

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Sources/Constitutions and Amendments

The Constitution of the Confederate States of America (1861)¹

Delegates from the first six states that seceded from the Union met in Montgomery, Alabama on February 4, 1861 to draft a constitution for the Confederate States of America. The Constitution they ratified on March 11, 1861 was almost identical to the Constitution of the United States. With the exception of more explicit protections for slavery and a permanent ban on the international slave trade, the only differences between Articles I, II, and III of the two constitutions was that the Confederate Constitution included the Bill of Rights in Article I and mandated a one-term, six-year presidency. The text of the first eight amendments to the Constitution of the United States was identical to Article I, section 9, paragraphs 12–19 of the Confederate Constitution.

When you read the various rights provisions in the Confederate Constitution, consider why the framers chose to mirror the Constitution of the United States. Most state constitutions ratified after 1787 protected different rights than the Constitution of the United States or used different phrases to protect the same rights. Why did slaveholders choose to emulate the language in the Bill of Rights rather than the language in the Constitution of Georgia (or Virginia, which had not yet seceded)? Do identically worded constitutional provisions necessarily have the same meaning? Might the pro-slavery and racist principles underlying the Confederate Constitution influence the interpretation of the constitutional rights in the text? Imagine federal courts in Boston and Charleston were adjudicating a law restricting the freedom of speech. Should they reach the same result?

Preamble

We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity invoking the favor and guidance of Almighty God do ordain and establish this Constitution for the Confederate States of America.

Article I

...
Sec. 2. (I) . . . [N]o person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.

...
(3) Representatives and direct taxes shall be apportioned among the several States, which may be included within this Confederacy, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all slaves. . . .

...

¹ *Journal of the Congress of the Confederate States of America* (Washington, DC: Government Printing Office, 1904), 1:909–24.

Sec. 9. (1) The importation of negroes of the African race from any foreign country other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.

(2) Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy.

...

(4) No bill of attainder, ex post facto law, or law denying or impairing the right of property in negro slaves shall be passed.

...

(12) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the Government for a redress of grievances.

(13) A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

(14) No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

(15) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

(16) No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

(17) In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

(18) In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact so tried by a jury shall be otherwise reexamined in any court of the Confederacy, than according to the rules of common law.

(19) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

...

Sec. 10. (1) No State shall . . . make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, or ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

...

Article IV

...

Sec. 2. (1) The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.

...

(3) No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law

or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.

Sec. 3.

...

(2) The Congress shall have power to dispose of and make all needful rules and regulations concerning the property of the Confederate States, including the lands thereof.

(3) The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them, at such times, and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the Territorial government; and the inhabitants of the several Confederate States and Territories shall have the right to take to such Territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.

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