Studies in American Political Development, 13 (Fall 1999), 279–287.
Printed in the United States of America.

JEFFERY A. JENKINS
Michigan State University

Partisanship and Confederate Constitution-Making Reconsidered: A Response to Bensel

In his response to my essay on the connection between partisan machinations in the Confederate Constitutional Convention and the disappearance of Democrat-Whig divisions in the Confederacy, Professor Richard Bensel raises a number of interesting arguments as to why partisanship was not a factor during the making of the Confederate Constitution. Additionally, Professor Bensel suggests a different avenue to examine the link between partisanship and constitution-building, specifically *state-level* constitutional conventions in the South where parties were known to be active and played a crucial role in decision-making.

On the whole, I believe that Professor Bensel's reply is very thoughtful. His suggestion for a greater focus on constitutional conventions at the state level is especially well received, for data from those conventions represent an untapped resource that could provide new insights into the nature of party politics. However, as in most "exchanges" of this nature, I must cordially disagree with him on the notion that the Confederate Constitutional Convention "simply does not provide the appropriate context" to examine whether partisan behavior is a factor in constitution-making. As I see it, Professor Bensel's argument is composed of three parts, each of which I will respond to accordingly. Moreover, after responding to Bensel's argument, I will provide new statistical evidence to support my earlier claims.

BENSEL'S ARGUMENT EXAMINED

Part 1: Discerning Member Motivations

One reason that Bensel suggests studying constitutional conventions at the state level is that, for many of these conventions, "we have complete records of the proceedings from which to glean partisan motivations." A similar research strategy cannot be pursued with the Confederate Constitutional Con-

© 1999 Cambridge University Press ISSN 0898–588X/99 $9.50

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

vention, because the proceedings of the Provisional Confederate Congress are "largely unrecorded and unremembered."[1] This portion of Bensel's argument represents a distinct "philosophical difference between our brands of research, to which I now turn.

Having read much, if not all, of Professor Bensel's work, I can say with some degree of confidence that his research resembles that of a historian. Through an intensive examination of newspapers, letters, memoirs, Congressional proceedings, and secondary sources, Bensel weaves stories that are often intricately detailed and exhaustively documented. To someone like myself who is an avid student of history, his work is a pleasure to read. Yet, his work is not always *theoretically* grounded; instead, he relies upon what individuals *say* or *write* to guide the derivation of hypotheses and the construction of arguments. This is why having rich, detailed legislative proceedings is so critical to his research, and why the scanty records from the Confederate Constitutional Convention are so problematic.

My research, on the other hand, is steeped in the rational choice tradition, which *assumes* that members of Congress possess certain types of preferences and thereby will exhibit certain types of behaviors.[2] Thus, unlike Bensel, I do not depend upon what members say on the floor or write in letters to constituents, because such "evidence" is often just "cheap talk." That is, members may express a viewpoint solely for public consumption and position-taking benefits.[3] To infer preferences from these "noisy" signals is problematic. What *is* important, on the other hand, is how members of Congress vote on legislation. Stated another way, while members can often backpedal from their *rhetoric,* it is more difficult for them to explain their *actions,* that is, their vote choices, which directly affect their constituents and become part of the public record. Members' voting decisions, therefore, are clear signals of their preferences (and can be thought of as *revealed preferences*) on an array of issues.

So, while Bensel views the proceedings of the Confederate Constitutional Convention as providing little opportunity for the type of research that he pursues, I hold a much different view. That is, while legislative debates and floor speeches are indeed missing from the proceedings, a *complete* record of members' voting activity *is* included, which provides limitless research op-

1. While not akin to actual Congressional proceedings, William C. Davis, *"A Government of Our Own": The Making of the Confederacy* (Baton Rouge: Louisiana State University Press, 1994) presents an exhaustive analysis of the politicking in the "unremembered" Provisional Confederate Congress.

2. The rational choice paradigm, as it relates to legislative politics, is well known, so I will not elaborate further. Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957) and Duncan Black, *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958) are seminal works, while John H. Aldrich, "Rational Choice Theory and the Study of American Politics," in Lawrence C. Dodd and Calvin Jillson, eds., *The Dynamics of American Politics: Approaches and Interpretations* (Boulder: Westview, 1994) provides a more recent overview.

3. See David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974). For an example of how reliance on political rhetoric can skew an understanding of political events, see Jeffery A. Jenkins and Brian R. Sala, "The Spatial Theory of Voting and the Presidential Election of 1824," *American Journal of Political Science* 42 (1998): 1157–79.

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

portunities.[4] In particular, by analyzing members' vote choices (and thereby their revealed preferences) in the Provisional Confederate Congress, I am able to study their *motivations,* issue by issue, as the Confederate Constitution was being written. To follow a strategy, as Bensel does, that ignores this wealth of voting data and concludes that the Provisional Confederate Congress is not worth studying because of the limited nature of its proceedings is, in my view, quite short-sighted.

Part 2: The Existence of Political Parties

A second chief problem that Professor Bensel raises is that it is impossible to tell a story of partisan behavior and Confederate Constitution-making when "there were no organized political parties at the convention." Further, Bensel argues that "political parties [were not] formally organized in the South during the years just before the birth of the Confederacy." In Bensel's view, then, these "facts" are a damning indictment of my thesis.

Taken at face value, Bensel seems to have a good case. However, the "evidence" behind his conjectures proves to be quite thin upon careful examination. First, he depends completely upon state party histories to make his "no party" case, histories that are themselves suspect. Second, his notion of what a "party" is proves to be exceedingly narrow. As it happens, these two points are interrelated; thus, my response, written as a single argument, will address both.

What is a party? In Bensel's terms, it is a "formal" organization of, presumably, like-minded individuals that maintains its existence over a sufficiently long period of time. With this view of party in tow, based on his readings of state party histories, Bensel does not believe that party competition in the South was sufficiently active in the half-dozen years prior to secession to justify my argument. Why? Because the "formal" party system of the late-1850s/early-1860s does not resemble the "formal" party system of the early-1850s, due to the fact that the Whig Party as a "formal" national entity had ceased to exist by the middle-1850s. It seems, then, that Bensel, like the historians that he cites, believes that party is a *static* concept, that is, the notion of what a party is or "looks like" should not change over time. Given that the Whig Party of the early-1850s is not present *in the same form* in the late-1850s, it is not surprising that Bensel reaches the conclusion that he does.

Party, however, is *not* a static concept; rather, it is *fluid*. Following the "conditional party government" theory espoused by David Rohde, a party organization will *change* depending upon how the political context around it changes.[5] The design and workings of a party organization therefore reflect the political landscape at a given point in time. Returning to the case at hand,

4. A *complete* listing of all Confederate roll calls has been compiled and placed into machine-readable format by historians Thomas B. Alexander and Richard E. Beringer (ICPSR data file no. 67).

5. See David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991). For additional discussion of the conditional party government thesis, see John H. Aldrich, *Why Parties?: The Origin and Transformation of Party Politics in America* (Chicago:

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

I agree with Bensel and most other historians that the national Whig Party, as a formal organization, had disappeared by the middle-1850s. However, it is well documented that the Whig Party in the South survived as an *informal* organization in various other "formal" manifestations up to the Civil War.[6] According to Kenneth Martis: "In the political realignment of the 1850s some southern Whigs associated with the Democrats, but most found refuge under the American party label."[7] When the American Party collapsed in the South in 1858–1859, former Whigs in Tennessee, Kentucky, Georgia, North Carolina, Louisiana, and Virginia ran under various "Opposition" party labels, electing nineteen members to the 36th U.S. House.[8] By 1860–1861, as I discussed in my original essay, those Whigs who were temporarily housed in Opposition parties formed the Constitutional Union Party.[9] Moreover, despite these transitional movements between various "formal" labels, the Whigs did not miss a beat, as detailed by Thomas Alexander: "the shift in party nomenclature from Whig to American in 1856 and to Constitutional Union in 1860 had but little impact on Whig voting strength or party organization in the South."[10]

University of Chicago Press, 1995) and John H. Aldrich and David W. Rhode, "Measuring Conditional Party Government" (paper presented at the annual meeting of the Midwest Political Science Association, 1998).

6. To his credit, Bensel acknowledges this point. But, because of his very strict view that a party must be a "formal" organization, Bensel discounts the relevance of this point for my thesis.

7. Kenneth C. Martis, *The Historical Atlas of Political Parties in the United States Congress, 1789–1989* (New York: Macmillan, 1989), 43. Supporting Martis's contention, McCrary, Miller, and Baum (1978), in an analysis of electoral change in Alabama, Mississippi, and Louisiana before the Civil War, generate ecological regression results that suggest

> in 1856, when the Whigs were replaced in the South by the Native American Party, only 2 percent of the electorate switched parties in these states – the Know-Nothings appear to be no more than the old Whig Coalition under another name. (See Peyton McCrary, Clark Miller, and Dale Baum, "Class and Party in the Secession Crisis: Voting Behavior in the Deep South, 1856–1861," *Journal of Interdisciplinary History* 8 [1978]: 429–57, 438.

8. Horace Montgomery, *Cracker Parties* (Baton Rouge: Louisiana State University Press, 1950); Martis, *The Historical Atlas of Political Parties in the United States Congress.*

9. Thomas B. Alexander, "Persistent Whiggery in Alabama and the Lower South, 1860–1867," *Alabama Review* 12 (1959): 35–52; Thomas B. Alexander, "Persistent Whiggery in the Confederate South, 1860–1877," *Journal of Southern History* 27 (1961): 305–29. For an excellent description of the movement of the southern Whigs from the Know Nothing Party, to various Opposition parties, to the Constitutional Union Party, see Daniel W. Crofts, *Reluctant Confederates: Upper South Unionists in the Secession Crisis* (Chapel Hill: University of North Carolina Press, 1989), 37–89. For a more cautious treatment of the "persistent Whiggery" thesis, see John V. Mering, "Persistent Whiggery in the Confederate South: A Reconsideration," *South Atlantic Quarterly* 69 (1970): 124–43.

10. Alexander, "Persistent Whiggery in the Confederate South," 306. Why did the southern Whigs take on alternate labels in the late-1850s? Their reasoning was strategic. The Whig label had suffered greatly from the politicking surrounding the Compromises of 1850 and 1854; thus, Whigs needed a new way of "selling" themselves to voters. By taking on short-term political causes, like nativism and anti-administrationism, they hoped to capitalize on the electoral benefits of the moment. As Joel Silbey states: "Unless the Whigs considered alternative frameworks, they were condemned to perpetual electoral weakness" (see Silbey, *The American Political Nation, 1838–1893* [Stanford: Stanford University Press, 1991], 138).

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

Thus, on the eve of the Civil War, the old Whig Party organization *still* existed in the South, albeit in a different form. With this more fluid definition of party emanating from the theory of conditional party government, the basis for my thesis remains intact.

Finally, there is the matter of whether parties played a role in the Confederate Constitutional Convention. Professor Bensel, relying again upon the work of historians, concludes that the answer was "no," because members of the convention were not elected with partisan affiliations and there is no evidence that partisan labels or partisan appeals were used in convention proceedings. Yet, we again see the informal "spirit" of party present, as delegates who were selected to the convention had known partisan backgrounds and were representing counties with longtime partisan attachments.[11]

Rather than rely solely upon historical evidence to counter Bensel's own historically-based claim, I apply the tools of social science to the investigation. First, a method of discerning party's existence (or nonexistence) within the convention must be found. A search for party effects within Congress is ultimately a search for the existence of *institutional parties,* which are, at their heart, organized voting coalitions. Thus, whether the old Democrat-Whig divisions were present during the writing of the Confederate Constitution is an *empirical* question that can be examined by studying members' vote choices in relation to their former party labels.[12] To conduct my examination, I will move beyond the simple party-vote comparisons used in my original essay and apply multivariate statistical techniques for a more definitive analysis.

Part 3: The Importance of Protective Tariffs and Internal Improvements

Professor Bensel's final point is the following: "tariff protection and internal improvements had ceased to be the primary issues . . . in the South long before the Provisional Confederate Congress met." Once again, I am in agreement. In the 1850s, the primary issue in the South was slavery, around which a largely nonpartisan, ideological coalition was built. After secession, however, *the slavery issue was decided.* That is, the new Confederate states agreed that

11. Ralph A. Wooster, *The Secession Conventions of the South* (Princeton: Princeton University Press), 262–64. Moreover, in a study of roll-call voting in a similar nonpartisan representational setting, the Sixth Illinois Constitutional Convention (1969–1970), van der Silk, Pernacciaro, and Kenney (1974) found that

> although members were elected on a nonpartisan ballot, and did not organize the convention in a partisan fashion, partisan identification of the members was the best of several political, social, career, and constituency variables in accounting for roll call voting variance on most dimensions. (Jack R. van der Silk, Samuel J. Pernacciaro, and David Kenney, "Patterns of Partisanship in a Nonpartisan Setting: The Illinois Constitutional Convention," *American Journal of Political Science* 18 [1974]: 95–116, 95)

12. In a similar study, Welch and Carlson (1973) found that institutional parties remained in existence in the Nebraska legislature years after it became an official nonpartisan institution. See Susan Welch and Eric Carlson, "The Impact of Party on Voting Behavior in a Nonpartisan Legislature," *American Political Science Review* 67 (1973): 854–67.

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

slavery would continue unhindered; thus, slavery was taken out of the mix as a valid, political issue. At that point, I argue that it was natural for political leaders to drift toward the pre-1850s "reversion point," or divisions of the past, which were the two primary issues of the Second Party System: protective tariffs and federal funding for internal improvements. While the members of the newly-formed Confederate states saw eye-to-eye on slavery, this was *not* the case on protective tariffs and internal improvements. Thus, it seems reasonable that these two issues would reemerge as primary issues in the politics of the Confederacy. That is, until the Democrats took them out of the mix, thanks to Constitutional prohibitions, to which I now turn.

PARTISAN ACTIVITY IN THE CONFEDERATE CONSTITUTIONAL CONVENTION: FURTHER EVIDENCE

Most histories of Confederate politics argue that the Confederate Congress was devoid of a party system, a claim that has been substantiated by roll-call analyses of Confederate Congressional proceedings.[13] However, both the historians and roll-call analysts place much of their emphasis on the First and Second Confederate Congresses, with little mention of partisanship during the Provisional Confederate Congress. Before looking explicitly at the individual votes during the Confederate Constitutional Convention, I first turn my attention to a search for party in the Provisional Congress.

There were 279 recorded roll-call votes in the four sessions of the Provisional Confederate Congress, twenty of which came when members finished their daily activities and reassembled in the evening as convention delegates. Taking the 259 nonconvention roll calls and analyzing them using a vote-scaling technique developed by Keith Poole and Howard Rosenthal,[14] I find little evidence to support the existence of the old Democrat-Whig party system.[15] Simply put, parties lend "structure" to roll-call voting, enticing members to maintain consistent voting patterns; however, the structure of

13. For histories, see Wilfred Buck Yearns, The Confederate Congress (Athens: University of Georgia Press, 1960); David M. Potter, "Jefferson Davis and the Political Factors in Confederate Defeat," in David Donald, ed., *Why the South Won the Civil War* (New York: Collier, 1960); Eric L. McKitrick, "Party Politics and the Union and Confederate War Efforts," in William N. Chambers and Walter Dean Burnham, eds., *The American Party Systems: Stages of Political Development* (New York: Oxford University Press, 1967). For roll-call studies, see Thomas B. Alexander and Richard E. Beringer, *The Anatomy of the Confederate Congress: A Study of the Influences of Member Characteristics on Legislative Voting Behavior, 1861–1865* (Nashville: Vanderbilt University Press, 1972); Richard E. Beringer, "The Unconscious 'Spirit of Party' in the Confederate Congress," *Civil War History* 18 (1972): 312–33; Jeffery A. Jenkins, "Examining the Bonding Effects of Party: A Comparative Analysis of Roll-Call Voting in the U.S. and Confederate Houses," *American Journal of Political Science* 43 (1999): 1144–65.

14. See Keith T. Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 1997).

15. Why separate the Constitutional Convention from the rest of the Provisional Congress? I follow the precedent set by Alexander and Beringer (1972), who argue that the "character" of the convention was significantly different in that "its mission was of a unique nature . . . the establishment of organic law" (Alexander and Beringer, *The Anatomy of the Confederate Congress,* 97).

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

voting in the Provisional Confederate Congress was far too unstable, relative to two-party U.S. Congresses, to indicate that party was a significant factor.[16]

Was there partisan behavior, however, in the Confederate Constitutional Convention? More specifically, is there evidence of party pressure on votes related to the issues underlying the old Democrat-Whig divisions? Unfortunately, no individual-level vote data exist for protective tariff legislation, as only state-level vote choices were recorded. However, as I indicated in my previous essay, individual-level vote data *do* exist for internal improvements legislation. There were two cases in which the yeas and nays of the entire body were called and recorded: first, on Bartow's (W-GA) motion to table Rhett's (D-SC) amendment to prohibit federal funding for internal improvements, and second, on the passage of Rhett's amendment.[17] Thus, while not providing a complete picture, these two roll-call votes offer the context required to search for Democrat-Whig partisan effects.

To analyze these two votes, I construct a multivariate regression model, more specifically, a logit model.[18] Once again, I turn to vote-scaling techniques developed by Poole and Rosenthal and apply them to the roll-call voting data from the Provisional Confederate Congress to produce two sets of spatial ideology measures, referred to as "Nominate" scores, which I incorporate as independent variables.[19] These spatial ideology measures represent members' revealed preferences on the principle issue dimensions uncovered by the vote scaling. Because there is little evidence of party being present in the proceedings of the Provisional Congress, these spatial ideology scores can also be thought of as "party-free" preferences. As a third independent variable, I include the past party affiliation of members.[20] The question then becomes: were members' votes on the two internal improvement roll calls merely a function of their spatial ideologies, that is, consistent with their ideological beliefs, or did party pressure also play a factor?[21]

Results from the two regressions appear in Table 1. The evidence is striking: the ideological predilections that members exhibited in the Provisional

16. A one-dimensional spatial model with sincere, probabilistic voting explains 70 percent of individual vote choices in the Provisional Confederate Congress. Incorporating a second dimension adds another 6 percent. A similar one- and two-dimensional model correctly classifies around 85 and 87 percent of individual vote choices, respectively, for an *average* two-party U.S. Congress. For a more thorough analysis of the connection between party and roll-call voting, see Jenkins, "Examining the Bonding Effects of Party."

17. *Confederate Journal*, I: 891–92.

18. Logit models are appropriate when the dependent variable is discrete, as in the case of an individual vote choice (yea or nay).

19. For a more in-depth discussion of the Nominate technique and spatial ideology, see Poole and Rosenthal, *Congress*.

20. Again, as in my previous essay, I incorporate four different partisan coding schemes to arrive at partisan affiliations.

21. In contemporary studies of Congressional voting behavior, including both Nominate scores and party in the same regression equation is problematic, because they are so highly correlated (often over 0.9). This is because a large portion of the spatial ideology represented by the Nominate scores is party induced. This issue of collinearity does not plague my analysis, however, because the Provisional Confederate Congress lacked a party system. Thus, the correlations between the two Nominate dimensions and party are a modest 0.16 and 0.08, respectively.

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

Table 1. Logit Results for Internal Improvement Votes

	To Table Internal Improvements Amendment	To Pass Internal Improvements Amendment
Nominate-1	−0.308	−0.151
	(0.825)	(0.962)
Nominate-2	0.215	0.728
	(1.082)	(0.652)
Party	−3.222**	1.612*
	(1.038)	(0.819)
Constant	1.016	0.247
	(0.646)	(0.572)
N	34	34
Pearson χ^2	35.37	32.12
% Corr. Predicted	82.35	67.65

Note: White-corrected standard errors appear in parentheses below logit coefficients.
Dependent Variable:
Vote = 1 if yea, 0 if nay.
Independent Variables:
Nominate-1 = Members' first-dimension Nominate score.
Nominate-2 = Members' second-dimension Nominate score.
Party = 1 if former-Democrat, 0 if former-Whig.
*$p < .05$; **$p < .01$.

Confederate Congress played *no* significant role in their voting behavior on *either* of the internal improvement roll calls. Instead, *party* proved to be the driving force behind members' vote choices, as the old Democrat-Whig divisions appear to have determined the legislative outcomes. On the vote to table the internal improvements amendment, the party variable is significant ($p < .01$) and in the predicted direction (negative), as Democrats voted against tabling while Whigs voted for tabling. Similarly, on the vote to pass the internal improvements amendment, the party variable is again significant ($p < .05$) and in the predicted direction (positive), as Democrats voted for passage while Whigs voted against passage. Thus, the internal improvements issue, which had once been a contentious issue between Democrats and Whigs in the U.S. Congress, remained a contentious issue between Democrats and Whigs during the writing of the Confederate Constitution.

That, however, is not the end of the story. Party proved to be the significant determinant in ten of the remaining eighteen roll-call votes cast in the convention, on such issues as supreme court jurisdiction, Congressional appropriations, the slave trade, and admittance of new states into the Confederate republic.[22] Thus, on twelve of the twenty roll calls (60 percent) during the

22. Ideology, as represented by *either* the first- or second-dimension Nominate score, was a significant determinant of vote choice in only five of the eighteen roll calls.

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press

writing of the Constitution, the legislative outcomes were determined not by ideology, but by the old Democrat-Whig divisions that would soon disappear in the government of the Confederacy.[23]

CONCLUSION

Here, then, is the evidence. While party indeed seems to have been absent in the Provisional, First, and Second Confederate Congresses, the old Democrat-Whig divisions were very much alive during the Confederate Constitutional Convention. In particular, the "fingerprints" of party voting were noticeably present on the constitutional prohibition of federal funding for internal improvements, a troublesome partisan issue from decades past.

Once the protective tariff and internal improvement issues were settled, along with some other ancillary matters in the convention, there were no *immediate* cleavages by which to sustain the Democrat-Whig divisions. New cleavages may very well have developed over time, and, in turn, the old Democrat-Whig conflicts may have continued; however, just one month after the convention adjourned, in April 1861, the firing on Fort Sumter began, and civil war was in the offing. The new issues created by war – conscription, habeas corpus, impressment – did not fit cleanly into the former partisan politics, and a "new" party system, organized around the new set of issues in play, did not emerge before the war had ended. Would a new party system have emerged, had the war been prolonged? Richard Beringer suggests that the answer might be "yes," as a roll-call analysis finds that "peace" and "war" factions had grown more stable in the Confederate Congress as the war had progressed.[24] What if the Confederacy had won the war? According to Beringer: "In a victorious Confederacy new political parties doubtless would have resumed rivalry along old Whig-Democratic lines."[25] This, of course, is merely speculation, but one can safely say that as of March 1861, the old Democrat-Whig divisions that had defined the U.S. politics of the prior two decades were still present in the politics of the Confederacy.

23. Alexander and Beringer (1972) hint at this strong-party result in their simple statistical analysis of more than two decades ago:

> When comparisons are made on the basis of former party affiliation . . . significant distinctions appear immediately . . . members of the Lower South's old parties acted more in accordance with usual behavior in the Constitutional Convention than they had since 1848. (Alexander and Beringer, *The Anatomy of the Confederate Congress,* 99)

24. See Beringer, "The Unconscious 'Spirit of Party' in the Confederacy."

25. Ibid., 327.

https://doi.org/10.1017/S0898588X99002357 Published online by Cambridge University Press