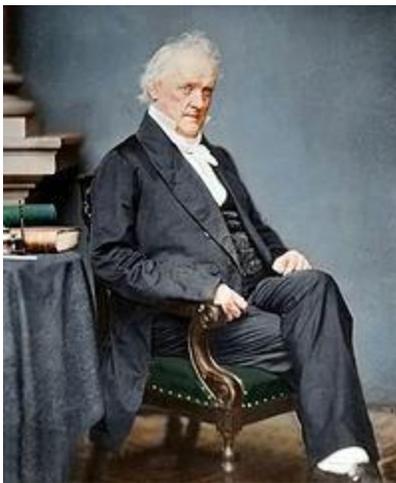


First Encounters, 1861 Politics

By Emil Posey

As January 1 of 1861 dawned over Washington, DC, the storm so long forming was no longer on the horizon. It was upon us. Feelings were intense yet mixed on both sides of the Mason Dixon line. Many in the South believed in the righteousness and Constitutionality of their cause; many saw it as immoral and undesirable. Many in the North were quite willing to let the South secede and good riddance to them; many saw the danger and irrationality in such a path. All were being swept along by overpowering political and cultural forces. They were caught in the storm.



President James Buchanan
March 4, 1857 – March 4, 1861

The late 1850s had been raucous in Congress. The partisan divide in the nation was becoming ever so stark. President Buchanan's cabinet had rotted, with some members actively preparing for (i.e., enabling) secession.¹ He himself, a one-term president, had a weak anti-secession position – against secession, but did nothing to prevent it.

Secession of slave-holding states in the Lower South was triggered by Abraham Lincoln's election as the sixteenth President of the United States. South Carolina, the cradle of secession, went first on December 20, 1860. It was quickly followed by Mississippi, Florida, Alabama, Georgia and Louisiana in January 1861 and Texas in February. The newly-formed Arizona Territory followed in March, Virginia in April, and Arkansas, Tennessee, and North

Carolina in May. Secession was effected by formal resolutions written and voted upon by delegates sent to the various state secession conventions.

Despite their acceptance of slavery, Delaware, Kentucky, Maryland, and Missouri did not secede due to divided loyalties and a combination of political maneuvering and Union military pressure. Kentucky and Missouri, however, were later accepted into the Confederacy and represented in the Confederate Congress (as well as in the US Congress).²

The Confederate States of America was formed in February by a constitutional convention in Montgomery, Alabama comprised of delegates from the six states that had seceded at that point.³ (Texas had not yet officially seceded but would send delegates when it did.) Jefferson Davis was elected

The Indian Territory was an unorganized territory comprising much of modern Oklahoma. Ten tribes located therein, acting more or less independently, signed treaties of alliance with the Confederacy, some even allowing themselves to be annexed by the Confederacy. Other Native American groups remained loyal to the Union. The Territory was not a discrete political entity and thus was not represented in either Congress.

President and Alexander Hamilton Stephen became Vice President (both positions being Provisional for the time being).

Both governments faced stiff challenges in the face of powerful opposition. Secession took place over several months, with the status and prospects of remaining border states shaky. For secession to be successful, the Confederacy had to establish itself as a separate republic, which meant it had both to defeat the North's invading armies and to establish its legitimacy in the world and among his own people. For President Lincoln to succeed, he had to maintain the integrity of the nation, which meant defeating militarily the secessionist effort, and the federal government had to reconcile the gaps in various agencies and Congress occasioned by Southern sympathizers having vacated their positions. And the Union, too, had to organize for and prosecute a war, all the while swamped with political and social frictions. Meanwhile, the Confederacy had to build a viable government from scratch. Its Constitution was adopted on March 11, although it did not go into effect until February 22, 1862. It adapted the US Constitution and government structure. During this period, the Confederate capital was moved from Montgomery, Alabama to Richmond, Virginia.⁴

The Executive Branches

By resume, Jefferson Davis had the huge advantage. A West Point graduate, he served with the Army for 13 years before marrying, resigning his commission, and becoming a Mississippi planter. There he became involved in politics, being elected as one of Mississippi's at-large representatives to the US House of Representatives in 1845. He served for a term before re-entering the military during the War with Mexico. After the war he returned to Congress as a Senator from Mississippi. His Senate service was punctuated by four years as Secretary of War under President Franklin Pierce, and then back in the Senate again. All in all, he had 15 years prominently placed on the national stage as a pro-slavery and states' rights advocate.

We are about to be deprived in the Union of the rights which our fathers bequeathed to us.

*Senator Jefferson Davis,
when quitting the US Senate
on January 21, 1861*

Abraham Lincoln's qualifications were not so prominent. He was a self-taught lawyer and served a single term in Congress prior to being the fledgling Republican Party's candidate for President in 1860. What national recognition he had prior to his nomination was driven essentially by his legal career and his failed campaign to challenge Illinois Senator Stephen A. Douglas' reelection bid.

Ironically, both had centrist attitudes. Lincoln was not an abolitionist and said so many times. Davis was not a secessionist and said so many times. Both felt strongly for the Union, although Davis believed it was constitutionally possible for a state to secede. Lincoln was against slavery, but he believed it should be contained where it was; Davis believed it was essential to the southern economy.

When it came to presidential leadership, Feather Schwartz Foster captures it well. "The balance...lies in the intangible qualities: the ones that no one notices until they are tested. Lincoln's fifty years of self-education had provided him with

a capacity for broad conceptual thinking and the ability to learn from all sources. He could and would change his mind if he saw the error. He could and would be able to work with most people. He could and would grow. It would be because of his rare and elusive qualities rather than paper credentials that he ranks as our foremost president. Davis, perhaps from a lifetime of being in command, was not flexible. He would remain rigid in his philosophies and attitudes throughout his life. He had favorites, and he had implacable enemies. He would never change. His leadership was flawed, and he pales in comparison.”⁵

This is well demonstrated in the selection and management of their cabinets.⁶ President Lincoln’s cabinet was more stable than President Jefferson’s. President Lincoln included political adversaries, molding them into an effective team (what Doris Kearns Goodwin labeled a *Team of Rivals*). While President Davis’ crew was no less cantankerous, he had an overbearing micro-management style that chafed. Moreover, with his military background, he virtually ran the military affairs side of the government, relegating his Secretary of War to little more than a “high clerk”.

Both had their hands full with their congresses, but President Lincoln’s skills were better; he was more adept at getting his way albeit it was often a difficult task. President Jefferson had two particular problems that hampered what abilities he had. The idea of states’ rights played a much stronger role in the South and often got in the way of practicality in dealing with national problems. Along with this, President Davis had to contend with state governors that were caught up in the same mindset. In the Confederacy, political loyalties were aligned around the states, with state governors taking the lead in dealings with President Davis. Note that The Preamble to the US Constitution reads “We the People of the United States, in Order to form **a more perfect Union...**” whereas The Preamble to the Confederate Constitution reads, “We, the people of the Confederate States, **each state acting in its sovereign and independent character**, in order to form **a permanent federal government...**” [emphasis added in each]. None of the Confederacy’s three federal branches—President, Congress and Judiciary—were intended to have final authority over the rights reserved for the states. The tenor of this relationship – its underlying philosophy – would be an ongoing problem for President Davis as he worked to form his government while in the middle of prosecuting a general war.

The Legislative Branches

The 37th Congress of the United States met in Washington, DC, from March 4, 1861, to March 4, 1863. By early summer of 1861 approximately one-quarter of the seats in both chambers of the US Congress in Washington, DC, were empty, abandoned by members who had defected to the Confederacy.⁷ There was much discussion early on as to what would constitute a quorum in Congress. The House could change its rules; the Senate was more tradition bound and less prone to change. As to what constituted quorums in the Senate, essentially there was tacit agreement to pragmatically pretend they had it and not discuss it.

Both chambers determined how to best disposition the delegations that absented themselves. On March 14, 1861, after much heated debate, the Senate declared the seats of six of their departed colleagues “vacant” and authorized the Secretary of the Senate to strike their names from the Senate roll. In July the Senate debated the fate of Southern members whose terms had not expired and who had not formally notified the Senate of their withdrawal, and another heated debate followed. On July 11 the Senate approved a resolution put forth by New Hampshire’s Daniel Clark (R) to “deny here, on the floor of the Senate, the right of any State to secede” by expelling ten absent Southern members “from the councils of the nation.”⁸ A few states, such as Missouri and Kentucky, elected new members to replace those who were expelled. The Unionist government in Virginia sent two senators to Capitol Hill. Many desks remained unoccupied in the Senate Chamber throughout the war years and into the Reconstruction era. The Senate continued to admit Southern members from reconstructed states through the early 1870s. The House of Representatives had more absentees to deal with, of course, but handled the matter in much the same way as the Senate.

In the Union party affiliations were numerous and shifted virtually from election cycle to election cycle. That can be seen clearly in the changes in voting strength in both chambers of Congress.⁹ Political parties were fractious, with shifting subgroups and alliances. A thumbnail survey of the more pertinent parties—

- **American Party**, formed in 1844 by the Know-Nothings, initially led by Lewis Charles Levin; an American nativist party, anti-Catholic, and opposed to the great wave of immigrants who entered the United States after 1846. Served as a vehicle for politicians opposed to the Democratic Party. Nominated former-President Millard Fillmore for president in 1856. Dissolved in 1860.
- **Constitutional Union Party** was formed by remnants of the defunct American and Whig Parties who were unwilling to join either the Republicans or the Democrats. Its members hoped to stave off Southern secession by avoiding the slavery issue
- **Democratic Party**, formed in 1828. The Democratic-Republican Party split over the choice of a successor to President James Monroe. The faction that supported many of the old Jeffersonian principles, led by Andrew Jackson and Martin Van Buren, became the Democratic Party. At its inception, it was the party of the “common man” and opposed the abolition of slavery. At the Democratic National Convention in 1860, the party split into two factions, thus allowing the Republican presidential candidate, Abraham Lincoln, to win the national election.
 - **Northern Democrats**, led by Stephen Douglas of Illinois, believed in popular sovereignty – letting the people of the territories vote on slavery. Douglas was their presidential candidate in 1860.

- **Southern (or Conservative) Democrats**, led by “Fire-Eater” William Lowndes Yancey of Alabama, insisted slavery was national. John C. Breckinridge of Kentucky was their presidential candidate in 1860.
- **Anti-Lecompton Democrats**, an offshoot of eight elected representatives from Indiana, New Jersey, New York, and Pennsylvania in the 36th Congress who opposed the "Lecompton" constitution--one of the constitutions proposed for governing Kansas upon its admission to the union. In contrast to the Topeka, Leavenworth, and Wyandotte constitutions, the Lecompton constitution would have enshrined slavery.
- **Independent Democrats**, an offshoot of seven Democrats, six of which represented districts in Southern states, who publicly defied their “Democrat” label.
- **Republican Party**, formed in 1854 by opponents of the Kansas-Nebraska Act, which allowed for expansion of slavery into certain US territories (discussed below) and abolitionists; known briefly as the Know Nothing Party. The party called for economic and social modernization and denounced the expansion of slavery as a great evil but did not call for ending it in the Southern states. It nominated John C. Frémont for president in 1856 (he lost to James Buchanan, Democratic Party) and Abraham Lincoln in 1860.
- **Union Party**, formed in 1860 from remnants of the defunct Free Soil Party, they were also called the Radical Abolitionists. They called for an immediate end to slavery nationwide; some of its members believed that violence was a suitable means of achieving this.



Joseph Emerson Brown
Governor of Georgia

November 1857 to June 1865

Brown was a powerful Georgian politician who appealed more to the working class than the planter elite. He was an ardent Secessionist and a passionate supporter of states' right. He spoke out against the expansion of national powers at the expense of states and became a staunch opponent of President Davis – a real thorn in his side, as it were.

Political parties didn't form in the Confederacy, but there were political factions in and among the various states. And there were the governors of each state, some of whom would prove quite difficult to deal with for President Davis.

On July 25, 1861, just days after the First Battle of Bull Run demonstrated that the war would not end quickly, the 37th Congress jointly enacted the War Aims Resolution (a.k.a. the Crittenden-Johnson Resolution, so named for its authors Representative John Crittenden (Unionist, KY-8) and Senator Andrew Johnson (D, TN). The resolution aimed at keeping the pivotal states of Missouri, Kentucky, and Maryland in the Union. The resolution said the war was being fought not for "overthrowing or interfering with the rights or established institutions of those states," but to "defend and maintain the supremacy of the Constitution and to preserve the Union." The war, it further stated, would end when the seceding states returned to the Union. Some of the practical

effect of the resolution was undermined two weeks later when Lincoln signed a confiscation act calling for the seizure of property -- including slaves -- from the rebels. Nevertheless, until September 1862, when Lincoln signed the Emancipation Proclamation, reunification of the United States -- not the abolition of slavery -- remained the official goal of the North. Representative Thaddeus Stevens (R, PA-9) and three others voted against the measure. Stevens led the way to its repeal in December 1861.

During its full tenure, the 37th Congress passed some eighteen significant pieces of legislation. Two of these were passed in 1861: the Revenue Act of 1861 on August 5, which levied the first federal income tax (explicitly temporary with a sunset date of 1866) at a flat rate of 3% on all incomes above \$800, and the Confiscation Act of 1861 on August 6, which permitted confiscation of any property used for insurrectionary purposes, including slaves. Most of its efforts in 1861 involved transitioning the nation to a war footing and overseeing the military's conduct of the war, although there was never an official declaration of war since the Union never recognized the Confederacy's legitimacy as a separate nation or government. (The Confederacy never received international recognition either despite ongoing attempts to get it, particularly from Great Britain and France.)

The Joint Committee on the Conduct of the War was established on December 9, 1861 to investigate the progress of the war. Since it was formed so late in 1861, we will hold discussion of it until the next segment of this series.

The legislative branch in the Confederacy was different. It started as a Provisional Confederate Congress. A unicameral governing body, it convened February 4, 1861, in Montgomery, sitting until May 21, 1861, whereupon it moved to Richmond. It convened there on July 20. In February 1862 it was succeeded by Confederate States Congress, which would remain in existence until March 18, 1865.

The 1st and 2nd Sessions of the Provisional Congress met in Montgomery; the remaining three sessions met in Richmond. In its 1st Session, which ran through March 16, the Provisional Congress drafted a Provisional Constitution and set up a provisional government until a permanent government was installed. It also hosted a Constitutional Convention to develop a permanent Constitution that would provide the Confederacy with a permanent form of government "organized on the principles of the United States." The new Constitution would go into effect on February 22, 1862. A permanent government was elected by popular election on November 6, 1861.

The Provisional Congress initially contained Deputies drawn from the original seven Southern states to secede: 9 from Alabama, 3 from Florida, 10 from Georgia, 6 from Louisiana, 7 from Mississippi, 8 from South Carolina, and 7 from Texas. It added Delegates, eventually totaling 59, drawn from other states as they seceded or from provisional governments representing border states that did not secede (in alphabetical order): 5 from Arkansas, 10 from Kentucky, 9 from Missouri, 10 from North Carolina, 7 from Tennessee, 17 from Virginia, and 1 from the Arizona territory.

Throughout all five sessions, the Provisional Congress concerned itself with putting into place government agencies and authorities necessary to bring the Confederacy into operation and prosecute the war. This involved the passage of almost 70 public acts.¹⁰

What is a "Civil War"?

Typically, a civil war is fought between two factions vying for control of the same government to rule the same territory. This was not the case with the American Civil War. It was fought because one region of the country declared political independence. Rather than claiming to have legitimate authority over the territories of the entire United States, the Confederate government claimed only to have legitimate authority over the seceding states – a new government, establishing itself as a separate country. The war between the North and the South was fought over the matter of independence versus unionism. (For a fuller discussion, see "Was the American Civil War a 'Civil War'?", Chris Calton, Mises Institute, 05/23/2018, <https://mises.org/wire/was-american-civil-war-civil-war>.) Moreover, it does not fit neatly into the definition of either rebellion or insurrection in that the Secessionists were not attempting to overthrow an existing government or seize power.

The Judicial Branches

1861 was not a busy year for the Supreme Court of the United States (SCOTUS). It issued only two rulings: *Jefferson Branch Bank v. Skelly* (December 1861) – a trespass case, and *The St. Lawrence* (December 1861) – a libel case.¹¹

The most important issue in 1861 involving SCOTUS was *Ex parte Merryman* (17 F. Cas. 144, 148, C.C.D. Md. 1861). It was not a Supreme Court case, but rather a Circuit Court of Appeals case heard by Chief Justice Roger Taney (author of the Dred Scot decision of 1857) while riding circuit. Chief Justice Taney protested President Lincoln's April 27 suspension of habeas corpus from Washington, DC to Philadelphia based on the threat to the capital posed by Confederate sympathizers in Maryland in their attempts to hamper the passage of troops through Maryland to reinforce and protect the nation's capital. Note that Congress was not in session at this time.

When a person is detained by police or other (as in this case, military) authority, a court can issue a *writ of habeas corpus* compelling the detaining authority either to show proper cause for detaining the person (e.g., by filing criminal charges) or to release the detainee. Article I, Section 9 of the Constitution says, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." (A casual reading of this codicil looks to provide a bit of wriggle room in its implementation.)

In this instance, *habeas corpus* had been suspended by one Major General George Cadwalader per President Lincoln's order. Taney ordered the arrested person, one John Merryman, a Maryland militiaman, brought before him in Baltimore for a hearing. Cadwalader refused. Taney held Cadwalader in contempt of court and issued a *writ of attachment* ordering a US Marshal to seize him and bring him before the court. The Army refused the writ; neither Cadwalader nor Merryman were produced to Taney. Taney filed a written opinion on June 1, 1861, with the US Circuit Court for the District of Maryland, in which he argued against Lincoln for granting himself easily abused powers. Taney asserted that the President was not authorized to suspend *habeas corpus*.

Taney's opinion quoted an earlier opinion by Chief Justice John Marshall in *Ex parte Bolman* (8 U.S. 75, 1807), "If at any time the public safety should require the suspension of the powers vested by this act in the courts of the United States, it is for the Legislature to say so. That question depends on political considerations, on which the Legislature is to decide. Until the legislative will be expressed, this court can only see its duty, and must obey the laws." Note that Taney's final order in Merryman never actually ordered Cadwalader (the actual defendant), the Army, Lincoln or his administration, or anyone else to release Merryman. Because the US Marshal had been unable to serve the attachment, the citation for contempt was never adjudicated. At the end of

Under the Judiciary Act of 1789 and subsequent Acts, SCOTUS justices had the responsibility of "riding circuit" and personally hearing intermediate appeals, in addition to their caseload back in the capitol. This duty was abolished by Congress with the Judiciary Act of 1891. Wiki.

the Merryman litigation, it became a nullity, as do all civil contempt orders at the termination of litigation.¹²

Both President Lincoln's suspension of habeas corpus and Taney's judgment remain controversial. Merryman was not the last of such incidents. There were more arrests, shutdowns of newspapers, and confinements without charges or trial. Meanwhile, SCOTUS has never squarely determined if the President has any independent authority to suspend *habeas corpus*.

One who understood what was coming—

You people of the South don't know what you are doing. This country will be drenched in blood, and God only knows how it will end. It is all folly, madness, a crime against civilization! You people speak so lightly of war; you don't know what you're talking about. War is a terrible thing! You mistake, too, the people of the North. They are a peaceable people but an earnest people, and they will fight, too. They are not going to let this country be destroyed without a mighty effort to save it ... Besides, where are your men and appliances of war to contend against them? The North can make a steam engine, locomotive, or railway car; hardly a yard of cloth or pair of shoes can you make. You are rushing into war with one of the most powerful, ingeniously mechanical, and determined people on Earth — right at your doors. You are bound to fail. Only in your spirit and determination are you prepared for war. In all else you are totally unprepared, with a bad cause to start with. At first you will make headway, but as your limited resources begin to fail, shut out from the markets of Europe as you will be, your cause will begin to wane. If your people will but stop and think, they must see in the end that you will surely fail.

*William Tecumseh Sherman (still a civilian)
to Prof. David F. Boyd at the Louisiana State Seminary,
December 24, 1860*

Although the Confederate States Supreme Court was never constituted, the supreme courts of the various Confederate states issued numerous decisions interpreting the Confederate Constitution. Unsurprisingly, since the Confederate Constitution was based on the United States Constitution, the Confederate State Supreme Courts often used United States Supreme Court precedents. The jurisprudence of the Marshall Court thus influenced the interpretation of the Confederate Constitution. The state courts repeatedly upheld robust powers of the Confederate Congress, especially on matters of military necessity.¹³

As 1861 came to a close, most realized that the war was going to be a long and bloody business. Few had expected war; fewer still had foreseen the conflagration to come. Certainly, none of the Southern leadership did — none in their right

mind anyway. When the end did come, the hopes and expectations associated with secession not only would be crushed, the South would be physically and economically devastated for decades to come. The storm was upon them indeed.

Notes

1

The Buchanan Cabinet			
<i>Office</i>	<i>Name</i>	<i>Term</i>	<i>Post-Cabinet Status</i>
<i>President</i>	<i>James Buchanan</i>	<i>1857-1861</i>	<i>Did not run for reelection; retired to private life</i>
<i>Vice President</i>	<i>John C. Breckinridge</i>	<i>1857-1861</i>	<i>Southern Democratic nominee for President in 1860; Senator from Kentucky March-December 1861; fled South and became a Confederate general officer; appointed Confederate Secretary of War January 1865</i>
<i>Secretary of State</i>	<i>Lewis Cass Jeremiah S. Black</i>	<i>1857-1860 1860-1861</i>	<i>Resigned and returned to private life Left office; after a two-year stint on staff at the US Supreme Court, resigned and retired to private life</i>
<i>Secretary of the Treasury</i>	<i>Howell Cobb Philip Francis Thomas John Adams Dix</i>	<i>1857-1860 1860-1861 1861</i>	<i>Resigned and became a Secessionist leader Resigned; continued in Maryland politics Left office; became a US general officer</i>
<i>Secretary of War</i>	<i>John B. Floyd Joseph Holt</i>	<i>1857-1860 1861</i>	<i>Resigned (forced); became a Confederate general officer Left office; continued in Lincoln Administration</i>
<i>Attorney General</i>	<i>Jeremiah S. Black Edwin Stanton</i>	<i>1857-1860 1860-1861</i>	<i>(See above) Left office; continued in Lincoln Administration</i>
<i>Postmaster General</i>	<i>Aaron V. Brown Joseph Holt Horatio King</i>	<i>1857-1859 1859-1860 1861</i>	<i>Died in office (See above) Left office; returned to private law practice</i>
<i>Secretary of the Navy</i>	<i>Isaac Toucey</i>	<i>1857-1861</i>	<i>Left office; returned to private law practice</i>
<i>Secretary of the Interior</i>	<i>Jacob Thompson</i>	<i>1857-1861</i>	<i>Resigned in January; became Inspector General of the Confederate Army</i>

² Although secessionist factions passed resolutions of secession in Missouri October 31, 1861, and in Kentucky November 20, 1861, their state

delegations in the U.S. Congress remained in place, seven from Missouri and ten from Kentucky. Louisiana Congressional Districts LA 1 and 2, two of its four representatives remained seated in the 37th Congress. [https://en.wikipedia.org/wiki/37th_United_States_Congress]

³ The Provisional Congress, the first governing body of the Provisional Government of the Confederate States, was founded in Montgomery, Alabama on February 4.

⁴ A detailed comparison of the two Constitutions can be found at <https://jjmccullough.com/CSA.htm>. See “A Tale of Two Cities” in this website’s Nooks & Crannies section for a discussion of the issues surrounding the decision to move the Confederate capital (<https://tvcwrt.org/nooks-crannies/>).

⁵ ”Lincoln vs. Davis: A Paper Debate”, Feather Schwartz Foster, Presidential History Blog, <https://featherfoster.wordpress.com/2013/10/11/lincoln-vs-davis-a-paper-debate/>

6

The Lincoln Cabinet in 1861			
<i>Office</i>	<i>Name</i>	<i>Term</i>	<i>Post-Cabinet Status</i>
<i>President</i>	<i>Abraham Lincoln</i>	<i>1861-1865</i>	<i>Assassinated in office after reelection</i>
<i>Vice President</i>	<i>Hannibal Hamlin</i>	<i>1861-1865</i>	<i>Did not run for re-election</i>
<i>Secretary of State</i>	<i>William H. Seward</i>	<i>1861-1865</i>	
<i>Secretary of the Treasury</i>	<i>Salmon B. Chase</i>	<i>1861-1864</i>	
<i>Secretary of War</i>	<i>Simon Cameron</i>	<i>1861-1862</i>	
<i>Attorney General</i>	<i>Edward Bates</i>	<i>1861-1864</i>	
<i>Postmaster General</i>	<i>Montgomery Blair</i>	<i>1861-1864</i>	
<i>Secretary of the Navy</i>	<i>Gideon Wells</i>	<i>1861-1865</i>	
<i>Secretary of the Interior</i>	<i>Caleb Smith</i>	<i>1861-1863</i>	

The Davis Cabinet in 1861			
<i>Office</i>	<i>Name</i>	<i>Term</i>	<i>Post-Cabinet Status</i>
<i>President</i>	<i>Jefferson Davis</i>	<i>1861-1865</i>	<i>Became a Union prisoner</i>
<i>Vice President</i>	<i>Alexander Stevens</i>	<i>1861-1865</i>	<i>Became a Union prisoner</i>

<i>Secretary of State</i>	<i>Robert Tombs</i>	<i>Feb-Jul 1861</i>	<i>Resigned; became a Confederate general officer Resigned upon election as CS Senator from Virginia</i>
	<i>Robert M. T. Hunter</i>	<i>Jul-Feb 1862</i>	
<i>Secretary of the Treasury</i>	<i>C. Meminger</i>	<i>1861-1864</i>	<i>Resigned; returned to private life</i>
<i>Secretary of War</i>	<i>LeRoy Pope Walker</i>	<i>Feb-Sep 1861</i>	<i>Resigned; became a Confederate general officer Resigned; became Confederate Secretary of State</i>
	<i>Judah P. Benjamin</i>	<i>Sep-Mar 1862</i>	
<i>Attorney General</i>	<i>Judah P. Benjamin</i>	<i>Feb-Sep 1861</i>	<i>Appointed Attorney General Replaced by Thomas Bragg; returned to private practice Resigned, returned to private practice</i>
	<i>Wade Keyes</i>	<i>Sep-Nov 1861</i>	
	<i>Thomas Bragg</i>	<i>Nov 1861-Mar 1862</i>	
<i>Postmaster General</i>	<i>John H. Reagan</i>	<i>1861-1865</i>	<i>Became a Union prisoner</i>
<i>Secretary of the Navy</i>	<i>Stephen Mallory</i>	<i>1861-1865</i>	<i>Became a Union prisoner</i>

⁷ Scanning these two charts give you a picture of the North-South imbalance in Congress.

Senate	Total	Sitting	Vacant
<i>Alabama</i>	<i>2</i>		<i>2</i>
<i>Arkansas</i>	<i>2</i>		<i>2</i>
<i>California</i>	<i>2</i>	<i>2</i>	
<i>Connecticut</i>	<i>2</i>	<i>2</i>	
<i>Delaware</i>	<i>2</i>	<i>2</i>	
<i>Florida</i>	<i>2</i>		<i>2</i>
<i>Georgia</i>	<i>2</i>		<i>2</i>
<i>Illinois</i>	<i>2</i>	<i>2</i>	
<i>Indiana</i>	<i>2</i>	<i>2</i>	
<i>Iowa</i>	<i>2</i>	<i>2</i>	
<i>Kansas</i>	<i>2</i>	<i>2</i>	
<i>Kentucky</i>	<i>2</i>	<i>2</i>	
<i>Louisiana</i>	<i>2</i>		<i>2</i>
<i>Maine</i>	<i>2</i>	<i>2</i>	
<i>Maryland</i>	<i>2</i>	<i>2</i>	
<i>Massachusetts</i>	<i>2</i>	<i>2</i>	

<i>Michigan</i>	2	2	
<i>Minnesota</i>	2	2	
<i>Mississippi</i>	2		2
<i>Missouri</i>	2	2	
<i>New Hampshire</i>	2	2	
<i>New Jersey</i>	2	2	
<i>New York</i>	2	2	
<i>North Carolina</i>	2		2
<i>Ohio</i>	2	2	
<i>Oregon</i>	2	2	
<i>Pennsylvania</i>	2	2	
<i>Rhode Island</i>	2	2	
<i>South Carolina</i>	2		2
Tennessee	2	1	1
<i>Texas</i>	2		2
<i>Vermont</i>	2	2	
Virginia	2	2	
<i>Wisconsin</i>	2	2	
<i>Total (voting members)</i>	68	49	19

House	Total	Sitting	Vacant
<i>Alabama</i>	7		7
<i>Arkansas</i>	2		2
<i>California</i>	3	3	
<i>Connecticut</i>	4	4	
<i>Delaware</i>	1	1	
<i>Florida</i>	1		1
<i>Georgia</i>	8		8
<i>Illinois</i>	9	9	
<i>Indiana</i>	11	11	
<i>Iowa</i>	2	2	
<i>Kansas</i>	1	1	
<i>Kentucky</i>	10	10	
<i>Louisiana</i>	4		4
<i>Maine</i>	6	6	
<i>Maryland</i>	6	6	
<i>Massachusetts</i>	11	11	
<i>Michigan</i>	4	4	
<i>Minnesota</i>	2	2	
<i>Mississippi</i>	5		5
<i>Missouri</i>	7	7	
<i>New Hampshire</i>	3	3	
<i>New Jersey</i>	5	5	

<i>New York</i>	33	33	
<i>North Carolina</i>	8		8
<i>Ohio</i>	21	21	
<i>Oregon</i>	1	1	
<i>Pennsylvania</i>	25	25	
<i>Rhode Island</i>	2	2	
<i>South Carolina</i>	6		6
<i>Tennessee</i>	10	2	8
<i>Texas</i>	2		2
<i>Vermont</i>	3	3	
<i>Virginia</i>	13	5	8
<i>Wisconsin</i>	3	3	
<i>Total (voting members)</i>	239	180	59

8

https://www.senate.gov/artandhistory/history/common/expulsion_cases/Civil_War_Expulsion.htm

9

Senate – Seated / Voting Share of those seated (Rounded)		
<i>Party</i>	<i>36th Congress (at end of session)</i>	<i>37th Congress (at beginning of session)</i>
<i>Know Nothing</i>	4 / 4%	0%
<i>Democrat</i>	42 / 47%	22 / 42%
<i>Republican</i>	20 / 49%	29 / 56%
<i>Unionist</i>	0%	1 / 2%
<i>Vacant</i>	0	16

House – Seated / Voting Share of those seated (Rounded)		
<i>Party</i>	<i>36th Congress (at end of session)</i>	<i>37th Congress (at beginning of session)</i>
<i>Know Nothing</i>	5 / 2%	0%
<i>Constitutional Unionist</i>	0%	1 / <1%
<i>Democrat</i>	83 / 35%	44 / 24%
<i>Anti-Lecompton Democrat</i>	8 / 3%	0%
<i>Independent Democrat</i>	7 / 4%	1 / <1%

<i>Opposition</i>	<i>19 / 8%</i>	<i>0%</i>
<i>Republican</i>	<i>113 / 48%</i>	<i>105 / 58%</i>
<i>Unionist</i>	<i>0%</i>	<i>31 / 17%</i>
<i>Vacant</i>	<i>2</i>	<i>61</i>

https://en.wikipedia.org/wiki/36th_United_States_Congress and
https://en.wikipedia.org/wiki/37th_United_States_Congress#Changes_in_membership

¹⁰ For a full listing, see “The Statutes At Large of the Provisional Government of the Confederate States of America, from the Institution of the Government, February 8, 1861, to Its Termination, February 18, 1862, Inclusive; Part I, Lists of Acts and Resolutions, Proclamations and Treaties,”
<https://docsouth.unc.edu/imls/19conf/19conf.html>.

¹¹ <https://caselaw.findlaw.com/court/us-supreme-court/years/1861>

¹² https://en.wikipedia.org/wiki/Ex_parte_Merryman

¹³

https://en.wikipedia.org/wiki/Constitution_of_the_Confederate_States#Judicial_review