

The Constitutional History of Tennessee

by

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Follow the links below to read the original documents

1787, Constitution for the United States of America

1796 Constituion of the state of Tennessee

1835 Constituion of the state of Tennessee

1870 (Reconstruction) Constitution of the state of Tennessee Early Forms of Government

Through a long series of events, North-Carolina, the western portion of which would become Tennessee, became one of the thirteen united States of America. The first Constitution of North Carolina originated December 16, 1776. The Articles of Confederation, July 9, 1778, created the United States of America in Congress Assembled, as the first national government. The Articles of Confederation entitled the free inhabitants of the States to the privileges and immunities of the free citizens in the several States, but excluded paupers, vagabonds, and fugitives from justice (Article IV).

The Cumberland Compact was established May 1, 1780. It allowed the people to change governments when they became oppressive. Continued the ownership of property and provided for the collection of property taxes (rent).

The Constitution of September 17, 1787 created the United States, "in order to form a perfect Union."

Article I, Legislative Power

Article II, Executive Power

Article III, Judicial Power

Article IV, Relation of the States

Article V, Process of Amendment

Article VI, Debt, Supremacy of Constitution, and Oath

Article VII, Establishment of Constitution

“

All debts contracted and engagements entered into, before the adoption of the Constitution, shall be as

valid under this Constitution, as under the Confederation.” (Article VI, Section 1).

“

The citizens of each State shall be entitled to the privileges and immunities of the citizens of the several States.” Article IV, Section 2, Clause 1).

Citizen – all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. [Henry-Campbell: Black, Blacks Law Dictionary®, Sixth Edition, West Publishing Co. St. Paul Minnesota, 1990]

Inhabitant – One who resides actually and permanently in a given place, and his domicile there.... A corporation can be an inhabitant only in the state of its incorporation. [Henry-Campbell: Black, Blacks Law Dictionary®, Sixth Edition, West Publishing Co. St. Paul Minnesota, 1990]

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” 14th Amendment

The Request For Western Lands

In 1780 and 1784 Congress asked states to surrender western lands to the United States, “as a further means of extinguishing debt and establishing the harmony of the United States.”

On April 19, 1784 the General Assembly of North-Carolina introduced an act to secede western lands to the United States.

In the fall of 1784 North-Carolina repealed the cession.

A Constitution and Form of Government for the State of Franklin passed on December 17, 1784. John Sevier became governor. The assembly met in March 1785, and asked Congress to accept the cession made by North-Carolina and admit Franklin as a state.

North-Carolina continued to oppose statehood for Franklin, while Congress asked that they desist from opposition.

In 1785 second constitution, which was modified from that of North-Carolina, was adopted.

The Treaty of Hopewell, ratified by Congress on April 17, 1786 weakened Franklin.

Both North-Carolina and Franklin held elections in the county of Washington. The election ended up showing the Franklin supporters losing ground. Both governments held county courts, appointed officers in the militia, passed laws, laid taxes, destroyed each others papers.

In 1786 the North-Carolina legislature tried to end Franklin’s government, while Franklin punished those acting under the authority of North-Carolina.

In May of 1787 a convention met in Greenville to consider adopting the Constitution proposed in November of 1785.

During the election in August of 1787, the poles were unable to open due to fears of violence.

The North-

Carolina Assembly declared the election results to be void, and ordered a new writ to be issued. Violence

broke out between the supporters of Franklin and North-Carolina.

In August of 1787 Evan Shelby was elected succeed Sevier in March of 1788. Shelby declined the offer.

Sevier began to see that Franklin would collapse without help and requested help from Georgia.

The people of Franklin continued to seek support from Congress, while North-Carolina’s representatives to

the Federal Convention continued their opposition. The debate at the Federal Constitutional convention concluded that the admission of a new state depended on the consent of the state form which it was derived.

On September 17, 1787 the federal constitutional convention adjourned and Franklin's General Assembly opened in Greenville. The General Assembly of Franklin considered dissolving itself and appointed representatives to the North-Carolina legislature. Meanwhile, Georgia committed to helping Franklin in their fight against the Creek Indians.

Franklin leaders began circulating petitions to the North-Carolina assembly for separation. Commissioners from Franklin attended the meeting of the North-Carolina assembly in November. Congress urged North-Carolina to surrender western lands. North-Carolina disregarded the petition for giving up land.

1787 closed with the prospects for Franklin's statehood greatly diminished. When March 1788 came, there was no legislature, no governor. The State of Franklin was dead. Under these circumstances Franklin eventually became the Territory of the United States south of the Ohio River.

The 1795 census of the of the Territory of the United States of America south of the river Ohio showed the territory had enough inhabitants to become a state. Governor Blount issued a proclamation calling for a Constitutional convention to meet in Knoxville.

The 1796 Constitution for the State of Tennessee

The territorial assembly, for the Territory of the United States South of the River Ohio, began its last meeting on June 29, 1795, to consider whether the people of the territory wanted to become a state; and if so, what steps would be taken to accomplish this as soon as possible. By an act passed July 11, 1795, at the Second Session of the First General Assembly of the Territory, titled "An act providing for the enumeration of the inhabitants of the Territory of the United States of America south of the river Ohio" a census of the territory was taken. Subsequent to the finding of this enumeration and under the authority of the Act of July 11, 1795 Governor Blount issued the following proclamation on November 28, 1795:

William Blount, Governor in and over the Territory of the United States of America, south of the river Ohio.

To the People thereof.

Whereas by an act passed on the eleventh day of July last, entitled, "An act providing for the enumeration of the inhabitants of the Territory of the United States of America south of the river Ohio," it is enacted,

"That if upon taking the enumeration of the people in the said Territory as by that act directed, it shall appear , that there are sixty thousand inhabitants therein, counting the whole of the free persons, including those bound to service for a term of years, and excluding Indians not taxed, and adding three fifths of all other persons, the Governor be authorized and requested to recommend to the people of the respective counties, to elect five persons for each county, to represent them in convention, to meet at Knoxville at such time as he shall judge proper, for the purpose of forming a constitution or permanent form of government."

And whereas upon taking the enumeration of the inhabitants of the said Territory, as by the act directed, it does appear that there are sixty thousand free inhabitants therein, and more, besides other persons:--Now, I the said William Blount, Governor, &c. do recommend to the people of the respective counties, to elect five persons for each county, on the eighteenth and nineteenth days of December next, to represent them in a convention to meet at Knoxville on the eleventh day of January next, for the purpose of forming a constitution or permanent form of government.

And to the end that perfect uniformity in the election of the members of convention may take place in the respective counties, I the said William Blount, Governor, &c do further recommend to the sheriffs or their deputies respectively, to open and hold polls of election for members of convention, on the eighteenth and nineteenth days of December as aforesaid, in the same manner as pools of election have heretofore been held for members of the general assembly; and that all free males twenty one years of age and upwards, be considered as entitled to vote by ballot for five persons for members of convention, and that the sheriff or their deputies, holding such poles of election give certificates tot he five persons in each county, having the greatest number of votes, of their being duly elected members of the convention.

And I the said William Blount, Governor, &c think proper to declare, that this recommendation is not intended to have, nor ought to have any effect whatever, upon the present temporary form of government; and that the present temporary will continue to be exercised in the same manner as if it had never been issued, until the convention shall have formed and published a constitution or permanent form of government. Done at Knoxville, November twenty-eight, one thousand seven hundred and ninety-five. By the Governor,

Wm Blount

Willie Blount Pro Secretary

By the ordaining and establishing of the constitution, or form of government, of 1796, the People of the Territory of the United States south of the river Ohio formed themselves into a free and independent state, by the name of the State of Tennessee.

Form vb. to give form or shape or to shape to, arrange, train, instruct, develop,.... to make up, constitute, to arrange in order.... to take a definite form shape, or arrangement. [The Merriam-Webster Dictionary]

Letter from Governor Blount to the Secretary of State [of the United States]:

Knoxville February 9th 1796

Sir As Governor it is my duty and as President of the Convention I am instructed by a resolution of that Body to forward to you Express a copy of the Constitution formed for the permanent Government of the State of Tennessee which you will herewith receive by the hands of Major Joseph Mc Min of Hawkings County who was himself a Member of the Convention.

The 6th Section of the 1st Article will inform you that the first General Assembly to be held under this Constitution is to commence on the last Monday in March next. The object of the convention in determining on this early day is a Representation in the Congress of the United States before the termination of the present Session. And the 3rd Section of the Schedule will inform you how long it is contemplated, the Temporary form of Government Shall continue.

I have the honor to be very respectfully Your most obedient Humble Servant

Wm Blount

Timothy Pickering Esquire Secretary of State Philadelphia

AN ACT FOR THE ADMISSION OF THE State of Tennessee

(Printed in 1 Stat. 491 - 492)

An Act for the admission of the State of Tennessee into he Union

Whereas by the acceptance of the Deed of Session of the State of North-Carolina [1 Stat. 106 - 107],

Congress are bound to lay out into one or more States the territory thereby ceded to the United States.

Be it enacted by the Senate and the House of Representatives of the United States of America, in Congress assembled, That the whole of the territory ceded to the United States by the State of North-Carolina shall be one State, and that the same is hereby declared to be one of the United States of America, on an equal footing with the original States, in all respects whatever, by the name and title the State of Tennessee. That until the next general census, the said State of Tennessee shall be entitled to one Representative in the House of Representatives of the United States; and in other respects as far as they may be applicable, the laws of the United States shall extend to, and have force in the State of Tennessee, in the same manner, as if that State had originally been one of the United States.

Jonathan Dayton

Speaker of the House of Representatives

Samuel Livermore

President of the Senate, pro tempore

Approved June the first 1796

G Washington President of the United States

I certify that this Act did originate in the Senate. Attest Sam A. Otis Secretary

TO SUMMARIZE: Governor Blount's proclamation of November 28, 1795, recommend to the people, of the Territory of the United States south of the river Ohio, to elect five persons for each county, to represent them in a constitutional convention, to be held at Knoxville. At this convention, the People, of the Territory of the United States south of the river Ohio, formed themselves into a free and independent Republican state, by the name of the State of Tennessee. The state was formed for ". . . a Representation in the Congress of the United States before the termination of the present Session" [Letter from Governor Blount to the Secretary of State of the United States, See Exhibit 023 pages 419 - 420]. This letter created an offer from the People, of the Territory of the United States south of the river Ohio, made through their representative Governor Blount, to the United States of America. By AN ACT FOR THE ADMISSION OF THE State of Tennessee (Printed in 1 Stat. 491 - 492, See Exhibit 23 pages 424 - 425), Tennessee became ". . . one of the United States of America, on an equal footing with the original States, in all respects whatever, by the name and title the State of Tennessee...." By this Act the People of Tennessee became a party to all the organic laws of the united States of America.

In This is Tennessee, Mary U. Roothrock [published 1963 by M. U. Roothrock Publishing of Knoxville, Tennessee] states, "Thomas Jefferson once said the Tennessee's first constitution, adopted in 1796, was the 'least imperfect and most republican' in the United States (page 196). More will be said about the adoption of this document as the history of Tennessee is examined in greater detail.

The 1834 Constitution for the State of Tennessee

The time line for adoption of the 1834 Constitution for the State of Tennessee is repugnant to the 1796 Constitution for the State of Tennessee. This becomes apparent by an examination of the prescribed time line for a Constitutional Convention and the TIME LINE FOR THE 1834 CONVENTION.

Under the Authority of Article X, Section 3 of the 1796 Constitution for the State of Tennessee: "That whenever two thirds of the general assembly shall think it necessary to amend or change this constitution, they shall recommend to the electors, at the next election for members of the general assembly [Ex. First Thursday in August of 1833], to vote for or

against a convention; and if it shall appear that a majority of all the citizens of the state, voting for representatives, have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many member as their be in the general assembly, to be chosen in the same manner, at the same place, and by the same electors, that choose the general assembly, who shall meet within three months after said election, for the purpose of revising, amending or changing the constitution."

Under the Authority of Article I, Section 5 of the 1796 Constitution for the State of Tennessee: "The first election for senators and representatives, shall commence on the second Thursday of March next, and shall continue for that, and the succeeding day; the next election shall commence on the first Thursday of August, one thousand seven hundred and ninety-seven, and shall continue that and the succeeding day; and for ever after, elections shall be held once in two years, commencing on the first Thursday in August, and terminating the succeeding day."

This gives elections in the years 1797, 1799, 1801, 1803, 1805, 1807, 1809, 1811, 1813, 1815, 1817, 1819, 1821, 1823, 1825, 1827, 1829, 1831, 1833, 1835

Now, one may compare the actual time line of the 1834 Convention with the provisions of the 1796 constitution. The source for establishing the time line is the preamble to the 1834 constitution. In it the delegates of the 1834 convention declared:

"Whereas, the General Assembly of the said State of Tennessee (pursuant to the third section of the tenth article of the Constitution), by an act passed the twenty-seventh day of November, in the year of our lord one thousand eight hundred and thirty three, entitled, "An act to provide for the calling of a convention," did authorize and provide for the election by the people of delegates and representatives, to meet at Nashville, in Davidson County, on the third day in May, in the year of our Lord one thousand eight hundred and thirty-four, for the purpose of revising and amending (or changing) the Constitution;

We, therefore, the delegates and representatives of the people of the State of Tennessee, elected and in convention assembled, in pursuance of the said act of the Assembly, have ordained and established the following amended Constitution and form of government for this State, which we recommend to the people of Tennessee for their ratification. [Compare Exhibit 001 with Exhibit 010. The 1796 Constitution does not require ratification by the people].

An analyses of this time line In April 1833 the people voted for a constitutional convention, which had been proposed by Chapter LXXVI of the Acts of Tennessee.

April is not the month prescribed by Article X, Section 3 of the 1796 Constitution for the State of Tennessee for elections, this section requires elections in August.

The election of the delegates from each county, a total of sixty, was held on March 5 and 6, 1834. 1834 was not a year designated for the election of representatives. The meeting convened on May 19, 1834. With regards to the events surrounding the 1834 Constitutional Convention several of the acts committed by the General Assembly of Tennessee violated the methods for amending the state constitution as set forth in the Constitution for Tennessee of 1796. In this respect the Constitution of 1834 to is a VOID act of the legislature. Perhaps Caldwell is correct in asserting that the convention of 1834 marked the start of a new era, one of officials going beyond the limits of their office.

The 1834 constitution remained in use until the adoption of the Reconstruction Constitution of 1870. The events leading to the adoption of this constitution began with the election of Isham G. Harris as Governor of Tennessee in 1859. And culminate in the events of the reconstruction of Tennessee. At this point the events of reconstruction will only be covered briefly, but a more detailed discussion follows when the Tennessee Republic Common-Law Justices fully examine the nature of the courts in Tennessee. However,

determination of the validity of the 1870 Constitution adopted in Tennessee requires some understanding of the reconstruction process and its legal implications.

In 1834 the people of Tennessee adopted a second constitution. Joshua W. Caldwell in *Studies in the Constitutional History of Tennessee* (1895) explains that the constitution of 1834: "... marked the accession of the people to power, the triumph of democracy and the beginning of a new era of progress, of activity and state leadership. . . . [Governor William] Carroll dominated the time, and to him most of all, is due the credit for establishing the new order, whose charter was the constitution of 1834."

The constitution of 1834 converted Tennessee from a republic into a democracy, and it is recommended that the reader read *Federalist Papers # 10* to understand the distinction, if such is not known to them.

Under the authority of Article IV, Section 4 of The Constitution for the United States, 1789:

"The United States shall guarantee to every State in the Union a Republican form of Government, and shall protect each of them against Invasion; and on the Application of the Legislature, or the Executive (when the Legislature cannot be convened) against domestic violence."

James Madison said in *Federalist No. 43*: "... the authority extends no further than to a guaranty of a republican form government, which supposes a preexisting government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the federal Constitution. *Tulane Law Review*, "The Dubious Origin Of The Fourteenth Amendment" on page 38 states,

"Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is , that they shall not exchange republican for anti-republican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance."

In its landmark case of *William Marbury v. James Madison*, Secretary of State of the United States (February term of 1803) The Supreme Court of the United States declared in part:

The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on level with ordinary legislative acts, and like all acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not a law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently, to be considered, by this court as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of the topic. [*Reports of Cases Argued and Adjudged in the Supreme Court of the United States in the August and December term, 1801, and February Term 1803 Vol. L pages 60 - 74,*].

Under the Authority of *Maubury v. Madison* one must concur with the Supreme Court of the United States

"that an act of the legislature, repugnant to the constitution, is void." The conversion of Tennessee in 1834

from a Republic to a Democracy was repugnant to Article IV, Section 4 of The Constitution for the United

States, 1789, AND thus declares this conversion to be VOID.

The 1870 Constitution for the State of Tennessee

The events of the early 1860s eventually led our nation through one of its darkest hours. It is within the context of this conflict that the 1870 Constitution for the state of Tennessee arose.

Pre-War Events:

Isham (I'-sam) G. Harris, of Memphis, was elected governor of Tennessee in 1857, and again in 1859, both times by large majorities.

The legislature met in extra session on January 7, 1861, and provided for an election at which the people would say whether they wanted to hold a convention to determine whether Tennessee would remain in the Union or secede. The vote, taken on February 9, revealed that Tennessee strongly favored staying in the Union.

On April 12, 1861 the opening gun of the Second American Revolution was fired at Fort Sumpter.

On April 15, Lincoln called for seventy-five thousand troops, two regiments of which were from Tennessee, to put down the rebellion.

Secession

The legislature held an extra session, beginning April 25, in which Tennessee entered into military alliance with the Confederacy, adopted a declaration of independence, and ordinances dissolving the relationship between the state and federal government, to be ratified by popular vote.

The secession ordinance was ratified by popular vote on June 8, and on June 24, 1861, Governor Harris proclaimed that Tennessee's ties with the United States were dissolved.

Alexander Hamilton wrote in *The Federalist Papers*, No 28:

"The legislatures will have better means of information. They can discover the danger at a distance; possessing all organs of civil power and the confidence of the people, they can at once adopt a regular plan of position, in which they can combine all the resources of the community. They can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty."

Martial Law

On February 22 Grant declared martial law in West Tennessee (East Tennessee remained loyal to the Union during most of the war), and Nashville surrendered to the Federal Army on February 24, 1862.

As the subject of martial law raises many important and complex issues, it is discussed in a separate article from this article dealing with the constitutional history of Tennessee.

On March 12, 1862, Andrew Johnson, whom President Lincoln had appointed Military Governor of Tennessee, arrived and took over for the Union.

Governor Johnson demanded that all of Nashville's city officers and employees take an oath of allegiance to the Union, when they refused, he arrested them for treason and appointed his own officers in their place.

On March 18, 1862 Andrew Johnson in his Appeal to the People of Tennessee stated in part:

"In such a lamentable crisis, the Government of the United States could not be unmindful of its high Constitutional obligation to grant to every State in this Union a republican form of government, an obligation which every State has a direct and immediate interest in having observed toward every other

State, and from which, by no action on the part of the people in any State, can the Federal Government be absolved. A republican form of government, in consonance with the Constitution of the United States, is one of the fundamental conditions of our political existence, by which every part of the country is alike bound, and from which no part can escape" [The Paper of Andrew Johnson vol. 5, 1861 - 1862,].

Lincoln's letter to Governor Johnson, September 11, 1863:

(Writings of Abraham Lincoln, Constitutional ed., Vol. VI, p. 407 - 408)

"Executive Mansion, Washington, September 11, 1863

Hon. Andrew Johnson.

My dear Sir:-- All Tennessee is now clear of armed insurrectionists. You need not to be reminded that it is in the nick of time for reinaugurating a loyal State government. Not a moment should be lost. You and the co-operating friends that can better of the ways and means than can be judged by any here. I only offer a few suggestions. The reinauguration must not be such as to give control of the State and its representation in Congress to the enemies of the Union, driving its friends there into political exile. The whole struggle for Tennessee will have been profitless to both State and nation if it the Governor Johnson is put down and Governor Harris put up. It must not be so. You must have it otherwise. Let the reconstruction be the work of such men only as can be trusted for the Union. Exclude all others, and trust that your government so organized will be reorganized here as being the one of republican form to be guaranteed to the State, and to be protected against invasion and domestic violence. It is something on the question of time to remember that it cannot be known who is next to occupy the position I now hold, nor what he will do. I see that you have declared in favor of emancipation in Tennessee, for which may God bless you. Get emancipation into your new State government--constitution--and there will be no such word as fail for your case. The raising of colored troops, I think will greatly help every way.

Yours very truly,

A. Lincoln

Both the speech of Andrew Johnson of March 18, 1862 and Lincoln letter of September 11, 1863 expressed a desire that Tennessee once more have a republican form of government, verifying the constitution of 1834 provided a non-Republican form of government.

In the fall of 1864, Governor Johnson was elected Vice-President of the United States, and he was to be inaugurated on March 4, 1865.

A convention of Unionist met in Nashville January 9, 1865, drafted amendments to the state constitution, nominated candidates for governor and the legislature, and set February 22 and March 4, 1865 for the people to ratify their actions.

No Confederates or Confederate sympathizers, were allowed to vote, AGAINST THE PEACE AND DIGNITY OF THE STATE.

William Gannaway Brownlow was elected Governor on March 4, and he took office on April 5, 1865.

The Legislature of 1869, a military legislature acting under threat duress and collusion, called for a vote on holding a constitutional convention, and electing delegated to attend it.

This election, limited to only pro-unionist which was held on December 18, 1869, favored a convention by a very large vote.

Convention of 1870

The Convention met in Nashville on January 10, and elected General John C. Brown of Pulaski as its president. This act clearly violated Section XXIV, of the 1796 Declaration of Rights: ". . . that in all cases the military shall be in strict subordination to civil authority" by placing a military official in charge of developing a new government for Tennessee. :

The convention Adjourned February 23, 1870.

The Constitution was ratified by popular vote on March 26, 1870, and remained unchanged as the basic law of the state until 1953.

The delegates of the 1870 Convention declared:

"Whereas, the General Assembly of said State of Tennessee, under the virtue of the first section of the first article of the Declaration of Rights, contained in and forming a part of the existing [1834] Constitution of the State, by an act passed on the fifth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, did provide for the calling of a convention by the people of the State, to meet at Nashville on the second Monday in January, in the year of our Lord on thousand, eight hundred and seventy, and for the election of delegates for the purpose of amending or revising the present Constitution, or forming and making a new Constitution; and, Whereas, The people of the State, in the mode provided by said act have called said convention and elected delegates to represent them therein; now therefore, We, the delegates and representatives of the people of the State of Tennessee, duly elected, and in convention assembled, in pursuance of said act of Assembly, have ordained and established the following Constitution and form of government for this state, which we recommend to the people for their ratification.

According to Military Government and Martial Law [William E. Birkhimer, LL.B., Major General Staff U.S. Army, Third Edition, 1914], ". . . the adoption of a constitution during the war [was] under military orders" (page 110).

In Lincoln's letter to Johnson, he issued the following order to his military governor, "Let the reconstruction be the work of such men only as can be trusted for the Union. Exclude all others, and trust that your government so organized will be reorganized here as being the one of republican form to be guaranteed to the State."

The threatening acts of Johnson during his administration as military governor are shown in his actions toward the officials of Nashville. In Lincoln Plan of Reconstruction Charles H. McCarthy observes on page 17, "The mayor and the city council were ordered to take an oath of allegiance to the United States, and on their refusal were imprisoned."

On December 8, 1863 Lincoln issued his Proclamation of Amnesty and Reconstruction [Letters and State Papers of Abraham Lincoln, Vol. II. p. 408, see page 23 - 26. This proclamation required"... a number of persons not less than one tenth in number of votes cast in the Presidential election [of 1860], each having taken the oath aforesaid and not having since violated it, and being a qualified voter by the election law of the State existing immediately before the so-called act of secession, and excluding all others, shall reestablish a State government which shall be republican and in nowise contravening said oath, such shall be recognized as the true government of the State and the State shall receive thereunder the benefit of the Constitutional provision which declares that "The United States shall guarantee to every State in this Union a republican form of Government, and shall protect each of them against invasion; and on the application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence."

Clearly the convention of 1869 operated under duress.

Duress any unlawful threat or coercion used by person to induce another to act (or refrain from acting) in a manner he or she otherwise would not (or would). Subjecting person to improper pressure which

overcomes his will and coerces him to comply with demand to which he would not yield if acting as free agent [Henry-Campbell: Black, Blacks Law Dictionary®, Sixth Edition, West Publishing Co. St. Paul Minnesota, 1990] Let us review what happened

Under their own free will, the people of Tennessee elected Isham (I'-sam) G. Harris, of Memphis, governor of Tennessee in 1857, and again in 1859, both times by large majorities.

The legislature met in extra session on January 7, 1861, and provided for an election at which the people would say whether they wanted to hold a convention to determine whether Tennessee would remain in the Union or secede. The vote, taken on February 9, revealed that Tennessee strongly favored staying in the Union.

On April 12, 1861 the opening gun of the Second American Revolution was fired at Fort Sumpter. On April 15, Lincoln called for seventy-five thousand troops, two regiments of which were from Tennessee, to put down the rebellion. When Tennessee saw that Lincoln wanted them to fight against their countrymen their opinion changed..

The legislature held an extra session, beginning April 25, in which Tennessee entered into military alliance with the Confederacy, adopted a declaration of independence, and ordinances dissolving the relationship between the state and federal government, to be ratified by popular vote.

The secession ordinance was ratified by popular vote on June 8, and on June 24, 1861, Governor Harris proclaimed that Tennessee's ties with the United States were dissolved.

Lincoln, and his co-conspirators Grant and Johnson knew they had to bar ex-confederates from involvement in formation the new government for their overthrow of civil government to be a success.

A contract entered into under duress by physical compulsion is void. Also, if a party's manifestation of assent to a contract is induced by an improper threat by the other party that leaves the victim no reasonable alternatives, the contract is voidable by the victim [Henry-Campbell: Black, Blacks Law Dictionary®, Sixth Edition, West Publishing Co. St. Paul Minnesota, 1990]

As a result of this line of evidence, one must conclude one must consider the Constitution of 1870 to be a void document.

Which is the true Constitution for the State of Tennessee?

An Examination of the Constitution on 1870 shows it to be essentially democratic, rather than republican innature. In many respects it was more democratic than the document of 1834.

Therefore on the same grounds that the 1834 Constitution for Tennessee was repugnant to the Constitution for the United States, and thus void, so also could a Tennessee Republic Common Law Justices find and declare the 1870 Constitution for Tennessee to be repugnant to the Constitution for the United States. The 1870 constitution lacks legitimacy both in its form and how it was established. Finally one must concur with the Supreme Court in Texas v. White that the government formed in 1870 in Tennessee was and remains a de facto government only, organized by the President in virtue of his authority as commander-in-chief.

The constitution of 1870 was adopted under military government and created a de facto government only, The continuation of a military and de facto government by State officials represents a serious breach of the organic trust document of 1796, titled The Constitution for the State of Tennessee. Willful continuation of said breach, and hinderance of the establishment of a de jure government by the de jure Free People of Tennessee constitutes a comission of The Felony Official oppression T.C.A. 39-16-403 (a) (2), against the peace and the dignity of the state. Officials violating said statute become liable for all the penalties associated with committing the felony of Official Oppression. A Tennessee Republic common-law grand

jury may declare that the 1796, Constitution for the State of Tennessee remains as the only legitimate Constitution and form of Government for the State of Tennessee. Any willful denials of such a claim by state officials constitutes a commission of The Felony Official oppression T.C.A. 39-16-403 (a) (2), against the peace and the dignity of the state.

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