and abide by its
decision.\textsuperscript{14} At this time two of the judges of the Court believed the act

\begin{footnotes}
\textsuperscript{9} Ibid., 844-846.
\textsuperscript{10} The Daily Constitutionalist, June 8, 1864.
\textsuperscript{11} Schwab, op. cit., 191, 192.
\textsuperscript{13} Ibid., 709.
\textsuperscript{14} Jones, Diary, Vol. II, 163.
\end{footnotes}
unconstitutional, and it seemed as if the men who had substitutes in the army were about to lose, but they must wait until after the June meeting for a final decision.15

While men such as Governor Vance and Judge Pearson set themselves against the drastic measures of the government, they nevertheless favored the prosecution of the war until Southern independence should be won. Governor Vance prided himself as a leader of this movement and in a speech to a large audience at Fayetteville on April 22, he made statements showing that he had been far in advance of Governor Brown, Vice President Stephens and others in his opposition to the suspension of this writ, but he firmly held that its importance was secondary to the Union of the South. He said that, "a convention of any of the states looking to separate conventions would be unfortunate, injudicious, and would tend to produce unharmonious action."16 So with the Governor ready to use his state militia to support Judge Pearson in his issuance of these writs, the law was practically disregarded in North Carolina.

Mississippi also passed resolutions condemning the act, and her representatives in Congress swung to the radical group.17 Mr. Brown, of the Mississippi Legislature, presented a bill to this effect in the House, but it was tabled and ordered printed.18

The feeling of Louisiana upon this question is probably best expressed by a letter from the Governor's representative to the President. "I am at a loss to know," he wrote, "by what authority any military commander

15 Edward McPherson, The Political History of the United States of America during the Great Rebellion including Classified Summary, citing The Richmond Sentinel, March 8, 1864.
16 The Daily Constitutionalist, April 23, 1864.
18 Ibid., 34.
of whatever grade from the President to the Corporal assumes to annul the Constitution; to move across the lines of state sovereignty as if they did not exist and by simple military orders deprive our citizens of life." This would "incite a bloodier revolution than the one present." 19

Probably the best organized opposition to suspension came from Georgia, where we find such excellent leaders as Alexander H. Stephens, his brother Linton, Robert Toombs and the Governor, Joseph E. Brown. 20

A couple of days before the suspension act passed Congress, the Stephen brothers and Governor Brown had a meeting in which they went over some of the chief issues upon which the Governor was to speak in his address to the Georgia Legislature, which was to convene on March 10. 21

Governor Brown had very little to do with the preparation of this speech, for Alexander H. Stephens later admitted in a letter to R. V. Johnson that he had "advised it from stem to stern." It presented arguments for peace and against suspension of the writ of habeas corpus. 22

In his speech the Governor stated:

The suspension of the writ of habeas corpus under pretended necessity confers upon the President powers denied by the Constitution. The power of Congress to suspend habeas corpus is only implied and limited by express declaration in favor of personal liberty. Congress can not confer judicial power upon the Executive, and warrants issued by the President are plain violations of the Constitution. If this act is acquiesced in the President may imprison whom he chooses, it being unnecessary to allege treasonable efforts. No court dare investigate the case. The legislature of Georgia is earnestly requested to take prompt action and to stamp the act with the seal of their rebuke. 23

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20 Ibid., 278-281.
23 The Daily Constitutionalist, March 11, 1864.
The Constitutionalist commented that it "regretted to see evidence of design to provoke a conflict between the State and the Confederate authorities." It emphasized Southern failures abroad and the suffering at home, and blamed the President largely for this trouble because he had pushed this act upon an unwilling Congress. However, the editor trusted Congress, and claimed that it was a small thing to submit to the suspension of this writ in contrast with what Southern soldiers were giving up during the last three years.24

The Charleston Mercury in an editorial strongly supported the Governor's position. It admitted that the Confederate Congress had authority for their action, and made a further plea against putting the Confederacy upon the same base level as the North by suspending the writ.25 The Richmond Sentinel vociferously disagreed and used British precedent to prove its point, showing how Britain had suspended the writ no less than nine times during the last two centuries.26

A short time after Governor Brown made his speech, Linton Stephens introduced a bill into the legislature condemning suspension. In his plea he noted that suspension was directly forbidden in the Confederate Constitution, and its use implied only as a war measure in case of extreme necessity. On this basis he claimed that the direct law had precedence over the implied one. He noted that the authority to suspend the writ was found in the Federal Constitution of 1787 but not in the revised one of 1789. He claimed that warrants are legal only when they come from a judicial source as shown by "due process of law" and that the recent act

24 The Daily Constitutionalist, March 15, 1864.
25 Charleston Mercury, March 24, 1864.
26 Richmond Sentinel, April 27, 1864.
was, therefore, unconstitutional because it upheld illegal seizure. He pleaded for consistency to strengthen the weakened morale of the South. 27

A few days later, the Vice President himself, wishing to be sure that the bill would pass, delivered a powerful and effective speech before the Assembly. He called this problem, "a most exciting and by far the most important question of the time." He emphasized the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. "No warrants" he maintained, "should issue but upon probable cause, supported by an oath and affirmation, and particularly describing the place to be searched and the persons or things to be seized." 28

He had no fault to find with the President and officers on whom this extraordinary power was conferred, but claimed that abuses of it might be exercised without their knowledge. His main objection to the bill was that it would keep the principals having substitutes in the army from appealing to the courts. He did not appreciate the necessity for its suspension, but even if it were necessary,

"it was done in a way offensive and dangerous to our freedom, and if we do not protest, it may be fastened upon us as a policy of government. In protesting against it we are not opposing the government but really exercising the right and proper solicitude for individual liberty." 29

The Sentinel, which was the official organ of the administration saw the suspension law entirely exhonerated, and in a four column editorial wholeheartedly supported the administration. 30

28 Henry Cleveland, Alexander Hamilton Stephens in Public and Private with Letters and Speeches before, during and since the War, 185.
29 Richmond Examinet, (Virginia), May 25, 1864.
30 Richmond Sentinel, April 25, 1864.
Governor Brown now proceeded to send copies of "his" speech to county clerks and soldiers in the army, and copies of Stephens' speech to the sheriffs of each of the counties, this project being financed partly by himself and partly by interested parties in Milledgeville.31

In the meantime the question had arisen as to just what, if any, were the hidden motives of these objectors, especially of men such as Stephens. On April 8, Alexander H. Stephens, in a letter to H. V. Johnson, said that he did not personally dislike the President, but seriously objected to some of the acts passed with his support. He claimed that Davis was striving for the "military dictatorship" of the South and that he was "oscillating, timid, petulant, peevish, obstinate but not firm." He also denied any intention of organizing an anti-Davis party in Georgia, one of the activities of which he had been accused.32

The Mercury criticised the administration and claimed that the suspension of the writ was wrong because the President was not limited in its use. It was not ready to yield to the Confederate government, in the very things for which they were fighting against the North. It claimed that the President was the chief instigator of the law which would give him great added power and accused him of using Washington methods in trying to get the law ratified in Congress. Another bad effect for which it held him personally responsible was the dissention caused in the states of Georgia, Mississippi, Louisiana and North Carolina over this question.33

To this editorial, the Fayetteville Observer34 took exception and accused the Mercury of being "bitterly opposed to the administration."

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33 Charleston Mercury, June 27, 1864.
34 Fayetteville Observer, (Mississippi) July 17, 1864.
The Mercury answered that it was opposed only when the President and administration did things unconstitutionally such as the suspension of the writ of habeas corpus. It claimed that to be a patriotic citizen, one should support a government in wise measures only, and to support it in weak measures was only to help destroy it. The Southern people should not trust individuals but themselves, and instead of looking to men, they should look to institution.35

On October 7, all of the governors of the states east of the Mississippi River met and adopted a resolution which amounted to virtual condemnation of the suspension act, so practically all of the seceding states were now on record as being against any form of the law.36

But the Mercury, true to the spirit of the Confederate government, continued to publish editorials strongly opposing the President's policy, realizing however that in such troubled times as these, few people would listen to cold reason.38

Another great Southern newspaper said that it had refrained from any criticism of the act, which had been legally passed, but it now disapproved for three reasons. First, there were no adequate reasons for it. Second, the men to whom the powers of arbitrary imprisonment were delegated, were such that the probability of their acting discreetly was reasonably doubtful. Third, the repeal of this act would furnish a ready and convenient tool for demagogues to raise agitation among the people.39

Many of the Congressmen who were in favor of suspension did so with reservations. This is shown by the views of Senator Wigfall of Texas

35 Charleston Mercury, August 4, 1864.
37 Charleston Mercury, April 15, 1864.
38 Ibid., June 4, 1864.
39 Richmond Examiner, May 3, 1864.
upon the duties of Congress, when he said that,

If it [the habeas corpus writ] is repealed, the Congress should not adjourn — at least for a brief period. If the act is not repealed, it is the duty of Congress to remain in session. The purpose is to repeal it at any moment that injustice or oppression should be attempted.

He did not envisage such a contingency but claimed that the right to suspend was a legislative right, and that Congress should be prepared at all times to act on so important a matter. By some his speech was considered "the most remarkable speech delivered in the late session of Congress" and "of such superior merit that it would have been universally read at another time."

Because of widespread antagonism toward the act, there were repeated efforts in Congress to repeal it. On May 3, a resolution to this effect was referred to the Judiciary Committee. This resolution, sponsored by Representative J. T. Leach, denounced the act as unconstitutional and "subversive of the dearest rights and liberties of the people of the Confederate states." Leach believed that members of Congress, in their zeal to serve their government, had perjured themselves and violated the Constitution by the unwise and illegal suspension of the act.

On the twelfth of May, a vote was taken in the House, and the resolution was favored by a count of 58 to 20. It was then referred to the Senate where it was tabled because the members realized that if they did pass it, the President would veto it, and it would be impossible

40 Charleston Mercury, May 13, 1864.
41 Richmond Examiner, June 18, 1864.
43 Charleston Mercury, June, 1, 1864.
45 Ibid., 57.
to get the required majority to override such action. 46

On May 20, the President was asked if the emergency conditions which made this act necessary were still in existence, and he emphatically answered that they were. 47 He claimed that the law was valuable, not so much for the few arrests that it caused, but because it acted as a deterrent in getting draft dodgers into the army. He made a plea to Congress for confidence in his government and said that if they knew what he did, but could not tell them, he was sure they would agree with his position on the question. 48

Again the hopelessness of the situation was expressed in the Mercury:

Liberty is a mere accident of circumstances and perishes at the first violence. Our whole movement for independence and freedom is a dead failure, and that from the necessity of things.

It was claimed that this was largely due to the breeding of dissatisfaction especially in the states whose legislatures so strenuously objected to giving the President despotic powers over the personal liberties of the people. This power was an entirely unnecessary usurpation of the act, the article continued, as proved by the fact that the proceedings of suspension took place in secret session. Very few people knew anything about the suspension and not a single arrest took place under it. 49

The act of February 15, expired on August 1, and the President called for a new law, but in vain. 50 During his efforts to get another bill through his last Congress, Senator Foote declared that he would resign if

46 Richmond Sentinel, May 14, 1864.
49 Charleston Mercury, November 21, 1864.
any such bill should pass, but there was not much excitement about the matter, for Congress was in a kind of hopelessly sullen mood caused undoubtedly by military reverses.51

On December 30, Congress sat in secret session, probably perfecting a bill for suspension but it was not until the following March that the President was moved by a still deeper conviction as to the necessity for such a law.52 He told Congress the passing of such a law was not only "advisable" but "indispensable" to the successful conduct of the war, and he placed the responsibility for results upon Congress for declining to "exercise a power conferred by the Constitution, as a means of public safety, to be used in periods of national peril, resulting from foreign invasion."53

The House passed the suspension act on March 4, and it was sent to the Senate but as Congress adjourned on the fifteenth, further action was impossible.54 In deferring this matter, Congress, after discussing it for four of five weeks, had decided that such a bill was unimportant because it was thought that spies could be tried summarily without the suspension of the writ. Congress also deemed such an act inadvisable because of the opposition from many of the Southern state legislatures. At a time when reverses were besetting the government on all sides, it would be better to do nothing to engender more dissensions, although reverses were due to other more deep seated causes than the existence of the writ of habeas corpus.55

51 Jones, Diary, Vol. II, 359. Also found in Richmond Examiner, May 20, 23, 1864.
55 Ibid., 71.
The war lasted four years. The periods of the suspension of the writ in the Confederacy amounted in the aggregate to one year, five months and two days, which was less than one-half of its entire duration. In the North it was suspended for one year, ten months and twenty-one days by executive assumption and for the rest of the war by the authorization of Congress. In general, the Confederate government showed the greater regard for the liberty of the individual, and the Southern citizen the greater jealousy of the use of arbitrary power. President Lincoln, from the very first assumed the right to suspend the writ of habeas corpus by executive decree, a right never claimed by President Davis. It was generally conceded in the South that Congress alone possessed the power, and the privilege of the writ was available to the citizens of the Confederacy except when curtailed by express statute.

57 Ibid., 471.
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