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Breach of Faith: Conscription in Confederate Georgia

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An abstract of
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Abstract

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Historians have concluded that the passage of three conscription, or military draft, laws by the Confederate Congress between 1862 and 1864 proved a sublimation of states' rights political ideology to the exigencies of the Civil War. This dissertation concludes that the Confederacy tried to, and for a time did, balance states' rights and conscription. First, states temporarily acquiesced to Confederate power as long as the civilian application of the law did not disrupt existing political architectures. Second, Confederates renegotiated definitions of states' rights and military power to bring them into closer alignment. Third, Confederates refined definitions of citizenship both to broaden the effectiveness of conscription and to safeguard the primacy of state over national allegiances. Fourth, conscription remained dependant on local social and economic elites who could either help or hinder its enforcement. As a result, the Confederacy was able to reap the benefits of centralized military power while maintaining a solid foundation in states' rights. But as the war turned against the South, the pool of available recruits dwindled, and conscription became corrupted by fraud and evasion. The Confederacy slowly drifted toward a military application of the law, a shift that threatened the compromises that supported conscription's acceptance.

This dissertation primarily investigates the application of conscription in the state of Georgia, although it does discuss events in other states for comparative purposes. Georgia was selected because in most cases the rhetorical support for or opposition to

conscription drove the broader national debate. It utilizes previously untapped legal, military, cultural and political records to analyze conscription at the national, state and local levels and demonstrates that any understanding of conscription must depend on a comprehensive understanding of all three.

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PREFACE

There is a direct relationship between a society's composition – social, economic, cultural, ideological and political – and its capacity for war. Eighteenth-century Prussian military theorist Carl von Clausewitz's famous maxim that "war is the continuation of politics by other means," for example, recognizes military action as a rational continuation of attempts to achieve socially accepted political goals, not as an undirected and meaningless expression of violence. Even those who disagree with Clausewitz's limited schema recognize that society and military power are inextricably linked. Since the late 1970s, such an understanding has given rise to the concept of strategic culture, general patterns of beliefs, attitudes and meanings ingrained within society that define as well as direct acceptable applications of military power. While Clausewitz is correct that in national wars politics must direct when and where to apply the capacity for violence, strategic culture is a much broader and more powerful concept, dictating what forms of violence are acceptable and giving collective meaning to that violence even in apolitical wars or in pre- or trans-national societies.

While both Clausewitzian rationalism and strategic culture define strategies to achieve specific goals, neither explain the development of mechanisms necessary to achieve those goals, mechanisms dependent upon the relationship between the military and the civilian structures that supply military manpower. What happens when strategic goals are not served by rationally acceptable agents? What happens when the levels and forms of violence required for victory exceed rationally acceptable levels? What happens when the agents tasked with gaining victory are incapable of achieving it because of rationally imposed limitations? One possibility, as international affairs expert Stephen

Peter Rosen has argued, is that “states may be forced or may choose to be less powerful than they might otherwise be, by adopting military organizations that reflect the dominant structures of the society.”¹ Another possibility is that states may choose to sacrifice their political beliefs, if only temporarily, in favor of victory. Such has been the consensus on the relationship between states’ rights and compulsory military service in Confederate States of America.

States’ rights is a form of republicanism that elevates the protection of state corporate rights to parity with the protection of individual rights. Based in the concept of divided sovereignty, a subtle and controversial doctrine in which the states, the national government and the people each share in the rights and responsibilities of governance, states’ rights was not the belief that *all* political power should be vested in the states. On the contrary, depending upon the circumstances, compromises could be made to grant increased powers, either permanently or temporarily, to the national government as long as the architectural integrity of decentralized politics remained stable. Although Southerners typically framed states’ rights as a chronological debate over which political body could proclaim itself the preeminent sovereign power – they frequently phrased it in terms of the states having created the national government – in practice this rhetoric gave way to a more realistic debate that recognized power as permanently unsettled, ebbing and flowing in reaction to events both within and without the political structure.

Critics of federal policy, North and South, had employed its rhetoric. Anti-federalists had used it to fight the ratification of the United States Constitution.

Democratic–Republicans had used it to fight Alexander Hamilton’s Federalist programs

¹ Stephen Peter Rosen, “Military Effectiveness: Why Society Matters,” *International Security* 19, no. 4 (Spring 1995), 6.

in the 1790s. New Englanders had used it to protest entry into the War of 1812 and the Mexican War, while agriculturalists had used it to fight protective tariffs meant to bolster northern industrial development. From its first formal articulation in Thomas Jefferson's 1798 Kentucky Resolutions to its maturation under John C. Calhoun in the 1830s to its test under fire during the territorial expansion of the 1840s and 1850s, states' rights had proven a supple dogma that could be deployed against any form of federal encroachment on the sovereignty and prerogative of the states.

The secession of the Southern states and the creation of a Confederacy based on states' rights, however, cannot be read simply as political ebb and flow. The more sustained assault on the westward expansion of slavery in the 1850s combined two powerful agendas – states' rights and slavery – and caused all prior restraint to disappear. Southern leaders now saw themselves as the saviors of an American republic led astray. Under their guidance, the states, conceived by the Founding Fathers, born of the Revolution, suffered under Northern radicals, crucified, died, and buried by the election of President Abraham Lincoln in 1860, would be resurrected as a confederation of states whose gospel would be states' rights – personal virtue, personal freedom, decentralized power, local governance, and the sanctity of private property.² It was a gospel against which all future political decisions would be weighed.

² Forrest McDonald, *States' Rights and the Union: Imperium in Imperio, 1776-1876* (Lawrence, KS: University of Kansas Press, 2000), chap. 9; Herbert McClosky, "State Sovereignty: Alexander H. Stephens' Defense of Particularist Federalism," *The Review of Politics* 11, No. 2. (April 1949), pp. 170-183; Frank Lawrence Owsley, *States Rights in the Confederacy* (Gloucester, MA: Peter Smith, 1961); Frank Lawrence Owsley, "Local Defense and the Overthrow of the Confederacy: A Study in State Rights," *The Mississippi Valley Historical Review* 11, no. 4 (March 1925): 490-525; Ulrich Bonnell Phillips, *Georgia and State Rights* (Yellow Springs, OH: Antioch Press, 1968), and Richard E. Berringer, Herman Hattaway, Archer Jones, and William N. Still, Jr., *Why the South Lost the Civil War* (Athens, GA: University of Georgia Press, 1986), chap. 10, 16, and appendix I.

This touchstone was especially apparent in the area of state security. Confederates believed large national armies led to military despotism by concentrating too much power in the hands of the national executive. Standing armies were to be avoided in deference to the republican purity of state militias.³ Thus, while the Confederacy created a small, regular army, the large provisional army that did most of the fighting against the United States early in the war was composed of state and privately raised volunteer short-term militia companies.⁴ Volunteers could join either force, but the Confederate government had little power to coerce either the states or their citizens to comply with troop requests.⁵ Militia units retained their state identities, and states controlled the enlisting, officering, training, supplying, clothing, and arming of most military units. It was a military balance that closely mirrored the broader political balance of the Confederacy.

³ Similar concerns had prevented the increase of the United States regular army earlier in the century. During the War of 1812, President James Monroe proposed increasing the U.S. regular troops in response to the failure of militia troops from New York and other northern states to repel British invasions from Canada. In the 1830s, John C. Calhoun proposed a modified regular force expansion by creating an expandable army, one based on the maintenance of a small enlisted force with a disproportionately large officer corps. Officers would use peacetime for education, training and preparation of the permanent regular force and themselves to be used as a core supplemented by a rapid expansion of the enlisted ranks during war. John K. Mahon, *History of the Militia and the National Guard*, The Macmillan Wars of the United States, Louis Morton, ed. (New York, NY: Macmillan Publishing Company; London: Collier Macmillan Publishers, 1983), 74-75, 82-83.

⁴ See, Richard P. Weinert, "The Confederate Regular Army," *Military Affairs* 26, no. 3 (Autumn 1962): 97-107. This system was a continuation of the antebellum martial system employed by the United States. During the Revolutionary War, for example, the American army had consisted of a core of hardened Continental troops and numerous attached local and colonial militias. America entered the War of 1812 with a regular army of nearly 36,000 men and a combined volunteer and militia force of more than four times that number. Seventy percent of the American army in the Mexican War was volunteer or militia forces. The Confederate army also contained militia and partisan units raised by secessionist elements in the non-seceded states of Missouri and Kentucky, as well as some northern states. John R. Alden, *A History of the American Revolution* (Da Capo Press, 1989), 251-252; Mahon, *History of the Militia*, 67, 94. See also Marcus Cunliffe, *Soldiers and Civilians: The Martial Spirit in America, 1775-1865* (Boston, MA: Little Brown, 1968).

⁵ O.R., ser. IV, vol. I, pp. 126-127, 537.

The reality that dawned in the late winter and early spring of 1862, however, was that states' rights was undermining its own defense. The short-term soldiers refused to reenlist in the numbers needed by the Confederate high command. The decentralization of military organizations stymied recruiting efforts, delayed troop transfers and denied Confederate soldiers the use of state-owned weapons. So bad were conditions in February 1862 that Speaker of the House Thomas Bocoock wondered aloud to the newly seated Confederate Congress "whether without injury to its own integrity, [the Confederate constitution] can supply the machinery and afford the means requisite to conduct this war to that successful conclusion which the people in their hearts have resolved on."⁶

Congress's answer was the passage of three acts collectively authorizing the conscription of all white male Confederate residents between the ages of seventeen and fifty, the first laws of their kind in American history. Even the draft laws of the United States, the first of which passed in 1863, one year after the first Confederate law, would not grant such sweeping powers. President Jefferson Davis could now force Southern men into the military at will. For a nation founded on states' rights, on the sanctity of decentralized powers, on personal liberties, the Confederacy appears to have answered Bocoock's question with a resounding "no." Rather than sacrifice its military effectiveness, the Confederacy sacrificed its political integrity.

What is remarkable is how little this interpretation has changed since its first formulation in 1924. In his seminal study *Conscription and Conflict in the Confederacy*, University of Alabama historian Albert B. Moore maintained that the Confederacy

⁶ *Southern Historical Society Papers*, XLIV (Richmond, VA: The William Byrd Press, Inc., 1923), 12. Hereafter cited as SHSP.

readily abandoned states' rights.⁷ *Conscription and Conflict* is a straightforward book, detailing the basic legislation, organization, and implementation of conscription as well as a state-by-state account of the cooperative and obstructive efforts of state governments.⁸ Although the book covers only the fundamentals of conscription, it remains an important attempt to explain two seemingly contradictory strategies the Confederate government adopted to protect the slaveholder's republic. First, to preserve states' rights, the Confederate government bypassed state governments and assumed direct control over the enlistment of all eligible white male Confederate citizens. Second, in a society claiming the equality of all white men, it created a military system accused of allowing the wealthy to remain at home through generous exemptions while forcing the poor to enlist, of using mounted patrols and hunting dogs – tactics usually reserved for chasing runaway slaves - to chase down draft dodgers and deserters, and, in some areas, of leading to open rebellion against the Confederacy. According to Moore, the Confederacy never resolved these paradoxes, and the conscription effort, and by extension its war effort, struggled for it.

⁷ Albert Burton Moore, *Conscription and Conflict*, Southern Classics Series (Columbia, SC: University of South Carolina Press, 1996).

⁸ Other smaller studies look at specific aspects of Confederate conscription. Douglas Clare Purcell's "Military Conscription in Alabama During the Civil War," *Alabama Review* 34, no. 2 (1981): 94-106, for example, details the origins and operations of Brigadier General Gideon J. Pillow's enlistment efforts in Alabama, Mississippi, and Tennessee but adds little to Moore's work. His major source materials are the *War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* 70 vol. (Washington: Govt. Print. Off., 1880), hereafter cited as *Official Records* followed by series (Roman numeral), volume, part (if needed), and page numbers, and Moore, who himself relies primarily on the *War of the Rebellion*. David P. Smith's "Conscription and Conflict on the Texas Frontier, 1863-1865," *Civil War History* 36, no. 3 (1990): 250-261, studies conscription efforts on the Texas frontier, the conflicts between Governor Pendleton Murrah of Texas and the Confederate government over control of that state's militia and state troops, and the effects the transfer of these troops to Confederate control had on the protection of Texans from Indian attacks.

Without exception, historians have accepted this interpretation. A quarter of a century after Moore, E. Merton Coulter's *Confederate States of America*, the seventh volume of the *History of the South* series, suggested that the Southern nation would have been better served had it not ignored states' rights but made conscription the exclusive purview of the states.⁹ Fifty-plus years after Moore, James McPherson, in his deservedly praised *Battle Cry of Freedom*, carried on the tradition of portraying President Davis in Hamiltonian terms, and quoted Davis' defense of conscription as "necessary and proper" for the survival of the Confederate states.¹⁰ Even "comprehensive" histories of the American draft give Confederate conscription little attention and make no attempt to question Moore's hypothesis. Jack Leach devotes only two pages of his 460-page *Conscription in the United States: Historical Background* to the "sweeping and most oppressive nature" of Confederate conscription, and John Whiteclay Chambers II devotes less than six pages in *To Raise an Army: The Draft Comes to Modern America*.

By comparison, the Union draft has been the subject of numerous works.¹¹ Following the Civil War, Provost Martial General James Fry, head of the Union army's Bureau of Conscription, ordered each of his district Acting Assistant Provost Martial Generals to compile a general history of their conscription efforts and to suggest solutions to the many problems they had faced. Collectively these reports, and in particular that of General James Oakes of Illinois, formed the structural basis for

⁹ E. Merton Coulter, *The Confederate States of America, 1861-1865*, vol. 7, *A History of the South*, Wendell Holmes Stephenson and E. Merton Coulter, eds. (Baton Rouge, LA: Louisiana State University Press and The Littlefield Fund for Southern History of the University of Texas, 1950), 327-328.

¹⁰ James. M. McPherson, *Battle Cry of Freedom: The Civil War Era* (Oxford: Oxford University Press, 1988; New York, NY: Ballantine Books, 1989), 433.

¹¹ For a detail historiography of northern conscription studies, see James W. Geary, "Civil War Conscription in the North: A Historiographical Review," *Civil War History* XXXII, no. 3 (1986): 208-228.

subsequent federal military drafts throughout the twentieth century. They also served as the basis for the first formal history of the Northern draft, General Fry's own *New York and the Conscription of 1863*.¹² The World War I military draft fostered a renewed interest in compulsory service and in 1928, four years after Moore published *Conscription and Conflict*, Frederick A. Shannon published *The Organization and Administration of the Union Army, 1861-1865*. The first comprehensive study of the Union draft, it found that, unlike the Confederate draft, the Union draft had actually protected states rights by motivating states to meet federally mandated quotas rather than acting directly on the citizen. Lincoln imposed the draft only on those states that failed to meet these quotas.¹³ Eugene C. Murdock, writing amidst the furor of the Vietnam era drafts, attempted to support the modern draft by extolling the merits of its nineteenth-century Northern predecessor.¹⁴

In addition to its provenance, the Union draft also has a much more colorful and assessable history because of the several draft riots that erupted throughout the North. In particular, the July 1863 New York Draft Riots that killed at least 105 people has captured the imagination of the American public, garnering several books, documentaries

¹² Eugene Converse Murdock, *One Million Men: The Civil War Draft in the North* (Madison, WI: State Historical Society of Wisconsin, 1971), 5; James B. Fry, *New York and the Conscription of 1863: A Chapter in the History of the Civil War* (New York and London: G. P. Putnam's Sons, 1885).

¹³ Fred A. Shannon, *The Organization and Administration of the Union Army, 1861-1865* (Cleveland, OH: The Arthur H. Clark Company, 1928).

¹⁴ Eugene C. Murdock, *Ohio's Bounty System in the Civil War* (Columbus, OH: Ohio State University Press, 1963); Eugene C. Murdock, *Patriotism Limited, 1862-1865: The Civil War Draft and the Bounty System*. (Kent, OH: Kent State University Press, 1967); Murdock, *One Million Men*; Eugene C. Murdock, "Was It a 'Poor Man's Fight'?" *Civil War History* 10 (September 1964): 241-245. c.f., James W. Geary, *We Need Men: The Union Draft in the Civil War* (DeKalb, IL: Northern Illinois University Press, 1991).

and a major motion picture, 2002's *Gangs of New York*.¹⁵ Because of this, both supporters and critics of the draft throughout the twentieth century rooted their debates in the history of the United States' Civil War draft but gave only passing reference, if any, to the Confederate draft.¹⁶ Even at the turn of the twenty-first century, as rumors circulated about a possible draft to meet military demand in the post-9/11 wars in Iraq and Afghanistan, commentators' historical references emphasized the Union over the Confederate (although they usually mangled the history they did cite).¹⁷

¹⁵ Jay Cocks, Steven Zaillian, and Kenneth Lonergan. "Gangs of New York," dir. Martin Scorsese, s.n.: Miramax Films, 2002; Lisa Ades, Ric Burns and Steve Rivo, "American Experience: New York - A Documentary Film," dir. Ric Burns, s.n., Steeplechase Films, 1999; David M. Barnes and Keith M. Read, *The Draft Riots in New York, July, 1863: The Metropolitan Police, Their Services During Riot Week, Their Honorable Record* (New York, NY: Baker & Godwin, 1863); Joel Tyler Headley, *The Great Riots of New York, 1712 to 1873 Including a Full and Complete Account of the Four Days' Draft Riot of 1863* (New York, NY: E.B. Treat, 1873); Irving Werstein, *July, 1863* (New York, NY: Messner, 1957); James McCague, *The Second Rebellion: The Story of the New York City Draft Riots of 1863* (New York, NY: Dial Press, 1968); Adrian Cook, *The Armies of the Streets: The New York City Draft Riots of 1863*, (Lexington, KY: University Press of Kentucky, 1974); Iver Bernstein, *The New York City Draft Riots: Their Significance for American Society and Politics in the Age of the Civil War* (New York, NY: Oxford University Press, 1990); Harold M. Hyman, ed. "New Yorkers and the Civil War Draft," *New York History* 36 (April 1955): 164-171; William L. Calderhead, "Philadelphia in Crisis: June-July 1863," *Pennsylvania History* 28 (April 1961): 142-155; Winona L. Fletcher, "Speech-Making of the New York Draft Riots of 1863," *Quarterly Journal of Speech* 54 (April 1968): 134-139; Joseph P. Fried, "Story of the New York Draft Riots," *Civil War Times Illustrated* 4 (August 1965): 4-10, 28-31; A. Hunter Dupree and Leslie H. Fishel, Jr. "An Eyewitness Account of the New York Draft Riots, July, 1863," *Mississippi Valley Historical Review* 47 (December 1960): 472-479; Lawrence H. Larsen, "Draft Riot in Wisconsin, 1862," *Civil War History* 7 (December 1961): 421-427; Lawrence Lader, "New York's Bloodiest Week," *American Heritage* 10 (June 1959): 44-49, 95-98; Wayne Jordan, "The Hoskinville Rebellion," *Ohio State Archaeological and Historical Quarterly* 47 (October 1938): 319-354; William F. Reekstin, "The Draft Riots of July, 1863, on Staten Island." *Staten Island Historian* 19 (October-December 1958): 27-30. Death toll for the New York City riot taken from McPherson, *Battle Cry of Freedom*, 610.

¹⁶ See, for example, George Q. Flynn, *Conscription and Democracy: The Draft in France, Great Britain, and the United States* (Westport, CT.: Greenwood Press, 2002); George Q. Flynn, *The Draft, 1940-1973* (Lawrence, KS: University Press of Kansas, 1993); John O'Sullivan, *The Draft and Its Enemies: A Documentary History*, ed. John O'Sullivan and Alan M. Meckler (Urbana, IL: University of Illinois Press, 1974); John Whiteclay Chambers, *Draftees or Volunteers: A Documentary History of the Debate over Military Conscription in the United States, 1787-1973* (New York, NY: Garland Publishing, 1975); John O'Sullivan, *From Voluntarism to Conscription: Congress and Selective Service, 1940-1945* (New York, NY: Garland Publishing, 1982); David R. Segal, *Recruiting for Uncle Sam: Citizenship and Military Manpower Policy* (Lawrence, KS: University Press of Kansas, 1989); John Whiteclay Chambers, *To Raise an Army: The Draft Comes to Modern America* (New York, NY: Free Press, 1987).

¹⁷ See, for example, David Greenberg, "Calls for Military Draft Promote Illusion of Equality," *Christian Science Monitor*, April 26, 2004, p. 9. Susan Aschoff of the *St. Petersburg Times* confused elements of both the Union and Confederate drafts. Beth Asch of the *Boston Globe* incorrectly stated that both the

This vision's survival lies primarily with its strength in explaining Confederate loss. The Confederate government's heavy-handed approach to military recruitment and its rejection of states' rights in doing so alienated its population. Exemption laws excusing planters from service gave rise to claims of a rich man's war and a poor man's fight. And the nation as a whole looked down on conscripts as cowards and possibly traitors for failing to leap to their country's defense. Disenchanted with the direction the young nation was heading, if not openly opposing it, conscripts fled to the mountains and swamplands to avoid enlistment, civilians shielded these layouts, and enrolled recruits deserted. The soldiers themselves were more than capable of defeating the Union military. But they would not do so for a government that had surrendered the very principles for which they fought. On the other hand, the Union draft respected the rights of the states, treated its citizens equitably and established an exemption system that was reasonably open to all. Although it, too, was subject to claims of a rich man's war, it was not so blatant as the Confederacy. It is a vision marred by the fact that Confederacy never erupted in open, violent and wide-spread riot as did the North over its draft.

Slowly, the "poor man's fight" is giving way to new research. In the 1980s, historians began using statistical analysis to dissect both Northern and Southern enlistment patterns. David Riggs's study of the Union gunboat *U.S.S. Cairo*, for example, found a crew composed of diverse ethnic and economic backgrounds, not what one would expect from a military composed of the conscripted poor.¹⁸ He and other

Union and Confederate drafts required that "each state hold its own draft lottery." In fact, the Confederate law did not allow such lotteries. Susan Aschoff, "Is Your Number Up?" *St. Petersburg Times*, May 11, 2004, p. 1E; Beth Asch, "The All-Volunteer Army Is Working Well," *Boston Globe*, February 9, 2003, p. D12.

¹⁸ David F. Riggs, "Sailors of the *U.S.S. Cairo*: Anatomy of a Gunboat Crew," *Civil War History* XXVIII, no. 3 (1982): 266-273.

historians have found the Northern draft to be more responsive to a fluctuating market economy than to targeted class bias.¹⁹ Even among Confederate military studies, cracks are beginning to appear in the claim of the rich man's war. Larry Logue has suggested that fears of racial and social upheaval rather than patterns of social or economic bias influenced enlistment patterns throughout Mississippi.²⁰ Randolph Campbell finds that the Civil War in Texas was a "'rich man's war' and a 'rich man's fight' and to a somewhat lesser extent a 'poor man's fight' as well" as the wealthy served in greater proportion to their percentage of the total population than did the poor.²¹ Martin Crawford's research finds that the average enlistee was young and unemployed or underemployed searching for an opportunity to fend off poverty, not a poor white forced to enlist.²² Even the image of the conscript as a skulking coward is beginning to improve

¹⁹ W. J. Rorabaugh admits that the military was composed largely of landless unskilled and unemployed laborers, but argues that the military served as a buffer against poverty that improved the economic conditions for clerks, farm laborers, and skilled workers frustrated by the rise of a market economy. W. J. Rorabaugh, "Who Fought for the North in the Civil War? Concord, Massachusetts, Enlistments," *The Journal of American History* 73, no. 3 (December 1986): 695-701. See also, Emily J. Harris, "Sons and Soldiers: Deerfield, Massachusetts and the Civil War," *Civil War History* XXX, no. 2 (June 1984): 157-171; William Marvel, "New Hampshire and the Draft, 1863," *Historical New Hampshire* 36 (Spring 1981): 58-72, and Kurt Hackner, "Response to War: Civil War Enlistment Patterns in Kenosha County, Wisconsin," *Military History of the West* 29 (Spring 1999): 34. Research is also showing that the draft was used as a tool for labor rather than class suppression. Grace Palladino, *Another Civil War: Labor, Capital and the State in the Anthracite Regions of Pennsylvania, 1840-68* (Urbana, IL and Chicago, IL: University of Illinois Press, 1990); James W. Geary, "A Lesson in Trial and Error: The United States Congress and the Civil War Draft: 1862-1865." Ph.D. dissertation, Kent State University, 1976; James W. Geary, "The Enrollment Act and the 37th Congress." *Historian* 46 (August 1984): 562-582; Geary, *We Need Men*.

²⁰ Larry Logue, "Who Joined the Confederate Army? Soldiers, Civilians, and Communities in Mississippi." *Journal of Social History* 26 (Spring, 1993): 611-623. While Logue's article does make its points, it raises many more questions than it answers. His attempt to identify motivation through enlistment patterns is questionable, at best, and he makes large assumptions about riverfront planters without testing his theory that they may have enlisted elsewhere. c.f. Victoria Bynum, *Free States of Jones: Mississippi's Longest Civil War* (Chapel Hill : University of North Carolina Press, 2001).

²¹ Randolph B. Campbell, "Fighting for the Confederacy: The White Male Population of Harrison County in the Civil War," *Southwestern Historical Quarterly* CIV, no. 1 (2000): 22-39.

²² Martin Crawford, "Confederate Volunteering and Enlistment in Ashe County, North Carolina, 1861-1862," *Civil War History* 37 (1991): 29-50.

with Walter Hilderman's recent study of North Carolina conscripts, *They Went into the Fight Cheering*.²³

Yet few historians have been willing to question the other premise of conscription's critics: that conscription violated states' rights and that that violation destabilized Southern loyalties. Here I have to be clear. This dissertation does not examine states' rights' causative role in Confederate defeat. Frank Owsley's 1925 thesis that the Confederacy's fetish for states' rights as a constitutional principle lost it the war has already been addressed by historians.²⁴

²³ Beginning with the military service of his Confederate conscript ancestor, Private Albert G. Thompson, Hilderman reconstructs the operation of conscription in North Carolina and follows Thompson and his fellow conscripts throughout the remainder of the war. Although obviously self-serving – his claim that conscripts went into the war “cheering” might be a bit much – the work is admirable in its attempt to treat conscripts as legitimate Confederate soldiers who fought, died, coped or deserted just as every other Confederate soldier.

But Hilderman, an outspoken critic of the Sons of Confederate Veterans and other Confederate heritage organizations who have taken increasingly neo-Confederate or neo-secessionist stances, has come under intense criticism for his study. UCV members nationwide overwhelmed the review section of the book's website at Amazon.com with scathing reviews. One critic wrote that “this so called book deserves a - [minus] 5 Stars. This book is nothing but mear [sic] lies from a one sided idiot [sic]. Hilderman has absolutely no clue about what went on during the war for Southern Independence. Hilderman and his ancestor are both cowards.” Although Amazon.com eventually removed the early reviews at the request of a UCV member who had positively reviewed the book and himself came under fire, the attacks have continued. As of this writing (January 2008), one reviewer has suggested that the early reviews disappeared as a result of “scalawaggery and political correctness,” while another suggested that the “book is not worth the time it takes to read it, and the best possible use for it would be to hang it on a nail in the outhouse and let nature take it's [sic] course.” See, Customer Reviews for *They Went into the Fight Cheering*, Amazon.com (accessed January 25, 2008, at http://www.amazon.com/review/product/1933251255/ref=cm_cr_dp_hist_1?%5Fencoding=UTF8&filterBy=addOneStar; Walter C. Hilderman III, “An Open Letter to Mr. Chris Sullivan, Commander-in-Chief, Sons of Confederate Veterans, May 20, 2007,” electronic resource (accessed January 25, 2008 at <http://savethescv.org/Open%20Letter%20to%20Sullivan.htm>).

Hilderman's campaign against the course of the UCV has resulted in the creation of a website documenting his fight (www.savetheucv.org) and has garnered the attention of the Southern Poverty Law Center as well as local and national news organizations. Heidi Beirich and Mark Potok, “A War Within,” *Intelligence Report* 108 (Winter 2002), electronic resource (accessed January 25, 2008 at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=77>); Tracy Rose, “The War Between the Sons: Members Fight for Control of Confederate Group,” [Asheville, NC] *Mountain Xpress*, February 5, 2003.

²⁴ See, for example, Owsley, “Local Defense and the Overthrow of the Confederacy”; Owsley, *States Rights and the Confederacy*; Beringer, et. al., *Why the South Lost the Civil War*, chap. 10 and Appendix I; Paul D. Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge, LA: Louisiana State University Press, 1978); Arthur Schlesinger, Sr., “Lewis O. Saum, “Schlesinger and ‘The State Rights Fetish’: A Note” *Civil War History* 24 (December 1978), 357-359.

Even as Owsley's book was being released, Arthur M. Schlesinger, Sr., countered that states' rights "never had any real vitality" and that every region of the United States at different times under different circumstances had "sought its shelter in much the same spirit that a western pioneer seeks his storm-shelter when a tornado is raging." But the dialog that these two men began holds significance for understanding the relationship between conscription and states' rights. Schlesinger was right. States' rights had taken on multiple meanings that can only be understood against "underlying conditions of vast social, economic or political significance."²⁵ And so it was quite natural for the governors of Georgia and North Carolina and other disgruntled Confederates to rail against Davis and the Confederate Congress for violating *their* interpretations of what states' rights meant in *their* states. But, so, too, was Owsley correct. The fetish of states' rights was so deeply ingrained in the political mindset that even such counterintuitive legislation as national conscription could be defined along states' rights lines. The question remained, however, whose states' rights? And what would states' rights and the national compact look like when the debate was over?

The answer lies beyond the objective results of Congressional action (whether a bill passed or failed) and conscription activities (angry citizens and runaway conscripts) on which so many previous studies have relied. Greater attention must be paid to the multi-layered subjective and sometimes passionate influences that touched conscription. Some can be seen in the halls of the Confederate Congress. Moore paid little attention to Congressional action beyond recognition of the bills passed. Even he admitted that "in the absence of complete records it is impossible to place a satisfactory estimate upon the

²⁵ Arthur M. Schlesinger, Sr., *New Viewpoints in American History*, vol. 1 (New York, NY: The Macmillan Company, 1925), 243.

value of conscription.”²⁶ He wrote in the wake of the first publication of the *War of the Rebellion*, the official records of both the Union and Confederate armies from 1880 to 1901, records that included only a sampling of presidential and Congressional documents. And although he made use of the *Journals of the Confederate Congress*, these records lacked detail, in most cases recording only key votes and bills. It was not until the more detailed Congressional reporting of the Richmond *Examiner*, the Richmond *Dispatch* and other newspapers could be gathered and edited by the Southern Historical Society and the Virginia Historical Society that many of the important debates and speeches could be accessed in full.²⁷ Yet while several historians have dissected Congressional voting patterns on conscription, none have taken advantage of these resources to question Moore’s original findings.²⁸

Some influences can be seen in the actions of the states and their administrations. Georgia, in particular, offers fertile ground. The rancorous debate over conscription between Georgia Governor Joseph E. Brown and the Confederate government began soon after the passage of the first act and lasted throughout the war. It is here that the differing ideas about the constitutional basis for conscription first become visible, and it is here that the national debate gains its full meaning. Georgia is by no means representative of all Confederate states. Each state held its own opinions about the debate, and each would make worthy future subjects for study. But Georgia set the tone,

²⁶ Moore, *Conscription and Conflict*, 355.

²⁷ *SHP*, vols. 44-52.

²⁸ See, for example, 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, TN: Vanderbilt University Press, 1972); Kenneth C. Martis, *The Historical Atlas of the Congresses of the Confederate States of America, 1861-1865* (New York, NY: Simon & Schuster, 1994).

and in most cases the opinions expressed by other states and their political leaders came in response to Georgia's lead. So any attempt to understand conscription's relationship to the national compact must include an understanding of the state politics that rooted Governor Brown's opposition in both ideological and practical terms.

Even more influences can be found in the daily activities of conscription officials within the states. Moore's contention that conscription was a "battle of giants," a contest between legal and political elites, left little room for the county enrollment officer.²⁹ But conscription and its officers responded to local politicians, judges and attorneys, newspapermen and businessmen, immigrants and foreign agents, conscripts and draft dodgers, wives and daughters, as much as to state and national figures.

It is in the relationship between these different levels of influence and response that Schlesinger's underlying conditions of states' rights are to be found. What we find is that Confederates spent an inordinate amount of time shaping an explanation of conscription that conformed to their political touchstone. But we also find that their explanation was almost as dangerous to a states' rights Confederacy as had been their putative ignorance of states' rights.

²⁹ Moore, *Conscription and Conflict in the Confederacy*, 258.

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Yes, its *finally* done.

LIST OF ABBREVIATIONS

CI	Confederate Imprints
JCCSA	Journal of the Confederate States of America
GSCCF	Georgia Supreme Court Case Files
PCMA	Proceedings of the Committee on Military Affairs of the House of Representatives of the Permanent Congress
SHP	Southern Historical Society Papers

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CHAPTER ONE
SOME MEANS RESEMBLING CONSCRIPTION

In March 1862, Private William S. White of the 3rd Company, Richmond Howitzers, awoke to find himself covered in sleet, ice and snow. “Last night was one of the most miserable I ever spent,” he recorded in his diary. “My limbs are nearly frozen, and to-day it is so very cold we have to keep wrapped up in our blankets all the time.” The emplacements, he saw, were coming into the shape. The columbiads, Dahlgren’s and other big guns were being readied.¹ But the ground around Yorktown, Virginia, had turned to an icy slush that crackled under White's feet. It would only make the preparations that much more unpleasant.

White would be rid of that, though. He was going to Richmond where he would enlist as many recruits as he could for long-term Confederate service and forward them to the defensive lines. General George B. McClellan’s landing of a massive Northern army off Hampton Roads had spread fear up and down the Yorktown peninsula. Everyone knew that Richmond was the ultimate goal, but they also knew that even with the defensive walls and mounding barbets, White and the other 10,000 Confederate troops, diligent and brave to be sure, would be vastly outnumbered by the nearly 100,000 Union troops they would soon face. And if Richmond fell, the war was lost.² It was imperative White succeed at his assignment. But it would be an uphill battle. The idea of long-term service was not popular, and Virginia Governor John Letcher's his recent call for 100,000

¹ George B. Davis, Leslie J. Perry, and Joseph W. Kirkley, *The Official Military Atlas of the Civil War*, Calvin D. Cowles, comp. (New York, NY: Gramercy Books, 1983), plate XV:1.

² Stephen W. Sears, *To the Gates of Richmond: The Peninsula Campaign* (New York: Ticknor & Fields, 1992), chap. 1.

short-term militiamen offered ample incentive to reject the demands of the Confederate military.³

It had not been this way when secession had lit fires in the belly of hot-blooded Southern men. In towns and crossroads from Virginia to Texas, cannon fire and toasts, parades and speeches had greeted the creation of a new nation, a confederacy of states that many Southerners believed better reflected the political values of states' rights. And when the old Union had refused to recognize this new nation, Southern men young and old had raced to the ranks, thumping their chests in pride that *they* would preserve Southern rights and independence. Locally raised militia and volunteer organizations tendered themselves for Confederate service and promised the Confederate army would never want for soldiers. Wives and mothers had sewn flags and uniforms to carry their men across the battlefield. Battles had been won, and victorious Confederates had marched through Southern streets crying the war would soon be over; independence would soon be theirs.

But by late 1861, many of these same men had cooled to the realization that those initial impulses were fleeting. Secession's victory had not been complete, its acceptance in the border regions of Kentucky, Missouri, Tennessee, and Maryland was neither as heartfelt nor as widespread as some in the Deep South had hoped, and the stability of the Confederate nation was tenuous at best. Even after the Confederate victory at Bull Run, that single great battle that was to bring the war to an end, Union soldiers had fallen back

³ William S. White, "A Diary of the War, or What I Saw of It" in *Contributions to a History of the Richmond Howitzers Battalion*, Pamphlet No. 2 (Richmond, VA: Carlton McCarthy & Co., 1883), 102, 111-113.

to lick their wounds, not admit defeat.⁴ By 1862, Federal troops rebounded to seize control of much of the Mississippi River Valley.⁵ The Union assault at Port Royal, South Carolina, on New Year's Day had been a relatively minor engagement, but it had heightened a growing Southern sense that an invasion of the eastern seaboard was coming, a belief reinforced when Union naval ships began testing Confederate coastal defenses in Georgia and Florida. The capture of Roanoke Island in early February provided Union troops with a staging ground for further incursions along the North Carolina coast. By early March, Nashville had fallen, Union ironclads were sailing into the Chesapeake Bay, and Union troops from Roanoke were marching on New Bern and Beaufort, threatening to seize the Atlantic and North Carolina railhead at Morehead City.⁶ Worst of all, Northern forces were also massing for an assault on the Confederate capital at Richmond.⁷

⁴ For explorations of the Battle of Manassas and Confederate optimism for a quick war, see: Ethan Sepp Rafuse, *A Single Grand Victory: The First Campaign and Battle of Manassas* (Wilmington, DE: SR Books, 2002), chapter 1; John Hennessy, *The First Battle of Manassas: An End to Innocence July 18-21, 1861*. (Lynchburg, Va.: H. E. Howard, 1989); William C. Davis, *Battle at Bull Run: A History of the First Major Campaign of the Civil War*. (Garden City, N.Y.: Doubleday, 1977).

⁵ Stephen Douglas Engle, *Struggle for the Heartland: The Campaigns from Fort Henry to Corinth*. Great Campaigns of the Civil War (Lincoln: University of Nebraska Press, 2001); B. Franklin Cooling, *Forts Henry and Donelson: The Key to the Confederate Heartland*. (Knoxville: University of Tennessee Press, 1987); B. Franklin Cooling, *Fort Donelson's Legacy: War and Society in Kentucky and Tennessee, 1862-1863*. (Knoxville: University of Tennessee Press, 1997); Spencer Tucker, *Unconditional Surrender: The Capture of Forts Henry and Donelson*, Civil War Campaigns and Commanders Series (Abilene, Tex.: McWhiney Foundation Press, 2001); James J. Hamilton, *The Battle of Fort Donelson* (South Brunswick: T. Yoseloff, 1968).

⁶ David J. Eicher, *The Longest Night: A Military History of the Civil War* (New York: Simon & Schuster, 2001), 158-159, 183-185, 199-202.

⁷ The Peninsula Campaign was the centerpiece of Union General George B. McClellan's plan to eliminate the threat to Washington posed by Confederate General Joseph E. Johnston's Confederate army. Believing Johnston commanded as many as 150,000 men, far more than McClellan could rally outside of the United States capital, McClellan proposed turning Johnston's right flank by landing his army along Virginia's coast and then marching overland on Richmond. The plan's beauty lay in the fact that if Johnston maintained his present position there would be no possibility of him reaching Richmond in time; he would be too far away. But McClellan was mistaken. Johnston did not have 150,000 men; he had just over 42,000. And on the Yorktown Peninsula, where McClellan began his landing of 125,000 Union soldiers,

Just as fragile had been the utopianism of the selfless, long-suffering Confederate soldier. Soldiers found that the thump of pride quickly became the pound of fear and that family responsibilities outweighed ideological mandates. Crops needed tending. Families needed protecting. Slaves needed managing. Despite a genuine effort on the part of many Southern men to join the fight in 1861, few could afford to absent themselves for extended periods of time.⁸ Even if domestic factors had allowed, few men would have agreed to the long terms of service increasingly demanded by Confederate leaders. Service required a temporary submission of personal needs to the public good. That was the essence of republicanism, and the communal character of state militia service kept such ideals well within reach without threatening personal liberties. But long-term national service meant protracted isolation from home, martial regimentation, and an acceptance of seemingly arbitrary dominance by fellow whites, a condition unacceptable to whites attuned to a slave society that fractured black communal identity, subjugated the interests of black men and women to the needs and desires of white masters, and often found capricious and violent expression.

States, too, were concerned with the effects of long-term military service. As Justice Jenkins of the Georgia Supreme Court wrote in 1862, “withdrawn from the ordinary civil pursuits,” long-term soldiers became “de-citizenized,” removed from the civic body of their states, controlled by the national government, and denied the basic

Confederate Brigadier General John Bankhead Magruder had a skeleton force of only 10,000 men, chiefly artillerists, spread along a thin grey line from Yorktown in the east to Mulberry Island in the west. This is why Governor Letcher had issued the militia call that so hampered Private White’s enlistment efforts. The Confederacy, as far as he was concerned, would be unable to protect the city, and, like Georgia’s Governor Joseph E. Brown at the gates of Savannah, he felt it his constitutional duty to rally forces to its defense. Sears, *To the Gates of Richmond*, chap. 1.

⁸ See, for example, William Blair, *Virginia's Private War: Feeding Body and Soul in the Confederacy, 1861-1865* (New York: Oxford University Press, 1998), 35-37.

liberties due any republican citizen.⁹ Thus, special care was taken to keep the soldier's term in national service short, typically no more than one year.

The Confederacy did try to entice long-term volunteers. A December 1861 act offered a \$50 bounty to all new soldiers who enlisted for three years and all twelve-month troops who reenlisted for two years.¹⁰ Yet, it was ineffective and inefficient. After only two weeks, the Bounty Act had attracted a mere 150,000 men at a cost of \$15,000,000, or an average of \$100 per soldier, double the budgeted cost. Over the next eighteen weeks only 2,400 new recruits reported for Confederate service in Georgia.¹¹ Many soldiers simply found the bounty insulting. "The idea," wrote Private T. A. Barrow of Georgia, "of hiring a man with the pitiful sum of \$50 dollars to fight for freedom for liberty [sic] is (begging his majestys pardon) the biggest fool thing that ever was adopted by any cabinet that ever set upon the western hemisphere."¹²

⁹ *Jeffers v. Fair*, 33 GA 349; Bena, "Thoughts on Our Army," (Macfarlane & Fergusson, Printers, 1861), 5, in *Confederate Imprints, 1861-1865*, microfilm (New Haven, CT: Research Publications, 1974), hereafter cited as *CI* followed by reel and document number; Ricardo A. Herrera, "Self-Governance and the American Citizen as Soldier, 1775-1861," *Journal of Military History* 65, no. 1 (January 2001): 21-52. On republicanism in the American historical context see, Bernard Bailyn, *The Origins of American Politics* (New York: Knopf, 1968); Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg Va. by the University of North Carolina Press, 1998); Gordon S. Wood, *The Radicalism of the American Revolution* (New York: A.A. Knopf, 1991). c.f., Phillip Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford Political Theory, David Miller and Alan Ryan, eds. (Oxford: Clarendon Press, 1997).

¹⁰ *Official Records* I, 5:1016-1017; 4:1:763-764.

¹¹ Georgia enlistment levels and patterns in 1861 are based on an analysis of 30,865 of the 33,355 enlistments reported by the Confederate War Department. Lillian Henderson, comp., *Roster of the Confederate Soldiers of Georgia, 1861-1865*, 6 vols. (Hapeville, GA: Longina & Porter, 1959); Judah P. Benjamin to Jefferson Davis, December 27, 1861 in *Letters Sent by the Confederate Secretary of War to the President, 1861-1865*, National Archives Microfilm Publications, Microcopy 523, (Washington, DC: National Archives Microfilm Publications); *Official Records* I, 5:1022-1023, IV, 1: 962-963.

¹² T. A. Barrow to David Barrow, January 20, 1862, in Col. David C. Barrow Papers, Ms 69, Hargrett Rare Book and Manuscript Library, University of Georgia.

Feeling that the bounty had – perhaps – been ill-conceived, Congress passed a second act the following month that placed a nervously renewed faith in Confederate volunteerism and imposed what it considered to be a much higher recruitment goal for long-term soldiers – six percent of each state’s total white population. However, if the plan had worked as proposed, the army barely would have retained parity, perhaps even losing as many as 5,000 men. For example, Georgia contributed 33,355 men in 1861, 12,150 scheduled for discharge in spring 1862. The Confederacy’s six percent requisition would have increased Georgia’s contribution only to a little over 35,000. Arkansas, Florida, Louisiana, Mississippi, and South Carolina would have had net decreases in troop contributions.¹³

So Confederate leaders were understandably concerned. McClellan rapidly gained strength on the Yorktown Peninsula, and all Confederate volunteers could think about was going home. Money could not change their mind. Quotas failed to bolster their ranks. And volunteerism was slow to respond. As Alabama Congressman Robert Hardy Smith confided to his wife, “unless the twelve months men can be induced to volunteer for the war, our army will melt away.”¹⁴ Secretary of War Judah P. Benjamin claimed that most of the twelve-month men would eventually reenlist, but he could not guarantee it. No one could.¹⁵

¹³ General John Floyd had suggested a draft of one-tenth of the entire population. John B. Floyd to J. L. M. Curry, January [], 1862, in Macon *Telegraph*, April 11, 1862; *Official Records* IV, 1:902-903, 962-963; Historical Census Browser, accessed February 22, 2007.

¹⁴ R. H. Smith to [wife], December 11, 1861, in Robert Hardy Smith Papers, 1838-1866, Southern Historical Collection, Ms 1104, Wilson Library, University of North Carolina at Chapel Hill.

¹⁵ *Official Records* III, 1:775, 890-891, 906-908; IV, 1:962-964, 823.

Richmond *Examiner* editor John M. Daniel had a solution, something that would alleviate the problems faced by Private White and the untold numbers of other Confederate enlistment officers that cold March morning in 1862. “No half measures, or palliatives, of the well-known weaknesses of the volunteer system will answer the necessity of the case. We must raise a regular army, by some means resembling the conscriptions of all other nations in the world.”¹⁶ Conscription was not a new idea. States had used limited drafts for special militia calls ever since colonial times. For example, in cases of slave uprising or Indian attack, the local militia usually replied quickly and then just as quickly returned to civilian life. But during prolonged conflicts requiring longer terms of service, governors frequently resorted to drafts to enroll reluctant volunteers in poorly recruited districts.¹⁷ A similar process was in place during the early stages of the Civil War. As far back as November 1860, Georgia newspapers had published demands for state conscription to raise “at least one well disciplined company in every county.” And in May 1861, John Echols had asked Georgia Governor Joseph E. Brown to order the wholesale state conscription of all white men under the age of sixty.¹⁸ In February 1862, the Virginia General Assembly gave the Virginia governor

¹⁶ Frederick S. Daniel, *The Richmond Examiner during the War; or the Writings of John M. Daniel* (New York, NY: Printed for the author, 1868), 30-31.

¹⁷ John K. Mahon, *History of the Militia and the National Guard*, The Macmillan Wars of the United States, Louis Morton, ed. (New York: Macmillan Publishing Company; London: Collier Macmillan Publishers, 1983), 19-20; Milledgeville *Southern Recorder*, March 4, 1862; Allen D. Candler, ed., *The Confederate Records of the State of Georgia* (Atlanta, GA: C.P. Byrd state printer, 1909), 3: 154-155, hereafter cited as CRG; South Carolina Adjutant and Inspector General’s Office, General Orders No. 6, March 7, 1862, in William Porcher Miles Papers, 1784-1906. Southern Historical Collection #508, Wilson Library, University of North Carolina at Chapel Hill. Louise Biles Hill called Brown’s threats of a militia draft “without legal authority.” Such drafts had clearly been a normal expression of colonial and state militia authority throughout the United States for the past 200 years. Hill, *Joseph E. Brown*, 80.

¹⁸ Milledgeville *Federal Union*, November 6, 1860; John H. Echols to Joseph E. Brown, May 3, 1861, in Governor’s Subject Files, RG 1-1-5, Georgia Department of Archives and History.

nearly *carte blanche* to compel military service from the vast majority of that commonwealth's white male population.¹⁹ Texas also instituted state conscription, as did South Carolina. South Carolina Governor Francis Pickens went so far as to propose to his fellow governors that each state coordinate their enlistment practices into a nationwide, although not national, conscription of all white men between the ages of sixteen and fifty.²⁰

Under conscription, Daniel claimed, costs would be low. There would be no repeat of the excesses of the Bounty Act. It would also be equitable. The initial call for soldiers in 1861 had drawn young, single, unemployed "citizens upon whom the business of the Confederacy does not depend," people Daniel called "vagabonds, loafers, and half-a-day laborers."²¹ And neither patriotism nor the carrot of a fifty-dollar bonus had been enough to tempt the more apathetic and presumably wealthier citizens into action. Conscription not only would force these wealthy layouts into the army, it would provide a moral uplift to the "half-a-day laborers" by retaining them as students of virtuous citizenship in a military "school of athletics" for physical development and "constitutional invigoration."²²

¹⁹ *Acts of the General Assembly of the State of Virginia, Passed in 1861-2* (Richmond: William F. Ritchie, 1862), 40-41, 44-46 in CI, reel 63, no. 2272.

²⁰ Circular Letter of Francis W. Pickens to the Governors of the Confederate States, March 22, 1862, in William Porcher Miles Papers; Columbus *Enquirer*, March 15, 1862; Richmond *Daily Dispatch*, March 19, 1862; Williamson S. Oldham, *Rise and Fall of the Confederacy: The Memoir of Senator Williamson S. Oldham*, CSA Clayton E. Jewett, ed. (Columbia, MO: University of Missouri Press, 2006), 6.

²¹ Richmond *Daily Examiner*, January 13 and February 17, 1862

²² Richmond *Examiner*, January 9, 30, 31, and February 17, 1862. Daniel's plan tapped into the vision of many Confederate leaders who saw the Confederacy as a nation in which all white men could aspire to gain aristocratic stature, one key aspect of which was mastery of the "art military." Coulter, *Confederate States of America*, 65-66.

What Daniel did not advocate, however, was nationalized conscription. Despite fellow *Examiner* editor and Confederate chronicler Edward A. Pollard's contention that Daniel was the father of Confederate conscription, Daniel's advocacy was targeted at a specific audience, those intimately involved in Virginia's internal debates over military reorganization and enlistment. Although he sometimes invoked the Confederate government, even calling on the Davis administration to endorse his conscription ideas, his support of conscriptive powers consistently nudged up to but never supported an exclusively national policy. He addressed his ideas to the Confederate government but then challenged the Virginia government to implement them.²³ Compelling military service was a state activity meant to bolster the state's already recognized power over its citizenry. National conscription was a heretical concept, a drastic measure for drastic times, and although it may have represented what many claimed the Confederacy needed to survive – a steadfastness to bring all of the South's resources to bear and a willingness to sacrifice even deeply held political beliefs for the preservation of their way of life – its supporters were a distinct minority. For the time, however, conscription was simply an idea, a suggestion, a possibility. The reality remained that Private White would wander the icy streets of Richmond in search of willing recruits and find few.

“THE DEVIL'S OWN INVENTION”

That same frigid March morning, Brigadier General George Wythe Randolph inspected the rebel works outside of Yorktown. His artillery unit, the Richmond

²³ Richmond *Daily Examiner*, July 16, 1861, January 30, 1862; Edward A. Pollard, *Southern History of the War: The Second Year*, vol. 2 (New York: Charles B. Richardson, 1865), 22-23; Daniel, *Writings of John M. Daniel*, 30-31.

Howitzers, stood as the centerpiece of Confederate General John Bankhead Magruder's peninsular defense, and it was Randolph's job to ready the lines for the coming Union attack.²⁴ The entrenchments, redoubts and embrasures may not have looked like much, but they took shrewd advantage of the natural marshy terrain and a thin grey line now stretched from Yorktown in the east along the Warwick River to Mulberry Island on the west. What it lacked was soldiers to man it. He, like Private White, had seen first hand the damage and confusion wrought by Confederate enlistment policies that kowtowed too readily to state prerogatives, and he struggled daily to balance the defensive preparations on the Peninsula with defensive attitudes exhibited by the states. The Bounty Act had allowed reenlisting Confederate companies to reorganize and elect new officers in deference to state fears that the Confederacy would convert short-term state companies into long-term national armies – all while preparations should have been finalized for McClellan's assault. In the Fourteenth Virginia, no less than twenty new companies were in formation with every man vying for a officer's commission. Some in Randolph's command estimated that under such conditions the army would end up with “three inefficient regiments in the place of one fully organized and equipped,” each competing for the same recruits to complete their ranks.²⁵ What the states needed, Randolph probably thought, was to remember that the real enemy was the Federal army, not the Confederate government.

Randolph, like Davis and Lee, had pressed for the creation of a large long-term regular army at the beginning of the war to avoid such confusion. He had taken this

²⁴ Sears, *To the Gates of Richmond*, chap. 1, esp. 24-27.

²⁵ White, “A Diary of the War,” 102, 111-113.

concern to the Virginia Constitutional Convention in 1861, spearheading a system of age-based militia classifications similar to that used by the Prussian military that allowed that state to create a long-term state military presence. Later, as a member of the 1861-1862 Virginia legislature, he had authored Virginia's conscription initiative to support this military, the same initiative that sparked John Daniel's pro-conscription writings.²⁶ But now it was time to take his ideas to the Confederate government. Randolph had just been named the Confederacy's third Secretary of War.

He arrived in Richmond on Saturday, March 22, 1862.²⁷ The next day, he met in private with President Davis, and the following Monday morning the two men presented the Cabinet with a plan for what many thought was inconceivable - national conscription. One can only speculate as to how Davis and Randolph justified such a proposal. No records of the meeting exist, nor do any memorialists offer clues. It may have been that Davis argued that the defense of Richmond the Confederate capital required a larger, more universal, more coordinated effort than did Richmond the state capital. It may have been that Davis claimed the danger to Richmond to be so clear and present that time did not afford a reliance on traditional methods, at least in the short term. It may have been that frustration with the coordination of disparate and sometimes divergent state enlistment policies had reached a point where a national policy was justified with or without impending emergencies. More likely, it was a combination of the three as the

²⁶ George Green Shackelford, *George Wythe Randolph and the Confederate Elite* (Athens and London: The University of Georgia Press, 1988), 46, 53-57, 62.

²⁷ *Journal of the Congress of the Confederate States of America, 1861-1865*, vol. 2 (Washington DC: Government Printing Office, 1904-05), 72-74, hereafter cited as JCCSA; *Official Records IV*, 1:1018; Jefferson Davis, *The Papers of Jefferson Davis*, vol. 8 (Baton Rouge, LA: Louisiana State University Press, 1971), 108; Rembert Wallace Patrick, *Jefferson Davis and His Cabinet* (Baton Rouge: Louisiana State University Press, 1944), 123.

frustrations which had been present for some time reached a critical mass once Richmond lay exposed to attack. What is clear is that the two men left that meeting with Cabinet approval in hand. They passed the plan to Robert E. Lee, Davis' military advisor, who in turn ordered his aid-de-camp, Major Charles Marshall, to prepare a draft bill repealing the Bounty Act and placing “the whole population between the ages of eighteen and forty-five” in military service.²⁸ In the meantime, Randolph and Secretary of the Navy Mallory informed the heads of the various Congressional committees of the President’s intentions.²⁹

Davis' plan aimed to accomplish one thing: get more troops in the field as quickly as possible without sacrificing domestic stability. From the beginning of the war, he had been forced to accommodate state military laws and the resulting confusion had produced nothing but delays. He realized that neither he nor Congress could hope to cajole or coerce the states into modifying their laws, nor could he be assured that Congress could produce a body of law that coordinated with all of the states. The only solution was the repeal of all Confederate laws dealing with enlistment and organization and pass new laws streamlining the enlistment of all white Confederate males between the ages of eighteen and thirty-five.³⁰

²⁸ Charles Marshall, *An Aide-de-Camp of Lee, Being the Papers of Colonel Charles Marshall, Sometime Aid-de-Camp, Military Secretary, and Assistant Adjutant General on the Staff of Robert E. Lee, 1862-1865*, Major General Sir Frederick Maurice, ed. (Boston, MA: Little, Brown, and Company, 1927), 30-33.

²⁹ It probably fell to Benjamin to prepare the President’s message. Benjamin admitted after the war that he had written most of Davis' congressional messages as the President had little time to attend to such matters. Senator Henry S. Foote stated it more bluntly: “...its been known that Mr. Davis needed constantly the aid of a facile and polished writer [Benjamin] in the preparation of his messages and other important political documents.” Eli N. Evans, *Judah P. Benjamin: The Jewish Confederate* (New York, NY: Free Press, 1988), 153, 155; Thomas Bragg Diary, 192; Clifford Dowdey, ed., *The Wartime Papers of R.E. Lee* (Boston, MA: Little, Brown, 1961), 133; William J. Cooper, *Jefferson Davis, American* (New York, NY: Alfred A Knopf, 2000), 374-375.

³⁰ JCCSA 2:106.

Men such as Texas Senator Williamson Oldham were incensed. States' rights was sacrosanct. Volunteerism worked, and central government could resort to conscription only under the most dire, and as yet unrealized, circumstances. Davis' proposal was heresy.³¹ In a vehement speech given Friday, March 28, Oldham argued that conscription attacked not the defects of the volunteer system but the very "theory of our government." The war was begun to preserve the rights of the states, and he made no distinction between those who sought to destroy them, North or South. "Ours is a free government, resting upon the consent of the people, and to require that every man between eighteen and thirty-five should perform military service, without the consent of his State, would be destructive of the liberties of the people." Congress did not have the power, he argued, "except through the intervention of the States, to force citizens into the army of the Confederate States."³² Too hastily accepted or too poorly circumscribed, the power to conscript became not a tool for Confederate survival but "the devil's own invention for the subjugation of liberty," the first step toward military despotism in the vein of Napoleonic France, Imperial Rome, and the militarized Germanic states.³³ North Carolinian Robert C. Puryear agreed. Conscription could be "a most despotic measure and more arbitrary than any free government ever dared to pass. My fear has been for a long time that it was the great object of the inaugurators of this Revolution to build up a

³¹ *Augusta Chronicle and Sentinel*, April 5, 1862; *Milledgeville Southern Federal Union*, April 8, 1862; *Fayetteville Observer*, April 7, 1862; Joseph E. Brown to H. V. Johnson, April 21, 1862, in Joseph E. Brown Papers, Ms 95, Hargrett Rare Book and Manuscript Library, University of Georgia.

³² SHSP 45:26, 28-29; Oldham, *Rise and Fall of the Confederacy*, 107-108.

³³ "Georgia," "Letter to the Editor [*Macon Daily Telegraph*]" in Adjutant and Inspector General's Office Book of Commissions, Book B49: 688-695, Georgia Department of Archives and History; *Macon Telegraph*, April 4, 1862. See also the historical debate over conscription in *Memphis Daily Appeal*, April 6, 1862; *Columbus Daily Enquirer*, April 4, 1862; *Richmond Daily Enquirer*, April 18, 1862.

monarchy upon the ruins of our glorious Republic and if this law pass it will greatly increase my apprehensions.”³⁴ The Memphis *Daily Appeal* also agreed. The Confederate government seemed to “go just a little too far, as it seems to a good States’ rights man, in their readiness to embrace [conscription].”³⁵ First, Congress had given the president the power to accept organized companies without state permission. Then it gave him the power to accept individual soldiers without state permission. Now it wanted to grant him the power to *force* men into the service. Many questioned when these grants of power would stop.³⁶

But for a vocal Congressional minority, Davis' proposal made sense. Oldham's fellow Texas senator, Louis T. Wigfall, convinced that states' rights and conscription were not at odds with one another, argued that the “full, plenary and ample” war making powers granted by a states' rights Constitution included the power of conscription. He even went so far as to suggest that the vaunted volunteer system might be “extra-constitutional, if not unconstitutional.”³⁷ And many in the Confederacy appeared to agree as a common theme began to appear in most pro-conscription writings: the government

³⁴ R. C. Puryear to “My Dear Baby,” March 3, 1862, in Clingman and Puryear Family Papers, Southern Historical Collection #2661, Wilson Library, University of North Carolina at Chapel Hill.

³⁵ Memphis *Daily Appeal*, April 2, 1862.

³⁶ See for example, “Georgia” in Augusta *Chronicle and Sentinel*, April 5, 1862.

³⁷ Wigfall's reply is usually referred to as the “broken reed” speech because of his claim that the Confederacy's reliance on foreign intervention or Providence for military victory was reliance on a “broken reed.” This comment was actually made two months earlier by the editor of the Richmond *Examiner* and repeated by Wigfall here. SHSP 45:27-28; Richmond *Examiner*, January 9, 1862. See also, W. Buck Years, *The Confederate Congress* (Athens: University of Georgia Press, 1960), chap. 5. SHSP 45:26-29; Milledgeville *Southern Federal Union*, April 8, 1862; Augusta *Daily Constitutionalist*, April 10, 1862. See also, Alvy L. King, *Louis T. Wigfall, Southern Fire-Eater*, Southern Biography Series (Baton Rouge: Louisiana State University Press, 1970), chap. 1-3; Dallas Cothrum, “Louis T. Wigfall: 'Just Plain Mean',” in *The Human Tradition in Texas*, ed. Ty Cashion and Jesús F. de la Teja (Wilmington, DE: SR Books, 2001), 55-70.

should be trusted to know what was best for the war.³⁸ “How preposterous and absurd to dream of success,” wrote the *Memphis Avalanche*, “if the public mind is to be eternally beset by suspicions.”³⁹ Or, as one Georgia correspondent boasted, the fear of a dictatorship “will do very well to scare women” but not true Georgians.⁴⁰ Instead, Confederates should fear a mercenary Union army composed of soldiers from the same despotic nations – Prussia, France, Germany, Austria, Poland, Hungary, and Italy – that anti-conscription Europhobes held as a possible Confederate future. These mercenaries, corrupted by the taint of imperial power, had come to the United States to fight for money, not for the patriotic impulses of the Confederate citizen. They were well armed and equipped, inured to the hardships of battle and life in the field, and accustomed to the degradation of military service. The threat of despotic Europe was not a potential. It was the reality facing them across battlefields from the Yorktown Peninsula to the Mississippi River.⁴¹

³⁸ Richmond *Daily Dispatch*, April 2, 1862; *Memphis Avalanche*, April 7, 1862; *Macon Daily Telegraph*, April 4, 1862; William W. Boyce to James H. Hammond, April 4, 1862, in Rosser H. Taylor, ed., “Boyce-Hammond Correspondence” *The Journal of Southern History* 3, no. 3.(August 1937): 348-354.

³⁹ *Memphis Avalanche*, April 7, 1862. See also, *Augusta Daily Constitutionalist*, April 10, 1862.

⁴⁰ *Macon Daily Telegraph*, April 5, 9 and 14, 1862. Several historians have argued that a fixed and knowable Confederate definition of states’ rights had become elusive and that the ill-defined danger to states’ rights posed by the rise of a putative dictator, north or south, served better as inflammatory rhetoric than as definitive of any actual threat. See, Schlesinger, *New Viewpoints in American History*, chap. 10; Lewis O. Saum, “Schlesinger and ‘the State Rights Fetish’: A Note,” *Civil War History* 24, no. 4 (1978): 351-359, and Beringer, et. al., *Why the South Lost the Civil War*, 297.

⁴¹ Fayetteville *Observer*, April 7, 1862; *Augusta Daily Constitutionalist*, April 10, 1862; Richmond *Daily Dispatch*, April 2, 1862; *Memphis Avalanche*, April 7, 1862.

BURNETT'S COMPROMISE

The following Monday morning, March 31, 1862, Senator Wigfall submitted Davis' draft bill to Congress in secret session.⁴² It required "all persons between the ages of eighteen and thirty-five" to provide military service "for the war" and extended the terms for all one-year troops in like fashion.⁴³ Lee originally had suggested conscripting up to age forty-five, but Davis wished to leave men thirty-five to forty-five at home for militia service, local defense and slave management.⁴⁴ This was Davis' only concession. He made no reference to any role for the states or their governors. Companies in the process of formation with sufficient men to complete their ranks would be given thirty days to finish their organization. Men enrolled in excess of the numbers needed to fill existing organizations would be formed into new organizations under the direction of the president with a guarantee that members of each company, regiment, or battalion would hail from the same state. New enrollments would be accomplished by state officials under Confederate control. Payments under the 1861 Bounty Act would be continued, and all men not liable under the act would be accepted as substitutes. Promotion would

⁴² JCCSA 2:114.

⁴³ *Ibid.*, 2:106, 129; *Official Records IV*, 1:1031. Lee had originally proposed to draft up to age forty-five with all those not placed in the line to be mustered and trained as a reserve force at camps of instruction. Davis instead called only for those persons between eighteen and thirty-five and left the remaining people at home, not in camps. Marshall, *An Aide-de-Camp of Lee*, 30-33.

⁴⁴ Lee had originally proposed to draft up to age forty-five. Marshall, *An Aide-de-Camp of Lee*, 30-33; JCCSA 2:106. Such a strategy would fit with Armstead Robinson's argument that concerns over home front stability and slave management limited the Confederacy's military effectiveness. See, Armstead L. Robinson, *Bitter Fruits of Bondage: The Demise of Slavery and the Collapse of the Confederacy, 1861-1865* (Charlottesville, VA: University of Virginia Press, 2005).

be decided by seniority with the lowest officer grade gaining appointment directly from the president.⁴⁵

This was not a proposal for a true *levee en masse*. “Persons,” no doubt, did not refer to women nor did it refer to all men. But even with that limitation, there was a lot of room for interpretation about the breadth of Confederate power. How was “persons” going to be interpreted? Did it include non-residents and sojourners as well as Confederate citizens? Was conscription “for the war” potentially enrollment for life? There was the possibility that even after the war border skirmishes would continue. How long these skirmishes would continue could not be known, so it was equally unclear how long Southern men would be required to remain in the military. To many, this uncertainty raised the prospect of an army whose existence would be continued *ad infinitum*. Was there to be a limit set on the length of the war? Who would administer the draft? Conscription as a process might be explained as a temporary wartime measure, but the unfettered ability of the president to command or conscript state officials as well as the expansion of executive appointment and nominating powers posed a danger not only to the rights and powers of the states’ but to the basic architectural divisions of the Confederate polity. The questions were endless, and the imprecision of the bill was unacceptable.⁴⁶

⁴⁵ The original bill submitted by Senator Wigfall does not survive. By working backward through the debate and amendment process from the final legislation, one can approximate what the original proposed. The first and fourth sections of Wigfall’s bill cannot be recovered as Congress deleted these sections in their entirety. JCCSA 5:128-129, 134-135, 139-142, 145-149, 153-154; 5: 219-228; James M. Matthews, ed., *The Statutes at Large of the Confederate States of America, Commencing with the First Session of the First Congress, 1862. Public Laws of the Confederate States of America, Passed at the First Session of the First Congress, 1862. Private Laws of the Confederate States of America, Passed at the First Session of the First Congress, 1862* (Richmond: R. M. Smith, Printer to Congress, 1862), 29-32.

⁴⁶ JCCSA 2:128-129, 134-135, 137.

The Senate began scattered and unproductive debate in secret session on April 5, and by April 8 it was evident that Senate conservatives were going to push for limits. Senator James Orr of South Carolina proposed a substitute authorizing the President to strengthen the Confederate army to 600,000 men by increasing troop quotas from the six percent set the previous February. Should a state's quota not be met after thirty days, the president would be authorized to assume control of that state's militia and continue its service for the war. If the state militia was insufficient to meet the state's quota, the President could draw men from other states as needed to complete the enrollment. Orr, however, chose not to offer his bill for debate. Although he read it into the record, he withheld the proposal until "the proper time," possibly to when the conscription debate became so bogged down that the amendment would come as a welcome release. The bill was enough to satisfy most ardent states' righters by continuing the quota system rather than centralizing military powers, but it did not bode well for interstate relations should the President choose to cross state borders to meet those quotas. What it did do was remain a silent but constant reminder that if acceptable compromises could not be reached on conscription, a substitute bill was waiting in the wings.

Kentuckian Henry C. Burnett, whose state had suffered recent losses at Forts Henry and Donelson, knew that little could be accomplished if Congress bogging down in a contest over states' rights. For him, the best solution was to postpone debate, if only temporarily, and to accept a limited increase in central powers to meet the present emergency. Burnett's amendment to Wigfall's bill retained the president's authority to conscript but placed several limits on that power. Extended service would be limited to three years from date of original enlistment or the length of the war, whichever was

shorter, to prevent the possibility of open-ended enlistments. It also restored some of the privileges denied by the original bill, in particular the right of troops to elect company and regimental officers and the grant of a furlough upon reenlistment. Further amendments guaranteed that *all* conscripts, not just the excess recruits organized by the president, would be assigned to units from their home county or state, not only in deference to community cohesion but in the belief that the camaraderie between conscripts and veterans would enhance the recruit's military training.⁴⁷

Burnett's willingness to compromise on states' rights alarmed many of the senators. Those from Georgia, Texas, and North Carolina remained either irreconcilably divided or opposed to the bill. But the checks on centralization offered by the compromise succeeded in bringing the senators from Mississippi, Alabama, and Tennessee, men who had rejected conscription at first, and Virginia, whose senators had split over it, solidly behind the act. It was clear Senate approval was likely. The opposition hoped to prevent passage by opening the doors to the Senate's secret sessions, exposing the details of debate to public scrutiny in an effort to rouse public indignation against centralization. Senator Orr even offered his earlier mentioned quota bill as a belated substitute. However, both measures were soundly defeated. The Senate passed its version of the Conscript Act on Friday, April 11, 1862, with only Georgia solidly against it.⁴⁸

⁴⁷ Ibid., 2:142, 145.

⁴⁸ Ibid., 2:140-141, 153-5.

The compromise bill made its way to an impatient House the next morning.⁴⁹ Unlike Senator Orr, House conservatives were not going to wait and measure Congressional attitudes. Congressman Henry S. Foote of Tennessee offered several amendments claiming that the Confederate right to conscript was based on the joint consent of the state and the draftee and if either party objected, that power ceased to exist.⁵⁰ Charles Russell of Virginia moved an amendment that would replace conscription with a system of federalized militia calls that mirrored Senator Orr's proposal of several days past only without Orr's limitation of a 600,000 man army and with an expanded age range of eighteen to forty-five. When that failed, Russell suggested that the existing laws requiring the Confederacy to make troop requisitions upon the states not be revoked or annulled but merely rendered dormant. When that too failed, he suggested that the President be authorized to call out the state militias and to command them for any length of time but only in response to the invasion of one or more of the Southern states. In addition, James Lyons, also of Virginia, proposed that conscription be approved but limited to the raising and arming of Confederate troops, leaving the existing training and command structures in place. None of these amendments passed.⁵¹ As with the Senate, it was the influence of the Border States and those states subject to Union attack that assured passage.⁵²

⁴⁹ *Augusta Chronicle and Sentinel*, April 11, 1862.

⁵⁰ JCCSA 5:220-222.

⁵¹ *Ibid.*, 5:224-225.

⁵² See, *ibid.*, 2:140. Both Alexander and Beringer's *The Anatomy of the Confederate Congress* and Martis's *Historical Atlas of the Congresses of the Confederate States of America, 1861-1865* find geographic influences to Congressional voting patterns on conscription based upon the region's Union occupational status and secession support as well as the region's existing manpower pool and mechanisms to exploit this pool. According to Martis, conscription was well supported in the border regions of northern Virginia,

The final Conscript Act of April 16, 1862, appeared both efficient and balanced. It provided for the enrollment of every white male resident of the Confederate States not legally exempt between the ages of eighteen and thirty-five for a term of three years unless the war ended sooner. All twelve-month men liable to service already in the ranks would have their terms extended an additional two years. Georgia, for example, would be required to provide over 94,000 men or roughly sixteen percent of its total free population and one third of its white male population.⁵³ In fact, under conscription most Confederate states would have to contribute between two and four times as many men as they had in 1861 and between two and a half to three times as many men as required under the six percent quota. The total possible size of the Confederate army would increase from the 333,000 men at the beginning of 1862 to well over 800,000. To

Kentucky, and Missouri, a band of unoccupied territory stretching from Georgia to the Mississippi River, and the border lands of the Western theater. In all of these regions, present Union occupation or the lack of such a threat coupled with a pro-secessionist base lent support to the conscription movement. Martis, however, also credits the inability of the Confederate government to enforce conscription in some of these areas as further reason for general support even though such ability would not have been known during the initial votes in the spring of 1862. It should also be noted that the findings, graphics and illustrations used by Martis are scaled and can not be reflective of the specific support received by any one sub-issue – for example, election of officers, length of service, etc. - especially the first votes surrounding conscription in 1862. In addition, Martis's findings are only for the House and do not reflect Senate votes. Martis, *Historical Atlas*, 97-100, and Alexander and Beringer, *Anatomy of the Confederate Congress*, chap. 5.

⁵³ The continuing effort to digitize, transcribe and index all of the population schedules produced by the United States Census Bureau has given researchers the ability to parse almost instantaneously information that would have proven too time consuming only a short time before. Such information, however, must be accepted cautiously. Not only were census takers notoriously inconsistent in their roll taking, frequently missing households, misspelling names, or otherwise incorrectly recording information, those people being enumerated frequently withheld or provided faulty information both knowingly and unknowingly. In addition, modern indexers and transcribers frequently make unwitting errors in their work. Thus, the totals presented here are not claimed as definitive or comprehensive. Historical Census Browser, accessed February 22, 2007; *Official Records* IV, 1:902-903, 905-906, 1081.

These numbers do not account for men lost to exemptions and details. An exemption act passed on April 21, 1862, excluded from military service all medically unfit persons, all state and Confederate government employees, persons directly involved in mail delivery, ferry and railroad transportation, telegraphs operators and newspaper printers and editors, ministers and school teachers, employees in iron foundries and wool or cotton mills, as well as public hospitals, asylums and apothecaries. It is impossible to estimate the number of potential exemptions. It is granted that exemptions severely restricted conscription's potential to bring in as many men as it could have.

counter fears of such a large military force exclusively under Confederate command, the act authorized the president to use state officers, with the consent of the governor, to perform the enrollment, and guaranteed that all men conscripted would be sent to companies and regiments from the conscript's home state.

But even with the compromises, concerns remained. Questions on constitutionality had addressed only the power to pass a conscription law, not whether conscription would be constitutional in and of itself. Congress had not fully examined conscription's relationship with states' rights nor had it attempted to measure the contingent effects of conscription. There appeared to be no limit to the men conscription could reach - state legislators, judges, county clerks, justices of the peace, even the governor himself, might fall to the power of the Confederate government. What would happen to the states and their citizens? The power that conscription gave was not simply one of drawing men into the military. Because of the relationship between citizenship and military obligation that militia service encapsulated, the power to compel national service drew with it the power to compel national allegiance. Conscription threatened to destroy the state not only from the top down by dismantling states' right theory but potentially from the bottom up by co-opting the allegiances of state citizens. In fact, there were so many questions that several prominent Confederate figures began to ask very pointed questions about what conscription really meant for the fledgling nation. Among them was Georgia Governor Joseph E. Brown, a rough and tumble political brawler unwilling to yield any of his state's political sovereignty to military expediency.

“A FEVERISH EXCITEMENT”

Governor Brown was in Savannah when he read Secretary of War Randolph’s telegraphed announcement that the Conscript Act had passed. It was not unexpected news. Still, Brown was not pleased. He did not agree with the Conscript Act, and the rancor of his personal opposition would frame much of Georgia’s official reaction. Politically aggressive and increasingly protective of his state, he opposed any form of encroachment on Georgia’s sovereignty and prerogative and from the beginning of the war had come into conflict with the Davis administration. Throughout the spring of 1861, he had complained bitterly about Confederate policies on the mustering of state militia into Confederate service, the appointing of Confederate surgeons to state organizations, and the acceptance of companies raised without state permission. He had been especially adamant about the sanctity of state purchased arms and had not only refused to allow state arms to leave Georgia but had pressed to have any arms that left the state returned when the men firing them left the service.⁵⁴ Yet, all of these complaints paled in comparison to Brown’s opposition to the conscript acts.⁵⁵

⁵⁴ Joseph H. Parks, “State Rights in a Crisis: Governor Joseph E. Brown Versus President Jefferson Davis,” *The Journal of Southern History* 32, no. 1 (February 1966): 3-24; Thomas Robson Hay, “Joseph Emerson Brown: Governor of Georgia, 1857-1865,” *Georgia Historical Quarterly* 13, no. 2 (June 1929): 94; Alexander C. Niven, “Joseph E. Brown, Confederate Obstructionist,” *Georgia Historical Quarterly* 42, no. 3 (September 1958): 242-245; Owsley, “Local Defense and the Overthrow of the Confederacy,” 495-499.

⁵⁵ Any claim that Brown’s relations with President Davis and the Confederate government were confrontational would be an understatement. Even a cursory examination of the evidence shows that Brown lost few opportunities to vent his anger in Richmond’s direction. The question has been how to understand this relationship. The prevailing interpretation holds that Brown’s opposition represented only one of several examples of political, economic, and social divisions existing in the Confederacy that undermined the nation’s ability to win the war. It is an explanation that developed out of the political and cultural reunification of the former enemies during the 1870’s and 1880’s, a reunification solidified by the jingoism of the Spanish-American War and World War I, and one that hoped to explain Confederate defeat without damaging this new unity. Loss came not as a result of a superior foe but as a result of fractures in the Confederate political-economy. On sectional reunification at the turn of the twentieth century, see David L. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge and London: The Belknap Press of Harvard University Press), chap. 10. For a perceptive historiographical essay questioning the

causative role of states' rights ideology on Confederate defeat, see Beringer, et. al., Jr., *Why the South Lost the Civil War*, 203-235.

Early narratives of conscription in Georgia exonerated Governor Brown. The state, they claimed, had been acting in the same honorable vein of conservative opposition that had led to the creation of the Confederacy. As I. W. Avery wrote in 1881, "Georgia in standing up for a strict observance of constitutional limitations did her duty, and she deserves the more credit that she did it amid all the temptation to ignore it." Such claims, however, were far from unbiased. Avery even admitted that he included Brown's writings on conscription in his *History of the State of Georgia* because Davis had given a prejudiced and incomplete accounting of the documents in his *Rise and Fall of the Confederacy* published earlier that same year. See, I. W. Avery, *The History of the State of Georgia from 1850 to 1881* (New York: Brown & Derby Publishers, 1881), 225, 238; Jefferson Davis, *The Rise and Fall of the Confederate Government*, vol. I (New York and London: Thomas Yoseloff, 1958), chap. 14.

During the 1920's, however, the burden of responsibility shifted from Davis to Brown, a shift resulting from more than the rejection of Avery's personal and political biases. Conscription was once again a political issue. Soon after Congress's declaration of war against Germany in 1917, President Woodrow Wilson proposed his own version of military conscription with the Selective Service Act. Like its Confederate predecessor, the 1917 bill sought to strengthen the nation's military force while reducing the role of the state militia, now called national guard, components. Despite protests by numerous isolationist and pacifist groups, the United States Congress passed the act with only nine dissenting Southern votes. See, I. A. Newby, "States' Rights and Southern Congressmen during World War I," *Phylon* 24, no. 1 (1st Quarter, 1963), 34-50; Anthony Gaughan, "Woodrow Wilson and the Rise of Militant Interventionism in the South," *The Journal of Southern History* 65, no. 4 (November 1999), 771-808; c.f., Thomas Fleming, *The Illusion of Victory: America in World War I* (New York: Basic Books, 2003), chap. 3.

It was thus in the context of the Southern *mea culpa* and the Selective Service Act of 1917 that historians such as Albert B. Moore, Frank L. Owsley, and Ella Lonn questioned Brown's opposition to Confederate conscription and found it wanting. The Governor's actions represented not a noble tradition of political opposition but the kind of self-centered provincialism that had doomed the Confederacy to defeat. Moore's 1924 monograph *Conscription and Conflict in the Confederacy*, for example, claimed that Brown would not "surrender one tittle of States' rights to considerations of public weal" and cast such doubt on the legitimacy of conscription in the mind of the public that it encouraged a general evasion of it. The following year, Frank Owsley drew Brown's actions even more personally when he wrote that Brown's "patriotism reached very little farther than the borders of his own political opportunities, which coincided with the boundaries of the state of Georgia," a contention later reiterated by David Potter in the 1960s. Ella Lonn claimed that Brown and other Southern governors "sowed dissension among the people until all spirit of cooperation between the States and the Confederate government was destroyed." Rather than Brown the champion of states' rights, it was Brown the dogmatist who obstructed the execution of laws that aimed to strengthen the army and bring about Confederate victory. See, Moore, *Conscription and Conflict*, 123, 259. More recently, Brown biographer Joseph Parks has suggested that Brown's identification of his own personal needs and character had become so intertwined with the state's that his opposition to the Conscript Act was based more on this personification than on opposition to conscription itself. See, Owsley, "Local Defense and the Overthrow of the Confederacy", 502; Parks, "State Rights in a Crisis," 3; David M. Potter, *The South and the Sectional Conflict* (Baton Rouge: Louisiana State University Press, 1968), 273; Ella Lonn, *Desertion During the Civil War* (Lincoln and London: University of Nebraska Press, 1998), 116.

Biographical studies of Joseph E. Brown that include detailed examinations of the conscription debate include Hay, "Joseph Emerson Brown"; Niven, "Joseph E. Brown, Confederate Obstructionist"; Joseph H. Parks, *Joseph E. Brown of Georgia* (Baton Rouge: Louisiana State University Press, 1976), chap. 11 and 14; Herbert Fielder, *A Sketch of the Life and Times and Speeches of Joseph E. Brown* (Springfield, MA: Press of Springfield Printing Company, 1883), chap. 11; and Hill, *Joseph E. Brown*, chap. 4. State and Confederate political and military histories include J. R. Whisenhunt, "The Controversies of Governor Brown of Georgia with the Confederate Authorities," M.A. Thesis, University of Texas, 1929; Maude Sparkman, "Governor Brown and the Confederate Administration," M.A. Thesis, The University of Chicago, 1914; T. Conn Bryan, *Confederate Georgia* (Athens: The University of Georgia Press, 1953), chap. 6; Escott, *After Secession*, 81-85; Moore, *Conscription and Conflict*, chap. 12, and Coulter, *Confederate States of America*, 391-392.

For now, Brown was more concerned with the defense of Savannah. The state's seizure of Fort Pulaski in January 1861 had been relatively painless. But the North was not making its maintenance easy. By February 1862, the Union military had moved two regiments of infantry, supported by two engineering and two artillery companies along with several 17,000-pound artillery pieces onto Tybee Island and thence across the coastal marshes.⁵⁶ And it was no secret such efforts were taking place. The sounds of the Union works drifted across the river toward the Confederate fort each night. The people of Savannah talked frequently of Yankee boasts that Federal ironclads would lay the city in ruins.⁵⁷ By early spring 1862, the importance of Pulaski only increased as Confederate troops defending the Georgia coast abandoned the town of Brunswick and several of the marshy barrier islands to concentrate their numbers at Savannah.⁵⁸ All hopes and all efforts focused on Pulaski and the works of the three brigades of the state-commanded Georgia State Troops.

Although a young brigade, the State Troops already had garnered praise. General Robert E. Lee, who had supervised much of their work at Fort Pulaski in early 1862, hailed the Troops for their efficiency, and Major General John C. Pemberton, who succeeded Lee in mid-March, was explicit in his belief that "the safety of the city [of Savannah] may depend upon" their actions.⁵⁹ So it was with pride that Governor Brown

⁵⁶ Eicher, *The Longest Night*, 231-234.

⁵⁷ Robert Manson Myers, ed., *The Children of Pride: A True Story of Georgia and the Civil War* (New Haven: Yale University Press, 1972), 861.

⁵⁸ *Official Records* I, 6:377, 379, 391, 396.

⁵⁹ William Harris Bragg, *Joe Brown's Army: The Georgia State Line, 1862-1865* (Macon, GA: Mercer University Press, 1987), 6; *Official Records* I, 6:431.

addressed approximately 7,000 State Troops in Savannah's Johnson Square on Saturday, April 5, 1862 – the same day the Confederate Senate began its debate on the proposed Conscript Act.⁶⁰ “It was not [Fort Pulaski] alone [that had prevented Union troops from invading Savannah],” he said. It was the Federal army's fear “to encounter the compact columns of State troops who have stood around the city like bulwarks of stout hearts and strong arms, invincible before you had completed your fortifications, but now almost invulnerable.” Yet the pride of the work completed was tempered by the realization that the six-month terms of the State Troops were coming to an end, and there was much work yet to be done.⁶¹ Holding out bounties and furloughs similar to those offered by the Confederacy, Brown had urged all of his Troops to reenlist for an additional two-and-a-half years of state service and avoid the “reach of a draft for Confederate service.”⁶²

Brown had warned Secretary of War Benjamin and others in the Davis administration of the pending discharges, hoping the news would prompt the assignment of additional Confederate troops.⁶³ He had written to General Pemberton that no more than 3,500 of the approximately 8,000 State Troops would be available in the coming

⁶⁰ The Georgia State Troops numbered about 8,000 men. As their terms came to an end Brown requested an equivalent number of Confederate troops be sent to Savannah as replacements. The *Savannah Daily Morning News* reported the number of troops on review on April 5 as being between 6,000 and 7,000. Brown's letter to Secretary Benjamin of March 24 states that one regiment (approximately 1,000 men) was to muster out of state service “in a week” lending credence to the *Morning News*' estimate. In addition, General Pemberton's estimate of State Troop strength dated April 9 places the number at about 7,500 total men. *Savannah Daily Morning News*, April 8, 1862; *Milledgeville Southern Federal Union*, April 15, 1862; *Official Records III*, 4:430-431; I, 53:223, 224.

⁶¹ Derek Smith, *Civil War Savannah* (Savannah: Frederick C. Beil, 1997), chap. 6; Bragg, *Joe Brown's Army*, ix-x, 5-9. See the opinion of Lt. Charles C. Jones, Jr., on the effectiveness of the Savannah defenses and the role of the State Troops, in Myers, *Children of Pride*, 861-864.

⁶² *Daily Morning News: Extra! Saturday Morning April 5, 1862: Governor Brown's Address to the State Troops*. Broadside. (Savannah, GA: John M. Cooper, 1862); *Milledgeville Southern Recorder*, April 15, 1862.

⁶³ CRG, 3:170-171.

months, while Pemberton's own investigations revealed that Brown's numbers were probably overstated.⁶⁴ The *Savannah Republican* predicted that fully three-fourths of the State Troops had resolved not to reenlist.⁶⁵ And local events appeared to bear out such predictions. An enlistment drive at the city's parade grounds on the following day, April 6, drew a minimal crowd. Another enlistment drive at Forsyth Park was equally unsuccessful. Although the Mitchell Guards, an Irish immigrant company, stepped forward *en masse*, neither the fervent pleadings of a dashing colonel on horseback nor the parade of a Negro fife and drum corps could draw many new recruits from the crowd.⁶⁶

Brown's request for Confederate troops had gone unfulfilled. As George W. Randolph, Secretary Benjamin's successor, had explained, Confederate forces were needed elsewhere. Relief would come, he had promised, when the Confederate Congress passed new legislation "continuing the army as it stands and furnishing a large body of recruits. We shall have veteran troops in the field and camps of instruction to season and drill the new levies. With this organization you will have troops enough to defend your coast." If only Brown could keep his State Troops in the field until "Congress acts on the conscription bill."⁶⁷ But the Conscript Act only made the situation worse. With most of the Troops now liable for conscription, Brown felt any attempt to salvage the remnants "must produce conflict among [the state and the Confederacy] in the face of the enemy."

⁶⁴ *Official Records IV*, 1:430-431, 1067.

⁶⁵ *Savannah Republican*, April 8, 1862.

⁶⁶ Smith, *Civil War Savannah*, 71-72.

⁶⁷ CRG, 3:176. Robert E. Lee made a similar request of Pemberton and Brigadier General Alexander R. Lawton, commanding Confederate forces in Savannah. They were to use every means possible to keep their men either in State or Confederate service until the conscription act passed. *Official Records I*, 4:471-472.

He had no choice but to surrender the remaining men to Alexander R. Lawton, now the general in charge of Confederate forces along the Georgia coast.⁶⁸

The Troops went into a “feverish excitement.” The Conscript Act did not permit the transfer of whole organizations, only the acceptance of individual volunteers, and the men knew it. By surrendering command to Colonel Lawton, Brown effectively had disbanded his State Troops. The few officers remaining found they had almost no control over their men, and with no Confederate enrolling officers yet assigned to the city, there was no one to muster troops into Confederate service.⁶⁹ The Conscript Act allowed the use of state officials, but Brown refused in no uncertain terms to let that happen, even temporarily.⁷⁰ So for almost a week, nearly all of the remaining 5,000 State Troops hung in limbo, not knowing if they were state or Confederate soldiers, if they had to stay in Savannah or could go home, who their commanding officers were or who to ask to find out. Furloughed companies were especially confused. Captain Benjamin R. Kendrick’s Company E, First Brigade, Georgia State Troops, had mustered out on April 8, 1862, after most of the company agreed to reenlist as State Troops following a thirty-day furlough. Railroad repairs had stranded the men in Macon when word came of a Union attack on Fort Pulaski. They hastily reassembled but because of delays in the repairs were still stranded when Brown transferred the State Troops on April 16. Now, after

⁶⁸ Joseph E. Brown to Herschel V. Johnson, April 21, 1862, in Joseph E. Brown Papers; *Official Records* IV, 1:430-431, 1067; General Orders, No. 77, in Executive Papers, 1861-1865, Box 16, 2nd Brigade Georgia State Troops, William R. Perkins Library, Duke University.

⁶⁹ Lawton to Brown, April 22, 1862, in Governor’s Subject Files.

⁷⁰ While Brown would not stand in the way of the enrollment of the general population, neither he nor any state official would assist in that effort. *Official Records* IV, 1:1078; Joseph E. Brown to Herschel V. Johnson, April 21, 1862, and Joseph E. Brown to Thomas W. Thomas, April 22, 1862, in Joseph E. Brown Papers; Joseph E. Brown to Jefferson Davis, April 22, 1862, in *Correspondence between Governor Brown and President Davis on the Constitutionality of the Conscription Act* (Atlanta, GA: Atlanta Intelligencer Print, 1862), 7-8, hereafter cited as *Brown-Davis Correspondence*.

more than two weeks, they remained stuck between Savannah and home, between the state and the Confederacy, waiting for someone to tell them whether they should “continue organized or disband and go as conscripts.”⁷¹

Secretary Randolph scrambled to avert the transfer, reminding the Governor that “it will cause great trouble to enroll and bring [the soldiers] back if they disband” but to no avail. Brown merely threw the Secretary’s words back at him. He had asked Brown to keep the troops in the field until “Congress acts on the conscription bill.”⁷² Brown had done that. He had said that “all [white men] between the ages of eighteen and thirty-five must go into Confederate service.” That being done, Brown would be left with few men to maintain his already dwindling state military. Even the pleadings of President Davis could not get Brown to resume command as it would be “peculiarly embarrassing” to the Governor to reorganize the unit only to have the Conscript Act disorganize it once again in the near future.⁷³

Instead, Brown offered his own solution. He ordered the state’s Congressional delegation in Richmond either on April 16 or 17 to meet with President Davis and outline a draft bill that would permit the transfer of organized state units with their commissioned officers intact. Such concessions to state authority had already been made in the final Conscript Act – the ability to use state enrollment officers and guarantees of unit homogeneity – so Davis saw little problem in agreeing to the proposal. As dramatic a change as conscription was, he did not wish to create undue confusion, and he was more

⁷¹ B. R. Kendrick to Joseph E. Brown, April 24, 1862, in Governor’s Subject Files.

⁷² Randolph to Brown, April 2, 1862, in CRG 3:176.

⁷³ *Official Records* IV, 1:1067-1068, 1072-1073.

than willing to meet the Governor's request if it would keep the State Troops in the field.⁷⁴ In a special message to Congress, he asked that additional legislation be passed allowing the transfer of pre-existing state organizations, and the following Monday, April 21, after weekend consultations between Davis and House Committee on Military Affairs Chairman William Porcher Miles, Congress passed such a bill.⁷⁵

For Brown, it was a bittersweet victory. Once again a conscription initiative that had aimed to extend Confederate power over individuals and threatened to dismantle existing state organizations had acquiesced to demands that state ties be recognized within the scope of that power. Individuals must be allowed to retain ties of allegiance and identity with their home states through unit homogeneity. And now the sanctity of existing state organizations must be recognized by accepting companies and regiments *in toto*. Yet he could not save his State Troops. Generals Lawton and Pemberton, tired of the increasingly uncontrollable troops, decided not to detain the men any further. By the time Congress authorized Lawton's acceptance of the transfer, only one brigade out of three, with an additional company of artillery and one of cavalry – roughly half of the men Brown originally had transferred – remained organized, and they were “rendered quite inefficient, by the anxiety of the officers and men to find their proper places in the new organizations.” So restless were the men that Lawton requested permission from the Governor to disband the remaining companies to allow new ones to form. Though the

⁷⁴ *Ibid.*, 1:1072-1073.

⁷⁵ Proceedings of the Committee on Military Affairs of the House of Representatives of the Permanent Congress (PCMA), Manuscript, New-York Historical Society, entry for April 19, 1862; Matthews, *Statutes at Large 1862*, 51; JCCSA 2:191 and 5:266; SHSP 45:174.

men could reenlist and reform their previous ranks, for now the Georgia State Troops were shattered.⁷⁶

“NOT ONE MAN OUT OF A THOUSAND”

As Brown watched the Confederacy absorb the State Troops, he could only believe, given Jefferson Davis' pre-war states' rights record, that the president had made a mistake or been led astray by duplicitous advisors. For now, he would submit, albeit reluctantly. Worried Georgia soldiers, feeling they should be exempted because of their service in the state's militia, petitioned the Governor's office for advice, but as Adjutant General Henry C. Wayne explained even they would not be protected – for now.⁷⁷ That submission, however, was contingent on how deeply conscription cut. The State Troops had suffered the unfortunate consequences of its own constitution. As a temporary force created to meet the immediate demands of coastal defense, it could easily be surrendered in the pursuit of larger goals. But the militia was no such sacrificial lamb. The militia was needed not only to meet the challenges of the war but to assume the responsibilities of slave management in the absence of large numbers of white males now in the Confederate army. In addition, the militia was of greater symbolic, if not always functional, importance to the maintenance of the decentralized political economy at the

⁷⁶ Brown had also hoped to have the State Troops accepted as divisions or brigades not as individual regiments. In this way the commands and commissions of the state's top general officers would be preserved in addition to the regimental field commanders. This Congress refused to do. Lawton to Brown, April 22, 1862, and Henry R. Jackson to Joseph E. Brown, April 28, 1862, in Governor's Subject Files; Joseph E. to Henry R. Jackson, April [May] 6, 1862, in Joseph E. Brown Papers.

⁷⁷ Joseph Lemmond to Joseph E. Brown, April 18, 1862, in Governor's Subject File; L. H. Briscoe to John C. Moore, April 20, 1862, L. H. Briscoe to Thomas M. Robinson, April 20, 1862, L. H. Briscoe to Capt. C. L. Turner, April 22, 1862, L. H. Briscoe to Col. J. E. Jones, April 23, 1862, L. H. Briscoe to William G. Woodfin, April 24, 1862, & L. H. Briscoe to Col. James R. Wylie, April 26, 1862, in Adjutant and Inspector General's Letterbook, vol. 9, April 10 – May 21, 1862, RG 22-1-1, Georgia Department of Archives and History, hereafter cited as A&IG Letterbook; *Brown-Davis Correspondence*, 7.

heart of Brown's states' rights philosophy. As Brown wrote to Herschel V. Johnson, he might "for the sake of our cause submit to a temporary disregard of the rights of the State" under conscription, but he could not "submit to the *destruction* of the State government."⁷⁸ In a lengthy letter to President Davis on April 21, Brown warned against conscripting too deeply into the state government. And the militia was an integral part of that government.

Davis' brief response of April 28 was insightful, for it reached beneath the superficial, though still important, concerns of protecting state personnel, to the core issue at hand. Brown's concern for the protection of the militia was valid. But he misunderstood the law. It had no effect on the militia organization. It did not damage the state government. It did not target militiamen or councilmen or Congressmen or any other government official. It simply required *men* come forward and do their duty. Brown, by drawing his opposition in terms of militia organizations, implied that the basis for the Conscript Act lay in the Confederate government's ability to call out state militia, an area of concurrent authority that placed strict limits on national control of state troops. But as Davis explained to the governor, "the constitutionality of the Act you refer to as the 'Conscription Bill,' is clearly not derivable from the power to call out the Militia, but from that to raise armies."⁷⁹

The continuing debate remained firmly rooted in this constitutional polemic. How did one define the Confederate military, as an army or a militia? And, if one

⁷⁸ Brown to H. V. Johnson, April 21, 1862, in Joseph E. Brown Papers, MS 95, Hargrett Rare Book and Manuscript Library, University of Georgia Libraries; Brown to Thomas W. Thomas, April 22, 1862, *ibid.*; *Brown-Davis Correspondence*, 3-8.

⁷⁹ *Brown-Davis Correspondence*, 8.

adhered to the militia model, how did one interpret the concurrent powers of commanding that force? There are very few powers granted solely and explicitly to the central government either by the United States or Confederate constitutions. The powers to direct interstate commerce and international relations are two examples, but so, too, is the central government's ability to organize and maintain a standing army. All other powers are either held exclusively by the states or shared concurrently by both governments, with each power-sharing relationship carrying its own dangers. Coordinated concurrent powers allow both governments to exercise the same power independent of each other, but pose a liberal threat to individuals who now become subject to double jeopardy under both state and national jurisdictions. Superior-subordinate concurrent powers eliminate the threat of double jeopardy as one government's use of power lays the other government's power in abeyance, but threaten state prerogatives as national action might supersede state action. Advocates of states' rights tended to disclaim coordinate powers as anti-republican while upholding superior-subordinate powers that consistently remained subject to state precedence.⁸⁰

For Brown, the relationship between the national army and the state militias mirrored that between the national and state governments, a condition of constant tension over a finite quantity of power but always favoring state over national authority. As he pointed out in his May 9 reply to Davis, "by a well known rule of construction, [the military provisions of the Constitution] must be taken as a whole and construed together"

⁸⁰ A more modern interpretation inverts this relationship and holds that in some cases states may exercise concurrent powers until Congress chooses to act on the subject, in which cases state action must lay in abeyance. J. A. C. Grant, "Scope and Nature of Concurrent Power," *Columbia Law Review* 34, no. 6 (June 1934): 995-1008.

to create a unified military hierarchy that defined the concurrency of military powers.⁸¹ These provisions called for state militias to act as a superior protective barrier against encroachment of a subordinate national army into the general population. To prevent an inversion of this relationship, the size of the national army was limited constitutionally, and any expansion of national military authority could only happen with state approval and state oversight. The national government could requisition organized state militia with state commissioned officers but only for the terms of service approved by the states themselves.⁸²

The Conscript Act violated both these provisions and the superior-subordinate nature of concurrent military powers. By acting directly on the population without the permission of the state, it suspended the state's authority over its own citizens and inverted the constitutional power structure. With superior-subordinate powers, one power must necessarily lay in abeyance when the other is exercised. The two cannot operate simultaneously. Thus, it was only logical that if the Confederacy claimed military powers to force state citizens into the Confederate army, the state was required to suspend its militia powers over those same citizens. With militia laws suspended, the

⁸¹ *Brown-Davis Correspondence*, 10; c.f., "Georgia," "Letter to the Editor [Macon *Daily Telegraph*]" in Adjutant and Inspector General's Office Book of Commissions, Book B49: 688-695; Macon *Telegraph*, April 4, 1862. Brown's demeanor with the President throughout the summer of 1862 was undoubtedly influenced by the Governor's own failing health. Brown had traveled almost constantly between Savannah, Milledgeville, and Atlanta since his speech to the State Troops in early April, and his already slight frame was beginning to show the ready signs of fatigue. "His Excellency, we regret to say, appears to have suffered in health," noticed the Atlanta *Intelligencer* following the Governor's May 2 visit to that city. But what some attributed to the pressures of the office actually marked the beginning stages of mumps and throughout the month of May Brown would be confined to his bed suffering from chills and a "slow fever" that would leave him "seriously indisposed." Augusta *Chronicle & Sentinel*, May 3 and 28, 1862; Atlanta *Intelligencer*, May 28, 1862.

⁸² Confederate Constitution, article I, section 8, paragraphs 12 and 15; *Brown-Davis Correspondence*, 10-11. On the regular army of the Confederate States of America, see Weinert, "Confederate Regular Army," 97-107.

state's ability to direct, limit and enhance national military strength ceased. The expansion of the Confederate military could no longer derive from the expression of state authority but from an expansion of the national government itself. It was, as Brown decried, “a bold and dangerous usurpation by Congress of the reserved rights of the States and a rapid stride towards military despotism.”⁸³

It was obvious to President Davis and his cabinet that the Governor’s views resulted from a rather limited interpretation of the Constitution.⁸⁴ For one, the military powers contained in the Constitution were “distinct, specific, and enumerated in paragraphs separately numbered” so that they could not be construed as related, much less limiting. The only exception was Article 1, section 8, paragraph 18, the “necessary and proper” clause, which *expanded* rather than restricted the exercise of military powers within the confines established by the Constitution.⁸⁵ Conscription was based on the authority to raise and support *armies*, he reminded the Governor, not an *army*, and as such the Confederacy’s power could not be limited solely to a *regular* army or to a *single* military force.⁸⁶ What Brown considered a militia-army was instead a provisional army, a temporary national force that transcended the traditional divisions of regular army and militia and represented a legitimate expression of national powers that did not breach the traditional confines of superior-subordinate militia powers recognized by states’ rights theory. Thus, while Brown’s vision limited national powers to preserve state supremacy,

⁸³ *Brown-Davis Correspondence*, 25.

⁸⁴ Davis had submitted Brown’s letter of May 9, 1862, to his Cabinet and the Confederate Attorney General. *Ibid.*, 15.

⁸⁵ *Ibid.*, 16.

⁸⁶ Confederate Constitution, art. 1, sec. 8, par. 12.

Davis' allowed for an expansion or contraction of national powers and organizations without necessarily affecting the states or their rights.

This vision of the state-national politico-military relationship had been explained to Governor Brown back in May 1861 by then Secretary of War L. P. Walker. As long as hostilities with the North were only threatened, the Confederacy was content to organize a regular army supplemented by temporarily attached state forces for the “recovery of our forts, arsenals, and dock-yards.” The reduction of Fort Sumter by Federal troops, however, changed that. No longer were state militias needed for short-term adjunct support, now *men* were needed for long-term combat duty. Because of this, the old militia-army model upon which Governor Brown relied was no longer valid. It was true the Confederacy had requested troops from the states and that the troops had been organized and tendered under the militia laws of the states.⁸⁷ It was true that these companies had formed the backbone of the initial Confederate military force.⁸⁸ But each company had been mustered separately into Confederate service, and each had taken an oath of allegiance as a soldier in the Confederate army. Some had reorganized under Confederate law and elected new officers and reformed their ranks. The transference of authority from the state to the Confederacy and the resulting shift of an aggregated military force of state militia into a provisional army had been completed well before the passage of the Conscript Act. “There is not one man out of a thousand of those who will

⁸⁷ Bragg, *Joe Brown's Army*, viii.

⁸⁸ Wiley Sword, *Southern Invincibility: A History of the Confederate Heart* (New York: St. Martin's Press, 1999), 33-34.

do service under the Conscription Act,” Davis told Governor Brown, “that would describe himself, while in the Confederate service, as being a militia man.”⁸⁹

“THE GREAT BODY OF THE PEOPLE”

This was not the response Brown wanted. He had hoped Davis would change his mind. But it was not to be, and Brown became convinced that every element of state power was now threatened by conscription in the same way the State Troops had been. Brown soon found a conflict in state and Confederate law, the kind the conscription law was supposed to have eliminated, to shield the state's militia. State law allowed the governor to call for elections to fill militia offices vacated by reason of “death, resignation, or otherwise.”⁹⁰ It was a broad mandate and in many instances throughout the antebellum period Georgia’s governors had used the law’s suppleness to declare vacancies in cases of disputed elections and abandonment. Yet when Davis refused to yield to Brown's vision of Confederate-state relations, the governor decided to ignore such precedents and strictly define *vacancy* as being created only by death, resignation, abandonment or court martial.⁹¹ The conscription of a militia officer created no vacancy under the law and without a legal vacancy Brown could not commission a replacement.⁹²

⁸⁹ As the wife of Brigadier General Alexander R. Lawton explained the differences, both the volunteer state militia and regular Confederate army were perpetual organizations differing only in the sources of their authority – one from the state, the other from the national government. While the Confederate regular and provisional armies may have shared national authorities, the Provisional Army remained a temporary force organized to meet emergencies such as the present war, while the regular army assumed the additional continued responsibilities of border defense, training and education. Mrs. A. R. Lawton to A. J. Lawton, April 19, 1861, in Alexander Robert Lawton Papers, 1774-1952, Southern Historical Collection #415, Wilson Library, University of North Carolina at Chapel Hill; *Brown-Davis Correspondence*, 22.

⁹⁰ William A. Hotchkiss, ed., *A Codification of the Statute Law of Georgia, Including the English Statutes of Force: In Four Parts. To Which Is Prefixed, a Collection of State Papers, of English, American, and State Origin; Together with an Appendix, and Index.* (Augusta, GA: C.E. Grenville, 1848), 235, 236, 237.

⁹¹ *Brown-Davis Correspondence*, 43-44.

It was an imaginative move on the Governor's part, one that offered additional layers of states' rights argument. For even if Brown's ongoing debate with Davis failed to convince, the limited definition allowed him to refuse to commission officers and to use this putative deficiency to show that the conscription act denied the state its right to officer and train its militia not just while in Confederate service but at all times. He could also oppose conscription as a violation of property rights. For Brown, power was not institutionalized in an elective office. It was personalized in honorable and worthy men selected by the community through elective acclamation. Men were not placed in office; official power was placed in them. It was, in some ways, a form of community property vested in an individual. As one correspondent to the *Macon Telegraph* wrote, "An election to office confers a personal privilege and benefit for the protection of which ample provision is made by law...the officer who is *forced* into the service of the Confederate States does not forfeit his vested right – he is still an officer... of the State."⁹³ Thus, the conscription of militia officers not only removed men, it removed the state property vested in the men.

But like many of Brown's arguments, it was a double-edged sword. For while it aimed to strengthen Brown's position in protecting the state's militia organizations, it also provided fodder for political opponents and raised questions among his allies. Brown's political success had grown from his ability to successfully straddle the divide between Jackson and Calhoun Democrats.⁹⁴ He appealed to the yeomanry because he

⁹² CRG, 3:249.

⁹³ *Macon Daily Telegraph*, May 20, 1862.

⁹⁴ See, Wallace T. Hettle, "An Ambiguous Democrat: Joseph Brown and Georgia's Road to Secession," *Georgia Historical Quarterly* 81, no. 3 (1997): 577-592.

spoke “in a simple style, using the homeliest of phrases... There was a sympathy between the speaker and the people that not even the eloquence of [Robert] Toombs could emphasize, or the matchless skill of Mr. [Benjamin H.] Hill disturb. In Brown the people saw one of themselves.”⁹⁵ A non-slaveholder or poor yeoman who heard Brown decry his more polished opponent as lacking judgment, prudence and sagacity felt the vicarious thrill of sticking his thumb in the eye of a planter aristocracy that frequently thumbed its nose at him.⁹⁶ Yet with all his Jacksonian appeal, Brown was no liberal threat. The same verbal battles that elevated his reputation among Whig-skittish yeoman also made him the recognized leader of the state’s Democratic party.⁹⁷ And although hailed as “a representative of the horny handed constituency,” he firmly supported slavery, states’ rights, and the legitimacy of secession.⁹⁸ With this support the governor had easily won a rare third term at the beginning of the war in a campaign that had stressed wartime political continuity.

However, supporters of his gubernatorial opponent Eugenius A. Nisbet of Macon had gained control of the General Assembly. Nisbet was a former Whig whose conservative background and support of secession – he had drafted the state’s secession ordinance – had made him an acceptable candidate to fellow former Whigs, Know-Nothings and Democrats disgruntled with Brown’s continued insolence with the Davis

⁹⁵ Hill, *Joseph E. Brown*, 17.

⁹⁶ *Ibid.*, 18.

⁹⁷ Parks, *Joseph E. Brown*, 7, 9.

⁹⁸ Phillips, *Georgia and State Rights*, 181.

administration.⁹⁹ And soon after the issue of General Orders No. 8, Nisbet's followers latched onto the apparent hypocrisy of Brown's protection. They proclaimed the militia not just the officers but the "whole arms-bearing population of the state." They leapt at the opportunity to showcase Brown's protection of militia officers, admittedly members of the local community's elite, as a betrayal of the state's "wool hat boys."¹⁰⁰ "If it was so easy to construe the Constitution so that it would exempt the officers," asked the *Augusta Chronicle & Sentinel*, "it would have been equally as easy to discover a construction which would have exempted the privates."¹⁰¹ The *Southern Confederacy* simply asked how the law could be unconstitutional if it conscripted one group of militia men but constitutional if it conscripted another.¹⁰²

⁹⁹ James Horace Bass, "The Georgia Gubernatorial Elections of 1861 and 1863," *Georgia Historical Quarterly* 17, no. 3 (September 1933), 174-175; Fielder, *Life of Joseph E. Brown*, 174; Parks, *Joseph E. Brown of Georgia*, 160. Little research has been done on Georgia's Civil War political history, so little is known about the partisanship that underlay Brown's contentious relationship with the 1861-1862 General Assembly. I. W. Avery contends the break came when the fiscally conservative Nisbet faction had tried to reduce war-time expenditures by handing over as much of the state's military responsibilities as it could to Confederate control. Brown had responded by pushing a measure to reduce expenditures by reducing legislative pay. In all likelihood, the governor and his legislature had probably differed only in means rather than ends, yet the Nisbet faction no doubt would revel in Brown's political comeuppance if it could weaken the popular support he held. Avery, *History of the State of Georgia*, 217.

¹⁰⁰ Both the conflation of and distinctions between *people* and *militia* was and remains a contested area within the debate over Second Amendment rights. See, H. Richard Uviller and William G. Merkel, *The Militia and the Right to Bear Arms, or, How the Second Amendment Fell Silent*. Constitutional Conflicts, Neal Devins and Mark Graber, eds. (Durham and London: Duke University Press, 2002), 37-40; Paul Finkelman, "'A Well Regulated Militia': The Second Amendment in Historical Perspective," Symposium on the Second Amendment: Fresh Looks, Carl T. Bogus, ed. *Chicago-Kent Law Review* 76, no. 1 (2000): 195-236.

¹⁰¹ *Augusta Chronicle & Sentinel*, May 10, 1862.

¹⁰² But the tendency of Brown's opponents to exaggerate General Orders No. 8 to create the impression of class bias confused or negated much of their argument. For example, "John Hampden's" contention that "thousands of ... corporals" would take advantage of the order to claim exemption so blurred the distinctions between commissioned and non-commissioned officers that critics simply laughed at his amateurish attempts at social and military criticism. Corporals and sergeants were non-commissioned officers elected from and by the militiamen who acted as intermediaries between the enlisted men and their commissioned officers. But they retained strong ties to the enlisted ranks from which they came. A Georgia militia law of 1818 even envisioned the non-commissioned office as a form of "round robin" in which all enlisted men would have the opportunity to hold the rank for one year. They were not the commissioned officers the governor referenced in the order. Brown's supporters immediately latched onto "Hampden's"

Augustus H. Kenan, one of Georgia's strongest pro-Davis politicians, also questioned Brown's limited protection policy. But his questioning focused primarily on why militia officers needed to be between the ages of eighteen and thirty-five. "An officer at 36, 40 or 50 is full young for home defense," he suggested, "and I presume there is patriotism enough in this class of our citizens to fill all vacancies."¹⁰³ Had this line of questioning been followed to its logical conclusion – the appointment of non-conscript age men to militia offices – a compromise might have allowed conscription to take full effect while honoring the Governor's concerns for the continuation of the state militia. Such a compromise, however, would have required some unlikely admissions. Governor Brown and his supporters would need to acknowledge the state precedent in executive pronouncement of militia vacancies which in turn would have required Brown to acknowledge the cause of that vacancy, namely a national power to conscript. This was something that, even if the state's reserved powers over the militia had been protected, Brown would have been unwilling to do.

Confederate Vice President Alexander Stephens and his brother Linton also expressed concern over Brown's protections, only they felt he had not gone far enough. They and Governor Brown had been in basic agreement. Volunteers for Confederate service were regular army. Men forced or compelled by law into service were militia.¹⁰⁴

challenge as a hollow attempt to foment discord among the enlisted ranks by depicting the Governor's protection as more capricious than it actually was. Macon *Telegraph*, May 12 and 24, 1862; Milledgeville *Southern Confederacy*, June 21, 1862.

¹⁰³ Milledgeville *Southern Recorder*, May 13, 1862; Bass, "The Georgia Gubernatorial Elections of 1861 and 1863," 167, 178, 179.

¹⁰⁴ Joseph E. Brown to Alexander H. Stephens, July 2, 1862, in Ulrich B. Phillips, ed. *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb*. Vol. 2, American Historical Association. Annual Report, 1911: Report of the Historical Manuscripts Commission (Washington, 1913), 597-599.

Given this structure, Brown's protections did not make sense. Linton Stephens, for example, wrote in agreement with Alexander that "the Central Government, shall not have the power of forcing the humblest man into its military service except in some one of the three greatest emergencies which can arise [invasion, insurrection, and fire], and with the concurrence of his own State. The very jist of this restriction is the protection it affords to the men and not to the organization."¹⁰⁵ The militia "was not a mere organization which may itself be destroyed by the removal of the men who compose it" and that the framers of the Constitution had been but "babbling geese" if they had meant the constitutional protections for the militia organization not to apply equally to its constituent parts – the entire arms-bearing population.¹⁰⁶

But here Brown appears to have been more in line with President Davis. Davis and other pro-conscriptionists argued that the militia was an organization "created by law" and that the "arms-bearing inhabitants of a State are *liable* [emphasis added] to become its militia." Without a law directing that service, those inhabitants are "no more militia than they are seamen." The anti-conscription commentator "Georgia," who may have been Governor Brown himself, also claimed the militia as "the great body of the people." But the militia to which they referred was not "the great body of the *people*" but "*the* great body of the people" [emphasis added], and it was the organization Brown

¹⁰⁵ Linton Stephens to Alexander H. Stephens, June 30, 1862, in Alexander H. Stephens Papers, MSS 94, Emory University. It appears, contrary to what previous studies have held, that Governor Brown agreed with the definition of militia as the whole of the arms-bearing population, until after September 1862 when Elbert County Superior Court Judge Thomas W. Thomas included such a definition in his legal ruling. Governor Brown does not explicitly define the militia as such until July 1863. *Lovingood v. Bruce*, Elbert County Superior Court, Minute Book 1862-1868, 37, 62-71; CRG, 3:362.

¹⁰⁶ *Macon Telegraph*, May 16, 1862.

wished to protect.¹⁰⁷ Even Brown's contemporaries observed that "while he protested against the conscript acts and policy, he did not oppose the enrollment of private soldiers of the militia which did not break up its organization; but refused to allow the officers enrolled and ordered away."¹⁰⁸ Brown's concerns, then, were framed by the expressed purpose of protecting the state's reserved rights over the institutional body of the militia as a symbol of the independence and sovereignty of the state of Georgia within the Confederate States of America, not of protecting the entirety of Georgia's arms-bearing population.

Brown was able to capitalize on this distinction to smooth over his initial complaints against the Conscript Act. By sacrificing the generalized militia of military-aged men – the great body of the *people* – who fell under the Conscript Act, he was able to preserve a more limited institutional militia – *the* great body of the people – of overaged men and a bloated corps of militia officers. In some respects Brown was creating his own version of John C. Calhoun's expandable army. As President James Monroe's Secretary of War following the War of 1812, Calhoun was no friend of the militia system. But realizing that the states would not support a drastic reorganization of the military system that elevated national over state preparedness, he instead proposed an Expandable Army Plan. The War Department would retain a fully staffed army officer

¹⁰⁷ *Brown-Davis Correspondence*, 18-19; *Macon Telegraph*, May 16, 1862. "Georgia" would publish several letters in the *Macon Daily Telegraph* throughout April and May 1862. One of these letters is recorded in the Georgia Adjutant and Inspector General's Office Book of Commissions. It may be that "Georgia" was a member of the state executive branch, either in the Adjutant General's Office or the Governor's office. Although such evidence is circumstantial that Brown actually *was* "Georgia," it is curious that the letter of "Georgia" published on May 12, 1862, used exact phrases used by Governor Brown in his unpublished letter to President Davis of May 9, 1862. c.f., *Macon Daily Telegraph*, May 12, 1862, and *Brown-Davis Correspondence*, 10.

¹⁰⁸ Fielder, *Life of Joseph E. Brown*, 264-265.

corps that would oversee the maintenance of a skeletal national army. During peacetime, the officers would continue their training, building and strengthen in the *esprit de corps* around which a wartime military could be formed. The regimental and battalion organizations would be understaffed so as not to alert the fears of the states, but during military conflicts could be quickly filled by state requisitions, volunteers and drafts.¹⁰⁹ The Georgia state militia now took this form. The exemptions of General Orders No. 8 maintained a bloated – some complained excessively so – officer corps around which the administrative structure of the state militia could be maintained to be supplemented by future calls to men not liable to conscription.

By the end of the summer of 1862, most Georgians had come to see conscription as something they could accept “without discussing the whys and wherefores” too seriously.¹¹⁰ Georgia attorney George Anderson Mercer may have criticized the act as “badly worded & moulded,” but Confederates were not so disenchanted as to deny it a fair trial.¹¹¹ Many of the major newspapers supported the measure as a necessary component of a successful war effort, and the *Macon Telegraph* warned that any attempt to foment opposition to conscription would be viewed as unpatriotic and potentially treasonous.¹¹² Even the men most likely to fall within its provisions, though displeased,

¹⁰⁹ Lawrence Delbert Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812*. Studies on Armed Forces and Society (Chapel Hill, NC: University of North Carolina Press, 1982), 174-175.

¹¹⁰ *New Orleans Daily Delta*, April 16, 1862; *Milledgeville Southern Confederacy*, April 20, 1862; *Milledgeville Southern Recorder*, April 22, 1862; *Macon Daily Telegraph*, April 24, 1862; *Richmond Daily Enquirer*, May 5, 1862.

¹¹¹ Herschel V. Johnson to A. H. Stephens, April 16, 1862, and May 4, 1862, in Herschel V. Johnson Papers, 1812-1880, Rare Book, Manuscript and Special Collections Library, William R. Perkins Library, Duke University; George Anderson Mercer Diary, 1851-1889, vol. 3, Southern Historical Collection Ms 503, Wilson Library, University of North Carolina at Chapel Hill.

¹¹² *Macon Daily Telegraph*, April 24, 1862, in *Augusta Daily Constitutionalist*, April 30, 1862.

offered few open complaints.¹¹³ Governor Brown initially reacted as most Confederate governors did – with a reluctant and guarded acquiescence to a questionable but essential measure to meet a mounting Union military presence.¹¹⁴ As he admitted to former Georgia Governor Herschel V. Johnson soon after the act’s passage, he would “for the sake of our cause submit to a temporary disregard of the rights of the State by the Confederate government.”¹¹⁵ He even refused to protect the state’s militia from conscription through the end of April 1862.¹¹⁶

But such acceptance came only as a result of compromises that allowed the particularist sentiments of states’ rights advocates, wary of the measure’s centralizing tendencies, to temper some of the harsher provisions of the original bill. Gone was the idealistic vision of the noble, long-suffering Confederate soldier, but gone, too, was the wide-ranging plan to conscript everyman liable to militia duty. Davis was wise enough to leave older militiamen untouched for home defense. Gone was the requirement that only individuals be accepted for enrollment. Now entire units previously organized and officered by the state would be accepted. Gone was wholesale conscription of militiamen. Officers would now be protected in deference to the militia organization’s stability. Gone, too, was Davis’ denial of state participation. State officials could now oversee conscript enrollment and organization if the governor wished. Senator Wigfall’s

¹¹³ Moore, *Conscription and Conflict*, 18.

¹¹⁴ Richmond *Daily Dispatch*, May 7, 1862; Atlanta *Intelligencer*, May 8, 1862.

¹¹⁵ Brown to H. V. Johnson, April 21, 1862, and Brown to Thomas W. Thomas, April 22, 1862, in Joseph E. Brown Papers; *Brown-Davis Correspondence*, 3-8.

¹¹⁶ Joseph Lemmond to Joseph E. Brown, April 18, 1862, in Governor’s Subject File; L. H. Briscoe to John C. Moore, April 20, 1862, L. H. Briscoe to Thomas M. Robinson, April 20, 1862, L. H. Briscoe to Capt. C. L. Turner, April 22, 1862, L. H. Briscoe to Col. J. E. Jones, April 23, 1862, L. H. Briscoe to William G. Woodfin, April 24, 1862, & L. H. Briscoe to Col. James R. Wylie, April 26, 1862, in A&IG Letterbook 9; *Brown-Davis Correspondence*, 7; Savannah *Daily Morning News*, April 28, 1862.

contention that conscription could be accepted despite putative contradictions with states' rights appeared to have been correct, and Jefferson Davis' defense of the act suggested that expanded central powers could be accommodated by states' rights depending upon how one defined the military being created. Even Governor Brown appeared to have settled into an uneasy acceptance.

CHAPTER TWO IN VIEW OF THE DELICATE RELATIONS

On Saturday morning, July 5, 1862, Captain Thomas M. Bradford arrived, as usual, before everyone else. He liked to dismiss the night guards, perch himself on the front steps of the Georgia State House and watch the town slowly stir to life. At over sixty years of age, Bradford was too old for active military service. There would be no battlefield glory for him. This grizzled land agent's war would be spent protecting the capital and guarding military stores.¹ There was no dishonor in it; he served his state as best he could. But his better self – that proud, patriotic Confederate – longed to “see the elephant,” as soldiers described their first battle experience.

It was the kind of southern July morning that made everything move a bit slower than usual, hot and humid with the air still heavy despite (or perhaps because of) the rains of the past few days.² And it was quiet. The Georgia legislature was in its summer recess so activity in the State House was much lighter than it had been a few months earlier. At that time, the halls of power had been abuzz with speculation about the coming conscription law. Now, the congressmen were at home, and the governor was dividing his time between the capital at Milledgeville, his home at Canton, the Georgia Military Institute at Marietta, Savannah, or any number of other sites throughout the state. The initial shock of conscription had waned. The verbal battles between Brown and Davis just now were becoming public knowledge, but already the debate had grown

¹ Wayne to Dunwoody, July 12, 1862, in A&IG Letterbook 11.

² Macon *Daily Telegraph*, July 3 and 19, 1862.

tiresome, and most Georgians, Bradford included, had accepted conscription as a *fait accompli*.

Despite the silence, Bradford was not sure he actually had heard the noise. There had been no footfalls, and no one else was supposed to be in the building. And yet there it was again: the faint squeak of floorboards drifting out of the building behind him. He turned and looked through the open doorway but saw nothing. Perhaps it was Old Ben returned from drawing water from the well. Or maybe it was Adolphus, the servant in the Adjutant General's Office, arriving for work. No, it was still too early, even for them. Yet there it was again. He drew his sidearm and quietly entered the building to investigate.³

As he neared the Guard Room, a figure emerged from the office and raced up the adjacent stairwell, a jangling ring of keys in one hand. Bradford could tell almost immediately that it was Jackson Cagle, the young clerk in the Adjutant General's Office.⁴ It was not the first time he had caught Cagle snooping around the State House. Early in 1861, when the twenty-three-year-old dirt farmer's son was a clerk in Surveyor General Ahaz Bogges' office, Bradford had discovered him rummaging through papers left on a table in the governor's reception room.⁵ Another time, Old Ben had alerted him to the fact that Cagle had begun stealing the night watchman's keys from the guard room while Ben retrieved water. Bradford had "advised and admonished [the clerk], as I would a

³ Ibid.

⁴ Ibid.

⁵ Wayne to Dunwoody, July 12, 1862, in A&IG Letterbook 11; Bradford to Brown, July 12, 1862, in Governor's Subject Files; Population schedule, 1850 Federal Census.

child, to change his conduct,” but to no avail.⁶ Cagle was never punished. When Boggess died in mid-1861, Bradford had warned Boggess’s replacement, Archibald Gaulding, of Cagle's antics. He had even offered to pay twenty-five dollars per month out of his own pocket to hire a replacement, but Gaulding had refused to fire him.⁷ And when Bradford heard of Cagle’s transfer to the Adjutant General’s office, he had warned Adjutant General Henry C. Wayne, but he, too, had refused to fire the young man.⁸ So, instead of chasing Cagle up the stairs, Bradford simply shook his head in disbelief and holstered his weapon. There was no point.

Later that morning, Bradford took the short walk across Capital Square to the Milledgeville post office to await the day’s mail.⁹ He was joined by several friends and in the course of the ensuing conversation Bradford recounted his earlier discovery of Cagle. Young, healthy boys such as Cagle should not be at home creating mischief, he fumed. His companions agreed. One of them took a pencil and a scrap of paper from his pocket, and together they assembled a list of men, including Cagle, working in the State House whom they would see enlisted in the military. Pushing the men to volunteer would have accomplished the goal, but it would not have tarnished the men with the odium they deserved for shirking their duty for so long. Instead, they would send the list

⁶ Bradford to Brown, July 13, 1862, in Governor’s Subject Files.

⁷ Myron Wade House, “Carroll County,” *New Georgia Encyclopedia*, (Georgia Humanities Council and the University of Georgia Press, 2004-2007), <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2305&hl=y>, accessed March 30, 2007; *Atlanta Constitution*, August 9, 1870; *Columbus Enquirer*, August 20, 1861.

⁸ Bradford to Brown, July 13, 1862, in Governor's Subject Files.

⁹ Wayne to Dunwoody, July 12, 1862, in A&IG Letterbook 11.

to Major John Dunwoody, state commandant of conscription, and have him order the men's arrest and conscription.¹⁰

The following Tuesday, Cagle was at work in the Adjutant General's Office when a Confederate officer entered the room and handed him a single sheet of paper informing him that he had been conscripted.¹¹ He was confused. State officials were supposed to be exempt. And yet here was a Confederate officer placing him under arrest. Cagle's superior, Adjutant General Henry C. Wayne, was incensed. Not at Lieutenant Moffett, the enrolling officer, for Wayne knew he had no "intention to seek a collision between the State and Confederate authorities, [although] his course certainly [was] calculated to induce one."¹² Nor was he angry with Major Dunwoody. Rather, it was Captain Bradford's "gratuitous and unanswerable interference with this Office" that caught the full brunt of Wayne's anger.¹³

Bradford thought he had done nothing wrong. As he later explained to Governor Brown, he believed "it was our duty to do all we could to induce all healthy young men to go into the army... It was the cause, the great cause, the success of which is so important to us and our posterity, that influenced me to try to do something to aid it."¹⁴ But Wayne thought Captain Bradford's "malevolence must be of a high type when for its gratification he forgets his own relation to the State of Georgia, and volunteers as the secret assistant of the Enrolling officer in violation of all official courtesy... and with the

¹⁰ Ibid.

¹¹ Moffett to Cagle, July 9, 1862 in Wayne to Moffett, July 10, 1862, in *ibid.*

¹² Wayne to Dunwoody, July 12, 1862, in *ibid.*

¹³ Wayne to Bradford, July 12, 1862, in *ibid.*

¹⁴ Bradford to Brown, July 13, 1862, in Governor's Subject Files.

chance of provoking an issue of a serious character between the state and a confederate officer.”¹⁵

It was not unexpected that Governor Brown would issue an official complaint to Secretary Randolph.¹⁶ After all, a Confederate officer had marched into Georgia’s state capitol building and arrested a state official, a direct affront to the sovereignty of the state. But Brown never pressed the matter as far as he could have. After all, a confrontation such as this was tailor-made for a governor bent on exposing the machinations of a dictatorial government. But Brown recognized that mistakes such as this were going to be made by both state and Confederate officials, and he tried to remain fair-minded even as he lambasted President Davis’s constitutional interpretation. Although he made a great show of offering armed resistance to protect state officers, those officers served with a conscription notice usually reported to the Confederate camp of instruction anyway to avoid aggravating the situation while their cases were adjudicated.¹⁷ As General Wayne explained, Brown felt that “in view of the delicate relations of the Governor to the Confederacy on the matter of the Conscript Law, it is [the state’s] duty to show to Confederate Authorities that we deal fairly with them to the extreme of the law and the Governor’s Orders.”¹⁸

¹⁵ Wayne to Brown, July 12, 1862, in A&IG Letterbook 11.

¹⁶ CRG, 3:292-293.

¹⁷ L. H. Briscoe to John Dunwoody, July 28, 1862, in A&IG Letterbook 12.

¹⁸ Anonymous to Major Dunwoody, July 8, 1862, in Governor’s Subject Files; John Dunwoody to Henry C. Wayne, July 14, 1862, in Adjutant and Inspector General’s Incoming Correspondence, RG 22-1-17, Georgia Department of Archives and History; Henry C. Wayne to John Dunwoody, July 21, 1862, in A&IG Letterbook 11; L. H. Briscoe to John Dunwoody, July 28, 1862, Henry C. Wayne to John Dunwoody, August 8, 1862, and Henry C. Wayne to Captain A. Fitzpatrick, August 8, 1862, in A&IG Letterbook 12.

So while Cagle's arrest does little to highlight the putative excesses of the Confederate government, it does open a window on the questionable breadth of the conscription law under states' rights. How could conscription work between the two opposing visions laid out by Davis and Brown? How far would conscription intrude into or overlap with state governments, their powers and officials? Where did the boundaries of conscription lay? An obvious one was that of age, a barrier that allowed older members of the state militias to remain untouched. Another was the limit imposed by General Orders No. 8, a boundary that protected militia officers as the corporeal expression of the state's militia powers. Yet another was that marked by men such as Jackson Cagle and other minor government officials who stood at the outer limits of state authority and organization. Would they be sacrificed for the war effort? Or did they deserve the same protection as militia officers? These were not simple questions, and the attempt to discover answers requires a dual approach. First, we must understand the events surrounding the passage of the second Conscript Act during the last half of 1862. While Governor Brown would continue to make concessions to the Confederate government, the second act would come closer, in some regards, to the original vision of Lee and Davis, a vision that only increased fears of an expansive national government and decreased Brown's willingness to cooperate. Second, we must revisit the story of conscription from a different perspective, that of the laws, pressures, and expectations that weakened conscription, for it is in these that Confederates began to reach an acceptable rationale for a states' rights national conscription.

“STOP, YOU’LL SPOIL MY PICTURES!”

As summer turned to fall in 1862, attentions once again turned to conscription. Would it be expanded? And if so, how far? Military necessity would inform that decision, but its justificatory power would fail as Confederate fortunes improved. Instead, advocates of the Confederacy’s conscriptive powers would begin to search for what Kentucky Congressman James Moore called “a speedy and final [answer to] questions of Confederate power and State sovereignty” that would accommodate national conscription.¹⁹

In this search Governor Brown arguably carried the greatest burden. Although his opposition was heartfelt, the firmness with which he had opposed the first act had made him appear obstructionist and vindictive. Some Confederates ridiculed his constitutional interpretations as naïve and uninformed, and members of the Georgia General Assembly’s Nisbet faction criticized his unilateral decision to shield militia officers as dictatorial and elitist. Although it is unclear whether Davis’ interpretation of expansive national power was widely held, it is clear that he, not Brown, had political momentum on his side.

Yet neither man was able to make definitive statements on constitutional principles. Despite his vehemence, even Governor Brown knew the limitations of his office, and he directed his adjutant general to tell Georgia citizens that “State Authorities have no right or power to venture an authoritative construction of the Conscription act. They can only give an *opinion* on doubtful questions.”²⁰ If either man’s states’ rights

¹⁹ SHSP 46:83.

²⁰ L. H. Briscoe to [], no date, in A&IG Letterbook 12.

vision was to be vindicated, it would have to gain the support of the state courts, which made constitutional rulings in the absence of a Confederate Supreme Court, as well as the support of the state legislatures, the core of popular representation and power in the Confederacy. Neither would achieve their expected results or clarity of principle.

The Confederate Congress reconvened after its summer recess at noon on Monday, August 18, 1862. Spirits were high, and Representative Franklin Barlow Sexton noted that the opening of session was “quite a cordial re-union.”²¹ He had reason to be upbeat. While the passage of the first Conscript Act had signaled a desperate military situation the previous spring, things had turned around over the summer. Nathan Bedford Forrest had made a name for himself delaying Union General Don Carlos Buell’s advance on Chattanooga. General Thomas J. “Stonewall” Jackson had driven deep into the Shenandoah Valley, winning five battles against three separate Union forces and diverting reinforcements needed for two separate Union offensives: John Charles Frémont’s campaign in East Tennessee and Irvin McDowell’s planned support for McClellan’s attack on Richmond in the Peninsula campaign. General Robert E. Lee had then capitalized on Jackson’s successful diversions to stop McClellan’s advance at the Seven Days battles of late June and followed this victory by pressing northward through Maryland in the direction of the United States capital.²²

Lee’s Maryland invasion produced a wave of panic in the North, especially after a Chicago *Times* report suggested that conscription could raise a Confederate army of as

²¹ F. B. Sexton, “Diary of a Confederate Congressman, 1862-1863,” Mary S. Estill, ed., *Southwestern Historical Quarterly* 38, no. 4 (April 1935): 276.

²² McPherson, *Battle Cry of Freedom*, 455-460, 470-471, 513-518; James M. McPherson, *Crossroads of Freedom: Antietam*, Pivotal Moments in American History, David Hackett Fischer and James M. McPherson, ed. (Oxford and New York: Oxford University Press, 2002), 80-89.

many as 1.4 million men. Although papers such as the New York *Herald* and the Wisconsin *State Register* ridiculed the estimate as the wishful thinking of pro-Confederate Northern Democrats, some Northerners were indeed anxious about the potential of Confederate conscription.²³ Even President Lincoln, in light of Lee's approach on Washington, began to question his decision to suspend Union enlistment efforts, ironically made at about the same time that the Confederates had passed the first Conscript Act. On July 2, 1862, he reversed his decision and issued a call for 300,000 three-year troops. He made a second call on August 4 for an additional 300,000 nine-month troops.²⁴

With Lincoln's new troop calls, it was clear that repeal of the first act was unlikely. The Macon *Weekly Telegraph* wrote that only by expanding the Conscript Act to embrace all white men under the age of forty-five could the Confederacy hope to raise its forces to 600,000 men, a force "which ought to be a match for the enemy in a defensive war."²⁵ "This last victory has brought us to the very door of the Federal capital," wrote the Richmond *Daily Dispatch*. To capitalize on this success, the army needed to be replenished and reinforced, "and it is the duty of Congress to see that they be so... . We entreat the members of Congress to turn their attention entirely to this object for a season, and not to withdraw it until they shall have completed a conscription law."²⁶ The editor of the Houston *Telegraph* went even further: "In addition to the including of all persons between the ages of 35 and 50 within the conscript act, if that is

²³ Wisconsin *State Register*, August 2, 1862; Boston *Investigator*, August 6, 1862

²⁴ McPherson, *Battle Cry of Freedom*, 491.

²⁵ Macon *Weekly Telegraph*, August 15, 1862.

²⁶ Richmond *Daily Dispatch*, September 3, 1862.

to be done, our Congress, now in session, could not do a wiser thing than pass another conscript act, calling for the enrolling of 50,000 able-bodied negro men, or say equal to twenty percent of the white men in the field.”²⁷

Although Davis denied the Confederacy had entered a new period of crisis, he suggested that Congress make a Southern response to Lincoln’s call-up a top priority by expanding the Conscript Act to “embrace persons between the ages of 35 and 45 years... [as] a wise foresight.”²⁸ Secretary Randolph could not have agreed more.

Four months have not elapsed since [the Conscript Act's] passage, and the present condition of the Army and of the country sufficiently proves its wisdom. Four months ago our armies were retiring, weak and disorganized, before the overwhelming force of the enemy... . Now we are advancing, with increased numbers, improving organization, renewed courage, and the prestige of victory, upon an enemy defeated, disheartening, and sheltering himself behind defensive works... . A military system which has done so much in so short time should be cherished and perfected and its defects speedily corrected.²⁹

Two weeks later, the Senate Committee on Military Affairs returned a bill calling for an expansion of the existing age limits to forty-five.³⁰ It was countered the following day by a bill from William Lowndes Yancey. Believing conscription constitutionally permissible but politically dangerous, Yancey proposed to reduce conscription to a secondary means of enlistment by allowing the president to conscript the extended age

²⁷ *Houston Tri-Weekly Telegraph*, August 20, 1862.

²⁸ JCCSA 5:299.

²⁹ *Official Records IV*, 2:43.

³⁰ JCCSA 2:253; A Bill to be Entitled an Act to Amend an Act Entitled “An Act to Provide Further for the Public Defence,” approved 16th April, 1862, CI, reel 4, no. 93-1.

group only after the failure of the states to answer fresh volunteer requisitions.³¹ His amendment was meant as a “peace offering,” not only for the present but for the future when “old wounds” might fester within the body politic. “When the war ceases,” he said, “and peace gives occasion for the full development of State sovereignty such collisions [between the states and the Confederate government], such temporary submission [of the states to the Confederacy], favored by circumstances, are remembered as humiliations... [that] tend to breed parties, which, in the end, may disrupt the Government.”³² But even in this compromise, Yancey was unwilling to surrender all national power to effect military preparedness. His amendment retained the Conscript Act, although it delayed its action to be used against states unable or unwilling to meet Confederate enlistment quotas. In addition, it *required* the president to call for new troops, something the Senate’s bill only *authorized* the president to do.³³ Nevertheless, the Senate rejected Yancey’s amendment by a vote of fifteen to seven, perhaps because although it used conscription sparingly, it applied it unequally upon the states.³⁴ Only Williamson Oldham spoke in opposition to both bills in a lengthy speech of September 4 that reiterated his previous arguments against national despotism and loose interpretations of constitutional doctrine, and only Oldham and James L. Orr, the Senate’s two defenders of

³¹ SHSP 46:17-18, 32-34; JCCSA 2:257; Substitute Proposed by Mr. Yancey to the Bill (S. 71) to Amend an Act Entitled “An Act to Provide Further for the Public Defence,” approved 16th April 1862, CI, reel 4, no. 93-2.

³² William Lowndes Yancey, “Conscription,” in *Speeches of William Lowndes Yancey, Esq., Senator from the State of Alabama* (Montgomery: Montgomery Advertiser Book and Job Office, 1862), 19-20.

³³ Yancey, “Conscription,” 20-21.

³⁴ JCCSA 2:261.

states' rights constitutionalism from the first act's debates, voted against any expansion of conscription.³⁵

In the House, things would not be so painless. On August 18, South Carolinian William Porcher Miles offered his own expansion of the Conscript Act to include all white male citizens eighteen to forty-five years of age.³⁶ That bill was countered by a resolution from Henry Foote calling for a new 250,000-man army to be raised by requisitions for volunteers.³⁷ What followed was supposed to be a debate on the referral of the two proposals to the House Committee on Military Affairs. But Foote's tactic of supporting his own proposal by attacking the existing law turned the debate into a referendum on the first act's constitutionality.

At first, Foote was unable to speak openly due to House secrecy rules. When he questioned how Davis could claim that the Conscript Act had been passed by a large majority when he knew that was not true, W. G. Swan, of Tennessee, objected to the statement as disclosing Congressional secrets.³⁸ Once these rules were lifted, however, Foote began to filibuster. For over two hours, the Tennessean railed against the first act as a violation of states rights.³⁹ He was interrupted several times, William P. Chilton of Alabama expressing concern that Foote must be exhausted – certainly the House was, Chilton complained – but Foote continued to speak until the House adjourned. On

³⁵ SHSP 46:35; Williamson Simpson Oldham, *Speech of W.S. Oldham, of Texas, upon the Bill to Amend the Conscript Law, made in the Senate, September 4, 1862* (Richmond, 1862).

³⁶ SHSP 45:176.

³⁷ *Ibid.*, 45:178.

³⁸ *Ibid.*, 45:182.

³⁹ *Richmond Enquirer*, August 26, 1862.

Friday, Foote once again took the floor, and once again questioned how Congress could consider extending a law that many of its members had “painfully voted for...upon the ground of its necessity.” Even President Davis, Foote reminded the men, admitted he had signed the bill “with very great reluctance.”⁴⁰

By now the House had grown weary of Foote’s antics. Otho Singleton of Mississippi told Foote that “it was a useless waste of time to discuss the merits of the conscript act; he saw nothing new in [his] speech; it was a rehash of his former speech.”⁴¹ Congressman Sexton complained that Foote “consumed nearly the whole day in useless discussion of the Conscript Act,” while William Porcher Miles thought “it was not the time to discuss the merits of the [first act].”⁴² Confederate Attorney General Thomas Bragg noted in his diary that “that political Charlatan Foote day in and day out is talking.”⁴³ Several Congressman called for Foote to withdraw his resolution and end the discussion, but Foote refused.⁴⁴

By week's end, the House appeared to be spinning out of control. Claiborne Herbert, of Texas, joined the fray with what was described as a “very foolish speech on Foote's resolutions.” Claiming that Texans, while acquiescing to the necessity of the first law, seriously questioned its constitutionality, he threatened that “if the law were extended, as proposed, so as to embrace persons over 35 years of age, the people [of

⁴⁰ SHSP 45:204.

⁴¹ *Ibid.*, 45:208.

⁴² Sexton, “Diary,” 277; SHSP 45:208.

⁴³ Thomas Bragg Diary, 2:78

⁴⁴ SHSP 45:208-209.

Texas] would be compelled to raise the ‘Lone Star’ standard again.”⁴⁵ The draft bill had not even made it to committee and already members of the House were threatening secession from the Confederacy.⁴⁶

For more than ten days, the extension proposal languished in the House and then in the House Committee on Military Affairs while the Confederate public grew increasingly anxious. The Richmond *Daily Dispatch* offered the most pointed criticism when it wrote that “the members are spending the precious time that should be spent in preparing to meet the emergency which is most assuredly approaching, in idle talk. We only hope they may not find out, in the next sixty days; that they have ‘no more business before them,’ and ‘skedaddle,’ as they did last spring, leaving the capital of the Confederacy in danger a second time from an irruption of the Northern barbarians.”⁴⁷

The *Dispatch* could not have been pleased when House debate lasted an additional sixteen days. In most cases, the speeches were apologia justifying positive votes cast the previous April. Many carried the empty air of opportunism as politicians felt the need to inject any comment, however inane or repetitive, simply to appear on the record. So wearisome did the debate become – “Everybody [is] tired of the discussion” recorded Congressman Sexton – and so light did attendance become in the midst of it,

⁴⁵ Sexton, “Diary,” 277; SHSP 45:214.

⁴⁶ Herbert’s comments did not sit well with his constituents. A public meeting held in Lagrange, Texas, on September 27, 1862, disavowed the threat to secede and, although regretting the necessity of passing the Conscript Act, pledged to submit to and support the policy and “conscript every man and youth of whatsoever age, who might be able to bear arms.” Houston *Tri-Weekly Telegraph*, October 6, 1862.

⁴⁷ Richmond *Daily Dispatch*, August 26, 1862

that Congressman Hines Holt of Georgia moved a call on the House for “conscripting members to serve their country by listening to the debate on conscription.”⁴⁸

Despite the tedium, no one claimed the army did not need more men, even if only to replenish existing units. As Tennessee’s Meredith Gentry colorfully described, “to be stingy of men now was to be like the man whose house, having a few pictures in it was on fire; when the engines began to play upon it, he cried, ‘stop, you’ll spoil my pictures!’”⁴⁹ The question was one of method. Some congressmen supported a simple extension of the first act much as the Senate had already approved. Others opposed extension because it would establish “the conscription principle as the permanent policy of the Government,” an unnecessary escalation of Confederate power.⁵⁰ On the whole, the House appeared to be leaning toward a more moderate stance that reverted to traditional methods of military enlistment while still respecting the principle of conscription.

The bill finally returned by the Committee on Military Affairs was similar to Yancey’s Senate amendment relegating conscription to a secondary means of enlistment. As North Carolina’s Owen Rand Kenan explained, “this has been done to meet the objections of gentlemen as to the constitutional questions; otherwise [the bill] is pretty much the same [as the first act].”⁵¹ It was a conscious step in the direction of restoring a traditional states’ rights relationship between the individual states and the Confederate

⁴⁸ SHSP 46: 96-97.

⁴⁹ *Ibid.*, 46: 70.

⁵⁰ *Ibid.*, 46: 96.

⁵¹ O. R. Kenan to Stephen Graham, September 8, 1862, in Kenan Family Papers, 1748-1979, Southern Historical Collection #4225, Wilson Library, University of North Carolina at Chapel Hill.

government, and offered congressmen a way to step back from an April vote that the Richmond *Enquirer* called “repugnant to the feelings of vast numbers.”⁵² Still, it retained the Confederacy's ability to supersede the military powers of recalcitrant or sluggish states to enlist recruits if needed.

Other proposals would have repealed conscription altogether. South Carolina's Representative Milledge Bonham proposed a substitute that would have repealed the first act in favor of state quotas capped at a cumulative 300,000 men.⁵³ North Carolina's Burgess Gaither proposed a similar repeal but would have given the president perpetual power to requisition an unlimited number of troops from the states for the duration of the war.⁵⁴ Neither proposal garnered much support, and attention remained focused on the committee bill which finally passed, slightly amended, on September 17 by a vote of 49 to 29.⁵⁵

The bill was not perfect. The first section authorized the president to call into service all “white male citizens” between the ages of thirty-five and forty-five and made no reference to state participation. The second section then authorized the president to make requisitions upon the state governors for “all or any portion of the persons within their respective States” between the ages of thirty-five and forty-five, while the third section authorized the president to implement the terms of the first Conscript Act should any governor fail, within a reasonable amount of time, to fulfill requisitions made under

⁵² Richmond *Enquirer*, September 5, 1862, quoted in Macon *Daily Telegraph*, September 9, 1862.

⁵³ JCCSA 5:345; SHSP 46:16, 26.

⁵⁴ “Mr. Gaither’s Substitute for Bill to Increase the Army,” CI, reel 6, no. 254-2; SHSP 46:27-28; JCCSA 5:344-345.

⁵⁵ SHSP 46:57, 176-178; JCCSA 5:354-355.

section two. The contradictions between the first and second sections make it unclear as to whether the act would apply only to Confederate citizens or to all legally recognized persons. It was also unclear whether the president would have the authority to conscript with no state participation as in section one, or if he would be required to make state requisitions under section two. Confusing as well was the punitive action to be taken under section three. If the president, following the failure of the governors to comply, resorted to action under the first Conscrip Act, he would only be authorized to conscript white males between the ages of eighteen and thirty-five, not ages thirty-five and forty-five as required under sections one and two.

And Congressman John Crockett of Kentucky pointed to what potentially was the greatest flaw of the House bill: the attempt to “reconcile the difference between... systems of raising an army, which [are] utterly irreconcilable.”⁵⁶ In most respects, the House bill was acceptable to states’ rights advocates, weakening conscription enough to make it palatable as long as states fulfill their obligations to provide fresh troops. It also appeared to settle the question of troop identity. Since states could not raise armies, the bill’s emphasis on state-raised forces confirmed that provisional troops were militia. The implication was that these militiamen would then carry into Confederate service the constitutional rights and protections, i.e., election of officers, state appointment of officers, and more, that the first act threatened to deny.⁵⁷ And by strengthening state control over the provisional army, the traditional republican balance of power inherent

⁵⁶ SHSP 46:28.

⁵⁷ *Ibid.*, 46:51. The only additional change suggested was one made by Henry Foote to make military liability under the act derivative of state rather than Confederate laws. Although constitutionally suspect in its own right to have the Confederate government legislate citizenship obligations within the states, such a change would have addressed many of the questions being asked at that time concerning national citizenship.

within states' rights constitutionalism would be restored. Yet, at the same time, the ability of the president and the Congress to force state militia laws into abeyance not only inverted the superior-subordinate relationship between the state and the Confederate governments, it altered the legal identity of the companies raised from militia to army. The possibility existed, then, that some elements of Confederate regiments might be considered state-raised militia while others might be considered Confederate-raised army, each with their own rights and privileges. As Crockett warned, "if adopted [the bill] would result in inextricable confusion in the War Department."⁵⁸

The Senate and House had thus split in their support for an expansion of the Conscript Act. The Senate, comfortable with the compromises of the first act and wary of dismantling national powers too soon, wished simply to extend the temporary emergency measures. To it, House concerns over states' rights were overwrought and hampered efforts to protect the entire nation. The House, on the other hand, fearful that temporary measures might become permanent policy, saw the second act as an opportunity to shun desperate concessions and negate any doubts that the Confederacy was a states' rights nation. Both bodies had understood the first act as a temporary aberration that could be repealed at the earliest opportunity. But the House was more anxious to resurrect states' rights to its full glory, and, because of its impatience, Congress as a whole was now forced to face the issue.

The two houses hoped to negotiate a settlement and agree amongst themselves on a constitutional form for conscription, not only to produce an acceptable bill but to take a definitive stance on states' rights. Such negotiations, however, were overtaken by two

⁵⁸ Ibid., 46:28.

events that first emboldened anti-conscription men to stand firm and then, seemingly in an instant, swept away any doubt that conscription should be expanded as soon as possible.

“SO MUCH SOUND AND FURY, SIGNIFYING NOTHING”

Unlike Jackson Cagle, thirty-year-old James M. Lovingood wanted to go to war. Two of his younger brothers, George and Samuel, caught in the rush of excitement following the fall of Fort Sumter, had gone in July 1861. The two had managed the family’s Elbert County farm, but left confident that their father’s twenty-four slaves – nine or ten of them prime field hands – could tend the summer crops under the supervision of their brothers, James and William, who lived nearby. That fall, after the harvest was finished and the winter stores were full, William enlisted, leaving James alone. James might have enlisted then, too, but the burden of family and farm fell solely on his shoulders now. His wife was pregnant with their first child, the fields needed tending, and his parent’s slaves needed supervision. Besides, it made little sense to enlist only to spend the next few months isolated in winter camp.

By March 1862, the time seemed right. Yet after making the sixty-mile journey down the Savannah River Valley to the 15th Georgia’s rendezvous point for new enlistees at Augusta, a Confederate medical officer rejected James as medically unfit.⁵⁹ Three months later, he tried again, this time with the 9th Georgia Battalion Infantry stationed in Tennessee for the defense of Chattanooga. He made the 300 mile journey from Elberton

⁵⁹ Unless otherwise stated all information regarding this case comes from *Lovingood v. Bruce*, Elbert County Superior Court, Minute Book 1862-1868, 37, 62-71.

to Knoxville to enlist with Company B, a company composed largely of men from Elbert County. Yet, once again, a surgeon rejected him as unfit.⁶⁰

By now, James despaired of being able to serve in any military force, and he began working in earnest to reconcile the romantic patriotism that drove him to military service with the realities of physical infirmity and the mundane responsibilities that drew him back home. Then Colonel John A. Trenchard, a New York-born school teacher and colonel of the Elbert County militia, asked him to serve as ensign in the 189th District militia, and James leapt at the chance.⁶¹ The Confederate military may not want him, but the state militia did and he served proudly in his new office for the next three months.

On September 3, 1862, Lieutenant Sydney P. Bruce, a local mechanic serving as Confederate conscription officer for Elbert County, arrested Lovingood as a deserter. Bruce had served the militiaman with his conscription papers sometime in late August, but James, feeling himself safe within the protections of Governor Brown's General Orders No. 8, had refused to report. The Confederacy had rejected him twice already. Why should he forfeit his new found office only to be rejected a third time? As far as Lovingood was concerned the arrangements made by the governor, Major Dunwoody, and Secretary Randolph the previous June protecting militia officers were still in effect. So when Bruce took custody of Lovingood that Wednesday in September and attempted to send him to the Confederate camp of instruction, Lovingood filed a petition for a writ

⁶⁰ Ibid., 63.

⁶¹ Ibid., 37, 62-71; Population schedule, 1850 Federal Census; Population schedule, 1860 Federal Census; Henderson, *Roster*, 2:432; William S. Smedlund, *Camp Fires of Georgia's Troops, 1861-1865* (Lithonia, GA: William S. Smedlund, 1994), 275.

of habeas corpus, a judicial enquiry into the legality of an arrest and detention, with the Elbert County Superior Court.⁶²

The writ, as it was colloquially known, was a relatively simple procedure. Conscripts, by themselves or through their attorneys, petitioned the court, demanding that both they and the arresting officer – usually the enrolling officer, but it could also be a local sheriff, company commander or hospital surgeon – appear before the court to hear the officer’s return, or justification for arrest. The court would then hear evidence and call witnesses before rendering its decision.⁶³ If the court found the detention legal, it returned the conscript to the defendant’s custody. If not, the conscript was free to go home. Almost any court could issue a writ, and conscripts could choose to appear before almost any Confederate or state judge. But since the Confederate District Courts were located in only a few of the larger cities access to these courts was limited, and most conscripts appealed to local, but no less dignified, tribunals. Some judges might have preferred that conscript cases be handled in the Confederate districts courts, but even they recognized that no court could restrict or divert a conscript's right of petition.⁶⁴

⁶² A writ of habeas corpus is a court order requiring an arresting official to produce a prisoner before the court so that the legality of the arrest might be determined. It is not typically used to determine the legality of the law under which the arrest was made.

⁶³ See, for example, the detailed testimony offered in *Brawner v. Norton*, Oglethorpe County Inferior Court, Minutes 1863-1869, 141, 146; *Brawner v. Norton*, Oglethorpe County Ordinary Court, Miscellaneous Records (Unbound), 1796-1925.

⁶⁴ *Terhune v. Young*, Chatham County Superior Court, Minute Book 24, 491; Chatham County Superior Court, Minute Book 25, 196; Don E. Fehrenbacher, *Constitutions and Constitutionalism in the Slaveholding South* (Athens, GA: University of Georgia Press, 1989), 68-73; John B. Robbins, “The Confederacy and the Writ of Habeas Corpus,” *Georgia Historical Quarterly* 55 (1971): 86, 89. On the lack of a Confederate Supreme Court see William M. Robinson, *Justice in Grey: A History of the Judicial System of the Confederate States of America* (Cambridge, Mass.: Harvard University Press, 1941). See also, *McPhearson v. Williams*, Thomas Co. Superior Court, Book K, 226-227 & Book 1858, 478-479; *Wimberly v. Mims and Burdett*, Richmond Co. Superior Court, Book 22, 325-329; *Mims and Burdett v. Wimberly*, 33 GA 587, and *Mims, et.al. v. Wimberly*, Supreme Court Case Files (GSCCF), RG 92-1-1, Georgia Department of Archives and History.

The case came to trial before Elbert County Superior Court Judge Thomas W. Thomas on Saturday, September 13, 1862. The judge was known for his quick temper, made even more exacting in this case by the tensions he felt between the unflinching nature of his states' rights convictions and the recent turn in Confederate military policy. Thomas was also a close personal friend of Governor Brown, the Stephens brothers, and Herschel V. Johnson, all anti-conscription men, and the judge's decision reflected many of the extremes of anti-conscription thought all of them had shared during the preceding five months.⁶⁵

In its narrowest sense, the Lovingood case hinged on whether the state protections afforded under General Orders No. 8 prohibited Lovingood's arrest under the Conscript Act. It should have been a referendum on Governor Brown's protections and whether the state could interpose itself to prevent the enforcement of Confederate law. But Lovingood's attorney argued not only that the arrest was illegal under General Orders No. 8 but that, because the Conscript Act was inherently unconstitutional, *any* order for arrest under the act was inherently illegal.

The militia defense did not hold. Lovingood's rank was a brevet appointment and lacked a final executive commission. But the constitutional argument did, at least in Judge Thomas's court. Drawing on the same key paragraphs and interpretations of article 1, section 8 of the Confederate Constitution as Governor Brown, Thomas ruled that the Conscript Act unconstitutionally changed the political relationship between the state and the Confederate government and denied the state its reserved right to train and officer its

⁶⁵ Thomas had recently resigned as colonel of the 15th Georgia, the same regiment into which Lovingood had been denied enlistment, due to his declining health. John H. McIntosh, *The Official History of Elbert County, 1790-1935* (Atlanta, GA: Cherokee Publishing Company, 1968), 112, 130-131; Phillips, *Correspondence of Toombs, Stephens, and Cobb*, 593.

militia. And lest his ruling be interpreted as protecting only those men enrolled in the organized militia, Thomas tapped the Stephens brothers' more stringent definition to say that all men, enrolled or not, were militiamen because state law declared all white males between the ages of eighteen and forty-five *liable* to militia service. For Judge Thomas, the militia's protection was as vital to state independence as was the protection granted state government officials. "In the preamble to our Confederate Constitution care is taken to assert and maintain that the States are sovereign and independent," he wrote. "In what sense can this be said of Georgia if every man of her Militia can be taken from under the control of her Constitutional Commander in Chief without his consent?"⁶⁶ Lovingood was released from Confederate custody and allowed to return to his militia post.

News of the ruling spread quickly on both sides of the Mason-Dixon Line. The *Augusta Chronicle and Sentinel* reprinted the ruling on September 23, followed soon by other state journals. Newspapers as far west as New Orleans and as far north as Milwaukee picked it up.⁶⁷ Even into late November, the *Lovingood* case remained a topic of discussion in Boston.⁶⁸ The *Daily National Intelligencer* in Washington, D.C., wrote that the ruling proved "some men in Georgia have not forgotten that the rebellion against the Government of the United States was originated in the name of 'State

⁶⁶ *Lovingood v. Bruce*, Elbert County Superior Court, Minute Book 1862-1868, 68.

⁶⁷ *Augusta Chronicle and Sentinel*, September 23, 1862; *Charleston Courier, Tri-Weekly*, September 30, 1862; *Weekly Raleigh Register*, October 1, 1862; *Richmond Daily Dispatch*, October 1, 1862; *Chattanooga Daily Rebel*, October 3, 1862; *Jackson Daily Mississippian*, October 3, 1862; *New Orleans Daily Delta*, October 10, 1862; *Milwaukee Daily Sentinel*, October 18, 1862; and Thomas Bragg Diary, 2:110.

⁶⁸ *Boston Daily Advertiser*, November 26, 1862.

rights’.”⁶⁹ And on the other side of the Atlantic, the *Index*, London’s pro-Confederate newspaper, reprinted excerpts of the decision.⁷⁰

Also being reported at this time was the exciting news coming out of Maryland. Lee’s troops, victorious yet exhausted after the Battle of Second Manassas on August 29 and 30, had pushed wearily into western Maryland on September 3, the same day the House began earnest debate on the expansion of conscription. Lee should have allowed his men time to recuperate; they had been on the march for ten weeks. But the Union defeat at Manassas, coming as it did on the heels of Union failures at Vicksburg and Chattanooga, had not only demoralized the Northern army, it had depressed the war fervor of the Northern people. Lee knew the best way to capitalize on these victories was to press on toward Washington, perhaps disheartening even further Lincoln’s base of political support and encouraging the election of Peace Democrats to the United States Congress in the coming mid-term elections. Perhaps he could even win the war with one final battle for the United States capital.⁷¹

Lee’s invasion was not without its problems. His bedraggled troops, more willing in spirit than body, stretch over miles of Virginia and Maryland countryside. By the end of the first week of the invasion, over 10,000 soldiers straggled behind the main force to rest and forage local farmsteads for food and clothing. But this did nothing to dampen the optimism that Lee’s invasion engendered on the Confederate homefront.⁷²

Southerners back home ridiculed the “mortal terror” that Lee’s advance fostered in some

⁶⁹ *Daily National Intelligencer*, October 8, 1862.

⁷⁰ *The Index*, November 20, 1862.

⁷¹ McPherson, *Crossroads of Freedom*, chap. 3.

⁷² *Ibid.*, 100.

Northern communities.⁷³ “All day long has the city been overjoyed at the reception of news from our armies in the East and West,” wrote a correspondent in Richmond to the *Macon Daily Telegraph* on September 11. “Onward does the column roll, subduing, conquering and crushing as it moves... Lee and Jackson, ever victorious in their march, now tread the soil of Maryland, where shouts of glory rise to the joy of our arms.”⁷⁴ “Hermes,” writing to the *Charleston Mercury* a day earlier, cheered that “it is confidently stated that our whole army is in Maryland.”⁷⁵

It must be remembered that most of the troops at Lee’s command, even at this point, were mainly volunteer soldiers retained in service by the first conscription act, not new conscripted soldiers, and House opponents of the extended Conscript Act took Lee’s invasion as evidence that conscription and conscripts were not needed. Even those who questioned the strategic value of Lee’s invasion used its seeming tactical success as evidence to suppress the Conscript Act. And such a stance was only strengthened when Judge Thomas ruled conscription unconstitutional in the *Lovingood* case. So by mid-September, House conservatives were emboldened to stand firm in their demand for quotas and requisitions and to reject any compromises that might allow the first act to continue undiminished. Perhaps they felt as “Hermes” that the losses of the early spring had been a cathartic experience that rid volunteers of their romantic notions of warfare and that recent successes evidenced a maturation of the Confederate soldier that restored even General Lee’s diminished faith in volunteerism.⁷⁶

⁷³ *Richmond Daily Dispatch*, September 17, 1862.

⁷⁴ *Macon Daily Telegraph*, September 16, 1862.

⁷⁵ *Charleston Mercury* quoted in *Macon Daily Telegraph*, September 16, 1862.

⁷⁶ *Ibid.*

Yet, on September 17, as the Richmond newspapers heralded the Confederate advance and congressmen cast their votes in favor of the weakened House bill, the bloodiest single battle in American history erupted outside of Sharpsburg, Maryland. Confident in the pace of his advance, Lee had made the risky decision on September 9 to divide his forces and dispatched much of his army west to capture the well-stocked federal garrison at Harpers Ferry. While the gamble paid off for Stonewall Jackson, commander of the Harpers Ferry victory, it proved treacherous for Lee. Union General George B. McClellan, stung mightily by Lee in the Seven Days battles, had learned of Lee's temporary weakness after a private in the 27th Indiana found a misplaced copy of Lee's orders. Although McClellan missed several opportunities to attack and possibly destroy Lee's reduced forces on September 13 and 16, he finally met the Confederates outside of Sharpsburg along Antietam Creek on September 17, 1862. McClellan had just over 70,000 men, with an additional 6,600 in reinforcements twenty-three miles away. Even after reinforced by elements previously dispatched to Harpers Ferry, Lee had just over 26,000 men including his cavalry and artillery. By the end of that day, more than 23,000 Union and Confederate soldiers had been killed or wounded.⁷⁷ The Confederacy suffered a casualty rate of almost forty-five percent compared to sixteen percent for the United States.⁷⁸

⁷⁷ McPherson lists 2,108 Union dead, between 1,546 and 2,700 Confederate dead, 9,549 Union wounded and between 7,752 and 9,024 Confederate wounded. McPherson, *Crossroads of Freedom*, chap 4, battle statistics found on page 129. See also, Stephen W. Sears, *Landscape Turned Red: The Battle of Antietam* (New Haven and New York: Ticknor & Fields, 1983); *Antietam: Essays on the 1862 Maryland Campaign*, Gary W. Gallagher, ed. (Kent: The Kent State University Press, 1989); and Perry D. Jamieson, *Death in September: The Antietam Campaign* (Fort Worth: Ryan Place Publishers, 1995).

⁷⁸ Sears, *Landscape Turned Red*, 173-174.

Tactically, the Confederacy had won a qualified victory. As historian Stephen Sears points out, “it had beaten back a foe much superior in manpower and ordinance.”⁷⁹ But strategically, the victory represented an ultimately fatal setback. The numbers of casualties suffered by the Confederate army forced Lee to withdraw from Maryland, destroying any hope of weakening political support for the Lincoln administration. In fact, the euphoric outpouring of Northern newspapers at the removal of Confederate troops from Maryland more than made up for the temporary setback Lincoln had suffered during the previous summer.

The retreat also prompted Lincoln to revive his proposal for a proclamation of emancipation for slaves in the rebellious states. Two months earlier, Lincoln had shelved the proclamation but had done so with a prayer that God should provide a sign when the time was right to revive it. Antietam was that sign, and the war would never be the same. The emancipation proclamation, although driven by the practical need to deny rebellious states the labor of their slaves, provided a humane, moral character heretofore lacking in what had been a politico-legal war over state and personal rights. Combined with the Confederate retreat, it also ended any possibility of European recognition. When the battle began, recognition had seemed imminent. But once word of the battle’s outcome and the humanitarianism of the emancipation proclamation reached London, Prime Minister Palmerston backed away from intervention and never returned.⁸⁰

More urgent for Lee, however, was the task of rebuilding his army. Writing from Smoketown, northwest of Harpers Ferry, on September 23, Lee stressed to President

⁷⁹ Ibid., 309.

⁸⁰ McPherson, *Crossroads of Freedom*, chap 5.

Davis that “the subject of recruiting this army is... one of paramount importance.”⁸¹ Lee was aware of the political situation in Richmond, but he needed Congress to provide him with the means to once again take the offensive. The general had been engaged heavily in the writing of the first conscription act, and although he now did not have the time to become involved to the same degree, he did take the time to lobby key military figures in Richmond for extension. “I know that the President and Secretary of War will do all in their power to institute a better [enlistment] system,” Lee wrote to Major General Gustavus W. Smith, who had served with Lee at Seven Pines and would later serve as interim Secretary of War following Secretary Randolph’s resignation, “and I beg you to say to [Congress] that there has never been a more urgent necessity. I fear, for want of sufficient force to oppose the large army being collected by General McClellan, the benefits derived from the operations of the [Maryland] campaign will be but temporary.”⁸²

Lee’s appeals could not have come at a better time. Frustration mounted in Richmond at the slowness of Congress’s work. “Our Congress has passed no bill to raise troops,” Attorney General Bragg noted in his diary. “Everything drags slowly while the Yankees pour in their new troops.”⁸³ “Many intelligent persons,” grumbled the Richmond *Daily Dispatch*, “are so disgusted with the course of Congress upon the Conscription law that they begin to lose faith in the usefulness of representative bodies, especially in such a period as the present.”⁸⁴ The stubbornness of House conservatives

⁸¹ *Official Records* I, 19:2:622.

⁸² *Ibid.*, 19:2:624-625.

⁸³ Thomas Bragg Diary, 2:110.

⁸⁴ Richmond *Daily Dispatch*, September 26, 1862.

appeared unwavering, and in all likelihood the second conscription act might not have been settled by the time Congress recessed. But on September 22, details of the Antietam battle began appearing in the Richmond papers, soon followed by the private correspondence of General Lee to President Davis and the supplications of Lee's lobbyists to congressional officials.⁸⁵ Seemingly overnight, attitudes changed. A House-Senate conference committee hammered out the differences between the two opposing bills and reported back a compromise that in almost every regard reiterated the Senate bill for simple expansion. Gone were the demands for quotas and requisitions. The massive loss of life and desertion during the Maryland campaign had silenced many ardent states' righters.

But not all. Henry Foote was flabbergasted. If the members of the House "knew that a respectable judge in the State of Georgia had liberated a conscript under the habeas corpus, and that there was imminent danger of a collision between the Confederate and State authorities," they would allow him to speak, to convince the members that conscription was just as wrong now as it was then. Alexander Boteler of Virginia cut him off. He had "listened to the discussion of this subject day to day, feeling in his heart of hearts, that the time had been wasted." "[I] had been unable, in the hurly burly which prevailed, to catch more than one or two of [Foote's] ideas," Boteler later told the House, "and for the rest, it was so much sound and fury, signifying nothing." Without further debate, the House accepted the Senate version by a vote of 54 to 29.⁸⁶

⁸⁵ Ibid., September 22, 1862.

⁸⁶ SHSP 46:251-254.

Congress had not reached that “speedy and final [answer to] questions of Confederate power and State sovereignty” for which it had been searching.⁸⁷ The weeks of debate had settled little with the House and Senate disagreeing about when – some would say, *if* – the balance of power would be restored. But they had shown an important trend. Congress was beginning to concede that the breadth of power held by the Confederate government could be expansive within its defined boundaries. Even in the House, which was reluctant to accept conscription as a settled military policy, a majority of the membership conceded that in this one area of governance, the national authority might lay state authority in abeyance while states’ rights continued unaffected in other areas.

Still, this was just a trend, and one not fully realized since, after the Battle of Antietam, the political process once again answered to the whims of military necessity rather than seasoned debate. For Georgians, the entire congressional process had appeared capricious, especially to the state’s militiamen who felt themselves pawns to the process. While the first act had not included militia men over the age of thirty-five and commissioned officers had been protected by General Orders No. 8, the second act included *all* militiamen and threw General Order protections into question. Letters and petitions inundated the executive offices at Milledgeville asking how the new act might affect the militia, whether officers would be protected, commissions continued and conscription condoned.⁸⁸ But the governor remained silent. As L. H. Briscoe, assistant to Adjutant General Henry Wayne, answered one petitioner, “it is not [the governor’s]

⁸⁷ *Ibid.*, 46:83.

⁸⁸ A&IG Letterbook 12, *passim*; Henry C. Gibson to Joseph E. Brown, October 25, 1862, in Governor’s Subject Files.

habit to announce in advance what will be his action on the happening of future contingences.”⁸⁹ Even after the passage of the second act on September 26, Brown withheld any policy announcement.⁹⁰ It appeared to many that he had given up.

“MERE PHANTOMS OF DISEASED IMAGINATIONS”

Brown had laid out a fairly definite statement on conscription over the summer, and now that the fall sessions of the state Supreme Court and the General Assembly were gathering he undoubtedly knew that he might be called to task, especially from the legislature’s pro-Davis Nisbet contingency. So, when the governor finally broke his silence in mid-October and informed President Davis that *no one* from Georgia would be conscripted until the General Assembly could decide whether this Confederate law would be enforced in the state, he set the stage for a showdown on Confederate-state relations.⁹¹ Although the war to be won was between Brown and Davis and between Georgia and the Confederacy, the battle to be fought was between Brown, the state Supreme Court, and the Georgia General Assembly.

Governor Brown had tempered his protest of the first Conscript Act because it had tread successfully that fine line between providing the troops the Confederacy needed and leaving untouched enough men to preserve the state’s militia. It had accommodated

⁸⁹ L. H. Briscoe to [], no date, in A&IG Letterbook 12.

⁹⁰ A&IG Letterbook 12, *passim*. President Davis waited almost a month before issuing a call to conscript all white men between eighteen and forty years of age. By the estimate of Secretary Randolph, a call for men between forty and forty-five would increase the size of the army over 500,000 men, after deductions for exemptions, too many men, Randolph felt, for the Confederacy to arm, equip and feed properly. John B. Jones, a clerk in Randolph’s War Department, noted in his diary that this call was a “great mistake” although it is unclear whether Jones is referring to Randolph’s estimate, the size of the call or the fact that there was a call at all. *Official Records IV*, 2:132, 133; John B. Jones, *A Rebel War Clerk’s Diary*, Earl Schenck Miers, ed. (Baton Rouge: Louisiana State University Press, 1993), 110.

⁹¹ CRG, 2:294-302; *Official Records IV*, 2:128-131, 170.

Brown distinctions between the generalized militia of all military-aged men and the institutional militia of organized soldiers. But the second Conscript Act collapsed those distinctions and made every militiaman, organized and unorganized, liable to conscription. Brown no longer had the maneuverability to sacrifice a portion of his constituency to preserve the state infrastructure. Compromise now seemed impossible, and the governor committed himself to the complete nullification of the Conscript Act.

His strategy involved attacking the act on two fronts. The first sought a test case that could be submitted to the state Supreme Court that could judge the constitutionality of conscription. Hopefully, this case not only would endorse Judge Thomas' *Lovingood* decision but provide legal precedent to encourage the second front: statutory backing for Brown's executive objections. State nullification of national law was a disputed doctrine and had been ever since South Carolina attempted nullifying federal tariff legislation in the 1830s. But Brown, as a Calhoun Democrat, held firmly to nullification as a legitimate tool for overturning, or at least confounding, disputed Confederate law. If the courts and the legislature backed Brown's blockage, Brown would be well positioned to convince other states to follow suit.

James H. Nisbet, editor of the Milledgeville *Southern Federal Union*, unlike his relative in the state House, was a supporter of Brown's fight against the Davis administration. He had been among the first in the state to publish arguments against the constitutionality of the first act and had carried on a running debate with Georgia Congressman A. H. Kenan, who had voted in favor of the first act. He also had been prescient enough to predict as far back as May 1862 that Brown would be forced to rely

on a favorable supreme court ruling to back his political stance.⁹² Thus, it was almost providential that Milledgeville's enrolling officer, John B. Fair, conscripted Nisbet's clerk, thirty-seven-year-old Asa O. Jeffers.⁹³ Ocmulgee Circuit Court Judge Iverson L. Harris was in Milledgeville at the time, presiding over the Baldwin County Superior Court. The November session of the Georgia State Supreme Court was meeting in Milledgeville, as well. If the Jeffers' case could be rushed to trial in the next few days, the constitutional issue of conscription could be settled.

Brown must have been fairly confident of the case. He already had the support of several state superior court judges. Judge Thomas had made his anti-conscription feelings known in the *Lovingood* case. Judge Richard Henry Clark of Albany, who first thought the Conscript Act constitutional, had changed his mind after reading Brown's letters to the president then being published in Georgia's newspapers.⁹⁴ Judge James S. Hook of Washington County had written the governor a glowing letter of praise in which he commended Brown for "raising a voice amidst the battle's din, in defense of popular rights."⁹⁵ And although Judge Harris had made no public pronouncements on his prejudices, his political history suggested the possibility of a favorable ruling.

A prominent old-line Whig, Harris had become a Democrat in 1855, declaring that the Democratic Party was the only "sound national organization" not engaged in a "wild crusade against civil and religious liberty" as was the Know-Nothing Party then

⁹² Macon *Daily Telegraph*, May 14 and 21, 1862; *Weekly Georgia Telegraph*, May 16, 1862, and December 6, 1867.

⁹³ Population schedule, 1860 Federal Census.

⁹⁴ Richard Henry Clark to Joseph E. Brown, July 16, 1862 in Governor's Subject Files.

⁹⁵ James S. Hook to Joseph E. Brown, October 16, 1862, in Governor's Subject Files.

attracting so many former Whigs.⁹⁶ In supporting James Buchanan, the 1856 Democratic presidential candidate, Harris had endorsed publicly the Democratic platform statement that “the equality of the States is the vital element of the Constitution... The Union was made by its acknowledgement, and will be eternal, if that equality be not violated.”⁹⁷ Statements such as these most likely presented Brown the image of a jurist who posed little threat to the argument that conscription reduced the equality and liberty of the individual states.

But Harris had little patience for political manipulation of the law, and Brown should have known this. In late 1858, the General Assembly had selected Harris, David Irwin, and Herschel V. Johnson to codify Georgia’s extant statute and common laws into a single comprehensive code.⁹⁸ Harris refused to serve and warned Governor Brown in a sternly worded resignation letter of the dangers such a work posed. The duty of legal interpretation belonged solely to the courts, and the legislature’s attempt to distill precedent into broad “principles compressed into the fewest words,” even if done by esteemed members of the bench, displaced and corrupted that process from a judicial to a legislative function. The Georgia Code would only be adopted if approved by the General Assembly, giving the state legislature a negating power over the courts, in essence turning judicial review on its ear. Future courts would then be put into the position of decoding not what previous judges had ruled but what the General Assembly had decided that judges had ruled. In place of the Code, Harris had suggested a digest

⁹⁶ *Georgia Telegraph*, July 24, 1855

⁹⁷ *Ibid.*, August 12, September 9, 1856.

⁹⁸ *Weekly Georgia Telegraph*, December 14, 1858.

compiling and indexing undiluted judicial rulings. Such a digest, Harris concluded, “would have this commanding superiority over a condensed code, that it would not, like the latter, engender new decisions, and be like it, a fruitful source of constant interpretation.”⁹⁹

Such impatience for political tampering was evident in the Jeffers case. Prominent local attorney and long-time Brown supporter William McKinley rushed a petition for a writ of habeas corpus before Judge Harris on Friday, November 7, and made it clear he desired a quick decision so he could rush any needed appeals to the Supreme Court.¹⁰⁰ But so hastily did McKinley present his case, Judge Harris complained that he had been forced to give a ruling “almost without notice” and that attorneys representing the Confederacy, the one-armed Marion County attorney Captain Mark H. Blandford and James Nisbet’s old adversary Congressman A. H. Kenan, had not had the opportunity to give “full argument supported by authority.”¹⁰¹ Although he never accused McKinley of attempting to prejudice the court in his haste, Harris was keenly aware that the defendant was at a disadvantage by not having proper time to prepare. Under normal circumstances, such a case would have been delayed. But given the fact that the governor was also asking the General Assembly to make a similar decision on conscription, Harris agreed to hear the case.

⁹⁹ Milledgeville *Federal Union*, January 7, 1859, quoted in *ibid.*, February 1, 1859.

¹⁰⁰ McKinley had been a member of the nominating committee that chose Brown as the Democratic candidate for governor in 1857. During the war, he served as a member of the Governor’s Horse Guard, a local militia company charged with protecting the state capital. *Jeffers v. Fair*, GSCCF, A-3754; Avery, *History of the State of Georgia*, 36; Anna Maria Green Cook, *History of Baldwin County, Georgia* (Anderson, SC: Keys-Hearn Publishing Company, 1925), 409-412.

¹⁰¹ *Jeffers v. Fair*, GSCCF, A-3754; *Official Records IV*, 2:177; Henderson, *Roster*, 2:237.

Jeffers freely admitted his liability to conscription, so it was evident from the beginning that the sole question for the court was the constitutionality of the Conscript Act. It was also evident that Jeffers was not the man on trial. It was Brown. In the days following the trial, Brown would claim that the ruling had been made *ex parte*, without the presence of all parties, something Brown's critics agreed with only if one thought of the case as Brown did, that the governor was an unnamed party to the case. In fact, although McKinley had written a brief for the trial, his notes had been submitted to the governor for review, and Brown, who at first considered substituting his annual message to Congress for the brief, had modified the attorney's notes to more closely align with the constitutional arguments he had developed over the summer.¹⁰² The Confederate government could only raise troops by volunteers or state requisitions. Troops raised by any other method were, by definition, militia. The power to conscript carried with it the power to dismantle and destroy state governments.

The next morning, Harris' ruling set Brown's cause on its heels. Instead of invalidating the Conscript Act, the ruling secured the Confederate power to conscript *in toto*. The fears raised by opponents of conscription were but the "mere phantoms of diseased imaginations," and the only conflict between the state and the Confederate governments was the jealousy their chief executives felt over the patronage rights that came with the control of military appointment powers. Georgia had ratified the Confederate Constitution and had accepted the delegation of unrestricted army powers to the central government. If Georgia was now unhappy with that arrangement, its only recourse was to call a convention, rescind its ratification of the Constitution and secede

¹⁰² See speech of James Lawson before the Georgia House of Representatives, reprinted in Macon *Daily Telegraph*, November 24, 1862.

from the Confederacy. Striking a chord similar to the president's, the judge ruled that the breadth of power granted to the central government within its delegated sphere was expansive unless it posed a direct threat to the states or was specifically restricted elsewhere in the Constitution. "It strikes me as very strange," Harris wrote, "that a strict constructionist [such as the governor] should ask me to interpolate conditions and restrictions into so broad, unambiguous and unqualified a power as that to raise and support armies."¹⁰³ Thus, while the Confederacy could not conscript civil officers since that would threaten the stability of the state, it could conscript every other class of men including militia men and militia officers.

The following Monday, the *Jeffers* case moved into the state Supreme Court, and on Tuesday morning, November 11, the Court met before a joint session of the state Assembly to read its decision.¹⁰⁴ It upheld Harris' ruling in every respect. While acknowledging that a monopoly of military power was "incompatible with original unabridged State sovereignty," or Brown's vision of the Confederate polity, the delegation of expansive army powers to the central government, such as that in Davis's vision of the Confederate polity, was not. The central government would be but "the shadow of a government," the Court ruled, if it had to rely solely on the states to build an army.¹⁰⁵

¹⁰³ *Jeffers v. Fair*, GSCCF, A-3754.

¹⁰⁴ *Macon Daily Telegraph*, November 13, 1862.

¹⁰⁵ *Jeffers v. Fair*, GSCCF, A-3754; 33 GA 347, quotes on 364-365. Similar rulings would be made by the Texas Supreme Court (*Ex parte Coupland*, 26 Tex 387), Virginia (*Burroughs v. Peyton*, 16 Va. 470), Alabama (*Ex parte Hill*, 38 Ala 429), as well as the Confederate Attorney General. See, Rembert W. Patrick, *The Opinions of the Confederate Attorneys General, 1861-1865* (Buffalo, NY: Dennis, 1950), 231-242.

It was a decision that came as a surprise to many. “The decision of the Supreme Court in favor of the law, is, to us, one of the most unexpected of events,” wrote the *Macon Telegraph*, which had earlier reported that two of the three Supreme Court justices opposed the Conscript Act. But it was accepted by even the staunchest opponents of conscription.¹⁰⁶ Herschel V. Johnson admitted that his “opinion has been different, as you know – perhaps the opinion of [Georgia Supreme Court Chief Justice] Jenkins may satisfy me of my error. But whether this be so or not, I, as a citizen, will cheerfully defer.”¹⁰⁷ But for Governor Brown it was a serious setback. He had needed a judicial victory to convince the members of the legislature that the Conscript Act should be nullified. Now, instead of relying on constitutional theory, he would be forced to take a different tack.

¹⁰⁶ *Macon Daily Telegraph*, November 11, 1862

¹⁰⁷ Herschel V. Johnson to James S. Hook, November 14, 1862, in Herschel V. Johnson Papers.

CHAPTER THREE WHERE THE CONFEDERATE GOVERNMENT STOPPED

Conscription never made Georgia as politically and militarily impotent as Brown liked to claim.¹ The governor still held office, and the General Assembly still met. Courts still sat, and the state militia still mustered. Granted, things moved a little more slowly than they had before. The militia was smaller and Confederate enrollment activities brought anger and confusion, but conscription had not been the death knell of either state independence or state identity. Still, Brown should not be chastised too harshly for his hyperbolic statements. Conceptions of political and military power were changing, and many who had seen national military power as a danger to republican independence appeared to be accepting that power. What had been an admixture of independent state militias was beginning to assume the more modern form of a national army. But the transition was tentative. Although some Confederates may have seen such change as the sign of an emergent nation-state, it was not an interpretation everyone shared. There was a history and a heritage to the old ways difficult to deny, and among states' rights purists the rejection of that heritage threatened the world they knew.

The influence of the old republican fears could be seen in a series of exemption laws that excused key segments of the population from military service. Naturally, the physically and mentally incapacitated were exempted. But so, too, were the Confederate President and Vice-President, members of the judicial, legislative and executive branches of the Confederate government, as well as comparable posts in the state governments all received exemptions. Contractors, overseers, shoemakers, tanners, blacksmiths, wagon

¹ CRG, 3:203.

makers, millers, mill engineers, millwrights, employees of wool and cotton factories and paper mills and other men essential to economic and productive stability received exemptions as well.² But as Confederates began to question the limits of conscription, especially in light of the expanded second conscription act, exemptions took on even greater importance as the focal point of debates over the extent of national power.

It was generally understood that the obligation to provide military service was a natural consequence of membership in, or allegiance to, the political body demanding that service. Militia service was tied to state citizenship, national service to national citizenship. The problem with the conscription act was that it premised the primacy of national military service on a what was supposed to be a secondary national Confederate citizenship. Most citizenship was considered state-centered. Only in territories did national citizenship apply, but so wary were Confederates of acknowledging its existence that it even feared offering citizenship protections to pro-Confederate elements in the unseceded states of Kentucky, Delaware, Missouri, and Maryland. While they appreciated the loyal sentiments of the people, it would not do for the Confederacy to attract border states with the carrot of state sovereignty while simultaneously beating them with the stick of forcing their citizens to become national citizens.³ Likewise, when Congress tackled the issue of granting citizenship to unnaturalized Confederate soldiers it could only agree on the Army Naturalization Act of 1861, an act that granted the rights

² *Official Records* IV, 2:160-68.

³ James M. Matthews, ed., *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*, (Richmond, VA: R. M. Smith, Printer to Congress, 1864), 189-190, 228; JCCSA 1:56, 67, 171, 193, 217, 288, 291-292, 302-303, 318, 325, 361, 383-384, 390, 511, 603, 621, 718-719, 744, 5:108-109, 385, 6:56; SHSP 44:174, 45:78, 46:159-160; *c.f.*, R. H. Smith to [wife], December 11, 1861, in Robert Hardy Smith Papers.

and protections of Confederate citizenship but only until the soldiers could choose the state in which they wished to become naturalized.⁴

The dangers of state-centered citizenship, however, were substantial. Military service that flowed through the states had stymied national recruitment efforts, necessitating the conscription laws. But even after conscription, state-based citizenship remained limiting. Since the underlying theory of military obligation was unchanged, conscription remained contingent on the linear relationship between the conscript, the state and the central government, not on an inherent overarching national power. This meant that any potential recruit who fled his home state was safe from enrollment because he had left the confines of the relationship that transmitted the power to conscript. A Georgian who fled into Alabama could not be conscripted by an Alabama conscript officer because the Confederacy had no authority to reach through the state of Alabama to attach Georgia citizens. Nor could a Georgia conscript officer legally cross the border into Alabama to apprehend his runaway recruit. National boundaries served a similar purpose. The growing numbers of Kentuckians, Missourians, Marylanders and citizens of other unseceded states who fled Union advances into the deep South could not be conscripted because they were not citizens of a Confederate state. Texas became home to a floating population of Mexicans and Texans who crisscrossed the international border claiming either Mexican or Texas citizenship as best fit their situation.⁵ So while conscription, which was being criticized as a centralizing policy, might have allowed the

⁴ An amendment to the act in December 1861 extended the grant to navy personnel. JCCSA 1:291-292, 302, 325.

⁵ This border also provided an easy escape for deserters. *Official Records* I, 4:152-153; Antonio Lopez to General H. P. Bee, February 11, 1863, in *Official Records* I, 15:976; David Williams, *A People's History of the Civil War: Struggles for the Meaning of Freedom* (New York and London: The New Press, 2005), 294.

Confederate government to bypass the states procedurally, it could not bypass them politically.

As the commitment to conscription strengthened during 1862, this allegiance to state-centered citizenship increasingly became obscured. An amendment to the conscription laws meant to eliminate cross-border draft dodging allowed Confederate officials to ignore state boundaries and arrest eligible recruits wherever they might be found. This meant that Georgia citizens who conceivably could be protected while in Georgia could be arrested if they traveled to a state that granted unconditional support for conscription. Gradually, Georgia's political borders were becoming as porous as its physical ones.⁶ Some in Congress were beginning to accept Davis' contention that Confederate service was based on whether a conscript was a man or a person, not whether he was a state or Confederate citizen, thus furthering the disconnect between military obligation and political allegiance that, as Senator R. M. T. Hunter of Virginia pointed out, made it "extremely doubtful where the Confederate government stopped and the states [began]."⁷ It was thus vitally important that the Confederate government clarify its political position on conscription. Did conscription negate state citizenship? Was the central government to have such a strong national presence that states would become obsolete? Or, could a justification for conscription be found that brought a constitutional sanction of national supremacy in line with political tenets that held states supreme?

⁶ SHSP 45:190, 221-222, 250-254, 263-264; JCCSA 2:237, 241-242.

⁷ SHSP 46:138.

“CITIZENS OF THE COUNTRY OF THEIR DOMICILE”

Ten days after the passage of the first Conscript Act, Secretary of War Randolph dashed off a quick note to Attorney General Thomas Watts. He was confused.⁸ The draft bill prepared by Robert E. Lee and presented by President Davis had asked for the conscription of all *persons* between the ages of eighteen and thirty-five. Congress had approved its use on all “white men who are residents of the Confederate States” between those ages.⁹ For Randolph, the word *persons* meant legally recognized persons, that is, white male citizens. Did Congress’s residency requirement change the meaning? Could conscription now reach long-Southern-lived but still unnaturalized immigrants? Could it attach to European travelers and United States citizens stranded by secession and now residing in the Confederacy?

It was an important question. Living in the eleven Confederate states were approximately 250,000 to 290,000 foreign-born individuals, including an estimated 170,000 military aged men.¹⁰ Some, despite having lived in these states for years prior to

⁸ Thomas Watts to George W. Randolph, May 3, 1862, in *ibid.*, 81; *Official Records IV*, 1:1095.

⁹ JCCSA 2:129; *Official Records IV*, 1:1031.

¹⁰ Although roughly 13 percent of both the Northern and Southern populations were foreign born, the disparity in white population weighted so heavily in favor of the Union states that approximately 90 percent of immigrant population remained with the unseceded states. Angela Schwarz, “Immigrants” in *Encyclopedia of the American Civil War: A Political, Social, and Military History*, David S. Heidler and Jeanne T. Heidler, eds. (New York and London: W. W. Norton & Company, 2000), 1027-1028; James M. McPherson, *Ordeal by Fire: The Civil War and Reconstruction*, (New York: McGraw-Hill, Inc., 1992), 357.

The immigrant population of the Confederate states included approximately 85,000 Irish, 73,000 Germans, 53,000 British (non-Irish) and 12,500 Mexicans. By far the greatest numbers lived in the border states of Virginia, Tennessee and Kentucky (approx. 69,500) and in the Gulf trading ports of Texas and Louisiana (approx. 71,000). E. Merton Coulter, *The Confederate States of America, 1861-1865*. Vol. 7. A History of the South, Wendell Holmes Stephenson and E. Merton Coulter, eds. (Baton Rouge, LA: Louisiana State University Press, 1950), 443; Ella Lonn, *Foreigners in the Confederacy* (Chapel Hill, NC: University of North Carolina Press, 1940; reprint, Gloucester, MA: P. Smith, 1965), 29; Susannah U. Bruce, “Irish-Americans,” in *Encyclopedia of the American Civil War*, 1036-1037; Stephen D. Engle, “German-Americans,” *ibid.*, 822-824; Historical Census Browser, accessed January 13, 2005.

the war, now denied their residency, asserting and reasserting foreign nationalities. Even some naturalized immigrants denied Confederate citizenship – and many Confederates agreed with them – because their oaths had been given to the United States and not to the Confederacy. Add the untold ranks of northern- and western-born Southerners who came from the now-foreign United States, and the numbers of men who could claim legitimately to be foreign-born – and thus exempt from military service – soared. For an army already strapped for men, it was a question that could mean the difference between victory and defeat.

“I assume that it is too clear for dispute,” Watts answered Randolph, “that Congress meant by *residents*, those who had acquired domicil [sic] within the Confederate States.”¹¹ Domiciliation began with civic involvement.¹² Economic or political participation, be it opening a business and attracting customers and creditors or voting or running for office, were just two of the many outward signs of local involvement. Participating in the slave economy was another. Since British law forbid the ownership of slaves, Confederates found it difficult to believe that British subjects living in the South who bought, rented or in any way used the labor of a slave could still consider themselves loyal British subjects.¹³ Marriage, too, held profound meaning. Marriage bound not only families but communities together. Neighborhoods and settlements, particularly rural and agricultural ones, were identified as much with the

¹¹ The spelling of domicile in contemporary texts was invariably “domicil.” Thomas Watts to George W. Randolph, May 3, 1862, in *ibid.*, 81; *Official Records* IV, 1:1095.

¹² Joseph Story, *Commentaries on the Conflict of Laws, Foreign and Domestic* (Boston, MA: Hilliard, Gray, 1834; reprint, New York, NY: Arno Press, 1972), 52; c.f., Judge Charles L. Cleveland’s ruling in *Berthier v. Pickett*, published in *Houston Telegraph*, September 9, 1864.

¹³ George W. Randolph to E. Barksdale, in *Houston Tri-Weekly Telegraph*, June 4, 1862.

patterned intermarriages of dominant local families as they were with any other features. For those immigrants able to pierce this network through a well-placed marriage, the ties that bound him to the community were as much familial as they were social or economic.¹⁴

Such activity did not, in and of itself, bring domiciliation. But if uncontested, it did give the outward appearance of an intent to domicile, an appearance that could only be countered by overt acts of denial. During the Revolutionary War colonists who retained British allegiances continued their involvement in local markets, courts, and government even as these venues gradually assumed new allegiances and nationalities. Patriots assumed that those who continued such involvement accepted these new arrangements and became Americans in fact as well as deed. Only the outward and visible denial of this assumption – preferably by emigration – could prevent its solidification into accepted truth.¹⁵ Confederates, too, adopted this right of emigration. Jefferson Davis issued several proclamations throughout the war granting Northerners and Europeans time to pack their belongings and leave.¹⁶ For those who remained and failed to register as undomiciled aliens, the government assumed a volitional will to remain in the Confederacy and accept Confederate citizenship. It was a standard that not all immigrants met. Some had lived for years in the same communities yet avoided domiciliation by publicly asserting their intention to return to their native land at some

¹⁴ This would help to explain the sometimes violent reactions to some claims of alienage. While anger within the immediate family may have been tempered, the community reaction would have been informed by the belief that such abstention violated not only longstanding ties to community but to extended family as well. See, Robert C. Kenzer, *Kinship and Neighborhood in a Southern Community: Orange County, North Carolina, 1849-1881* (Knoxville, TN: The University of Tennessee Press, 1987), chap. 1.

¹⁵ See for example, *Inglis v. the trustees of Sailor's Snug Harbor*, 28 U.S. (3 Pet.) (1830).

¹⁶ See for example, *Macon Telegraph*, August 20, 1861.

fixed point in the future. Georgia, for example, allowed immigrants to deny domiciliation by registering as resident aliens with the local courts.¹⁷

As resident aliens, they could be exempted from conscription. In Atlanta, attorney A. W. Stone wrote to British Consul Edmund Molyneux that he was “troubled more than once every day with undomiciled foreigners seeking protection from enrollment.”¹⁸ In Savannah, where less than one hundred aliens had registered as resident aliens between 1826 and 1861, more than two hundred newly realized resident aliens registered in 1862 alone.¹⁹ Most other states allowed similar denials and exemptions, as well. In Charleston, the number of alien filings reached 600 to 700 by the spring of 1862 while Richmond’s numbers topped 2,000 to 3,000.²⁰

But Watt’s ruling threatened to disallow all of these filings. By tapping into the idea of domicile, the attorney general had laid the foundation for a national citizenship based on socially and communally constructed relationships that legitimated civic incorporation and residential continuity as an informal form of naturalization. As Watts explained, domicile created a relationship that “bound [immigrants] to society [and made them] subject to the laws of the State, while they reside in it.” It granted the protection of

¹⁷ Hotchkiss, *Codification of the Statute Law of Georgia*, 318-319. The state’s alien exemption spoke directly to the legitimacy of United States as nation-state. By stipulating that the exemption would only be extended to those countries extending comity to Americans abroad, it forced potential trading partners to accept the equality of the nation’s political existence on the world stage.

¹⁸ A. W. Stone to [Molyneux], January 23, 1862, in Great Britain, *Consulate Records, 1816-1875*, Rare Book, Manuscript and Special Collections Library, William R. Perkins Library, Duke University; Historical Census Browser, accessed October 11, 2006.

¹⁹ Chatham County Superior Court, Register of Aliens Not Subject to Military Duty under Act of December 9, 1824, 1862-1864; Chatham County Georgia, Court of the Ordinary, Register of Aliens Who Have Declared their Intention Not to Become Citizens of the United States, 1824-1861, in Free Person of Color Register, 1826-1835.

²⁰ *Augusta Chronicle and Sentinel*, April 4, 1862; *Richmond Dispatch*, March 25, 1862.

the state, “earned by considerations which the protecting power is not at liberty to disregard,”²¹ and with it, “*de facto*, though not *de jure*, citizens of the country of their domicile.”²² It was opinion seconded by judges throughout the Confederacy. The Confederate District Court judge in Charleston, for example, ruled that “during war, alien residents in these States [are] considered by the other belligerents as much enemies as they who [are] citizens.” They appealed to the same government for protection, suffered the same dangers and trials and should offer the same military service in return.²³

“I AM AWARE OF THE DELICACY OF OUR POSITION”

Georgia newspapers hailed Watt’s ruling as “common sense and right.”²⁴ He had given solace to a rising frustration among natal Southerners that immigrants, people who throughout the years had united with their communities, were taking advantage of their foreign birth to deny social and political membership and claim military exemption. Yet while Watt’s ruling gained praise, it did have several problems. First, the associations between undomiciled immigrants and speculators led many Confederates to advocate the expulsion of aliens, not their incorporation. “Experience may suggest the propriety, justice,

²¹ Watts felt that the decision as to the length of time required to establish domicile was a political, not a legal one. Thomas Watts to George W. Randolph, May 3, 1862, in Patrick, *Opinions*, 82. See also, Ivor Debenham Spencer, *The Victor and the Spoils: A Life of William L. Marcy* (Providence, RI: Brown University Press, 1959), chap. 22; *Correspondence between the Secretary of State and the Chargé d’Affaires of Austria relative to the Case of Martin Koszta* (Washington, 1853), and Andor Klay, *Daring Diplomacy: The Case of the First American Ultimatum* (Minneapolis, MN: The University of Minnesota Press, 1957), 134-139.

²² Thomas Watts to George W. Randolph, June 9, 1862, in Patrick, *Opinions*, 110. Watts reiterated this point to Secretary of War James Seddon in June 1863. See *ibid.*, 286-287.

²³ *Richmond Daily Dispatch*, July 8, 1863.

²⁴ *Augusta Daily Constitutionalist*, June 5, 1862.

and necessity of an additional act of Congress,” recommended Florida Governor John Milton to Jefferson Davis, “to remove from the Confederate States all persons who claim to be aliens and therefore exempt from and refuse to volunteer into the military service of the Confederate States.” Such an expulsion would remove from the loyal population a class of men who did nothing but consume precious resources, profit from the misery of those around them, and refuse to assist the very society they aimed to exploit.²⁵ But this is not what the Confederacy needed or wanted. It did not want to chase away immigrants. Rather, it wanted immigrants to embrace their new home and proclaim themselves, as Irish-born Savannah priest Father Jeremiah O’Neill had done, “a *rapublican* and a *sacessionist* and a *satizen*.”²⁶

Second, in the absence of countervailing evidence, Watt’s ruling assumed that all aliens who remained in the Confederacy wanted to become citizens, belying the fact that thousands had been stranded by the Union naval blockade or the difficulties of travel to the North. It also assumed that all Southerners wished to become Confederates. True, it was crucial that the Confederacy retain this belief. Without it the door opened on endless questions regarding the social, political and economic appeal of the Southern nation. Confederates had to believe that people *wanted* to become or to stay Confederates and would make the choice to accept allegiance to the Confederacy *with* military service. But this was certainly not the case. Life in a nation divided and at war with itself was not the stuff of immigrant’s dreams and many aliens saw no better recourse than to flee the South

²⁵ *Official Records IV*, 2:489.

²⁶ Rev. C.C. Jones to Mrs. Mary S. Mallard, December 13, 1860 in Myers, *Children of Pride*, 634.

if their alien status was not recognized. Peter Dolan, for example, was an Irish immigrant and a twenty-year resident of the South. While working as a newspaperman at the Charleston *Courier*, he faced the difficult choice of compulsory military service or expulsion from the city. When Confederate officials refused to accept his oath that he was not a naturalized citizen, Dolan moved his family from South Carolina to his wife's hometown of Boston, Massachusetts.²⁷

Lastly, the informality of domicile was hard to encapsulate and thus difficult for foreign nations and foreign nationals to accept as a definitive statement on allegiance. Domicile remained subjective, responsive primarily to qualitative states of social and political acceptance. Attorney General Watts could offer no clarification. For him, the definition was political, not legal.²⁸ And Congress, conscious of domicile only as a measure of pre-existing informal citizenship, never addressed it as a mechanism of naturalization.²⁹ The War Department, taking Watt's ruling as its guide, tied domicile to personal intent but could offer no standardized rules for measuring its achievement.³⁰ To complicate the matter further, popular definitions of domicile tended to be even broader than legal and political ones and were not constrained by the needs of international

²⁷ *Augusta Constitutionalist*, August 9, 1862.

²⁸ Thomas Watts to George W. Randolph, May 3, 1862, and June 9, 1862, in Patrick, *Opinions*, 81, 110.

²⁹ JCCSA 1:56, 67, 171, 193, 217; "A Bill to Prescribe Uniform Rules of Naturalization," CI, reel 3, no. 72-4; "A Bill to Prescribe Uniform Laws of Naturalization," in *ibid.*, reel 3, no. 72-3; Act of March 26, 1790, 1 Statutes-at-Large 103; Act of January 29, 1795, 1 Statutes-at-Large, 414; Act of April 14, 1802, 2 Statutes-at-Large 153.

³⁰ *Official Records IV*, 2:164.

diplomacy. As one beleaguered British subject wrote, “I am at a loss to understand the meaning of domicile as used here.”³¹

Such uncertainty placed conscription officials in a difficult position. Major John Dunwoody, Georgia’s first commandant of conscription, received War Department orders not to conscript undomiciled immigrants, but he received no instructions on identifying domicile other than a vague statement that “the question of domicile or permanent residence is... a question of law, and should be determined from the facts of the case and not by the opinion or oath of the party.”³² Since no Confederate law addressed domicile, Dunwoody, in true states’ rights fashion, looked to state law for guidance. Georgia’s citizenship laws followed an 1861 ordinance naturalizing all persons resident in the state at the time of secession except those who registered oaths of intent not to become citizens. So Dunwoody had to decide: Was conscription, as Confederate policy, to be driven solely by Confederate guidelines? Did Watt’s ruling trump Georgia’s naturalization law and disavow the oaths of non-intent in favor of ill-defined measurements of domiciliation? Or, did the state’s naturalization ordinance eliminate the need for domiciliation by relying on oaths of non-intent as the sole block to naturalization? Which guideline was Dunwoody to follow in determining citizenship and military obligation?

³¹ Alex Batt to Alan Fullarton, October 25, 1862, and Hardee to Fullarton, January 22, 1863, in *Consulate Records, 1816-1875*. Eugene Berwanger claims that the Confederacy developed a different definition of domicile than that used by European nations. The evidence suggests, however, that the definitions may not have differed although evidentiary requirements did. Europeans typically required a much higher standard of proof than did the Confederacy. Eugene H. Berwanger, *The British Foreign Service and the American Civil War* (Lexington, KY: University Press of Kentucky, 1994), 99.

³² *Official Records IV*, 1:1127.

His solution was to split the difference. Using his own discretionary powers, he permitted aliens claiming exemption to file oaths of non-intent contrary both to Georgia's deadline and War Department orders.³³ In violating both standards, he probably felt he was fulfilling his larger duty. He understood that domiciliation, as described in Watt's ruling, was an ongoing and individual process, one that denied arbitrary deadlines such as that imposed by the state. To fulfill War Department instructions, he could not take Georgia's time limit into consideration but had to look at the totality of the facts. Not all aliens naturalized by Georgia's action at the time of secession could be considered citizens by national domicile standards. Still, the overt actions typically used as facts in the case – continued residency during the war, as well as commercial, political and legal participation – could be deceiving. They did not always reveal internal intents. Commercial agents, for example, or stranded sailors, might have taken part in many or all of these activities in 1860 and 1861, but had no intention of remaining permanently. So, although subject to abuse, the oaths of intent filed with local courts and diplomatic officials could not be ignored as evidence of intent. They just had to be weighed against other facts in the case.

Dunwoody's decision did not sit well with his successor, Colonel John B. Weems.³⁴ Weems believed that someone, or some government, should have ultimate jurisdiction over conscription, and as a military officer his natural inclination was to look to the War Department. In early October 1862, he began dismantling Dunwoody's

³³ Under the first conscription law Confederate conscription officials assigned to the states granted or declined requests for military exemption. *Official Records IV*, 1:1100; *Augusta Daily Constitutional and Sentinel*, June 29, 1862 and July 13, 1862.

³⁴ War Department General Orders No. 47, series 1862, in Wayne-Stiles-Anderson Papers, MS 846, Folder 525, Georgia Historical Society, Savannah, Georgia.

cobble of state and national standards and ordered all aliens exempted by Dunwoody to be re-conscripted and re-examined. Domicile, not oaths, was to be the sole judge of military liability. This threw exempted aliens such as Thomas Hogan into turmoil. Hogan, an Irishman clerking in an Augusta general store, had gained foreign papers certifying his alien status soon after the passage of the first conscription act. When told he also needed, per Dunwoody's orders, an additional oath of intent, Hogan had given it.³⁵ Now Hogan found that "another enrolling officer appointed says he will enroll all men that was here at the time of secession and more especially foreigners & he is one of those men that will do so if he is not prevented by the Government... he looks to know [sic] papers nor does he care whether the [sic] are foreigners or Citizens but more especially the former class."³⁶ Henry S. Featherston, a British subject trapped in Georgia with his wife by the Union blockade of the Confederate coast, had contacted the British consul office in Savannah in 1861 and had been told to swear out an oath of intent. When the first conscript law passed, he produced this oath for Major Dunwoody who accepted it as valid and exempted Featherston from Confederate duty. Now his exemption was in question.

The British consular officers before whom Hogan, Featherston and other immigrants appeared for their papers and oaths were actually commercial agents. Dispatched by the governments of Europe prior to the war to promote and manage trade with the Southern states, they had been forced to assume diplomatic functions by the secession of the South and the beginning of war. And many Confederates now

³⁵ Thomas Hogan to Allen Fullarton, November 6, 1862, in *Consulate Records, 1816-1875*.

³⁶ *Ibid.*

questioned the prudence of allowing foreign agents originally accepted by the United State government to remain without Confederate issued exequaturs. Acceptance of these now *de facto* diplomats was shaky at best, and although they did their best protect their fellow subjects, both the consuls and their statements carried little weight. They could only attest to personal belief in an alien's alleged nationality, not to actual proof of nationality itself.³⁷ So when Allen Fullarton, the British consular agent at Savannah, appealed to Weems for Featherston's release, the commandant replied cordially but forcefully that the Confederate military would be the sole judge of citizenship and military liability despite diplomatic statements and legal oaths to the contrary:

“The foreigner who has lived for a term of years within the limits of the Confederate States claiming and enjoying the protection of the Government appealing to its Courts whatever his rights of person or property are assailed, prosecuting his daily avocation and making investments of his surplus capital, manifest more clearly and certainly his intentions as to any permanent residence here, than can be disclosed by his own affidavit to the contrary. Such acts on the part of the foreigner revoke every reasonable presumption of a mere temporary or transient residence. No man who is to the “Manor born” can do more to fix and establish his domicil. They distinctly show that it is not a transient residence but an acquired domicil because taken by him “*Animo Manendi*” [with intent to remain].³⁸

The *realpolitik* of European diplomacy, however, would not suffer such firmness. Confederate missions to both England and France had proven unsuccessful in attracting coveted European recognition of the Confederate government. Although Napoleon III

³⁷ Richmond *Daily Dispatch*, July 17 and July 18, 1863.

³⁸ John B. Weems to Allen Fullarton, October 30, 1862 in Great Britain, *Consulate Papers, 1859-1866*, Special Collections & Archives Division, Robert W. Woodruff Library, Emory University. See, for example, the case of Patrick Welsh in Ann Welsh to Allen Fullarton, January 9, 1863, and Charles Hardee to Allen Fullarton, January 22, 1863, in *Consulate Records, 1816-1875*. Welsh claims alien status even though the enrolling officer James Burdett offers evidence that Welsh had voted several times in local elections.

appeared willing, France's recognition was contingent on England's, and both Prime Minister Lord Palmerston and Foreign Secretary Lord John Russell continually refused to accede.³⁹ As Congressman Frank Sexton of Texas noted, "we certainly are in no condition to complicate our relations with foreign powers" with the conscription of European immigrants.⁴⁰ And while Virginia Congressman James Holcombe doubted that the conscription of aliens would provoke a war, he did think it "might be regarded as a breach of comity, and might provoke a retaliatory order by England, France and other foreign governments, excluding citizens of the Confederacy from their dominions."⁴¹ Given the relatively small number of British subjects appearing before Weems, Secretary Randolph ordered his subordinate to grant and restore the exemptions of British subjects based on consular statements as long as the immigrants agreed to leave the Confederacy at their earliest opportunity.⁴²

³⁹ On Confederate efforts to gain European recognition, see Frank Lawrence Owsley, *King Cotton Diplomacy: Foreign Relations of the Confederate States of America* (Chicago, IL: The University of Chicago Press, 1931; reprint, Chicago, IL: The University of Chicago Press, 1959); Berwanger, *British Foreign Service*; James Morton Callahan, *Diplomatic History of the Southern Confederacy*, American Classics Series (New York, NY: Frederick Ungar Publishing Co., 1964); D. P. Crook, *The North, the South, and the Powers, 1861-1865* (New York, NY: John Wiley & Sons, 1974); Milledge L. Bonham, Jr., *The British Consuls in the Confederacy*, Studies in History, Economics and Public Law, vol. XLIII, no. 3, edited by the Faculty of Political Science of Columbia University (New York, NY: Columbia University, 1911); Donaldson Jordan and Edwin Pratt, *Europe and the American Civil War* (Boston and New York: Houghton Mifflin Company, 1931); Edwin de Leon, *Secret History of Confederate Diplomacy Abroad*, William C. Davis, ed., (Lawrence, KS: University Press of Kansas, 2005); Paul Pecquet du Bellet, *The Diplomacy of the Confederate Cabinet of Richmond and Its Agents Abroad: Being Memorandum Notes Taken in Paris During the Rebellion of the Southern States from 1861 to 1865*, William Stanley Hoole, ed. (Tuscaloosa, AL: Confederate Publishing Company, Inc., 1963), and Charles M. Hubbard, *The Burden of Confederate Diplomacy* (Knoxville, TN: The University of Tennessee Press, 1998).

⁴⁰ Frank B. Sexton, "Diary of a Confederate Congressman, 1862-1863," ed. Mary S. Estill, *The Southwestern Historical Quarterly* XXXIX, no. 1 (July 1935), 60; *Richmond Daily Dispatch*, May 29, 1862; *Augusta Daily Constitutionalist*, June 5, 1862.

⁴¹ SHSP 50:173.

⁴² G. W. Randolph to Allen Fullarton, no date and November 11, 1862, in *Consulate Papers, 1859-1866*.

Weems obviously was not pleased with the kid gloves. When Featherston produced his new consular affidavit, Weems snatched the document away, hastily scratched through the words “the country” and inserted “the Confederate States” as if to reaffirm the nation’s identity and its supremacy over all within its borders.⁴³ But from this point forward Weems assured Consul Fullarton that he would “withhold no concession [on alien exemptions], compatible with my duties to my government, that would enhance that sympathy or insure the ‘material assistance which may be rendered when least expected.’”⁴⁴

States, too, were wary of pressing demands on immigrant militia service too firmly lest it damage foreign relations. “I am aware of the delicacy of our position with Europe,” Georgia’s Adjutant General Henry C. Wayne wrote to British Consul Edmund Molyneux in early 1862 concerning alien liability to state drafts, “and although never indulging, on international principles, any hope of a speedy recognition in Europe, still nothing shall be done so far as my influence extends to prejudice that recognition.”⁴⁵ Although Wayne thought any public pronouncement of a suspension in alien enlistment “impolitic,” he privately assured Consul Molyneux that exemptions would be granted to legitimate British subjects.⁴⁶ Wayne even submitted the name of Frederick Miller, a

⁴³ The War Department’s General Orders No. 82, series 1862, issuing rules and regulations under the second conscription act also included this stipulation. However, it also remained clear that overwhelming evidence of voting, marriage, property ownership, or other exercises of citizenship rights could counter any oath of non-domicile. *Augusta Chronicle and Sentinel*, June 19, 1862; Henry F. Featherston to Allen Fullarton, October 23, 1862 and January 13, 1863 in *Consulate Records, 1816-1875*; John B. Weems to Allen Fullarton, October 30, 1862 and November 7, 1862, in *Consulate Papers, 1859-1866*; G. W. Randolph to Allen Fullarton, no date and November 11, 1862, in *ibid*; *Official Records IV*, 2:164, 169-170.

⁴⁴ Weems to Fullarton, October 30, 1862, in *Consulate Papers, 1859-1866*.

⁴⁵ Henry C. Wayne to Edmund Molyneux, February 26, 1862 and March 4, 1862, in *Consulate Papers, 1859-1866*.

⁴⁶ Henry C. Wayne to Edmund Molyneux, March 4, 1862, in *ibid*.

seventeen-year old Irish watchmaker's apprentice living in Milledgeville as a British subject seeking aid in leaving the Confederacy.⁴⁷ Miller's age made him ineligible for conscription but liable to state militia service, and Wayne's action was meant as a sign of good faith that state officials were making every effort to protect those meriting protection.

Such reticence also extended to the conscription of Marylanders. Most politicians conceded that "it was a historical and legal fact that Maryland was one of the United States."⁴⁸ Even William Porcher Miles, who advocated the conscription of United States citizens who did not leave the Confederacy, hesitated when it came to the conscription of Marylanders. "We cannot recognize Maryland [as part of the Confederacy and conscript its citizens,]" he argued, "so long as she sends Senators and Representatives [solely] to the Yankee Congress."⁴⁹ To do so would violate international law and destroy what pro-Confederate sentiment remained within the state. Likewise, international protections made the conscription of United States citizens difficult. While such action might be justified to the satisfaction of Confederate minds, the perceptions of the outside world and the effect that such perceptions might have on foreign recognition reigned in any hopes of conscripting Northerners.

So while Watt's domicile ruling set the stage for the conscription of aliens, it could not be implemented. International affairs and the limitations imposed by the need for foreign recognition softened the Confederacy's resolve to press its claims on alien

⁴⁷ Henry C. Wayne to Allen Fullarton, July 3, 1863, in *ibid.*

⁴⁸ SHSP 50:170.

⁴⁹ *Ibid.*, 50:172.

service. Evidentiary confusion precluded uniform standards of enforcement with both Confederate and state officials accepting personal oaths as proof of intent despite sometimes glaring evidence of years of domiciliation. The Confederacy thus was arriving at a conscription policy that could best be summarized as this: White males living in the Confederate states, either as Confederate or state citizens, *de jure* or *de facto*, owed either Confederate or state service depending on whether a Confederate or state official arrested them first. The conscript could then sue in either a Confederate or state court as a Confederate or state citizen (although doing so might negate claims of non-domicile) to appeal arrest by either government (sometimes both) only to be arrested by a competing government as soon as he stepped out of the courthouse. As evidence of his citizenship or non-citizenship status, the conscript might present documents (that may or may not be accepted by the court) obtained from foreign consular agents (located hundreds of miles from home) under orders of the local enrolling officer (who had no idea what the law actually said). Conscription was supposed to have simplified the process of military enlistment by centralizing its operation. But the attempt to root conscription in states' rights had created so many contingent effects and unanswered questions that the process was becoming difficult to justify. It was enough to give a rebel (and a foreigner) a headache.

“WITH A VIEW TO SUCH DISCRIMINATION”

The confusion that surrounded domicile and non-domicile, and *de jure* and *de facto* citizenship, was simply too much for many Confederates to bear. For these individuals the situation was simple. If one lived and worked in a Confederate state,

stayed after the war began and relied on Confederate resources to protect one's property, one owed military service. Yet the official policy on aliens was disturbing. The government, it seemed, increasingly tolerated the political self-denial of locals to court favor with European royalty, creating an atmosphere in which some Southerners rejected Confederate citizenship and avoided military service. At first Confederates pointed to outsiders such as Unionists, anti-Confederates, draft dodgers, military layouts, deserters and the like. But increasingly Southerners of foreign birth became targets. So many British- and Irish-born Southerners claimed foreign exemption that in 1863, for example, that the *Southern Literary Messenger* ridiculed them as having followed Queen Victoria into a pacifist religious sect:

You say you're standing in duress,
 You are, upon your soul;
 You're acting under stringent stress
 Of Petticoat control!
 You say your dear old woman is
 A mistress absolute;
 And when she joined the Quakers, you
 Were forced to follow suit!
 You say that she would have it so –
 Oh! Shame beyond description!
 To keep you safe and sound at home,
 And keep you from conscription.⁵⁰

And some of the data tends to support that claim. By 1864, sixty-one percent of those men claiming military exemption in Savannah were born outside of a Confederate state.⁵¹

⁵⁰ *Southern Literary Messenger* 37, no. 4 (April 1863): 220-222.

⁵¹ Nancy J. Cornell, comp., *1864 Census for Re-Organizing the Georgia Militia* (Baltimore, MD: Genealogical Publishing, 2000), 93-106.

Likewise Jews drew contempt as greedy exploiters of war-time misery.⁵² Jews were not simply members of the Jewish faith. They were any speculator of supposed foreign birth, any outsider – Jew, gentile, Northerner or European – who should be incorporated quickly into the civic body or expelled.⁵³ Representative Robert H. Hilton of Florida complained that Jews “swarmed here as the locusts of Egypt. They ate up the substance of the country, they exhausted its supplies, they monopolized its trade.”⁵⁴ Henry S. Foote of Tennessee estimated that “at least nine-tenths of those engaged in trade were foreign Jews [and that] if the present state of things were to continue the end of the war would probably find nearly all the property of the Confederacy in the hands of Jewish Shylocks.” For Foote, the presence of vast numbers of foreigners was part of a conspiracy that allowed Jews to be “spirited here by extraordinary and mysterious means... to conduct illicit traffic with the enemy without much official examination.”⁵⁵ Savannah attorney George Anderson Mercer noted in November 1862 that the majority of those who refused to enlist even for home defense were “composed chiefly of Yankee shopkeepers and Jews of lower order.” By April of the following year he was complaining that “the Jews, who nearly all claim foreign protection, and thus avoid service, are the worst people we have among us; their exemption from military duty, their natural avarice, and their want of principle in this contest, render them particularly obnoxious.” By the following August, he was expressing the fear that many

⁵² See for example, *Official Records* I, 34:820-821, 978.

⁵³ *Richmond Daily Dispatch*, February 6, 1864.

⁵⁴ SHSP 47:123.

⁵⁵ *Ibid.*, 47:122.

Confederates held – that the Southern alien population was becoming not just a nuisance but a legitimate threat:

“They [Jews] swarm in every town and village, escape service as Aliens, owe no allegiance to our Govt think only of accumulating wealth, and are always ready to pursue any course that will save it. These are the ‘good union men’, who take the oath of allegiance to our invaders. These men are all speculator and extortioners, blockade-runners, and brokers; they have done more to depreciate our currency than all the rest of the community. It is an anomaly to see safely embosomed among us a people more hurtful than our Yankee foes... Citizenship is too easily procured, and Aliens too carelessly admitted; they are now reaping all the benefits of the war, while our own people are actually bearing all the burdens.”⁵⁶

Some Georgia judges kept a cool head amid the rising frustration. Bibb County Judge Osborn Lochrane, himself an Irish immigrant, ruled that “every citizen is bound to defend the state [but] a man only owes this overwhelming obligation to one country [and] it is not an obligation that follows his residence in every land.” Only natal and naturalized citizens could be conscripted, otherwise “the Courts would have been informed by something more clear and tangible than the use of the word ‘resident’ in the act of conscription.”⁵⁷ But even Lochrane was angered by the disruptive effects of international affairs. When Elias Lovengard, a Canadian, presented Judge Lochrane with British consular papers in July 1862, the judge ruled sarcastically that “as a citizen he might understand and believe that there was such a government as that of Great Britain, and certain men in the Confederacy claiming to be consuls, but he had no proper official knowledge of either fact.” If Great Britain did not recognize the Confederacy, Judge

⁵⁶ George Anderson Mercer Diary, 3:47, 76, 83, 94-95, 133-134.

⁵⁷ *Russell v. Confederate States of America*, published in *Macon Daily Telegraph*, April 15, 1864.

Lochrane was “not acquainted with Mr. Bull.”⁵⁸ And an Alabama judge ruled in 1863 that it remained the prerogative of the Confederacy, not some foreign government, to decide the political status and military liability of immigrants.⁵⁹

The situation was particularly galling to Congressman George G. Vest. Vest’s home state of Missouri had not seceded, although secessionist elements within had sent representatives to the Confederate Congress. By law, he and other Missourians were United States citizens, as were Marylanders and Kentuckians. He had watched as “‘roughs,’ ‘shoulder-hitters,’ and ‘blood tubs’” from Maryland exploited the whimsical nature of international affairs to slip back and forth across the Virginia-Maryland border one step ahead of the enlistment officer. Yet at the same time he had watched his fellow Missourian fleeing the advance of Union forces arrested by these same officers and sent to the nearest Confederate camp of instruction.⁶⁰ Now Europeans were claiming the same exemptions despite having been in the Southern states even longer than refugee Missourians. The double standards were unacceptable. Marylanders should be conscripted, allegiances be damned. The Confederacy had committed itself to the protection of Maryland. That protection made Marylanders no different from any other alien under Confederate care. The state was now a *de facto* member of the Confederacy,

⁵⁸ In Lochrane’s opinion, all inhabitants of Georgia, aliens and citizens alike, were liable to conscription following Georgia’s naturalization of state residents at the time of secession. Lochrane would later recognize that the Confederacy had ignored this naturalization and concede that unnaturalized aliens could not be held liable to conscription. Columbus *Daily Enquirer*, August 21, 1862; Macon *Telegraph*, August 26, 1862; J. C. M. Burney to Allen Fullarton, September 4, 1862, in *Consulate Records, 1816-1875*; Augusta *Chronicle and Sentinel*, July 22, 1863; *Lovengard v. Vason*, Bibb County Superior Court, Minute Book 10, August 12-13, 1862.

⁵⁹ Richmond *Daily Dispatch*, July 17 and July 18, 1863.

⁶⁰ SHSP 47: 120-121

and Marylanders owed military service just as any other *de facto* citizen.⁶¹ United States citizens should be conscripted, international law be damned. “It had been the invariable practice of this Government,” Congressmen William Porcher Miles pointed out, “to observe, with scrupulous nicety, the laws of nations, but the enemy’s contempt for all laws, civil and international, rendered it proper that we should advance our retaliation with his measures *pari passu*. Why should we hold up ourselves the international law when the outrages of the enemy every day showed their contempt for it? ... When one belligerent ignores all laws, the other was relieved from all obligation to observe them.”⁶² And Europeans should be conscripted, foreign protests be damned. “England and France had not recognized us,” Georgia’s Augustus Kenan reminded the House, “and those Governments would have to look to the United States Government [not the Confederate government] for redress in protecting the rights of their citizens... [we require] nothing more of foreigners than to assist in the defence of their country or leave it.”⁶³

Attitudes like Vest’s and Kenan’s hardened in early 1863, and as they did the emphasis Confederates had placed on the historicism of domicile began to include a presentism rooted in what may be termed compulsory-volitional allegiance. This was a much more stringent version of the assumptive naturalization that accompanied residential continuity following secession in 1860 and 1861. At that time, continuity was seen as a voluntary choice to stay or not to stay. But throughout 1862 aliens and immigrants took advantage of the leniency demanded by diplomatic relations to avoid

⁶¹ Ibid.47: 119-120, 50:169-176, 184-186, 201, 208-209.

⁶² Ibid.50:171-172.

⁶³ Ibid.50:185-186.

making their choice. They refused to (or could not) quit the Confederacy and yet would not make the final leap into full Confederate citizenship and its resulting military service. By 1863, it was apparent that the Confederate government was going to have to force them to make a decision. It was not going to require a specific decision. It was not going to follow Georgia's lead and forcibly naturalize all immigrants. As Congressman Foote explained, the Confederacy should not "oppress [aliens] by forcing them into the service against their will." But it was going to require all aliens to make a choice between emigration and citizenship, *de jure* or *de facto*, with military service.⁶⁴

In late February 1863, Congressman William Porcher Miles requested the House Committee on Foreign Affairs to suggest regulations on naturalization "with a view to such discrimination against persons not now citizens of the Confederate State as may best promote the stability and purity of our political and social institutions."⁶⁵ The bill that finally passed the House at the end of March, if it had been accepted by the Senate and signed by President Davis, would have repealed any remaining inherited United States naturalization laws while preserving the right of immigrants who had already begun the naturalization process to gain citizenship within the following three years – the minimum term of service under conscription – as long as they did not claim exemption.⁶⁶

Meanwhile, Alabama Senator Clement C. Clay, Jr., offered a bill to repeal all naturalization laws and all laws granting citizenship protections to unnaturalized

⁶⁴ Ibid.47:119-123, 144, 49:213-214. See also, Committee on Military Affairs of the House of Representatives, entries for January 20, 1863, January 26, 1863, February 27, 1863, April 22, 1863, December 22, 1863, January 22, 1864, February 2, 1864, and May 14, 1864. For Confederate attitudes toward those immigrants who delayed their emigration see, *Official Records* I, 51:2:365-366.

⁶⁵ SHSP 48:68; JCCSA 6:71-72.

⁶⁶ JCCSA 6:261-262; Sexton, "Diary," 45.

immigrants except for the Army Naturalization Act, which would require staking a claim in state citizenship somewhere in the Confederacy.⁶⁷ Although neither of these measures passed – the Richmond *Examiner* lamented their failure but understood that “any attempt to conscribe aliens would involve us in difficulties with foreign nations” – Congress was making it clear that Confederate society would no longer tolerate neutral parties.⁶⁸ Only military service should allow aliens to complete naturalization. For those who naturalized, only state citizenship should be available. And for those who did not wish to naturalize, only military service should grant them the temporary protections needed to avoid the punitive actions of arrest, seizure and sequestration imposed on alien enemies.

“SHAKING THEIR FAT SIDES”

Paralleling the debate over political membership was a debate over the boundaries of the polity itself. Which agents of power were essential to state independence and which were not? On the surface, it appeared a purely functional question. But in the search for an answer came a redefining not only of Confederate military identity, but a recasting of conscription itself. And it was this recasting that gave Governor Brown the opportunity to press his claims to military authority with renewed vigor.

No sooner had Reverend Joshua Peterkin finished his opening prayer on September 4, 1862, than thirty-eight-year-old North Carolina Senator William T. Dortch stood and made a rather controversial suggestion: all justices of the peace should lose

⁶⁷ A Bill to be entitled an Act to repeal the Naturalization Laws, Senate Bill No. 71 [1863], CI, reel 4, no. 105.

⁶⁸ Richmond *Examiner*, April 27, 1863.

their exempt status and join the military ranks.⁶⁹ As the chief law enforcement and judicial officers in many communities, justices of the peace and the constables assigned to assist them held civil jurisdiction over monetary disputes and criminal jurisdiction over minor felonies and trespasses. Although the exact numbers of justices and constables throughout the Confederacy is not known, Georgia may have had as many as 8,000.⁷⁰ North Carolina claimed to have approximately 5,000 exempted justices with an untold number of constables.⁷¹ Ending the exempt status of justices meant thousands of potential new recruits.

But many in the Senate could not countenance the conscription of even the meanest of judicial official. Back in May 1862, the *Raleigh Standard* had proposed the conscription of justices of the peace. Their jurisdiction was local, not statewide, it had argued, policing, not judicial. They were not necessary as long as the militia was preserved.⁷² But William Lowndes Yancey, Louis T. Wigfall and others who supported conscription had drawn the line at conscripting state officials. They echoed Governor Brown's claim that state officials should be exempt by right as members of independent governments, not by special favor of Congress, a favor that might be withdrawn as easily

⁶⁹ JCCSA 2:260.

⁷⁰ *Macon Daily Telegraph*, December 11, 1862.

⁷¹ *Fayetteville Observer*, May 15, 1862.

⁷² *Ibid.*

as it was extended.⁷³ Wigfall had gone so far as to say he would be willing to sacrifice the Confederacy before allowing the conscription of *any* state officials.⁷⁴

If conscription and states' rights were to coexist, which the ongoing attempts at compromise and accommodation suggested, then the importance of political offices and office holders in the maintenance of state political independence needed to be clarified. Yancey, Wigfall and Brown drew their notions of state sovereignty and identity from the physical embodiments of power in addition to the broader, more romantic notions of political identity. Just as important as the power of the peculiar institutions and esoteric cultural bonds that linked Southerners together was the power of the people to task government with certain responsibilities and to create mechanisms - officers - to fulfill those tasks. To allow any external agent to strip away either that power or the officers would be a rejection of the government's *raison d'être*. The recent debate over military identity - Was it an army? Was it a militia-army? - had offered few solutions. But it had helped define the militia as one line of political demarcation, a line that could be crossed only in very specific and limited ways. Governor Brown may have allowed the Confederacy to invade the enlisted ranks, but he had drawn the line at the officer corps because they were the physical embodiment of military power vested in the state. Now Senator Dortch was asking the same question of states' judicial and policing agencies.

Much of the debate was pointless. Although a few senators refused to accept the exemption of largely idle justices "who sat on their benches shaking their fat sides in the sun light, while other men were fighting the battle of the country," the vast majority

⁷³ *Official Records IV*, 1:1081; *Brown-Davis Correspondence*, 36-37.

⁷⁴ Benjamin Hill of Georgia found the opposition of men such as Yancey and Wigfall amusing. They had voted for conscription, but now raised the cry of despotism against it. SHSP 46:29-32, 44-45.

agreed with Senator Yancey who claimed that “if we had a right to seize upon the humble justice of the peace, and force him into the army, we might take the chief justice from the bench for the same purpose and by the same right.”⁷⁵ Still, there was an emerging logic that justified not only the conscription of justices of the peace but the conscription of all civil officials. By far the most clearly delineated was the speech given on September 8, 1862, by Mississippi Senator James Phelan, a speech that knitted together both Davis’s expansive army and Brown’s militia-army visions of the Confederate military to create a synthetic justification for conscription that both upheld conscription’s constitutionality and rooted it in such a way that even ardent states’ right advocates would begin to temper their criticisms and move to an attitude of greater compliance.⁷⁶

Phelan agreed with the most ardent states’ righters that national army powers referred only to a volunteer regular army and that conscription could not be used to increase that force. This meant that any force created through conscription was, by definition, militia. But this Confederate militia-army was not the aggregate of state militias imagined by Brown and other conscription opponents. Rather, Phelan’s close reading of the Confederate Constitution led him to the conclusion that the Founding Fathers had envisioned multiple militias, not multiple armies as claimed by President Davis. He agreed with those who said article 1, section 8, paragraph 15 gave Congress

⁷⁵ SHSP 46:30.

⁷⁶ Benjamin Hill of Georgia had come to a similar conclusion in his rather sardonic replies to Senator Wigfall on September 4 and 5, 1862, but the logic of the argument was not as clearly delineated as that of Senator Phelan. See, SHSP 46:29-32, 44-45, 62-65, and *Speech of Hon. James Phelan of Mississippi, on the Motion to Conscript “Justices of the Peace”* (Richmond, VA: Enquirer Book and Job Press, 1862). Senate records show Phelan gave his speech on September 8, while the published speech shows a September 6 date.

the power of “calling forth” the militia.⁷⁷ The use of the phrase “calling forth” implied the militia’s prior existence, and the only militia meeting that standard was the militia of the states. This was the power by which the Confederate government had created its militia-army during the crisis period of 1861, and this was the power that Brown and others had seen as the basis for conscription. But looking at paragraph 16 of the same section, Phelan noted that the Constitution gave Congress an additional power to “provide for organizing, arming, and disciplining the militia” with the limitation that the officering and training of this militia be handled by the states.⁷⁸ Here the Founding Fathers had consciously used different language, language implying that this militia was not yet in existence, not yet organized. This eliminated the state militias. So what militia needed organizing, arming, and disciplining? Phelan contended it was a national militia, one tasked with both offensive and defensive powers and that cooperated with the regular army and the state militias.⁷⁹ Defining the national military force thusly justified the use of conscription without threatening the republican tendencies of states’ rights conscious critics.

But what portion of the population could the Confederacy compel to join this national militia? Could the Confederacy conscript state officials? Phelan found the answer by substituting the definition of the word *militia* for the word itself in the relevant clause. He defined *militia* as a body of “men taken from the general population and arranged as a military force.” Substituting the definition for the word itself, he measured

⁷⁷ Confederate Constitution, art. 1, sec. 8, par. 15.

⁷⁸ Confederate Constitution, art. 1, sec. 8, par. 16.

⁷⁹ *Speech of Hon. James Phelan*, 3-6.

the liability of state officials against the power of Congress to organize “men taken from the general population and arranged as a military force.”⁸⁰ He applied this same test to article 1, section 9, paragraph 13 of the Confederate Constitution which incorporated the United States Constitution’s second amendment “right of the people to keep and bear arms” as a prerequisite for a well-regulated militia.⁸¹ It appeared logical to Phelan that the *people* referred to were the same men included in his militia definition. Thus it was equally logical to substitute the term *people* for *militia*. Were not justices of the peace *people* and *men*? Were not all state officials *people* and *men*? If they were, then they were all liable to Confederate military service. To give additional weight to his argument and impress the dangers inherent in denying such a reading, he pointed out that if justices of the peace and other government officials were not *people*, if they did not share in the obligations of *people* to provide military service, then they also forfeited the rights of *people*, in particular their right to bear the arms necessary for militia service.⁸²

On the issue of the conscription of civil officers, Phelan’s speech made little difference. While the Senate agreed in principle that civil officers met the *people* definition and should be conscripted, its respect for institutional security led to a compromise measure that continued the exemption of state officials except such “as the

⁸⁰ Ibid, 6-7.

⁸¹ Confederate Constitution, art. 1, sec. 9, par. 13.

⁸² Phelan’s use of *people* to legitimate conscription was a fresh approach, and one that opponents like Williamson Oldham quickly co-opted for their own use. They, too, realized that a comprehensive and constitutional militia basis for conscription within a states’ rights framework upended the vast majority of arguments against the despotism of a compelled army. So Oldham shifted his emphasis on the Constitution from a protective document for states’ rights to a delegatory document for national powers, powers that derived not from the states but from the “people, the political society, or community, in whom the sovereign power resides.” Williamson S. Oldham, *Speech of W.S. Oldham, of Texas, upon the bill to amend the conscript law, made in the Senate, September 4, 1862*. (Richmond, 1862).

several States may have declared, or may hereafter declare by law to be liable to militia duty.”⁸³

One cannot discount the importance of the political influence wielded by justices in their communities. As historian Robert Ireland has demonstrated, Kentucky’s justices of the peace, and by extension justices throughout the South, had achieved a level of professional and political identity by the 1850s that enabled them to influence state politics through their control of county and, by extension, state party development.⁸⁴ With public support of conscription shaky in many areas, it only made sense to gain as much political support as possible at the local level, bypassing the potentially disruptive influences of state administrations and appealing to the most influence political voices at the local level. But perhaps just as important was a more cynical self-preservation that moved the senators. First, it would not hurt to be able to point out to these influential justices come election time just who had saved them from Confederate field service. Second, if Phelan’s logic held and state officials were conscripted as *people* and *men*, then Confederate senators who gained their office on appointment by state legislatures were susceptible to being called state officials, in addition to Confederate officials, and held to the same *people* test.⁸⁵

⁸³ SHSP 46:193; *Official Records* IV, 2:161.

⁸⁴ Robert M. Ireland, “The Place of the Justice of the Peace in the Legislature and Party System of Kentucky, 1792-1850,” *The American Journal of Legal History* 13, no. 3 (July 1969): 202-222. See also, W. R. F., II, “The Justice of the Peace in Virginia: A Neglected Aspect of the Judiciary,” *Virginia Law Review* 52, no. 1 (January 1966): 151-188.

⁸⁵ The Florida state legislature did pass a resolution in December 1862 requiring all Floridians holding Confederate office in that state to be removed from office, conscripted and replaced by others not subject to enrollment. SHSP 46:138; JCCSA 6:140-141

The wording of the exemption bill, passed October 11, 1862, was important. It recognized not only the assumed exemption of all state officials, requiring an explicit authorization for their enrollment from the state, but also the militia basis for national service, rooting conscript liability in state militia liability. It also added an additional layer of understanding to the compromises made between the House and Senate in the passage of the second Conscript Act. Although the House had not been wholly comfortable with conscription as long-term national policy, Phelan's dictum of early September, combined with the military pressures brought to bear by Robert E. Lee's failed invasion of Maryland, had convinced enough House members to support the second Conscript Act as a viable piece of states' rights legislation, not as an extension of questionable centralization. The radicalism of states' rights that had roiled during the antebellum period over federal intervention in the slavery question, that had stressed state and personal individualism in the protection of rights and property, that had resulted in secession and civil war was beginning to moderate among elements of the Southern leadership. Although many Confederates acquiesced in conscription for the sake of national preparedness, others were beginning to accept it as constitutionally sanctioned. They were beginning to understand, as Senator Wigfall had said before the passage of the first Conscript Act, that even self-professed states' rights men could agree that the Constitution granted "full, plenary and ample" war making powers – including the power of conscription – to the Confederate government, as long as Constitutional interpretations remained state centered.⁸⁶

⁸⁶ SHSP 45:27-28.

Phelan's dictum had even more profound implications. If it is accepted that there is a direct relationship between a society's social, economic, cultural, political and ideological rationales and its capacity for war, for example, what forms of violence are acceptable to attain military and political goals, then it is equally acceptable that the mechanisms of violence used in the war might also have their origins in similar rationales.⁸⁷ Thus, as the rationale for conscription as a tool for raising a military as a mechanism of war increasingly acknowledged states' rights, so, too, did the understanding of the military itself. Valuing republicanism and minimal central powers, the Confederacy placed great faith in the states and their militias, so great a faith that they began defining their national military in similar terms and linking liability to national service, even under a law that many believed superseded state controls, as rooted in liability to state military service. This suggests, at least militarily, that the Confederacy was little different from the states. What Phelan was suggesting was no less than the organizational recognition of the coordinate military powers upon which states' rights men had based their support of conscription. As the tallest tree in the forest, the Confederate canopy might cast shadows over the states, but its roots shared the same soil, competed for the same nutrients, endured the same trials and suffered the same fate.

Instead of clarifying Confederate political and military relationships, the struggle over conscription had introduced no less than five distinct possible constitutional justifications, each of which could have been placed before the Confederate public.

⁸⁷ See, Jack. L. Snyder, *The Soviet Strategic Culture: Implications for Limited Nuclear Operations*, R-2154-AF (Santa Monica, CA: RAND, 1977); Ken Booth, *Strategy and Ethnocentrism* (New York: Holmes & Meier, 1979); Colin S. Gray, "National Style in Strategy: The American Example," *International Security* 6, no. 2 (Fall 1981): 21-47; Alastair Iain Johnston, "Thinking about Strategic Culture," *International Security* 19, no. 4 (Spring 1995): 32-64; John Keegan, *A History of Warfare* (New York, NY: Vintage Books, 1993), chap. 1.

President Davis, endorsed by the Georgia Supreme Court, held that national powers might be expanded within several constitutionally framed areas of governance without impinging on the rights of the states. Among those areas was the power to raise armies, a power independent of state control, and a coordinate power to call out the militia. And because the Conscript Act grew from expansive army powers and not militia powers, the provisional army of the Confederate was defined properly as an army. Opposed to this view was Governor Brown who held that the Confederate government might raise a regular army through volunteerism but had to rely upon the states and their militia for reinforcement and replenishment. The concurrent power over the militia was not a coordinate one, and the Confederate government must rely upon the permission and acquiescence of the states before exercising its subordinate authority to call them into service as a provisional militia-army. These were the two scenarios argued before the Confederate public and which have garnered the attention of historians and commentators ever since. These are the arguments that have framed the relationship between conscription and states' rights as irreconcilable.

But balanced between these two idealized forms lay three other compromise positions. The first, put forth by the Confederate House, restored the subordinate position of the Confederate government, rendering conscription a secondary means of enlistment and re-establishing the military identity as militia. Yet at the same time, it gave the Confederacy the ability to assume dominance over the states should they fail to fulfill their enlistment duties and, in the process, defined the Confederate force as an army. It was a catch-all proposal that teetered between the two extremes. A second, only tentatively advanced by the Georgia House, accepted conscription as a valid expression

of expansive national powers but defined those powers and the resulting army as militia-based. The third, and arguably the most promising, defined the Confederate military as a true national militia that mirrored the state militias. There was no attempt to scavenge forms and rules and histories and expectations from two anathematic military forms and cobble them together into some proto-nationalistic monstrosity. Each of the other justificatory systems tried to place a nationalistic face on what they wished to be a militia system. But they could never shed the feeling that the Confederacy needed either military authority over the states or a legitimate national army, even if in name only, to attract foreign intervention and recognition. Phelan was able to divest himself of this sentiment and propose what was the most states' rights centered of all justifications, one that viewed the national military as a militia equal in form and function to the state militia with a coordinate jurisdiction over Southern men. Just as the state militia comprised local militias raised under state auspice in the militia districts, so too the national militia would comprise state militias raised under Confederate auspice in the states.

CHAPTER FOUR CONFLICT MORE SEEMING THAN REAL

As Confederate politicians wrestled with politics and constitutionalism during the second half of 1862, more immediate concerns attended the general public. Conscription officials had begun their circuits in late May and early June, enrolling the names, ages and addresses of eligible recruits in small leather-clad notebooks, posting conscription notices in local newspapers, saloons, post offices, and general stores, delivering enlistment orders to homesteads, boarding houses, businesses and churches, or, worse yet, serving arrest warrants on reluctant recruits who had ignored earlier calls. For communities already reeling from the effects of the war, such activity only made things worse. For some, concerns were rather effete. One contemporary drawing depicts a southern belle draped across an upholstered settee bemoaning the fact that she has “not a beau, except those I have arranged and re-arranged before my mirror!”¹ For others, they were far more dire. Conscription left wives and children, young and old, to supervise farmsteads and slave hands. The productivity of many farms dropped, and abandoned families found themselves becoming their county’s *nouveau pauvre*.

Congress had anticipated such residual effects and worked to check conscription enough to leave the core of Southern communities as intact as possible. It mediated President Davis’ original draft and restored elements of state participation in conscription management. It passed legislation allowing the acceptance of community-raised companies despite the first act’s prohibition. President Davis, too, made concessions, allowing the exemption of militia officers and justices of the peace, marginal state

¹ *Southern Punch*, December 12, 1863.

officials at best, who could – and probably should – have been conscripted, as essential elements of state political identity. In addition, an exemption act passed on April 21, 1862, and amended throughout the war pre-empted conscription’s application on mail carriers, sheriffs, bailiffs, blacksmiths, tanners, mill operators, overseers and others thought necessary to political, economic, and social stability.² And for those who could not gain an exemption, the military accepted substitutes to serve in their stead.

But such allowances could not begin to settle all of the complaints against conscription. It was a perpetually controversial policy that appeared to elicit nothing but condemnation. Despite the growing sense that the state and Confederate governments shared a coordinate authority to fight the war, many politicians could not shake the belief that conscription was a blatant violation of states’ rights. The restraints imposed by Congress did not always address local concerns, and there was an outpouring of complaints and petitions to Governor Brown seeking redress for what individuals deemed excessive and unnecessary intrusions into local affairs. And the Confederate twenty-slave law exempting owners of twenty or more slaves met with such derision from poor, non-slaveholding whites that Governor Brown was quick to tout it as evidence of the dangers of conscription to a republican nation. It had produced an army “composed, in a great degree, of poor men and non-slaveholders, who have but little property at stake upon the issue.”³

Nor could conscription meet the needs of every community. The demand for slave management, for example, varied from county to county, and no blanket code on

² *Official Records* IV, 1:1081.

³ *CRG*, 2:433-34.

overseer exemptions could possibly hope to foresee every situation. Overseer exemptions worked well on large plantations, but small slaveholders and overseers managing less than twenty slaves were ineligible. This meant that a region with a large population of slaves scattered among numerous small farms might be overlooked. This is what happened in Dougherty County, Georgia, a section of the state heavily populated with both domestic and refugee slaves. Judge Richard H. Clark of Albany implored Governor Brown to intervene on behalf of his county. “The call has left the planting districts of this county & a portion of Lee, Terrell & Baker adjoining them in a very perilous condition for want of white men,” he explained. “There is scarcely, I believe not another section of the State situated as it is. Everywhere else the whites are pretty well distributed among the blacks. The sections referred to are simply one vast negro quarters.”⁴

And to make matters worse, Congress scarcely had begun to address the problems of the first act when it passed new legislation expanding conscription and amending exemption laws. Men who thought they were too old suddenly found themselves liable to conscription. Exemptions were granted, then limited, then revoked. It was a situation that confused many Southern men and led some, such as Peter L. Thomson of Quitman County, to pose a deceptively simple question: “Am I a deserter?” Thomson had enlisted in Georgia’s Second Battalion Partizan Rangers in September 1862 and then hired A. S. Edgerly, an exempted school teacher, as his substitute. For his services, Thomson paid the teacher the princely sum of \$2,700. Later that month, Congress passed the second conscription act and a second exemption act that tightened the eligibility requirements for

⁴ Richard H. Clark to Joseph E. Brown, August 8, 1864, in Governor’s Subject Files.

certain exemptions. In Thompson's case, Ederly had to have been actively teaching for at least two years before he could gain an exemption and be eligible as a substitute.⁵

Ederly's exemption as a teacher as well as his eligibility as a substitute were now in question. Peter Thomson might have to forfeit his \$2,700 and report as a conscript.⁶

Conscription's conflicts is a story oft told. But beneath the rancor was a layer of acceptance which sought the same coordination of martial activity sought by Senator Phelan's national militia model in September 1862. Long before the Mississippi senator laid out his ideas, the public was seeking its own methods of checking Confederate power by rooting its operation within rather than atop the local community. Once doubts as to conscription's acceptability were settled by the *Jeffers* decision, civilians sought to assure conscription's success through various social and cultural mechanisms. And while local courts continued to challenge conscription via writs of habeas corpus, they also upheld it, sanctioning the changing political relationship between the state and Confederate governments, and ratifying vernacular interpretations of conscription that spoke to the needs of their communities. It was a mosaic of activity that belies uniform narrative. Yet certain traits can be discerned by following conscription as it settled into Southern communities from 1862 through 1864.

STATE COMMANDANTS OF CONSCRIPTION

As Governor Brown and President Davis debated the constitutionality of conscription over the summer of 1862, Secretary Randolph concentrated on finding

⁵ Moore, *Conscription and Conflict*, 34, 69.

⁶ Macon *Telegraph*, November 13, 1862.

competent commandants. The state commandant of conscription oversaw all Confederate enlistment activity within his state. Beneath him were a varying number of subordinates. Each Confederate congressional district – Georgia had ten – came under the authority of an enrolling officer and an assistant enrolling officer, with each enrolling officer selecting from his conscripts men detailed as sub-enrolling and assistant sub-enrolling officers at the county and town level. In addition, each conscription office, district, local and state, might have its own coterie of bookkeepers, secretaries, surgeons, and detectives, making an exact accounting of conscription personnel impossible. Although commandants were military officers responsible to the War Department, they remained political pawns, and many would gain and lose their positions to the whimsical nature of intra-Confederate diplomacy. To make matters worse, they also bore the stigma of being the face of compulsion, the physical embodiment of the corrupt and dictatorial power that many claimed was going to destroy the Confederacy from the inside-out. Thus, state commandants had the unenviable challenge of pressing the Confederate government's claims on military service while calming civilian fears of a growing military presence. It was a precarious balancing act, one that many found difficult to achieve, for they had to be simultaneously rigid in their determination yet flexible to the changing contexts within which they worked. In many cases, this required compromises that limited the effectiveness of conscription, but it was essential for civilian acceptance of national military authority.

Major John Dunwoody

For over a month following the passage of the first Conscript Act, Randolph consulted state governors and Confederate military commanders for recommendations.⁷ Some appointments came relatively quickly. By May 28, 1862, Colonel John S. Preston was organizing a camp of instruction in South Carolina and seeking appointments for his drill masters. Other appointments dragged on for months. Secretary Randolph, General Braxton Bragg and Alabama Governor John G. Shorter spent much of June arguing over whether nominee Major L. F. Johnston was best qualified to be commandant or quartermaster, and in Florida, the nomination for state commandant became lost and the name of the applicant forgotten, forcing Randolph to choose an alternate.⁸ The selection of Georgia's commandant, however, was both more quickly accomplished and more complicated in execution. With Governor Brown's refusal to assist in the execution of conscription laws, the selection process fell to Randolph following a recommendation from Brigadier General Alexander R. Lawton, commander of the military district of Georgia, and, most likely, Adjutant General Samuel Cooper. But in making the selection, Randolph needed to choose someone beneficial to the Confederate military yet acceptable to the irascible governor without the benefit of Brown's counsel.

⁷ War Department General Orders No. 30, issued April 28, 1862, specified that each state would be commanded by an officer not below the rank of major detailed for temporary duty to coordinate Confederate conscription activities with state officials, select a location for one or two camps of instruction, supervise the construction of those camps, locate and employ qualified drill masters, and oversee the preparation of conscripts for field duty. War Department General Orders No. 30, series 1862, in *Official Records* IV, 1:1097; Randolph to G. P. Beauregard, May 6, 1862 in *Telegrams Sent by the Secretary of War, 1861-1865*, National Archives Microfilm Publications, Microcopy 524, (Washington, DC: National Archives Microfilm Publications), chap. IX, 34:207.

⁸ *Telegrams Sent by the Secretary of War*, chap. IX, 34:207-298.

Randolph's selection was John Dunwoody, Jr., a Mexican War veteran and successful merchant called by secession and the threat of war to seek a commission in the Confederate army. He had applied for an infantry command in 1861, listing an impressive array of political and military patrons on his application and, following a brief stint in the Confederate Adjutant and Inspector General's Office, gained a commission as Lieutenant Colonel of the Seventh Georgia Infantry. Although a short man, he cut a dashing, cavalier figure atop the black mare he rode at the Battle of First Manassas and in the defense of the Confederate entrenchments around Yorktown. "A little man and a little horse has the advantage," he later recalled, "the boys always shoot too high"⁹ At the time the first act passed, he was stationed near Orange Court House, Virginia, preparing his soon-to-be disbanded troops for the expected Union assault up the Yorktown Peninsula.¹⁰

Although Dunwoody's past experience in the Adjutant and Inspector General's Office may have led to his selection as commandant, several other factors probably contributed as well. Dunwoody's father, John, Sr., was a partner in the Roswell Factories, a complex of highly successful wool, cotton, and flour mills on the north shore of the Chattahoochee River just north of Atlanta, and John, Jr., may have been involved in the mills as the owner of an adjoining tannery. The logistics of feeding, clothing and sheltering the numbers of conscripts expected at Georgia's camp of instruction may have led Secretary Randolph to select Dunwoody with the expectation that his family and business connections might prove beneficial in easing any problems with delivery or

⁹ The blue uniform Dunwoody wore on the Peninsula looked so much like a Federal uniform that members of the 8th Georgia Infantry fired upon him during one skirmish. *Atlanta Constitution*, April 17, 1887, March 8, 1891.

¹⁰ *Atlanta Intelligencer*, April 11, 1862.

pricing.¹¹ More importantly, Randolph probably hoped that Dunwoody had what was needed to calm the fears of Governor Brown – professional military training and experience tempered by the image of a loyalty to state that overrode personal ambition. The colonel had attended West Point but had withdrawn prior to graduation to serve as a division inspector for the Georgia militia. Randolph was obviously hoping that Dunwoody's history of self-denial in favor of state over national service would calm Governor Brown's fears of a Confederate proconsul imposed on an unwilling state.

However, Dunwoody's legacy rests on his inability to weather the storms attending conscription's birth. To be fair, he was in a no-win situation. He was an officer enforcing an unclear law, the meaning and consequence of which was unclear even to the men who had written it. If he enforced it strictly enough to meet the demand for fresh troops, he ran headlong into Governor Brown's obstructionism. If he moderated his enforcement, he risked sanction by the War Department. So he did what many in his situation might have done. Dig in, work hard, and avoid conflict if at all possible.

It was in a May 31, 1862, meeting at Confederate district headquarters in Savannah two weeks after conscription went into effect that Dunwoody and Brigadier General Alexander J. Lawton laid the foundations for Georgia's conscription operations. Dunwoody presented Lawton with orders from Major General John C. Pemberton, commanding the Department of South Carolina and Georgia, for the detail of ten

¹¹ George W. Randolph to Joseph E. Brown, May 23, 1862, in Governor's Subject Files; *Official Records* IV, 1:1126, 1141-1142; Population schedule, 1860 Census; Sarah Blackwell Gober Temple, *The First Hundred Years: A Short History of Cobb County, in Georgia* (Atlanta, GA: Walter W. Brown Publishing Company, 1935), 111-116; Compiled Service Records of the Confederate Soldiers Who Served in Organizations from the State of Georgia. National Archives Microfilm Publications, Microcopy 266, (Washington, DC: National Archives Microfilm Publications), John Dunwoody, Field & Staff, hereafter cited as CSR with name and unit; Population schedule, 1860 Census. For additional biographical information see, *Atlanta Constitution*, March 8, 1891.

conscription officers, one for each of the state's ten Confederate Congressional districts.¹² In less than a week, the first of these men began to tour his district.¹³

The two officers also selected a site for the state's first Confederate camp of instruction to be named Camp Randolph in honor of the Secretary of War. Built midway between Atlanta and Chattanooga near the small town of Calhoun, the camp was a sprawling tented camp atop a small hill with a natural spring that supplied enough water to support four to five hundred men. It was divided into four "streets," each named for their resident conscript company – "A," "B," "C," and "D" – and contained facilities for quartermaster and commissary stores as well as a field hospital. Attached to the camp and usually falling under the same name were separate encampments of companies and regiments that used Camp Randolph as a place of rendezvous. It is doubtful that the camp held many, if any, permanent structures which, when combined with its rambling and constantly shifting configuration, made it "hard to locate precisely."¹⁴

Militarily and logistically, the site made sense. The exact location is not known, but it was likely three miles north of Calhoun where a bend in the Oostanaula River approached the intersection of the main Calhoun-Resaca Road and the Western and Atlantic Railroad, a site that offered both fresh water and easy access to transportation. It

¹² General Orders No. 1, Headquarters, May 31, 1862, in *Augusta Daily Constitutionalist*, June 4, 1862.

¹³ Cheney to Brown, June 6, 1862, in Governor's Subject File; Thomas M. Brittain, "Biography of Jabez Mercer Brittain," <http://ftp.rootsweb.ancestry.com/pub/usgenweb/ga/oglethorpe/bios/brittain.txt> (accessed September 20, 2008); Macon *Telegraph*, June 5, 1862.

¹⁴ *Ibid.*, 1:1130; Savannah *Daily Morning News*, July 19, 1862; *Augusta Chronicle and Sentinel*, August 20, 1862; Myers, *Children of Pride*, 930-933; Elizabeth F. Hopkins, ed., "Diary of and Official Correspondence Concerning Edwin Tralona Davis, 2nd Lt. Brevet, Company A, 57th Georgia Infantry, December 12, 1861-October 17, 1862" in Mrs. J. E. Hays, comp., *Confederate Letters, Diaries and Reminiscences*, vol. 17, W.P.A. project no. 4341 (Typescript, 1938-1940; Atlanta, GA: Georgia Division United Daughters of the Confederacy, 2000-), 4; John James Ryals to Sallie [Ryals], August 9, 1862, in *ibid.*, 14:295; *Rome Weekly Courier*, July 18, 1862, quoted in Smedlund, *Camp Fires of Georgia's Troops*, 233-234.

was a short train ride north of the Georgia Military Institute and a ready reserve of trained militia cadets who could be requisitioned as instructors should the need arise. It was also midway between the centers of military activity in Virginia and the Mississippi River Valley. Conscripts could be moved via rail to Chattanooga and thence westward toward Nashville and Memphis or eastward toward Richmond.¹⁵

Unfortunately, the location also minimized Dunwoody's effectiveness as a state commandant. Such isolation may have been part of his effort to reduce the intrusiveness of conscription and minimize the potential for conflict. And to a certain degree, he was successful, for this institutional reminder of conscription barely gained notice in the press. So, too, the arrival and activities of the district enrolling officers garnered little attention in May and June 1862. But Dunwoody's isolation limited his ability to counter controversies that otherwise might have been dispatched easily had he been closer to the epicenters of economic and political power – say, Macon, Augusta or Savannah – as his successors would be.

A few days prior to his meeting with General Lawton, Dunwoody made his formal presentation of credentials to Governor Brown at the state capitol in Milledgeville. Brown was “pleasant and conciliatory,” denying any personal animosity in his objection to conscription and claiming no desire to shield anyone from the law other than those legally excused by the Exemption Act of April 21. But he remained resolute in his refusal to support conscription and was equally adamant that the provisions of General Orders No. 8 would be upheld, that militia officers holding state commissions would not be conscripted. In addition, he now planned to protect a proposed 125-man state

¹⁵ *Official Military Atlas*, plate CXXXV-A, CXLI, LXXVIII:1.

bridge guard force. Should Dunwoody attempt to enroll either of these groups, Brown would have him arrested.¹⁶

Such statements confused not only Dunwoody but the greater part of the state's militia officers. Given Brown's refusal to shield them in the days immediately after the act's passage, some officers questioned whether the Governor's protection was real or some shrewd political ploy.¹⁷ Others feared positioning themselves against the Confederacy amid rumors that a compromise had been reached between the governor and the president.¹⁸ Still others believed newspaper reports that the Governor might even shield militia officers who had already volunteered in the Confederate army. Brown attempted to resolve such questions with General Orders No. 10 which protected only legally elected and commissioned – not brevetted – militia officers not already in Confederate service and actively engaged in their duties.¹⁹ But amid Brown's political posturing, most believed that anything was still possible.

It was about this time that the first of the conscription officers began to make their enrollments.²⁰ Unsure of the limits of their powers, they almost immediately ran into trouble. It would appear commonsensical in light of the present controversy that Dunwoody and his district officers would have used inordinate care not to enflame the

¹⁶ *Official Records IV*, 1:1129. For information on the State Bridge Guard, see Bragg, *Joe Brown's Army*, chap. 2.

¹⁷ L. H. Briscoe to James J. Crumbley, May 20, 1862, in A&IG Letterbook 9.

¹⁸ William O. Cheney, Jr., to Joseph E. Brown, June 6, 1862, in Governor's Subject Files.

¹⁹ L. H. Briscoe to Henry W. F. Worthy, May 20, 1862, in A&IG Letterbook 9; *Savannah Daily Morning News*, June 11, 1862.

²⁰ Lt. Jabez Mercer Brittain and Lt. F. W. Johnson began their district tours on June 5, 1862. Cheney to Brown, June 6, 1862, in Governor's Subject File; Brittain, "Biography of Jabez Mercer Brittain;" *Macon Telegraph*, June 5, 1862.

situation, that they would have received orders – or would have taken it upon themselves – to give extraordinary oversight to the enrollment process. But such appears not to have been the case. Instead, as would become apparent in numerous instances throughout the war, the failure of the state commandants and district officials to properly supervise or to adequately inform their men of the most recent interpretations of conscription law forced enrolling officers to rely upon their own personal interpretations. So, while Brown threatened to arrest anyone conscripting militia officers, Dunwoody appears never to have transmitted that warning to his enrolling or sub-enrolling officers.

Soon, both the governor and his adjutant general were inundated with complaints that conscription officers were arresting exempted militia officers.²¹ In a heated message to the Secretary of War, Brown demanded the immediate release of all conscripted militia officers, but Randolph offered only to release those who had been in state service prior to the passage of the Conscript Act on April 16.²² That in itself was a coup, for in the beginning Randolph had limited protection to members of the State Troops. But Brown was not satisfied and when he threatened to arrest all enrolling officers interfering with the state's militia, Randolph realized that the exemption of a relatively few militia officers was a small price to pay to preserve amicable Confederate-state relations and protect conscription in Georgia. He ordered Dunwoody not to enroll *any* militia officer that the governor recognized as commissioned but cautioned the governor that “we had better get rid of our common enemy before we commence a war upon each other.”²³

²¹ John J. Jones to Joseph E. Brown, June 14, 1862, in Governor's Subject Files.

²² *Official Records* IV, 1:1154.

²³ The people of Georgia appeared to agree that “the few exempts who will claim Gov. Brown's protection, are not worthy of a collision between the Confederate and State governments.” Macon *Telegraph*, July 14, 1862; *Official Records*, 1:1155, 1169-1170; Dunwoody to Randolph, June 25, 1862, in Letters Received by

The situation was made even worse by the confusion attending the process of enrolling these first conscripts. Until July 10, 1862, surgeons examining new recruits followed United States regulations adopted by the Confederacy in 1861. These were military guidelines, but they were written for a peacetime army, one that had the luxury of restricting enlistments to the most physically fit.²⁴ General Orders No. 32, published by the War Department following the passage of the first exemption act, continued these standards.²⁵ As a result, Confederate surgeons frequently rejected capable men who fell beneath the high pre-war physical requirements. It was this high standard that contributed to the controversies swirling around the initial call-up of Georgia conscripts, most notably the attempt to enroll militiamen. Theoretically, state militiamen already would hold a modicum of military training, easing the burden of teaching raw recruits. But they also would have been vetted by the medical examinations required by state militia laws. In essence, militiamen would have been prescreened for conditions that might render them unfit for Confederate duty.

The use of these pre-war standards meant that Dunwoody faced criticism not only from Governor Brown for focusing on the militia but from average citizens who saw otherwise fit men rejected for medical infirmities. From the outside, the system reeked of privilege and corruption, and it is true that some corruption took place. Fraudulent medical discharges and exemptions were available from unscrupulous surgeons, and in

the Confederate Secretary of War, National Archives Microfilm Publications, M437, reel 43. See also, Brown to Randolph, June 17, 1862, Randolph to Brown, June 18, 1862, Henry C. Wayne to Col. James R. Wylie, June 19, 1862, Wayne to Dunwoody, June 19, 1862, and Brown to Randolph, June 20, 1862, in Governor's Letterbook, 1847-1861, microfilm, Georgia Department of Archives and History, Atlanta, Georgia.

²⁴ Milledgeville *Southern Confederacy*, August 1, 1862; Augusta *Daily Constitutionalist*, August 15, 1862.

²⁵ *Official Records IV*, 1:1104.

many cases a conscript's word and wallet counted more than his capacity for the field. Dunwoody's adjutant Charles S. Hardee, for example, recounts one instance in which Richard Cabbage, a private banker from Macon, reported for enrollment at Camp Randolph. Hardee introduced the conscript to the camp's Chief Medical Officer as a "hightoned, truthful gentleman" whose word could be trusted as "the truth, the whole truth, and nothing but the truth." Cabbage received an unconditional exemption based on that simple introduction. He later repaid Hardee by funding the adjutant's speculation in 100 bales of cotton. Hardee netted \$2,500 from the deal.²⁶ However, most of the complaints undoubtedly stemmed not from mischief but from a misunderstanding of the system being used. Where civilians saw healthy young men who worked daily in the fields and hardy gentlemen with no obvious ailments, the army saw physical minutiae that separated the best from the merely adequate.

In addition, there were problems with Dunwoody's orders concerning examinations. It was within the power of the local enrolling officer to exempt men obviously unfit for service. But in disputed or questionable cases, enrolling officers were required to send conscripts before a surgeon at Camp Randolph or any "army surgeon of good standing."²⁷ The use of the phrase "army surgeon of good standing" left room for interpretation. Although Dunwoody designated five such surgeons, two at Camp Randolph and one each in Savannah, Macon and Augusta, it was unclear whether *any* army surgeon "in good standing" would be equally acceptable.²⁸

²⁶ Hardee, "Reminiscences," 258-259.

²⁷ Dunwoody to Enrolling Officers of Georgia, June 25, 1862, in *Augusta Chronicle and Sentinel*, June 29, 1862.

²⁸ *Augusta Chronicle and Sentinel*, June 29, 1862.

Exacerbating the problem was the fact that the conscription service provided no assistance in reaching these surgeons. It was up to the conscript to pay for his own passage, and many Georgians simply could not afford it.²⁹ As a result, local enrolling officers increasingly allowed conscripts to submit exams performed by regimental surgeons and family physicians. Not only was this contrary to Dunwoody's orders, it opened the door to rampant abuse and error. It was easy for patients to convince private doctors to provide evidence of physical infirmities, real or imagined, and for unscrupulous doctors to sell exemptions to the highest bidder.³⁰ Such unrestricted exemption by both civilian and military surgeons also allowed conflicts to arise that otherwise could have been avoided. It was not uncommon for strict conscript officers to enroll volunteers earlier rejected by regimental surgeons or family physicians. For example, in Walker County, enrolling officers conscripted sixteen volunteers previously rejected as physically unfit, saying that their discharges were "not worth a d--d cent!"³¹ Such confusion could not escape the notice of officials in Richmond, and Dunwoody freely admitted that he faced questions from both civilian and Confederate leaders about the high number of exemptions and low number of conscripts coming out of Georgia.

To correct the problem, the Adjutant and Inspector General's Office in Richmond issued orders at the end of July 1862 to re-enroll and re-examine every conscript

²⁹ Ibid.

³⁰ Such accusations of corruption were not just a Confederate problem. Even before the passage of the first Conscript Act, Georgians accused militia surgeons of similar biases. William Hauser of Jefferson County, Georgia, complained to Governor Brown in March 1862 that the state's medical examiners "turned off, as unsound, able-bodied rich men (so I learned) & put down poor man for the service who are not fit for it." William Hauser to Joseph E. Brown, March 7, 1862, in Governor's Subject Files; David Williams, Teresa Williams, and David Carlson, *Plain Folk in a Rich Man's War: Class and Dissent in Confederate Georgia* (Gainesville, FL: University Press of Florida, 2002), 104.

³¹ *Augusta Chronicle and Sentinel*, July 2, 1862.

previously exempted by any surgeon other than army surgeons specifically designated for such purpose. It also authorized the use of force to bring recalcitrant conscripts back for reassessment. And in these new exams, looser standards would be used to accept any conscript “able to perform the common avocations of life,” or, as the *Macon Telegraph* reported, all conscripts “unless they are minus a leg or arm.”³² But the order to reexamine only brought increased criticism. The *Augusta Daily Constitutionalist* called it arbitrary and despotic, while the *Atlanta Intelligencer* highlighted the story of one Harris county man who made two trips to see the surgeon at a cost of \$50 per trip, “half of what he was worth.”³³ And army surgeons so loosened their requirements that they accepted many men wholly incapable of military duty.³⁴ “Maj. Dunwoody is sending men into camp who are not fit for duty,” complained W. M. Boswell of Atlanta to Governor Brown. Suffering from a hernia, Boswell had been examined by two military surgeons and exempted. Now he was being forced to submit to a further examination. “Has these men the wright to trample the laws made by Congress under there feet in this way putting men in Camps who are nothing more nor less than a dead expence?”³⁵

By the fall of 1862, conscription in Georgia appeared to be spiraling out of control. Conflicts over militia enrollment had brought the state and the Confederacy nearly to blows. The mismanagement of medical examinations had alienated even those

³² Milledgeville *Southern Confederacy*, August 1, 1862; *Macon Telegraph*, August 2, 1862; *Augusta Chronicle and Sentinel*, August 2 and 25, 1862.

³³ *August Daily Constitutionalist*, August 3 and 15, 1862; *Atlanta Intelligencer*, August 27, 1862.

³⁴ Randolph to Dunwoody, September 22, 1862, in *Telegrams Sent by the Secretary of War*, chap IX, 34:354.

³⁵ W. M. Boswell to Joseph E. Brown, August 7, 1862, in Governor’s Subject Files. Such criticisms were not isolated to Georgia. The *Houston Telegraph* reported that Texas conscripts who had paid as much as eighty dollars for medical exemptions now found their money worthlessly spent. *Houston Tri-Weekly Telegraph*, October 29, 1862.

elements of the state's population that had approved of conscription the previous spring. Yet rather than admit the culpability of a Confederate government that had failed to stand firm on the power of conscription, had failed to inform its officers of the limits of their powers, and had failed to align peacetime military regulations with wartime requirements, the War Department laid the blame squarely at the feet of an apparently incompetent state commandant isolated in the North Georgia mountains. Secretary Randolph, dissatisfied with the "manner in which the duty of enrolling and collecting conscripts in Georgia [had] been conducted," relieved Dunwoody of command in late September and replaced him with Lieutenant Colonel John B. Weems.³⁶

Colonel John Weems

If Dunwoody's tenure saw the introduction of Confederate conscription *to* Georgia, Weems's saw the birth of states' rights conscription *in* Georgia. Although still scrutinized by Governor Brown, Weems did not suffer the constant haranguing Dunwoody had suffered, and he benefited from the uneasy *détente* that Dunwoody, Randolph and Davis had achieved with the Georgia governor. This is not to say that Weems went unscathed. Weems did come under fire for refusing to allow volunteers to join regiments of their own choosing. But most of the criticism came from Confederate officials angry that volunteers, even those who volunteered in the field with the regiment they preferred, had to report to Weems *before* their voluntary enlistment would be recognized.³⁷ It was also Weems who oversaw conscription at the time the Georgia

³⁶ *Official Records* IV, 2:95-96; *Columbus Ledger-Enquirer*, September 29, 1862.

³⁷ *Official Records* IV, 2:812; *Macon Weekly Telegraph*, November 24, 1862; c.f., E. C. Anderson correspondence in Wayne-Stites-Anderson Papers.

Supreme Court issued its ruling on constitutionality in the *Jeffers* case of November 1862. But his involvement in the case was limited, and Weems was able to use that time, a time during which Governor Brown forbid the enrollment of *any* Georgians pending rulings from the state supreme court and General Assembly, to finish the expansion of the state's conscription infrastructure.

The summer of 1862 had brought changes to the seat of war, shifting it deeper into Confederate territory. Calhoun had been a suitable location as long as the war remained in the Border States, and probably would have remained so had the summer invasions of Maryland and Kentucky been successful. But the defeats at Antietam, Perryville and Corinth suggested to many Southern strategists that the brunt of military activities in 1863 would take place in the lower reaches of the Mississippi River Valley and along the Atlantic coast of the deep South.³⁸ The failure to defend northern Mississippi meant that Union forces would be free to concentrate on seizing control of the Mississippi River at Vicksburg and removing General Braxton Bragg's army from central Tennessee. Increasingly, a rocky north Georgia location appeared ill-suited for the expanding war.

Thus, Weems moved Camp Randolph from the rolling hills of north Georgia to a shady grove on the Georgia Railroad formerly known as Camp Kirkpatrick, just west of Decatur.³⁹ Exactly when this move began is unknown. The first public announcement came in October 1862, but it is clear that well into November Weems was still dividing

³⁸ McPherson, *Ordeal by Fire*, 292.

³⁹ Camps Kirkpatrick and Randolph were located near the north parking lot of the East Lake Marta Station in Dekalb County, Georgia. George B. Davis, Leslie J. Perry, and Joseph W. Kirkley, *Official Military Atlas*, plate LXXXVIII:1.

his time between Calhoun and Decatur.⁴⁰ It was not until November 24, 1862, that the second incarnation of Camp Randolph officially opened, now commanded by Major Charles S. Hardee, Dunwoody's old adjutant.⁴¹ At the same time, Weems moved his headquarters at a second camp of instruction, Camp Cooper, built in middle Georgia at the fairgrounds on the southeastern edge of Macon.⁴²

Weems's goal in moving and expanding the state's camps of instructions was probably multifold. From a logistical standpoint, Decatur, with its easy access to the rail hub at Atlanta, could still reach the upper Mississippi River Valley and Virginia, and yet was in a much safer section of the state. Already the Union army had made forays as far south as Chattanooga, and Andrew's Raiders, a Union sabotage mission, had passed right by the front gates of Calhoun's Camp Randolph in its attempt to disrupt north Georgia's rail system.⁴³ In addition, Macon's rail service provided easy access to the lower Mississippi River Valley and the coastal deep South.

The move also made sense as a means of discouraging desertion and other disruptions that might hamper the conscription process. The upcountry of Georgia in

⁴⁰ Columbus *Ledger-Enquirer*, October 13, 1862; *Official Records* IV, 2:169-170, I, 20:395-396.

⁴¹ *Augusta Chronicle & Sentinel*, November 25, 1862.

⁴² *Macon Weekly Telegraph*, November 28, 1862; Columbus *Ledger-Enquirer*, November 27, 1862; Smedlund, *Camp Fires of Georgia's Troops*, 221; Richard W. Iobst, *Civil War Macon, The History of a Confederate City* (Macon, GA: Mercer University Press, 1999), chap. 7.

⁴³ See John Alfred Wilson, *Adventures of Alf. Wilson: A Thrilling Episode of the Dark Days of the Rebellion* (Toledo: Blade Printing & Paper Company, 1880); William Pittenger, *Daring and Suffering: A History of the Great Railroad Adventure* (Philadelphia: J. W. Daughaday, 1863); Joe F. Head, *The General: The Great Locomotive Dispute* (Cartersville, Ga. : Etowah Historical Foundation, 1990); MacLennan Roberts, *The Great Locomotive Chase* (New York : Dell, 1956); Randell W. McBryde, *The Historic "General:" A Thrilling Episode of the Civil War* (Chattanooga: MacGowan & Cooke, 1904); Russell S. Bonds, *Stealing the General: The Great Locomotive Chase and the First Medal of Honor* (Yardley, Pa.: Westholme, 2007), and Charles Kendall O'Neill, *Wild Train: The Story of the Andrews Raiders* (New York: Random House, 1956).

which Major Dunwoody had established his camp had never been a solid supporter of Georgia's secession, and it continued to harbor Unionist, anti-Confederate and deserter elements throughout the war.⁴⁴ Weems certainly recognized that the continuation of a conscript camp predicated on a controversial law within a region of questionable loyalty might present too great a temptation for angry and homesick conscripts to flee military service. By dividing the state between two camps of instruction and sending conscripts to the camp farthest removed from their homes, he hoped to provide a geographic obstacle to desertion. Conscripts drawn from the 1st, 2nd, 3rd, 4th, and 7th congressional districts, or from communities south of a rough line running from LaGrange to Jonesboro to Wrightsville to Sylvania, would be sent to the northernmost camp at Decatur. Although conscripts from the upper reaches of this area would be only ten to fifteen miles from home, it perhaps was felt that conscripts drawn from the high-slaveholding black belt counties of central Georgia would be less prone to abandon the Confederate cause than would conscripts from the low-slaveholding counties of south Georgia, some of whom would have had as many as 120 miles to travel. Likewise, conscripts drawn from the mountainous upcountry of the state north of that line would be sent into middle Georgia to Camp Cooper, a minimum of 75 miles away.⁴⁵

By themselves both of these explanations more than justified the selection of Macon. But Weems undoubtedly was aware of the important political message the

⁴⁴ See, for example, Georgia Lee Tatum, *Disloyalty in the Confederacy* (Chapel Hill, NC: University of North Carolina Press, 1934; Lincoln and London: University of Nebraska Press, 2000), 73-79; Michael Johnson, *Toward a Patriarchal Republic: the Secession of Georgia* (Baton Rouge, LA: Louisiana State University Press, 1977), 66; Mark A. Weitz, *A Higher Duty: Desertion Among Georgia Troops during the Civil War* (Lincoln and London: University of Nebraska Press, 2000), and Williams, *Plain Folk in a Rich Man's War*.

⁴⁵ Macon *Weekly Telegraph*, November 28, 1862.

choice carried as well. Establishing his headquarters at Macon meant that Weems recognized the importance of centering conscription at one of the state's key social, economic and political centers. He realized that if the rough road conscription trod in the state were to be navigated it would need the backing of key elements of Georgia's elite society: state officials to smooth Governor Brown's easily ruffled feathers as well as local officials to support the operation of the camp of instruction with essential supplies and materiel. Macon provided that opportunity, something that far-flung Calhoun could not. So while Major Dunwoody had been forced by the relative isolation of Calhoun to take a more heavy-handed approach with local farmers, impressing food stuffs as needed, Weems made a conscious effort to utilize the local marketplace for open bidding on supplies.⁴⁶ And Weems and future commandants would work to continue such good relations throughout the war, for example, by opening the camp to free public access on special occasions and donating surplus materials when they became available for use by the city's poor.⁴⁷ Weems was also careful to ingratiate himself with the local elite, in particular, Eugenius Nisbet's brother James with whom Weems offered toasts to the returning First Georgia Regulars in January 1863.⁴⁸ With the majority of the Nisbets

⁴⁶ In August 1862, Dunwoody issued an order that no farmer within a ten mile radius of Camp Randolph would be allowed to ship locally produced bacon, flour or grain on the local rail system. Such a limitation rendered the produce available for purchase or impressment by camp agents outside of a competitive marketplace. In contrast, Weems frequently placed advertisements in the local newspapers for straw, fodder and hardwood to supply the camp. One November 1862 ad called for 5,000 pounds of straw, 8,000 pounds of fodder and 100 cords of wood. *Macon Telegraph*, November 29 & December 10, 1862; Porter Fleming to Joseph E. Brown, August 17, 1862, in Governor's Subject Files.

⁴⁷ In January 1864, Major A. M. Rowland reported to the Macon city council that Camp Cooper had a large quantity of surplus wood that could be distributed among the city's poor. *Macon Weekly Telegraph*, March 5, 1863, and January 1, 1864.

⁴⁸ *Macon Daily Telegraph*, January 16, 1863.

siding against Governor Brown in the debates with President Davis, it made perfect sense for him to do so.

A truly competent commandant realized that no law as contentious as conscription, no order as controversial as the one to reexamine exemptions, could hope to succeed without the cooperation of the general public. This should have been doubly apparent given Governor Brown's refusal to cooperate with the Confederate government. Any kind of support conscription could hope to garner could only be gained by tapping into the state's social and political networks, bypassing the obstructionist state government. Yet Dunwoody's isolation in North Georgia had prohibited the formation of these crucial ties. The small rail town of Calhoun simply did not offer the kind of diplomatic exchanges necessary to foster state submission to conscription's orders. Instead, Dunwoody remained out of touch with the rest of the state, an isolated outpost of authority that answered to an even more remote Richmond government. He assumed that isolation would defend both him and his office from criticism. It did neither, and Georgia's future commandants would learn from his mistakes.

Weems, on the other hand, understood what Dunwoody failed to appreciate. For conscription to be successful, state commandants needed to position themselves within, not outside of the social and communal contexts in which they operated. They could not isolate themselves for the sake of harmony. They had to be as visible as possible to engender the trust and cooperation of a population caught between the needs of a successful war effort and the invectives of an anti-conscription governor.

DISTRICT ENROLLING OFFICERS

The companionship of military officers might have been appreciated by republican-minded civilians wary of martial power. Guided perhaps by the axiom of keeping your friends close and your (possible) enemies closer, Confederate civilians preferred to keep Colonel Weems and his fellow commandants near so as to direct or deflect conscription's potentially cutting power. But poor and non-slaveholding whites viewed these relationships in an entirely different light. Already concerned with exemption laws that appeared to privilege wealthy slaveholders, many lower class whites saw the growing alliance between commandants and state elites as a scheme to force the brunt of military service on the poor and unsuspecting. This meant that an even more important relationship for the success of conscription was that between enrolling and sub-enrolling officers and their districts and counties.

These officers were not immune to the abuse heaped on the Confederate leviathan. To many poor and yeoman whites, they were the "devil's minions" who deceived the freemen of the South and reduced them to "slaves - nay, worst than slaves - bruts - chained under the yoke of military discipline."⁴⁹ Yet for all the potency of this stereotype, it is an image that responds more to the fears of reluctant Confederates than to the realities of conscription. Forcing men into the military was not a job likely to garner widespread praise for obvious reasons, but enrolling officers did not meet with large-scale opposition and were able to tamp down much of the rhetoric precisely because they were able to ingratiate themselves into local society, gain the support of local elites, and acknowledge – though not always agree with – the continuation of the traditional balance

⁴⁹ Lee L. Dupont to wife, January 12, 1862, January 19, 18[], Dupont Letters, Lowndes County Historical Society and Museum, Valdosta, Georgia.

between state and national powers. So successful were most enrolling and sub-enrolling officers in the politics of conscription that civilian judges like Osborn Lochrane of Macon could instruct his courtroom that “a wide spread error prevails in regard to the conflict between the civil and military [authority].” There is no conflict, he said, “until martial law is declared, and even then...the conflict is more seeming than real. It is by an act of the civil, the military power exists. Military law is not military law because military men made it, but because the civil authorities have so declared” that the military may act within its proper sphere of power.⁵⁰

So a more accurate account would tell of veteran soldiers, many of them wounded, enforcing questionable laws on a very questioning people. They, like Colonel Weems, attempted to develop and root their power within local circumstances to show, rather than proclaim, that national military service was linked to the intimacy of personal and political relationships, not the demands of a superior power. This required an intense effort to balance personal ambition, military duty and political conciliation. Find that balance and enrolling duty could be a relatively peaceful assignment, one that many soldiers actively sought out. Stray too far in favor of firm enforcement, and enrolling duty could be violent, even deadly. Stray too far in favor of personal comfort or advancement, and enrolling duty could be short-lived and dishonorable. Conscription’s record takes little note of the accommodations made by so many enrolling officers, so it is among the actions of wayward officers that the bounds of proper conduct may be found.

⁵⁰ *Macon Daily Telegraph*, August 23, 1862.

Captain James A. Blackshear

James Appleton Blackshear was not an aggressive officer. He was too deeply concerned with his own comfort, a man for whom a captain's commission was an honorific reflecting on himself, his family and his community. Born in Sumter County, Georgia, in 1841, Blackshear had graduated from the Georgia Military Institute and later served as captain of the Eleventh Battalion Georgia Artillery, the Sumter Artillery, during the battles of Seven Days, South Mountain and Antietam. In early October 1862, the four companies of the battalion, weakened by death and discharge, underwent a reorganization that saw Blackshear's company disbanded, its men distributed among the remaining companies and its officers reassigned.⁵¹ It was a loss that threatened to destroy everything he felt he had earned.⁵² "I felt as though I were disgraced at home," he noted in his diary, "that I had sustained irreparable loss of position and character in the Army." And his new duty assignment guarding Union prisoners at Camp Lee outside Richmond hardly compensated for the loss.⁵³

The following November, however, things appeared to be turning around for the beleaguered Captain Blackshear: he was named enrolling officer for the Seventh Congressional District in Griffin, Georgia. Blackshear took with him Lieutenant Malcolm B. Council, a fellow superannuated officer of the Sumter Artillery, to serve as his assistant enrolling officer. It was a decision that speaks to the uncertainty many enrolling officers felt as they embarked upon their duties. Initially, such loyalty may be

⁵¹ *Official Records* I, 29:2:649.

⁵² Francis M. Council to James A. Seddon, May 5, 1865, in CSR, Francis M. Council (Sumter Artillery).

⁵³ James Appleton Blackshear Diaries, Special Collections Department, Robert W. Woodruff Library, Emory University, 15-21; CSR, James Appleton Blackshear (11th Battalion Georgia Artillery).

attributed to friendship or acquaintance. Since many of the first enrolling officers gained assignment to their home communities, they may have expected that any opposition to conscription would be tempered by the presence of a couple of “homegrown heroes” returning to the nest. But Blackshear does not fit this mold, nor do the majority of the state’s enrolling officers throughout the war. Blackshear and Council’s first duty assignment was not Americus, their hometown; it was Griffin, ninety miles to the north. The bitter debate between President Davis and Governor Brown was still on people’s minds. Not one but two conscription acts had been passed by Congress, and what was supposed to be a temporary measure had become a permanent aspect of the Confederate war effort. Blackshear’s loyalty was based most likely in the realization that conscription officers needed assistants whom they could trust, personally and professionally, should trouble arise.

Such needs-based loyalty was even more evident in the camps of instruction. In staffing Camp Randolph at Calhoun in the summer of 1862, Major Dunwoody had known that while the public’s reaction to the Conscript Act had been peaceable in the beginning, no one knew how conscripts would react once they got to camp. Initial estimates had claimed that between 5,000 and 6,000 conscripts would be housed at Camp Randolph beginning in June 1862. This meant that camp officials not only had to oversee the construction of a massive instructional facility but also had to control and command hundreds, maybe thousands, of potentially angry conscripts. Dunwoody had needed not only qualified men by trusted men. For his personal adjutant, he had chosen Second Lieutenant Charles Seton Hardee, a man with a keen sense for business and record

keeping and a Franklin College classmate of Dunwoody's brother Charles.⁵⁴ For his camp officers, he had drawn not only from his own regimental connections but those of his new adjutant. Several camp officers had served in the First (Olmstead's) Georgia with Lieutenant Hardee, others with Major Dunwoody in the Seventh Georgia. One of the nominees, Charlie Pratt, had been Dunwoody's next door neighbor in Roswell, Georgia.⁵⁵

For Blackshear, it was a second lease on military life, and like his fellow enrolling officers, he reaped a multiplicity of benefits. For one, few posts compensated as highly. In addition to the usual pay attending military rank, soldiers detailed as enrolling and sub-enrolling officers earned additional per diems of twenty-five cents extra duty pay, seventy-five cents commutation of rations and one dollar if they provided their own horse.⁵⁶ Whereas an enlisted foot soldier earned only a base eleven dollars per month, a detailed conscript on enrolling duty might earn as much as sixty-five dollars per month plus any padded reimbursements he might submit for arresting deserters or transporting conscripts to the camp of instruction. This pay increased in 1864, when base pay increased from eleven to eighteen dollars per month with an additional increase in the per diem from the combined one dollar for extra duty and commutation of rations to a single payment of two to three dollars plus an additional twenty dollars per month for the

⁵⁴ Charles Seton Hardee, "Reminiscences of Charles Seton Hardee," Martha Gallaudet Waring, ed., *Georgia Historical Quarterly* 12, no. 3 (September 1928), 256-258; *Official Records* IV, 1:1142; William Harden, *A History of Savannah and South Georgia*, vol. 1 (Atlanta, GA: Cherokee Publishing Company, 1969), 319-320; Henderson, *Roster*, 1:112.

⁵⁵ *Official Records* IV, 1:1141-1144; Population schedule, 1860 Federal Census; Henderson, *Roster*, 1:183, 193, 226, 834, 843, 890.

⁵⁶ CSR, G. W. Austin (Conscripts), W. J. Armstrong (Conscripts), Patrick Armstrong (Conscripts).

commutation of quarters and firewood.⁵⁷ Thus, in October 1864, Patrick Armstrong, a twenty-six-year-old Irish clerk at the conscription headquarters in Augusta, earned ninety-three dollars extra duty and commutation pay on top of his eighteen dollars private's pay, plus an additional ninety-three dollars for working after hours. While most privates in the Confederate army earned only eighteen dollars, Armstrong earned a total of \$204.⁵⁸ For officers such as Blackshear, the pay could be considerably higher.

But Blackshear was not interested in monetary gain. It was the reclamation of his honor that mattered most. No longer relegated to a position of subservience at Camp Lee, he could now reclaim the authority he felt suited his talents and temperament. As a superannuated officer, conscription duty gave him a command far from the frontlines, where the threat of violence, though ever present, was smaller.⁵⁹ To be sure, every enrolling officer had moments of excitement when facing down an obstinate conscript or deserter. But the usual response of such reluctant Confederates was avoidance, not confrontation, and only when Confederate officials attempted to root conscripts out of their "deserter country" hideaways did the majority of the anti-conscription violence occur.⁶⁰ Instead, their energies were spent building the Griffin office from scratch. Neither Major Dunwoody nor Colonel Weems had found a suitable officer for this

⁵⁷ Ibid., H. M. Blackshear (Conscripts), Theodore Bambrick (Conscripts), Patrick Armstrong (Conscripts), M. C. Levy (Conscripts), W. E. Lazenby (Conscripts).

⁵⁸ Ibid., Patrick Armstrong (Conscripts); Population schedule, 1860 Federal census.

⁵⁹ The regimental reorganizations allowed by the first Conscript Act provided a ready pool of superannuated officers for conscription duty. Walter C. Hilderman, *They Went into the Fight Cheering: Confederate Conscription in North Carolina* (Boone, NC: Parkway Publishers, 2005), 26.

⁶⁰ See, for example, *Official Records* IV, 2:770, 772; *Macon Telegraph*, September 15, 1862; Moore, *Conscription and Conflict*, 220; A. T. MacIntyre to Major General H. C. Wayne, April 21, 1865, Adjutant and Inspector General Incoming Correspondence; *Valdosta Daily Times*, December 20, 1884. In all of these examples, deserters and layouts had holed themselves into refuges and hideaways and fought only to protect themselves from the actions of Confederate and state officials to arrest them.

district, and Private Robert H. Bailey, the sub-enrolling officer previously stationed at Griffin, had made little progress in building his own office.⁶¹ It was a task “more agreeable, easy and honorable than what [it] had been in Va.,” Blackshear recorded. It invigorated him and bolstered his hopes for countering the “ignominy from my friends [and] contempt from the ladies” he felt he had received since losing his command.⁶²

Here he could partake of his love of the law. Although there is no evidence that he apprenticed with any law firm, he was well-versed in Blackstone and other legal theorists, and it appears he held hopes of practicing law at some point in the future. In fact, most district enrolling officers were men like Blackshear, legal-minded officers whom the War Department hoped would be able to interact clearly and discreetly with the public yet maintain rigorous and sometimes complicated standards of military, political and legal protocol. William Hovis and William McDaniel, for example, were both practicing attorneys. William Flemming, who later resigned his office to become captain of the 50th Georgia Infantry, and Edgar Dawson, son of William C. Dawson, the 1844 compiler of the laws of Georgia, were both law students. John A. McManus, Flemming’s replacement, and Joseph W. Johnston were both clerks of local courts.⁶³

And while his lofty ambitions had taken a different tack with the conscription service, the aura of personal glory Blackshear carried into office more than suited the

⁶¹ *Atlanta Intelligencer*, June 7, 1862; *Macon Telegraph*, July 10, 1862; *Milledgeville Southern Confederacy*, June 14, 1862; Henderson, *Roster*, 3:507; Blackshear Diary, 23.

⁶² Blackshear Diary, 16; CSR, James Appleton Blackshear (11th Battalion Georgia Artillery).

⁶³ *Official Records IV*, 1:1143; *Atlanta Intelligencer*, June 7, 1862; *Macon Telegraph*, July 10, 1862; *Milledgeville Southern Confederacy*, June 14, 1862; *Columbus Daily Enquirer-Sun*, May 1, 1883; Population schedule, 1850 Federal Census; Population schedule, 1860 Federal Census; Population schedule, 1870 Federal Census; CSR, John A. McManus (56th Ga.), Francis M. Allen (48th Ga.), Jabez Brittain (38th Ga.), R. S. Phillips (60th Ga.); Centennial Alumni Catalog, Hargrett Rare Book and Manuscript Library, University of Georgia Libraries, presented in the Digital Library of Georgia, 2006. <http://dlg.galileo.usg.edu/centennialcatalog/>; Brittain, “Biography of Jabez Mercer Brittain.”

demands of personal honor. He had “seen the elephant.” He could regale conscripts and volunteers alike with the glories of Seven Days, when he had led his battery of howitzers and six-pounders in the defense of Richmond, and of marching with Robert E. Lee into Maryland. He could tell of Antietam, the single bloodiest day of the war, of how he survived, of how *they* could survive, too, and return home as reputable men. The tales gave his calls to duty a substance, a gravitas, that played – he hoped – on impulses to honor that would spark other men to see the elephant for themselves.

This battle-tested gravitas was especially prominent – though not exclusively so – among county sub-enrolling officers. These were men usually lacking in the education and leadership skills district officials brought to the task. Their strength of office came not from the intangibles of proper bearing and tales well-told but from the very visceral and tangible effects of confronting battle and surviving. At the beginning of the war, sub-enrolling officers tended to come from the ranks of conscripts themselves, detailed directly from the camp of instruction based on hometown connections, organizational skills and other predictors of future success. Men who knew their way around the county, knew where the hiding places might be, knew county leaders, held the respect of the community, and could capitalize on these to maximize enrollment had a better chance of being detailed. But as the war progressed, the core of the conscription service increasingly became populated not by fresh conscripts but by soldiers recuperating from or permanently disabled by illness or battle wounds. In late 1862, when this shift began to take place, the introduction of disabled men was not as noticeable as it would later become. However, by the end of the war, it was unmistakable. Captain William Sharpe Wallace, enrolling officer for the fourth district in 1864, for example, had received a

gunshot wound to the jaw and neck that partially paralyzed his right arm and shoulder.⁶⁴ And it was no doubt surreal for sub-enrolling officers such as Privates John A. Walker and John Rucker, both detailed to Cherokee County in North Georgia, to not only convince recalcitrant conscripts to come forward but to actively hunt and at times combat deserters and draft dodgers. Walker had been shot at Gaines Mill in 1862, shattering the bones of his left hand and curling his fingers into his palm where they remained for the rest of his life.⁶⁵ A minié ball had passed through Rucker's right forearm, and into his left arm where it tore his left bicep in half and lodged in his left elbow. Rucker was paralyzed in his left arm and partially paralyzed in his right.⁶⁶ A ball struck Private George F. Banks, sub-enrolling officer for Talbot County, between the eyes and rattled around his sinus cavity before dropping into his mouth. Banks had simply spit the bloody ball out.⁶⁷ Private George W. Johnson, sub-enrolling officer of Hall County, was in even worse shape. At the Battle of Campbell Station in 1863, a Union shell exploded in his face blowing off his nose and the left side of his jaw, disfiguring his head and face, and rendering him both blind and deaf on his left side.⁶⁸ Blackshear may have been battle-tested, but he was far from the battle-scarred veteran that many of his subordinates would be.

⁶⁴ CSR, George F. Banks (5th Georgia).

⁶⁵ Confederate Soldier's Pension Application, John A. Walker, Milton County, Georgia, microfilm, Georgia Department of Archives and History, hereafter cited as CSPA.

⁶⁶ Ibid., John Rucker, Milton County, Georgia.

⁶⁷ CSR, George F. Banks (5th Georgia).

⁶⁸ CSPA, G. W. Johnson, Hall County, Georgia.

Captain Blackshear and Lieutenant Council worked diligently to get the Griffin office established, but it quickly became apparent that the daily work load was insufficient for two men. Although he continued making regular circuits of the district with the medical examining board and signing the rolls of his sub-enrolling officers, Blackshear decided his time was better spent if he “paid my respects to the ladies.” It was an opportunity to live “the life of a loafer as most men are wont to do.” Lieutenant Council, he explained, “preferred the society of gentlemen and consequently the work of our office,” so Blackshear whiled away the mornings over billiards, whist and alcohol. Following an afternoon of pleasure riding, he would spend the evening at “Parties, Sociables, Private entertainments and visits,” wooing the eligible daughters of wealthy merchants and railroad men “sometimes to 1, 2, and 3 A.M.”⁶⁹

To a degree, such inactivity was understandable. As conscription took effect in local communities, the pool of eligible conscripts became smaller, lightening the work load. It was not uncommon for many enrolling officers to check in with their office before heading off on private business. Privates J. F. Pettit, sub-enrolling officer for Gilmer County; Noah M. G. Kelley, sub-enrolling officer for Campbell County, and Sydney P. Bruce, sub-enrolling officer for Elbert County, for example, all appeared to have enjoyed frequent days off during the months after the passage of the second Conscript Act. Pettit received pay for working only fifty-two days during a five-month period in early 1863, Kelley only ninety days during roughly the same period, and Bruce

⁶⁹ For example, see Blackshear’s circuit schedules included in CSR, James A. Blackshear (11th Battalion Georgia Artillery), Blackshear Diary, and similar circuit schedules published in Milledgeville *Southern Confederacy*, December 27, 1862, and Macon *Daily Telegraph*, July 16, 1864. Among the objects of Blackshear’s attention were Mary Lewis, 19, daughter of Curtis Lewis, a wealthy cotton merchant; Laura Andrews, 14, the daughter of a local merchant, and Lizzie Armstrong, 16, sister of a Bibb County railroad agent. Blackshear Diary, 24-25; Population schedule, 1860 Federal Census.

only seventy-seven days during a six-month period in mid-1863. Such working days became more frequent as the war progressed into 1864 and the duties of the sub-enrolling officer increasingly turned away from enrollment and toward deserter hunting, but early in the war the offices of enrolling and sub-enrolling officer appeared, in many instances, to be relatively easy jobs allowing for numerous days off.⁷⁰

Conscription's supporters claimed this inactivity proved conscription's threat of force was more powerful than its exercise. For many reluctant Georgians this threat was enough to spur a resurgent volunteerism. Howell Cobb, only a lukewarm supporter of conscription, conceded that in this respect "the law has performed its work."⁷¹ And Georgia's enlistment figures tend to bear this out. The state had seen a traditional bell curve in enlistment numbers, peaking in the summer of 1861 between the fall of Fort Sumter and the Confederate victory at Bull Run but steadily declining thereafter. Only in March 1862 did the enlistment totals peak again – over 11,000 men on March 4 alone – when Governor Brown threatened to use a draft to meet the state's enlistment quota. During the thirty-day grace period allowed for company formation prior to the enforcement of conscription that ran from April 16 to May 15, 1862, enlistment numbers once again peaked, this time to the second highest monthly total of the war.⁷² In the aftermath of such volunteerism, it is no wonder that conscription numbers would be low and conscription officers would have little to do. The Atlanta *Intelligencer*, quoting the Milledgeville *Southern Recorder*, reported in mid-July 1862 that "the enrolling officers in

⁷⁰ CSR, J. F. Pettit (Conscripts), Noah M. G. Kelley (Conscripts), Sydney P. Bruce (Conscripts), Patrick Armstrong (Conscripts). The service record of W. E. Lazenby, sub-enrolling officer for Columbia County, shows that by early 1864 he was working almost every day. CSR, W. E. Lazenby (Conscripts).

⁷¹ *Official Records IV*, 2:35-36.

⁷² Enlistment totals derived from a survey of the muster dates recorded in Henderson, *Roster, passim*.

some counties find that not more than half a dozen men [are] liable to the conscript act. This argues that volunteering [has] been on a large scale.”⁷³ B. B. Barnes of Crawford County, Georgia, boasted that “the operation of the Conscript Law will not affect the people of this vicinity, as there is not one man left in the 6th District between the ages of 18 and 35 subject to military duty... they have nobly gone forth to defend their country, without being coerced.”⁷⁴

Others, however, saw this inactivity as proof of conscription’s failure. Of the estimated 94,000 men liable to service in Georgia under the conscript law, only 58,365 can be shown to have enlisted prior to the beginning of conscription’s enforcement.⁷⁵ Clearly, the threat of force was not enough to bring every eligible man into the service. Opponents, like Brown and Tennessee Congressman Henry S. Foote, claimed the conscript law did nothing more than chase these remaining men into hiding. In Georgia, conscription claimed a mere 1,730 troops between May 17 and July 31, 1862.⁷⁶ By September 26, Secretary Randolph was able to report only 2,718 Georgia conscripts.⁷⁷ Governor Henry Clark of North Carolina, comparing his own state militia roles with the reports given him by that state’s commandant of conscription Major Peter Mallet, could account for over 20,000 potential conscripts but only 5,000 actually enlisted into the service.⁷⁸ As Brown explained to Foote in August 1862, “the collection of troops by

⁷³ *Atlanta Intelligencer*, July 18, 1862.

⁷⁴ *Macon Daily Telegraph*, June 18, 1862.

⁷⁵ Historical Census Browser, accessed February 22, 2007; Henderson, *Roster, passim*.

⁷⁶ Henderson, *Roster, passim*.

⁷⁷ *Official Records IV*, 2:95-96.

⁷⁸ *Ibid.*, 2:67-69.

conscription in this State has proved a miserable failure. I could have furnished as many troops as the government has got conscripts, in 20 days had they have called before the act was passed, at a cost of one tenth of the sum expended under the Conscription Act.”⁷⁹

Such disputes had little effect on Blackshear. He continued his “usual dissipations” until February 1863 when he transferred to the 6th District. He had intended to make his headquarters at Madison, but, obeying orders from Major Hardee at Camp Randolph, removed it to Athens after only one day. Blackshear was unhappy with Athens. He had found Griffin open and welcoming, but Athens was cold and distant. Whether this was due to ill feelings over the removal of Jabez Brittain, Blackshear’s predecessor, or simple animosity toward *any* agent of conscription, Blackshear was uncertain. Room and board were difficult to find, and the owner of the office space previously rented to Lieutenant Brittain refused to renew the lease. Typically, enrolling and sub-enrolling officers’ offices consisted of two or three rented rooms – one for the enrolling officer and additional rooms for clerks, assistants and sometimes medical examinations – in local hotels, businesses, doctor’s or lawyer’s offices.⁸⁰ Lieutenant James A. McManus, for example, rented space in the law offices of Vason and Davis in Albany. Lieutenant F. W. Johnson’s office occupied two rooms at the Brown Hotel in Macon across from the city depot. First Lieutenant W. P. McDaniel set up his headquarters in the offices of Georgia Representative Lucius Gartrell on Whitehall Street

⁷⁹ Joseph E. Brown to Henry Foote, August 11, 1862 in Joseph E. Brown Papers, MS 95, UGA.

⁸⁰ CSR, John T. Gross (57th Ga.), J. W. Johnston (56th Ga.), David Waldhauer (F&S), and E. H. Winn (11th Battalion Ga. Artillery).

in Atlanta.⁸¹ But the only office space Blackshear could find was a small, dank second story room at the rear of a dilapidated wooden building. It was here that Blackshear, shunned by local elites and delegating the work of conscription once again to Lieutenant Council, retreated and read. For four months, Blackshear remained secluded with the works of Shakespeare, Pope, Johnson and Blackstone, reemerging occasionally to call upon Sukie Dougherty, the fourteen-year old daughter of renowned Georgia attorney William Dougherty.⁸²

It was only after Lieutenant Council fell ill and retired from his post that Blackshear truly resumed the responsibility for his office. It was then, forced out of his seclusion, that the captain appeared to come into his own. Even after Athens attorney Thomas M. Daniel temporarily assumed Council's duties, Blackshear continued to work.⁸³ Although still taking note of the available young ladies and struggling with his desire to return to his books, he spent more time than ever escorting his medical board throughout the district, examining and enrolling eligible conscripts.⁸⁴ And as his work expanded, the community began to open to him. "The associations brought about by the business of the office with the intellect of the community," he noted, "which is one of the

⁸¹ *Atlanta Intelligencer*, June 7 and 13, 1862; *Macon Telegraph*, June 5 and July 10, 1862; *Milledgeville Southern Confederacy*, June 14, 1862; CSR, John T. Gross; *Official Records* IV, 1:1128-1129.

⁸² Blackshear Diary, 26-28; Population schedule, 1860 Federal Census.

⁸³ Population schedule, 1860 Federal Census; Blackshear Diary, 30.

⁸⁴ The medical examination board typically spent no more than a few hours in any one town during its circuit. Enrolling officers announced the appearance of the board a week or two in advance by publishing the circuit schedule in local newspapers and ordering all liable men to appear for examination, either voluntarily or under escort by local sub-enrolling officers. See, for example, *Milledgeville Southern Confederacy*, December 27, 1862, and *Macon Weekly Telegraph*, July 16, 1864.

most learned in the country was of great advantage and gave me the opportunity to secure the respect of the good citizens as well as to improve by their ideas.”⁸⁵

Council’s eventual replacement was Lieutenant Francis Marion Coker, a thirty-three-year-old bank agent from Sumter County, Georgia, and, like Blackshear, a former officer of the Sumter Artillery.⁸⁶ Unlike Blackshear, Coker had continued for a time with the Sumter Artillery as an adjutant, but it was an assignment Coker felt “nominal” at best. He had begun making inquiries with the War Department in December 1862 for a position – *any* position – that required “a good business man,” and by the following May he had supplemented his requests with details of his failing health, his pulmonary disease, and his chronic hepatitis, all in an effort to gain reassignment. Coker’s ailments were far from debilitating but in 1862, they were enough to gain the attention of the proper officials. As chance would have it, Coker’s applications gained a hearing just as Lieutenant Council, newly recovered from his illness, requested a new field assignment. A deal was brokered, and it was agreed that the two men would swap positions. Coker would take Council’s place as assistant enrolling officer under Captain Blackshear, while Council would assume the duties of adjutant in the Sumter Artillery.⁸⁷

Coker was an industrious officer who took his duty extremely – some would soon complain excessively – seriously. He was a man apprehensive of the opinions of others, and who made every effort to prove his indispensability. “[I have] often experienced tortures that made my heart sink within me,” he explained to his wife, “at the bare

⁸⁵ Blackshear Diary, 28-37; John C. Moore to Joseph E. Brown, December 6, 1862, in Governor’s Subject Files.

⁸⁶ Population schedule, 1860 Federal Census; CSR, F. M. Coker (11th Battalion Georgia Artillery).

⁸⁷ CSR, F. M. Coker (11th Battalion Georgia Artillery).

anticipation of being ‘turned off’ and being considered a second or third rate clerk & not wanted by good men.”⁸⁸ In this respect, he was very similar to Captain Blackshear, aware as he was of the personal and familial honor that came from a well-placed office. Yet unlike Blackshear, Coker accepted that such position came not by right of office but through diligence and hard work, and he dove into his new assignment.

For Blackshear, however, old habits died hard. As Coker took charge of the office, the captain once again allowed his attentions to wander. “There were a great many parties,” he noted in his diary, “and I attended nearly all of them.” By January 1864, he was joining in local *tableaux* performances “which was the cause of great satisfaction to the ladies and attendants who wished to show their pretty selves and especially those delicate parts of their pert legs, arms and breasts which decency in other places hides.”⁸⁹

In March 1864, Blackshear transferred to the 9th District in Gainesville. It was an assignment he regarded as the “most unimportant and most ruinous that my life has yet experienced.” The pleasures of Griffin and Athens had weakened his resolve to deal with the truly challenging circumstances the Ninth District would pose: unionism, desertion and conscription avoidance. Such had existed to varying degrees throughout the Confederacy. But some areas had become renowned for the depth of their hostility to secession and war. Western Virginia and North Carolina, eastern Tennessee as well as scattered areas in Alabama, Mississippi, Georgia and Florida were especially virulent in

⁸⁸ Frank (M. Coker) to Wife, January 26, 1864, in Francis Marion Coker Papers, MS 15, Hargrett Rare Book and Manuscript Library, University of Georgia.

⁸⁹ Blackshear Diary, 28-37; John C. Moore to Joseph E. Brown, December 6, 1862, in Governor’s Subject Files.

opinions that ranged from pro-Union to anti-Confederate to a simple desire to left alone.⁹⁰ And among the worst was mountainous north Georgia. Over one half of the soldiers from Blackshear's new district had deserted by October 1862 and were hiding amid the thick mountain forests. In White County, twenty-two men broke into the county jail to free draft dodgers, and throughout many of the counties courts required armed guards to prevent the disruption of trials concerning conscription. Networks of safe houses stretched throughout the region protecting deserters and layouts, and armed bands of unionists and deserters roamed the countryside.⁹¹ For a man unaccustomed to the rigorous enforcement of the conscription laws, it was enough to "[so disturb] my mind that I was soon abandoned to a shameful illness and neglect of duty."⁹² Needless to say, little conscription activity took place in northeast Georgia that spring.

By this time, Colonel William M. Browne had become Georgia's new commandant of conscription, and his initial audit of the state's enrolling officers' performances focused intently on the service of Captain Blackshear. Standing before an irate Colonel Browne in Athens in early June 1864, Blackshear tried to explain that his inactivity was the result of not having a proper medical board to examine conscripts. But Browne knew the truth, and he accused the captain not only of simple neglect but the lack

⁹⁰ See, for example, John E. Johns, *Florida During the Civil War* (Gainesville: University Press of Florida, 1963), 160-167; *Enemies of the Country: New Perspectives on Unionists in the Civil War South*, John C. Inscoe and Robert C. Kenzer, eds. (Athens and London: University of Georgia Press, 2001); Thomas G. Dyer, *Secret Yankees: The Union Circle in Confederate Atlanta*, War/Society/Culture, Michael Fellman, ed. (Baltimore and London: Johns Hopkins University Press, 1999); Tatum, *Disloyalty in the Confederacy*; James Alex Baggett, *The Scalawags: Southern Dissenters in the Civil War and Reconstruction* (Baton Rouge: Louisiana State University Press, 2002); Weitz, *A Higher Duty*; Lon, *Desertion*, and Margaret M. Storey, *Loyalty and Loss: Alabama's Unionists in the Civil War and Reconstruction* (Baton Rouge: Louisiana State University Press, 2004).

⁹¹ Williams, *Plain Folk in a Rich Man's War*, 103, 160, 165-167, 180.

⁹² Blackshear Diary, 38.

of manliness to admit it. For someone as intensely honor bound as Blackshear, an attack on his masculinity was unacceptable. "Remiss as I had been [in my duties]," he later noted, "I was unwilling to be reproached and any insinuation on his part was considered a disrespect for me and my position and unwarrantable arrogance in him." Blackshear lashed back in what he admitted was "open insubordination."⁹³

Blackshear's contentious meeting, however, produced results. Typically, enrolling officers tried to reduce their travel as much as possible. The vast districts they oversaw demanded they find simple means of disseminating enrollment notices as quickly as possible. Many simply published their notices in local newspapers with warnings that all who refused to appear would be hunted as deserters.⁹⁴ Such notices allowed enrolling officers to concentrate their circuits on regions truly demanding their attention rather than on regions that were relatively easy to conscript. Others would take advantage of any large gatherings of people. The enrolling officer of Crawford County, for example, attended church services each Sunday to inspect the congregation for eligible men and note their names on the conscript rolls.⁹⁵ In August 1863, the enrolling officer for Atlanta, supported by members of the 27th Mississippi detailed as provost guard, surrounded a theatre during its evening performance and refused to allow the audience to leave until every man's papers had been examined. They conscripted over 300 men that night.⁹⁶ Blackshear, however, wanted to make sure that his newly found

⁹³ Ibid., 39-41.

⁹⁴ See, for example, *Augusta Chronicle and Sentinel*, July 8, 1862.

⁹⁵ William J. Knowlton to Joseph E. Brown, July 19, 1862, in Governor's Subject Files.

⁹⁶ J. W. Simmons, "Conscripting Atlanta Theater in 1863" in *Confederate Veteran* 11, no. 6 (June 1903), 279.

diligence was noted, and he hand delivered as many as 500 conscription notices throughout his district. Such a late surge, however, was not enough to overcome years of neglect and his act of insubordination, and he was transferred to the conscription office at Atlanta, a meaningless assignment given that the Tenth District was already being overrun by the advance of William Tecumseh Sherman's Union forces. Blackshear himself would be forced to evacuate the city soon thereafter.⁹⁷

Lieutenant Francis M. Coker

The career of Francis Coker followed another track. The level of energy that Coker had exerted in rounding up conscripts as assistant enrolling officer under Captain Blackshear had so impressed his superiors that Coker quickly gained appointment as an enrolling officer in his own right. And in each assignment he pursued conscripts with the same determination. In fact, when Coker transferred from Albany to Savannah in January 1864, friends he encountered at the Albany depot complimented him for "doing his duty" and offered wishes that he would soon be assigned to his home county of Sumter to "straighten it up" as well.⁹⁸

But hard work and strict enforcement by itself did not guarantee success. While stationed in Albany, Coker had arrested a volunteer in the Georgia State Guard as an eligible conscript. The Georgia State Guard was a special home guard unit under the command of Confederate Major General Howell Cobb, organized by the Confederate government in August 1863 to appease Governor Brown's concerns for home defense in the wake of the Conscript Acts. Like all local defense forces, the State Guard was to

⁹⁷ Blackshear Diary, 41-42.

⁹⁸ Coker to Wife, January 26, 1864, in Francis Marion Coker Papers.

draw its recruits only from Confederate exempts, but it was not uncommon for eligible conscripts to peremptorily enlist in home guards and other similar units in order to avoid national deployment.⁹⁹ The conscript's hope was that enlistment in *any* military force would meet the demand for Confederate military service. They very quickly discovered this was not the case. It was also not uncommon for enrolling officers to arrest these conscripts out of the ranks of the state forces on charges of desertion for avoiding conscription. However, enrolling officers had to be very careful in making these arrests for every instance threatened to bring state and Confederate governments into conflict. Such was the case with Coker whose arrest of the conscript threatened to disrupt the détente between Georgia and the Confederate government. Cobb was so angered by the arrest that he reported this arrogant young officer to his superiors and demanded Coker be arrested.

Instead, Coker was reassigned to Savannah. Although initially “indignant at the slanderous move [from] Albany,” suggesting that he had been brought to task for his interference with the State Guard, Coker soon found himself overwhelmed with work and never happier. He spent his days chasing deserters, examining substitutes, and aiding in the recruitment of State Guard troops.¹⁰⁰ “There is a perfect stream of applicants for exemptions,” he explained to his wife, “& they all require attention.” He had “not an hour – yea a moment to spare,” and once his clerk took “to drinking and whoring” and

⁹⁹ Bragg, *Joe Brown's Army*, x; Charles J. Harris to Lt. Col. G. W. Lay, April 1, 1864, in CSR, F. M. Coker (11th Battalion Georgia Artillery).

¹⁰⁰ Coker to Wife, January 26, 1864, in Francis Marion Coker Papers.

began ignoring his work, Coker became even busier. The reassignment, he decided, “was certainly complimentary to me.”¹⁰¹

If only his fellow military officers had been as complimentary. Coker had already drawn the ire of General Cobb, and it soon became apparent that even Coker’s closest associates held strong feelings about his aptitude for the conscription service. As Captain Blackshear’s experience had shown, conscription required a balance between military regulation and social refinement. Blackshear erred in straying too far into his “usual dissipations” and paying only desultory attention to conscription. Coker, on the other hand, displayed few of the niceties. He claimed that few understood him, not because he stood apart in isolation, but because he was brutally honest. “If you are honest you will be suspicioned,” he tried to explain to his wife, “because the world, being dishonest, expects dishonesty, and when disappointed, thinks something is wrong.”¹⁰² Thus, when Coker arrested the conscript from the ranks of the Georgia Guard, he justified it by claiming he acted in faith with the law. The man was eligible for conscription and ineligible for state service. Yet Coker rejected the complicated niceties, the dishonesties, that framed the fragile state of Georgia-Confederate relations and made such a show of arresting the man that Georgia’s commandant of conscription reported to the Bureau of Conscription in Richmond that the “conduct of his caused great indignation & has since been used with effect by the ‘discontents’ of this state.”¹⁰³ Nor was Coker’s tact any better with his Medical Examining Board. “[Dr.] Jones is a gentleman,” he noted to his

¹⁰¹ Coker to Wife, February 1, 1864, in *ibid.*

¹⁰² Coker to Wife, January 26, 1864, in *ibid.*

¹⁰³ Charles J. Harris to G. W. Lay, April 1, 1864, in CSR, F. M. Coker (11th Battalion Georgia Artillery).

wife, “but Hardee’s a sharper and Cloud’s a scoundrel.” So tense did their relationship get that when the state conscription headquarters at Macon ordered both Coker and the Board to transfer to Griffin in March 1864, the Board refused to go. “I hope they may be forced to strict compliance,” Coker wrote his wife, “though I can not [do so] if I never see them again.” As a parting shot, the Board delayed certifying Coker as unfit for active duty and slowed his departure for Griffin, all because Coker had called Dr. Cloud a “liar.”¹⁰⁴

Coker’s inability to temper his relations with the public and his fellow officers eventually led to his undoing. The Medical Board’s refusal to certify Coker’s medical disabilities merely bolstered commandant Browne’s determination to return Coker to active duty. “From all I can learn,” Browne reported to the Secretary of War, “Lt. Coker has been zealous in the discharge of his duty & of unimpeachable integrity, but his harshness of manner & conduct to conscripts as reported to me from most reliable sources render him unfit for the discharge of the duties of an enrolling officer.”¹⁰⁵

Although there are no numerical data to show either Blackshear’s or Coker’s ultimate effectiveness as conscription officers, it is clear that both the public and the military expected them to be more than simple beneficiaries of Confederate largesse or executors of Confederate will. Regardless of the benefits that attracted soldiers to the job, conscription officials could not let such rewards overwhelm the task at hand. The relative safety of the homefront and the social prestige attendant veteran status may have seduced officials into a more lenient application of conscription, but it did little to press

¹⁰⁴ Coker to Wife, March 23, 1864, in Francis Marion Coker Papers.

¹⁰⁵ Endorsement of William M. Browne on reverse of Francis M. Coker to James Seddon, May 5, 1864, in CSR, F. M. Coker (11th Battalion Georgia Artillery).

Confederate claims to service. At the same time, they could not let the exigencies of war overwhelm diplomatic niceties. The per diem might increase and promotion might come with each day spent rounding up conscripts, but such accomplishments meant little if they also drove the community to rebel against a too heavy hand. The success of conscription thus balanced on such factors as public trust, accommodation, honesty, integrity, integration and involvement. As Colonel Weems discovered in correcting the errors of Major Dunwoody, officers removed from the public sphere, isolated from the epicenters of local power and government, not only damaged chances for the acceptance of themselves personally but, by extension, the enforcement of conscription. They drew upon themselves suspicions, insinuations and accusations that attacked not only their manhood but the very legitimacy of conscription itself. Indeed, to settle the minds of Southerners already suspicious of the putative conspiracies of the Confederate government, conscription, as a publicly sanctioned national power, needed to wend its way through society, open, accessible and temperate, not impose itself atop it.

“ISN'T HE A GLORIOUS YOUNG CONSCRIPT?”

Throughout 1863, it increasingly became clear that conscription tended to be more effective in areas where enrolling officers regularly communed with the public in unofficial as well as official ways. Captain Blackshear's ritual of billiards, whist and alcohol served well in developing an accessibility to Griffin's civilian population, one that provided a healthy foundation upon which Lieutenant Council, if not the captain himself, could capitalize. Indeed, the task of developing such ties was not always difficult. Even under conscription, when the public supposedly had grown wary of

military authority, vocal elements within society supported conscription and used their influence and talents to pressure able-bodied young men to volunteer or submit to the orders of enrolling officers. Civilians reported potential conscripts to military officials. Local sheriffs and constables helped round up layouts and draft dodgers.¹⁰⁶ Civilian posses broke up deserter hide-outs,¹⁰⁷ and civilian speakers visited camps of instruction eulogizing the bravery of conscripts.¹⁰⁸ By March 1864, the idea that civil and military powers worked best in conjunction with one another gave rise to county oversight committees, three-man panels that were both investigatory bodies, gathering information for local enrolling officers, and advisory committees, suggesting the relative merits of exempting one individual over another for the benefit of the community.¹⁰⁹ Such assistance speaks to the same kind of acquiescence to the *Jeffers* decision taking hold within the state. Just as Herschel Johnson had vowed that “I, as a citizen, will cheerfully defer” to conscription, so, too, did significant segments of the general population.¹¹⁰

Opposition did not disappear entirely. Governor’s offices and courtrooms remained the focal point of personal pleas against conscription’s hardships. As John R. Alexander wrote to Governor Brown, the “action of Congress has put on us the stain of repudiation, it has placed it in the power of the Pres[ident] to withdraw from the country

¹⁰⁶ Bradford to Brown, July 13, 1862, in Governor’s Subject Files. For the use of sheriffs to arrest deserters and stragglers see, G. W. Randolph, Richmond, to Capt. [J.] Taylor, June 16, 1862, in Telegrams Sent by the Confederate Secretary of War, chap. IX, 34:264; *Official Records* IV, 2:7,22-23; James M. Buchan to Joseph E. Brown, December 26, 1862, and Maj. Gen. Simon B. Buckner to Joseph E. Brown, June 9, 1863 in Governor’s Subject Files.

¹⁰⁷ See, for example, *In re, Holly Goff, et. al.*, Dougherty County Superior Court, Minute Book L, 77-81.

¹⁰⁸ George Adams Fisher, *The Yankee Conscript, or Eighteen Months in Dixie* (Philadelphia, PA: J. W. Daughaday, Publisher, 1864), 110-114.

¹⁰⁹ *Official Records* IV, 3:218.

¹¹⁰ Herschel V. Johnson to James S. Hook, November 14, 1862, in Herschel V. Johnson Papers.

at this season of the year, the men who by their own manual labor, or the direction of negro labor, must produce provisions of the support of the army & the people at home.”¹¹¹ But public criticism changed markedly. Only rarely did published discourse attack the policy of conscription once Congress and the courts accepted the acts as law. More commonly, criticism shifted from the theory and rhetoric that had argued against conscription to a biting satire that highlighted the flaws within conscription. George W. Bagby, editor of the *Southern Literary Messenger*, for example, took aim at Congress with a short ode to the “Conscript fathers” who “declare all men ‘Conscripts,’ *excepting themselves.*”¹¹²

The cartoons of the *Southern Punch*, a Richmond-based humor journal that disapproved of conscription as policy but accepted it as law, took frequent aim at conscription’s agents.¹¹³ One

such image depicts two Confederate surgeons examining a conscript whom they initially declare unfit for duty. “He looks badly,” says First Ass-culapius, so named after Asclepius, the Greek god who defied Zeus to heal



Office Board of Examiners—Examination of a Conscript.

¹¹¹ John R. Alexander to Joseph E. Brown, April 12, 1864, in Governor’s Subject Files.

¹¹² George William Bagby, “The Conscription Bill: Its Beauty,” *Southern Literary Messenger* 34, no. 5 (May 1862): 328.

¹¹³ *Southern Punch*, November 8, 1864

man and resurrect the dead. “There is no marrow in his bones, no speculation in his eyes.” “At first glance he appears to be a doubtful case,” agrees Second Ass-culapius, “but his pulse comes up to time. The man is frightened. I will stake my ears upon his being fit for conscription.”¹¹⁴ It was a scene reminiscent of the exams ordered by Major Dunwoody in the fall of 1862 using loosened, some would say non-existent, medical standards. But it was not meant to frighten the targets of conscription – although it may well have done so – as much as it was to ridicule the inept agents who enforced it. As the caption artist explained, the work was “dedicated only to such incompetent or perverse M.S. [Medical Surgeons] as those who insist upon burdening the army and hospitals with men notoriously unfit for duty. Many a humane and skillful M.S. throughout the country will appreciate the righteous hit.”

The paper also took great pleasure in mocking men who tried to avoid conscription. Mr. Slowly, the character who represented these shirkers, developed a plan by which he would drink nothing but lager by the gallon, packing on the pounds until he was too fat to pass the medical exam. Several months later, when accosted by two conscription officers, he exclaimed: “Look at my age, sir! Look at my size, sir! Look, sir, at my general appearance, do *I* look like a conscript, sir?”¹¹⁵ In another comic episode, a conscript appears before the medical board claiming “I’m sick and powerful weak; I’m weak in the back, and I have a mighty misery in my head. I’m very weak too in my knees, sir.” The surgeon examines him, agrees that he is “very weak in the knees,” and writes out his exemption paperwork:

¹¹⁴ Ibid., October 10, 1863.

¹¹⁵ Ibid., November 14, 1863 and February 2, 1864.

I hereby certify that I have examined the bearer, and find him sound and healthy in every respect, with the exception of being very weak in the knees, which weakness is superinduced, or excited by fear and cowardice, but which will disappear after he has been in one fight. For fear, however, that he might not stand fire very well, the first time, I would advise that he be put in the front ranks, where he can't run away.¹¹⁶

It was a fitting comeuppance that would have delighted the thousands of conscripts in the ranks who scorned reluctant Confederates and cautioned against such dissemblance among future conscripts.

But perhaps the image most telling of the conflicting Confederate feelings about conscription was that of Henry and Emma, the parents of newborn Charles Augustus. “Isn’t he a glorious young conscript?” Henry asks his wife, raising Charles up to the heavens. While at once a sarcastic jab at the seemingly endless expansion of conscription’s age limits to



The Way the Future Army is to be Recruited.

include ever more young and old men, it was also patriotic symbolism of the highest order. Like Henry, the Confederacy had pride in its young conscripts and a hope for the future based on the potential of these young men. They may not grow to be mature

¹¹⁶ Ibid., October 24, 1863.

soldiers by the end of this war – as Henry points out, “this war will soon be over” – but conscription would prepare them “for the second war with the Yankees.” And in that war young Charles would rise “from the ranks to the position of General!” “Just the image of his father,” Emma smiles.

Using such multi-layered messages, newspapers throughout the South challenged young men to enlist, simultaneously evoking the shame of being conscripted to spur volunteerism while touting the bravery of conscripts to mediate that shame. The *Augusta Daily Constitutionalist* observed that “it has become fashionable to imagine that there is something disgraceful in being a conscript.” But “there are many,” the paper admonished, “who shall not say a major proportion? – among the conscripts whose hearts are as fully in their country’s cause, and who would as fearlessly battle for it as any volunteer.”¹¹⁷ And for every poet who moaned:

By the act of conscription –
 And I mean not a joke –
 When I thought I was safest,
 I was collared by Coke!
 Now, ho for camp Lee!
 In vain I have shammed
 I’m booked for the campaign,
 I’m in I’ll be d----d!¹¹⁸

there was another who proclaimed:

¹¹⁷ *Augusta Daily Constitutionalist*, August 22, 1862.

¹¹⁸ Milledgeville *Southern Confederacy*, February 16, 1864. *Coke* refers to Sir Edward Coke, the 16th century English jurist. His name is actually pronounced “cook.” Camp Lee refers to the camp of instruction located outside of Richmond, Virginia.

I was a lazy boy in the field,
 A gawky, lazy dodger,
 When came the Conscript officer
 And took me for a sojer.
 He put a musket in my hand,
 And showed me how to fire it:
 I marched and countermarched all day.
 Lord, how I did admire it.¹¹⁹

Plays and other public performances often made explicit links between the republican ideal of the citizen-soldier and the modern reality of the conscript. In April 1864, members of Fenner's Battery, Louisiana Light Artillery, and the Kentucky Glee Club, drawn from the Fourth Kentucky Infantry, organized a three-act pantomime in Dalton, Georgia, for the benefit of the widow of William B. Mumford, a Louisiana gambler who had torn down an American flag from the federal mint in New Orleans just prior to the city's capture by Union General Benjamin Butler in 1862. Butler later had Mumford executed for his act of defiance.¹²⁰ Act three was entitled "The Conscript," and it presented the story of Peter Gray, a Louisiana youth, enrolled into the Confederate army by enrolling officer St. Josquin.

As a character in this production, St. Josquin carries multiple meanings that highlight the level of public support that conscription had begun to garner by 1864. The name "St. Josquin" derives from Josquin des Prez, a Renaissance composer who based two Latin masses on a popular French secular tune, *L'homme armé*. By itself, *L'homme*

¹¹⁹ "The Valiant Conscript, as Sung with Great Applause by Messrs C. Morton and Oliver Wren," in *The Camp Jester, or, Amusement for the Mess* (Augusta, Ga: Blackmar & Brothers, 1864).

¹²⁰ Gerald M. Capers, Jr., "Confederate and Yankees in Occupied New Orleans, 1862-1865," *Journal of Southern History* 30, no. 4 (Nov. 1964), 406; Robert S. Holzman, "Ben Butler in the Civil War," *New England Quarterly* 30, no. 3 (Sept. 1957), 334; Milledgeville *Southern Confederacy*, April 6, 1864.

armé is a song easily suited for contrapuntal treatment as in a canon or a round for small choral groups, and its lyrics may have been known to the members of the Kentucky Glee Club:

The man, the man, the armed man,
The armed man
The armed man should be feared, should be feared.
Everywhere it has been proclaimed
That each man shall arm himself
With a coat of iron mail.

The juxtaposition of St. Josquin, the conscript officer, with the rallying cry that is *L'homme armé*, implies that the authors of “The Conscript” were well aware of the importance of conscription in arousing the military spirit of the Confederacy. It was not the professional soldier who would save the Confederacy, it was the citizen-soldier who answered the call to arms even as it issued from a conscript officer. The elevation of Josquin to sainthood, ostensibly a play on the abbreviated rank of Lieutenant (Lt.), the rank held by most enrolling officers, only added to his significance by imparting overtones of divine sanction to the act of military compulsion and service. A reporter for the *Southern Confederacy* was so taken with the play and its message that he suggested additional performances in Atlanta to convert “the numerous Peter Grays who are... getting ‘contracts and resorting to every other mode of dodging’ ye conscript.”¹²¹

Still, as creative and meaningful as these attempts tried to be their influence was most likely limited. The audiences for such plays as “The Conscript” were relatively small, and there was no attempt to publish the works for the reading public. Subscribers to the various newspapers and journals may have been larger, but there is some question

¹²¹ Milledgeville *Southern Confederacy*, April 6, 1864.

as to whether those who needed to hear the messages being given, layout conscripts and corrupt officials, for example, would have been receptive to them. But such works do speak to the growing level of public interest in an effective and efficient conscription system.

BY THE STATUTE OF KING CHARLES

One should not discount the role of the local courts in mediating conscription in the most ritualized and arguably most important interactions between civilian and military worlds. Even though the courts, by and large, upheld the power of conscription in conscript cases, it was a situation disconcerting to many Confederate officials because of the courts parallel ability to free conscripts from Confederate control. Assistant Secretary of War J. A. Campbell even accused state courts of being “interested in carrying through a [political] revolution commenced for the security of their rights and interests” by releasing every conscript who could be released by ostensibly legal means.¹²² Jefferson Davis tried to suspend the writ of habeas corpus in 1862, based, in part, on its increased use to release conscripts, but Congress refused to support his actions, fearing a martial dictatorship.¹²³ The attorney general even ordered that “any matter over which the Confederate laws operate, the State Judge or State Court can proceed no further,” but his statement carried little weight.¹²⁴ Yet the vast majority of the lower court rulings show that, far from trying to overturn or obstruct the conscription

¹²² *Official Records IV*, 2:655-56.

¹²³ Fehrenbacher, *Constitutions and Constitutionalism*, 74-81; Robbins, “The Confederacy and the Writ of Habeas Corpus,” 83-97.

¹²⁴ Fehrenbacher, *Constitutions and Constitutionalism*, 68-73 ; Robbins, “The Confederacy and the Writ of Habeas Corpus,” 86, 89.

process, local judges were much more interested in assuring that the Confederacy's claim to authority never exceeded that of the states.

By the end of 1862, conscription's political acceptability increasingly was predicated on a coordinated vision of concurrent Confederate-state powers. However, even before that time, Georgia judges were applying a similar standard to the jurisdictional relationships between military and civilian courts and between Confederate and state courts. Yet while most courts would agree with Judge Thomas when he wrote that where "the question is shall [a civilian] become a soldier... only the civil courts have jurisdiction," on the issue of *which* civil court, there was some debate. It was the general consensus that because state and Confederate courts were equal in power within a shared jurisdiction, whichever court took possession of a conscript case first retained jurisdiction throughout.¹²⁵ But such consensus did not settle the basis for such shared jurisdiction. Was it because of the inherent superiority of the states in the Confederate polity? Was it because the embryonic Confederate judicial system was unable to handle the influx of conscription cases? Or was it by Confederate fiat? Thus many judges made their claims of jurisdiction explicitly upon *per statutum tricessimo primo Caroli secundi regis* – "by the statute of the thirty first of King Charles the Second" – otherwise known as Britain's Habeas Corpus Act of 1679, suggesting that state jurisdiction could be claimed based on a shared legal legacy rather than claims of Confederate or state dominance.¹²⁶

The courts also tended to apply similar equitable standards when protecting the sanctity of the various military and governmental organizations. Georgia's judges

¹²⁵ *Oglesby v. McGuire and King*, Wilkes County Superior Court, Minute Book 1859-1867, 212-215; *Lovingood v. Bruce*, Elbert County Superior Court, Minute Book 1862-1868, 64.

¹²⁶ *Parker v. Bogan*, Jasper County Inferior Court, Minutes 1820-1868, 330-332.

routinely overruled state attempts to enroll furloughed and detailed Confederate soldiers into home guard and, after December 1863, state militia units. Some judges even ruled that bonded agriculturalists, men who had paid to stay on their plantations to grow food for Confederate troops, were under Confederate military control even though they were not officially enlisted in the military.¹²⁷ And the courts offered similar protections to militiamen and home guardsmen faced with Confederate conscription. Late in the war, Frank Williams, a twenty-six-year-old Greene County man, enlisted into the newly reorganized Georgia militia and gained a detail as a miller. When George Amos, the local Confederate enrolling officer, attempted to enroll Williams as a conscript, the Greene County Inferior Court freed the miller claiming that militia men could not be enrolled as Confederate conscripts.¹²⁸ The protections of state government officials was more clear-cut. The 1862 *Jeffers* decision, in addition to upholding the conscription law, had forbidden the Confederacy from enrolling legally elected and commissioned state officers. Throughout the war, Georgia judges released thirty-four of the forty-one known conscripts enrolled while serving in a state office. The remaining seven cases either had rulings that were not recorded or remanded the conscript to military service because the election to office came after military enrollment.¹²⁹ And similar protections applied to prevent the state militia from enrolling Confederate officials and details, as well.¹³⁰

¹²⁷ *Teasley v. McCurry*, Hart County Superior Court, Minutes 1859-1870, 326-330; *Albany Patriot*, November 10, 1864; *Jones v. Mercer*, 34 GA 27.

¹²⁸ The justices referenced an unnamed state supreme court case as precedent, *Williams v. Amos*, Greene County Inferior Court, Minutes [Book R]: 1860-1868, 133-135.

¹²⁹ See, for example, *Martin v. Norton*, Oglethorpe County Inferior Court, Minutes 1863-1869, 120, 133-134; *Humphries v. Callaway*, Thomas County Superior Court, Book 1858-1865, 555-557.

¹³⁰ See, for example, *King v. Moore*, Brooks County Inferior Court, Minute Book A, 246-247; *Bacon et al. v. Lamkin*, Columbia County Superior Court, Minutes 1860-1879, 198-199; *Williams v. Scott*, and

Still, not all judges were pleased with the extent to which such exemptions were recognized. Judge Iverson L. Harris upheld the exemption of constables and other local officials because “without sheriffs & constables the Superior, Inferior & Justices courts would [be] powerless to preserve order, execute their writs or enforce their judgments.” But he also realized that the tendency of courts to recognize most state and Confederate officers as legitimate exempts led many able-bodied conscripts to seek election purely for the exemption. In the case of Jackson Clark Thomason, a thirty-five-year-old Jasper County farmer, the judge was fully aware that “Thomason has sought to evade military service by taking refuge in a small office at this time with the trifling duty to perform and which will not taken probably ten dollars per annum during the war.” It was, he said, “too palpable to be either denied or morally extenuated.” But he was unwilling to accuse the voters of Jasper County of knowingly electing such a skulker for if they had “they would have subjected themselves justly to the implication of the want of patriotism - indeed they would have made themselves partakers in all the finesse and dodging to avoid military duty which the testimony in the case indelible fixes on Thomason.” And so the exemption of Thomason stood, as would the exemptions of numerous other constables and justices of the peace.¹³¹ It was not until the end of the war that states began to limit the exemption of state officials by drawing distinctions between constitutional and statutory offices. North Carolina’s constitution, for example, required that justices of the peace be elected, and citizens could not be denied the right to vote for

McGinnis v. Scott, Madison County Inferior Court, Minutes, Vol. C: 1845-1866, *n.p.*; *Hawks v. Moore*, Oglethorpe County Superior Court, Minutes 1857-1866, 518-520; *Ansley v. Starr*, Richmond County Superior Court, Book 22, 428-434; *Cleveland v. McGuire*, Minute Book 1859-1867, 207-212, and *Ansley vs. Starr*, 34 GA 85.

¹³¹ *Thomason v. Bogan*, Jasper County Superior Court, Minutes 1851-1870, 209-216.

the candidate of their choosing, even currently serving soldiers. So, in most cases, election as a justice of the peace brought exemption and military discharge. Constables, on the other hand, gained office either by election or by appointment when elections could not be held. Thus, a conscript winning election as constable would not necessarily be released from service because the law allowed an alternative method for filling the office from non-military candidates.¹³² Georgia's Supreme Court offered a similar ruling in early 1865.¹³³ But in none of the cases did judges waiver in their support for the protection of the jurisdictional distinctions that separated Confederate and state powers or in the inherent equality of those jurisdictions and powers.

In addition to defending the coordination of state and Confederate powers, state courts also recognized and legitimated vernacular interpretations of the conscription laws that made reasonable accommodations for the needs of local communities and brought a rough parity to the influence that the Confederacy and the states wielded in deciding how the military would be formed. Take, for example, the case of William Patterson, arrested by Lieutenant Caleb H. Camfield and ordered to report to General Howell Cobb at Quincy, Florida. Patterson claimed exemption as a Decatur County overseer and sued out a writ of habeas corpus in the courtroom of Judge Richard Henry Clark.¹³⁴ In his return to the writ, Camfield claimed that Patterson had become an overseer on December

¹³² *Smith v. Prior*, 55 NC 417; *Bridgeman v. Mallet*, 55 NC 500.

¹³³ *White and Bonham v. Sellars*, 34 GA 200.

¹³⁴ Judge Clark had originally thought the Conscript Act constitutional under the powers granted the government to raise armies for national defense although it was an "outrageous exercise of power if it was meant to be fully executed." But the state rights arguments of Governor Brown had swayed him. "I had not examined the question," he admitted in a July 1862 letter to Brown. "I have [since] carefully read the controversy between yourself, and the President, and I was made fully satisfied it was unconstitutional." Clark to Brown, July 16, 1862, Governor Subject Files.

1, 1862, *after* the passage of the two conscription acts. At the times the acts were passed, Patterson had been a merchant, a non-exempted profession. Thus, he was now liable for conscription regardless of his subsequent employment and any exemptions attached to it.¹³⁵

Legally, Camfield was correct. But Camfield failed to appreciate local precedents. Nearly 6,000 slaves lived in Decatur County, representing almost fifty percent of the county's total population. Almost all of them labored on one of the 513 farms and plantations that dotted the fertile Chattahoochee Valley. Throughout this region, the beginning of war and later conscription raised fears of what would happen to families left behind. Could women, children and old men properly supervise and control the vast numbers of slaves left behind? The citizens of Plains of Dura in Sumter County wrote that "quite a number of plantations of the country have no white male person on them. Many have but one & a few have two & those who are subject to military duty in state and confederate service must in the present crisis be called into active service."¹³⁶ And would slaves take advantage of the war to rebel against their master's family? "The idea seems to have gotten out extensively among them [the slaves] that they are all to be free," wrote William Harrison, of Calhoun County, "that Mr. Lincoln and his army are coming to set them free, to kill all the white people and set them free, that they are to assist Lincoln in killing all the white men and boys."¹³⁷ The refugee slave population in Thomas County grew so large that citizens convinced President Jefferson Davis in 1863

¹³⁵ *Camfield v. Patterson*, GSCCF, A3779; *Camfield v. Patterson*, 33 GA 561.

¹³⁶ Citizens of Sumter, Webster, & Marion Counties to General H. C. Wayne, July 31, 1863, in Governor Joseph E. Brown Petitions, RG 1-1-1, Georgia Department of Archives and History.

¹³⁷ Mills Lane, ed., *Georgia: History Written by Those Who Lived It* (Savannah, GA: Beehive Foundation, 1995), 141.

to temporarily suspend the conscription of overseers in that county.¹³⁸ It was in this context that enrolling officers in Decatur County had made exceptions to the requirements for validating overseer exemptions. The relative value of one soldier amongst the thousands already in service weight little compared to that of one more overseer to control a slave population that already outnumbered indigenous whites and only got larger as coastal refugees brought more slaves westward. Camfield, however, was obviously unaware of this and had to be reminded by Judge Clark that “[i]t appears to have been the practice of conscript officers of the Government to recognize this employment [overseers], though entered into subsequent to the date of the conscript Acts, and before enrollment, as a good cause of exemption.”¹³⁹

Yet, lest the actions of the court appear too self-serving, the records also show that the intervention of the lower courts not only worked to the delight of civilians wary of military service but to the benefit of the military itself since they mediated the actions of officers who might otherwise tarnish conscription’s fragile image. This was a much more subtle achievement of the courts, one that most civilians failed to recognize, focused as they were on the more obvious successes and failures of the court. Anti-conscription people praised the numbers of conscripts freed from Confederate control. Pro-conscription people praised *Jeffers* and other pro-conscription rulings. The impoverished complained about increasing legal fees – few could afford the ten dollar court cost plus attorney’s fees necessary to file a writ – while almost everyone

¹³⁸ Columbus *Weekly Enquirer*, June 23, 1863.

¹³⁹ Clark’s ruling would be overturned by the Georgia Supreme Court. This appeal decision, however, does not negate the fact that local vernaculars modified and directed local enrolling activities. 33 GA 561; Albany *Patriot*, May 29, 1863; Milledgeville *Southern Recorder*, June 2, 1863.

complained about the opportunism of lawyers on the make.¹⁴⁰ As Senator Benjamin H. Hill noted in 1864, “some of these [conscripts] employ lawyers (falsely so called,) who, if they do not get the final order as desired, can, at least, delay final action -- the fee often being measured by the length of the delay. . . Instances have been reported to me of enrolling officers and medical boards visiting and directing applicants for exemptions, details, etc., to go to the lawyers of their [the enrolling officer’s and medical board’s] own naming to make out their application and appeals. Those who complied and paid well found easy treatment.”¹⁴¹ But every conscript freed from military duty also represented an enrolling officer reproached for actions offensive to the law and public sentiment. Men such as Captain Joseph J. Chaires of the Eleventh Florida Infantry and Quitman business man James B. Creech, who falsely imprisoned and enrolled seven men as conscripts in South Georgia, or the conscription broker simply known as Cromarty, who kidnapped several individuals in Thomas County to barter or sell to local enrolling officers, had their activities sharply curtailed by local courts who recognized not only that these men acted illegally but that they threatened to undermine public support for conscription as a whole.¹⁴²

Thus the settings in which conscription played out were varied and complex, from formal offices and courtrooms to deceptively casual saloons, billiard halls, churches and

¹⁴⁰ *Oxford v. Rylander*, Bibb County Superior Court, Minute Book 10, 224-225.

¹⁴¹ Milledgeville *Southern Recorder*, November 1, 1864.

¹⁴² Dougherty County Superior Court, Minute Book L, 1051; Thomas County Superior Court, Minute Book 1858-1865, 227, 481-82; Thomas County Superior Court, Minute Book K, 224, 231, 482; J. J. Chaires to Lieut. C. Lumpkin, October 1, 1863, in CSR, Joseph J. Chaires; General Henry C. Wayne to Major Thomas Arrington, Adjutant General’s Letter Book, no. 20:142; Thomas N. Arrington to Nathan [], November 5, 1863, in Confederate States of America, Executive Papers, Box 2: Miscellaneous Letters, June-December 1863; Brooks County Inferior Court, Minute Book 1, 187-90; Brooks County Superior Court, Minute Book A, 238.

homes. Each stage was important, for as much as conscription's authority derived from constitutional mandate it owed equal debt to the power granted it by citizens themselves. Without shared authority, shared responsibility and shared accountability, the policy of conscription would not have worked nor would it have survived. The accusations of military despotism would have been validated. Instead, throughout the war conscription steadily embraced terms, ideas and practices more readily acceptable to the public at large, concepts like *militia* rather than *army* and *local* rather than *national*. Yet even as Southerners moderated conscription, state and national leaders found their efforts to be incomplete. In some cases, conscription's settlements posed new opportunities, opportunities that gave Georgia's wily governor a chance to begin resurrecting elements of state power that conscription ostensibly had taken away.

CHAPTER FIVE
ENTIRELY UNDER MY SUPERVISION AND CONTROL

As Confederates navigated the ideological and organizational challenges laid out by President Davis and Governor Brown, it appeared conscription would settle relatively peaceably into the Confederate political economy. The redefinition of the army as a militia appeared to be an acceptable, albeit contested, accommodation between conscription and states' rights theory. Exemptions, although admittedly exploited and abused by many, provided a means by which the home front might retain a semblance of normality. The exemption of justices of the peace and militia officers preserved the organizational and political bounds of the states against Confederate intrusion while the clarification of Confederate citizenship in the debate over alien exemptions reinforced the primacy of state over national allegiances. Confederate military service remained rooted in militia liability, and the influence wielded by local elites over Confederate officials assured that national power could not be exerted effectively without local support.

Paralleling this accommodation, however, were the continuing struggles of Governor Brown and President Davis to elaborate their constitutional visions. Brown initially had accepted conscription, convinced that Davis would come to his senses or that the Georgia courts and legislature would back his opposition. But none of these had come to pass. Davis remained adamant in his conviction that conscription was an expression of independent national army powers, not a conditional exercise of militia powers. The state supreme court issued an unequivocal ruling on the constitutionality of conscription based on Davis' own arguments. And the General Assembly either remained noncommittal lest it appear anti-patriotic or couched its opposition in as much anti-

Brown as anti-conscription rhetoric. Thus it remained for Brown to exploit the suppleness with which the Confederate government approached conscription and reassert the state's military authority within the accommodating framework built by the rest of the Confederacy.

Meanwhile, a series of battlefield defeats would force the Confederate government to make difficult decisions. The increased demand for troops would lead the government to reconsider its prior agreements and accommodations. Exemptions would have to be limited, substitution eliminated, and the power of the Confederate army extended beyond the militia strictures that had contained it up until this time. Most Confederates viewed the government's earlier willingness to accept these accommodations as political and, in some cases, legal contracts that defined the government's relationship to the population, so for the government now to renege on its agreements was interpreted as a crucial betrayal. The result would be an increase in the level of distrust between the government and the people and a breakdown of the agreements that had allowed conscription to exist.

“THE ELOQUENCE OF SILENCE IS EVIDENTLY UNAPPRECIATED”

Even before the *Jeffers* decision ended hopes for judicial nullification, Governor Brown began laying the foundation for legislative nullification and the rebirth of a state military presence. Although many people had accepted the law and were aiding in its execution, the removal of vast numbers of men and weapons from countryside and plantation had created innumerable hardships. In particular, women, children, and the elderly lay dangerously exposed to the potential for slave uprisings. Some even speculated that escaped slaves, united and strengthened behind Northern blacks and their

white abolitionist masters, might return to the South as marauding soldiers. “In this condition of our people,” Brown warned the Georgia General Assembly in his annual message on November 6, 1862, “a general insurrection, even at the most exposed point, might be productive of scenes of misery and horror which no language can describe.”¹ To prevent this bloodshed, Brown asked for “the enactment of such laws as will protect every military and other State officer in his position” as well as the expansion of the state militia to include white men between sixteen and sixty. Such laws would allow Brown to continue his expansive model of the state militia, provide an additional pool of eligible militiamen, and preserve the officer corps by statute not just executive fiat amid an expanded conscription. But it was not a popular proposal. Adjutant General Henry C. Wayne warned the governor that any law expanding militia age liabilities would be in violation of the Uniform Militia Act of 1792, adopted by the Confederacy in 1861, which had established national militia age guidelines of eighteen to forty-five.² Brown, feeling it his duty to take any necessary step to protect the state, rejected the advice and asked for the expansion anyway.³ Without these changes, he would lose all control over the state’s militia. It was pure demagoguery, but it served Brown’s purposes since conscription under the second act now posed physical as well as political dangers.

¹ CRG, 2:274.

² Henry C. Wayne to Joseph E. Brown, no date, in A&IG Letterbook 12.

³ On December 3, the House had presented a bill to expand the age of militia liability in the state to include white males aged sixteen to eighteen and forty-five to sixty to be organized into a reserve militia to prevent insurrection among the slave population. Unlike the Bridge Guard units already organized and the State Line units that would be authorized in mid-December, this was to be the first step toward the eventual reorganization of a state militia. It was a controversial bill and one that met with heated opposition not only from those who saw it as a violation of the Militia Act of 1792 or interpreted conscription as dismantling the militia but from opponents of conscription who saw a narrowly defined militia as the best weapon against the continuation of the Conscript Act. Macon *Daily Telegraph*, December 6 and 13, 1862; Bragg, *Joe Brown’s Army*, 25-28.

An additional push for legislative nullification came in a separate and much longer address given later that same day. Tapping the potent metaphorical values of race and subjugation, Brown was careful to paint a bleak picture of Confederate life under the conscription:

“[Who] supposed, when we entered into this revolution for the defense of *State Rights* against federal aggression, that, in a little over one year, the person of the free-born citizens of the respective States would be regarded and claimed, while at home in pursuit of their ordinary avocations, as the vassals of the central power, to be like chattels, ordered and disposed of at pleasure, without the consent, and even over the protest of the State to which they belonged...”⁴

Under the threat of such oppression, Brown had felt it his duty to defend the state in the absence of the General Assembly during its summer recess, and, once the assembly convened, to submit “the question of the *surrender* [of the state] to the representatives of the people.” It was now up to the legislature “to adopt measures and give proper directions to this question.”⁵ Would the governor be allowed to retain control over a skeletal but expandable militia under conscription, or would conscription be rejected and the state restored to military independence?

The General Assembly was confused about how to handle the governor’s message. In the House, one congressman tried to table it, another thought to submit it to the Judiciary Committee since it dealt with legal affairs, another thought it should be sent to a select committee, and yet another felt it should go the Committee on the State of the Republic because it dealt with the political status of the state. In the Senate, similar questions arose. Brown probably expected such confusion, hence his desire for a

⁴ CRG, 2:285.

⁵ *Ibid.*, 2:302. The Macon Telegraph opposed the governor’s message as a blatant call for nullification. *Macon Daily Telegraph*, November 8, 1862.

favorable high court ruling to settle the legal aspects and keep the assembly focused on nullification. It was a need that became even more important when one senator suggested the General Assembly bypass the entire question and declare in “full force” the Conscript Act without further state adjustments.⁶ And when A. H. Kenan, fresh from Judge Harris’ courtroom where the *Jeffers* case was being argued, gave a highly praised speech in favor of the conscription acts before a joint session of the legislature, it became obvious to Brown that a favorable Supreme Court ruling was crucial to a favorable legislative decision.⁷

But the *Jeffers* ruling issued later that month, strongly worded as it was, made legislative action moot. The Senate dropped its proposal to declare conscription in full force, and both houses looked ready to drop any further discussion.⁸ The court had ruled, and the General Assembly was in no mood to rake the coals. Brown would have to find another route to show that, while conscription arguably might be constitutional, it was imprudent for state security. Proof was not hard to find.

That weekend, Brown received two important pieces of information. The first was a notice from Brigadier General H. W. Mercer in Savannah that Mercer was no longer authorized to keep slave labor under Confederate control for the construction of Savannah’s coastal defenses. If Savannah were to be defended, Georgia would need to furnish the labor itself.⁹ Ignoring the fact that what Mercer needed was common, not military, labor, Brown played upon the state’s experience with the State Troops under the

⁶ Macon *Daily Telegraph*, November 10, 1862.

⁷ *Ibid.*; Richmond *Daily Enquirer*, November 22, 1862.

⁸ Macon *Daily Telegraph*, November 13, 1862.

⁹ *Ibid.*, November 12, 1862; CRG, 2:313-314.

first conscription act to argue that once again the Confederacy was abandoning Savannah. The State Troops had overseen defensive preparations at Fort Pulaski earlier in the year, but they had been removed by the first act. Only a short time after that, Fort Pulaski had fallen to the Union army. Now the second act, by making all militia-aged men liable to Confederate duty, prevented the governor from calling out the militia to defend the city. But the assembly refused to take the bait. Rather than oppose conscription, they authorized the governor to impress the state's slave population to meet the labor needs.¹⁰

Brown also received word that black Union troops had landed in Camden County. As part of the troop realignment that earlier had placed the State Troops in charge of Savannah's defenses, Confederate authorities had removed artillery batteries and infantry units stationed on most of the state's barrier islands. Communities like St. Mary's and Brunswick, St. Simon's and Jekyll Islands, which had guarded the coastal waterways, had been abandoned, allowing Union forces to march in. St. Simon's Island, which once had helped in the defense of Brunswick Harbor, had become a contraband colony of approximately 400 escaped slaves, guarded by black Union pickets and the Union navy. St. Mary's on Cumberland Sound at the Georgia-Florida border, which had petitioned President Davis in April 1861 of its precarious position, was now populated mainly by women, children and old men and sat virtually unprotected save Camden County's rapidly dwindling militia.¹¹

Exploiting this weakness, Union Brigadier General Rufus Saxton dispatched the captured Confederate steamer *Darlington* on October 28, 1862, from Beaufort, South

¹⁰ *Macon Daily Telegraph*, November 12, 1862.

¹¹ *Official Records* I, 6:235-236, 379-380, 14:347-348, 366, 374-376.

Carolina, to Fernandina, Florida, thence to sail northward through the barrier islands attacking Confederate pickets and enlisting coastal slaves into the Union army. On Monday, November 3, the *Darlington* sailed into Cumberland Sound, up the Bell River to its intersection with the Jolly River and then back down the Jolly past St. Mary's to King's Bay, all the while driving in Confederate pickets, burning salt works and freeing slaves.¹² Seven days later, the *Darlington*, now joined by the gunship *Potomska*, continued its course northward and destroyed several plantations around Sapelo Sound north of Darien. Meanwhile, a Union transport ship, the *Neptune*, and an escort gunship, the *Mohawk*, landed at St. Mary's and after a brief skirmish burned nearly half the town.¹³

For Brown, this was the proof he needed to show how conscription impeded his ability to defend the state. For as black Union troops raided St. Mary's on the fourth, two Confederate cavalry units stationed in South Georgia were too far away to help. Camden County militia Colonel Henry H. Floyd had requested permission to organize the approximately forty men left in the county into a fresh militia company, but Brown, feeling his hands tied by the Conscript Act, instead referred the message to the General Assembly. Decrying his "embarrassing condition" in not being able to rally the state's militia because of conscription and the "decision of our own Supreme Court, rendered under heavy outside pressure," the governor asked for the assembly's opinion as to the limits of his once authoritative militia powers.¹⁴

¹² Ibid., 14:189-192.

¹³ Macon *Daily Telegraph*, November 14 and 15, 1862, Philadelphia *Inquirer*, November 24, 1862, *The Liberator*, December 12, 1862.

¹⁴ CRG, 2:317-322; Macon *Daily Telegraph*, November 15, 1862.

As with the *Jeffers* case, Brown expected a favorable ruling. The Senate was already considering a resolution allowing him to organize the militia as needed for coastal defense.¹⁵ And word of the Camden raid led several newspapers to endorse Brown's call for expanded militia laws. "Then," the editor of the Macon *Telegraph* wrote, "the governor will have a resource from which to repel invasion, or organize such State force as may be necessary, and the alleged conflict between State and Confederate authority will be removed."¹⁶¹⁷ Linton Stephens, too, endorsed the governor's call. Claiming to have received requests for militia from the Sapelo River area of McIntosh County where the *Darlington* had raided several plantations and freed numerous slaves, Stephens said it was the governor's duty to meet these demands. If *Jeffers* or any other court decision denied that power, it should be ignored. The *Jeffers* decision was based on a particular set of circumstances in a particular case, and the legislature was free to either accept or reject that ruling as new circumstances demanded. It, as a coordinate branch of government, was not beholden to the courts and should look favorably on the governor's proposals.¹⁸

But Brown's seeming opportunism led many to question the request. Was it merely another attempt to provoke needless conflict over an already settled issue?¹⁹

¹⁵ Macon *Daily Telegraph*, November 15 and 26, 1862.

¹⁶ *Ibid.*, November 15, 1862.

¹⁷ *Ibid.*, November 12, 1862.

¹⁸ *Ibid.*, November 14, 1862.

¹⁹ David G. King to Joseph E. Brown, November 15, 1862, in Governor's Subject Files; Macon *Daily Telegraph*, November 15, 1862; Avery, *History of the State of Georgia*, 250.

Brown was not the only politician to exploit the conscription debate. At a joint session of the General Assembly on November 18 held to elect a new Confederate senator from Georgia, Herschel V. Johnson, who had moderated his opposition to the Conscript Act after the *Jeffers* decision, appeared to be the top contender. Fearing a moderate voice would gain access to Congress, Lewis Neale Whittle of Macon

General Mercer himself denied that the militia was needed to protect the coast.²⁰ And if the militia was needed, either the conscription acts negated the organization, in which case, Congressman Thomas Banks Cabiness asked, how does one call out a militia that does not exist, or if the militia did still exist, why not avoid conflict by calling out only those men not enrolled as conscripts?²¹

The assembly's response was so raucous that the Macon *Telegraph*, which rose as the voice of Georgians troubled by the legislature's procrastination, noted on November 17 that "the eloquence of silence is evidently unappreciated."²² By the twentieth, its editors claimed that the "next most absorbing question here, to that of when the war will close, is, when the House will have disposed of the Camden raid [resolutions]."²³ "It is laughable to see the results so far of the discussion [on conscription]," observed the *Telegraph*, "only to fix opinions the more firmly."²⁴ Two days later, it reported that the

demand that each of the twelve candidates be polled as to their stance on the Conscript Act. Although most members of the assembly discounted the demand as an attempt to discredit Johnson, it reflects the kind of political potency conscription held even after it had passed the test of constitutionality.

During this joint session, Lucilius H. Briscoe of Milledgeville read to the assembly a private letter from Johnson in which Johnson stated his disapproval of the Conscript Act and the *Jeffers* decision, but also said he would abide by the law and the decision "to preserve harmony between the respective Governments." Following his election, Johnson addressed another joint session in which he laid out three options in dealing with the Conscript Act: acquiescence, nullification and secession. The latter two were improper during a time of war, so he acquiesced, but registered his disapproval so that his acquiescence could not be used as precedent to justify future actions by the Confederate government. *Macon Daily Telegraph*, November 18 and December 7, 8, 1862; *Savannah Daily Morning News*, November 24, 1862.

²⁰ *Macon Daily Telegraph*, November 14, 1862.

²¹ *Ibid.*

²² See for example, *Macon Daily Telegraph*, November 8, 12, 13, 14, 15, 19, 20, 22, 28, December 2, 4, 17, 1862.

²³ *Ibid.*, November 19 and 22, 1862.

²⁴ *Ibid.*, November 22, 1862.

resolutions would simply be dropped – as they were by a vote of sixty-eight to forty-eight – and “a better disposition of them could not be made.”²⁵

“YIELDED ALL I COULD YIELD”

The lack of consensus on gubernatorial powers under conscription mirrored Georgia’s general lack of consensus on conscription itself. While the assembly engaged in its political gamesmanship over the Camden resolutions, a joint Committee on Confederate Relations hammered out a response to the governor’s annual message of November 6. The committee's minority report openly supported conscription as a legitimate exercise of delegated powers and urged Georgians to accept the *Jeffers* decision and acquiesce to the enforcement of the law. But the majority report supported the governor. The Confederate government could raise armies only with the consent of the states, and any legislation authorizing compulsory service without the cooperation of the states was “unconstitutional and within [the state legislature’s] power to be declared void.” However, as strong a stance as the report was, it was moderated by the same kind of accommodation with which others had faced conscription. “While the foregoing resolutions express our convictions,” the majority wrote, “we are still willing to leave the conscript acts undisturbed in their operation, reserving to the State such rightful remedies as may be demanded by future exigencies.”²⁶

²⁵ Ibid., November 29, 1862.

²⁶ *Journal of the Senate of the State of Georgia, at the Annual Session of the General Assembly, Begun and Held in Milledgeville, the Seat of Government, in 1862* (Milledgeville, Ga.: Boughton, Nisbet & Barnes, State Printers, 1862), 119-121.

Which report would the full assembly endorse?²⁷ Each had its supporters. Senator Ware proposed a resolution that the General Assembly officially and publicly endorse the supreme court ruling, while Congressman Strickland, of Hart County in the north Georgia mountains, offered a resolution requesting the president to suspend the operations of conscription in Georgia based on the General Assembly's opposition to *Jeffers*.²⁸ And there was no little controversy about supporting either report as the *Savannah Republican* accused Brown's supporters of packing the committee with anti-conscription men and tainting the process. In the end, neither house wished to take a firm stand.²⁹ The resolutions sat unaddressed until the second week of December, and, even then, Senator George A. Gordon regretted that he had to resurrect the resolutions from the "tomb of the Capulets' beneath the Secretary's desk" to make an impassioned speech against the constitutionality of the act but for acquiescence to the law.³⁰ Senator David Vason's proposed legislative statement resolved that "without assenting or dissenting from the constitutionality or expedience of said conscript laws, the General Assembly of the State of Georgia waives all objection to the operation and execution of said laws," and, echoing Governor Brown's statement to the president in his first letter of protest back in May, "leaving the question of constitutionality... to the people at a time when it may less

²⁷ For President Davis, it did not matter. The essence of both resolutions was that the legislature would not endorse Governor Brown's attempts to nullify the Conscript Act. Seizing the opportunity, Davis dispatched his aide-de-camp William M. Browne, a Georgian, to meet with the governor and present to him the president's wishes that "the decision of the supreme court of Georgia may be regarded as conclusive of the constitutional question presented," thus freeing the path for a more cooperative relationship. *Official Records IV*, 2:211-212, 216-217.

²⁸ *Journal of the Senate of the State of Georgia, 1862*, 139; *Macon Daily Telegraph*, December 3, 1862.

²⁹ *Savannah Republican*, date unknown, quoted in *Macon Daily Telegraph*, December 8, 1862.

³⁰ *Speech of Hon. George A. Gordon, of Chatham, on the Constitutionality of the Conscription Laws, Passed by the Congress of the Confederate States, delivered in the Senate of Georgia, on Tuesday, 9th of December, 1862* (Atlanta, GA: Printed at the Office of the Daily Intelligencer, 1862), CI, reel 91, no. 2755-1.

seriously embarrass the Confederacy.”³¹ Even when Brown tried to ramp up the rhetoric once again by protesting the inability of Georgia troops to elect their own officers, the Senate refused to act, believing that any response would only provoke yet another conflict with the president.³² The House postponed discussion on the resolutions on December 9 and, following a rousing three-hour speech by Confederate Senator Benjamin H. Hill before the General Assembly on the evening of December 11 in favor of conscription, never raised it again.³³

Brown’s request for an extension of the upper age of militia liability from forty-five to sixty also failed.³⁴ For anti-conscription politicians, the claim that the Confederacy was damaging state security by co-opting state militiamen was a key component of the constitutional argument against conscription. But if militia age limits expanded beyond those of the conscription acts, the Confederacy could rightfully counter the argument by claiming it was impossible to co-opt the entire state militia and thus did little to diminish state security. Expansion would only undermine the constitutional argument. Thus, the militia extension bill faced what the *Macon Telegraph* called the “anti-conscriptive scalpel” of Brown’s own men who sought to confine the dimensions of the state militia to match those of the Confederate army and make the law as abhorrent as possible to state prerogative. Besides, it was contradictory, possibly even hypocritical,

³¹ *Journal of the Senate of the State of Georgia, 1862*, 259-260.

³² *Macon Daily Telegraph*, December 16, 1862.

³³ *Ibid.*, December 11, 19, 1862; *Speech of Hon. B. H. Hill, delivered before the Georgia Legislature in Milledgeville, on the evening of the 11th December, 1862* (Milledgeville: R. M. Orme & Son, Printers, 1863), CI, reel 91, no. 2769.

³⁴ *Macon Daily Telegraph*, April 9, 1863.

many state legislators thought, for the governor to oppose conscription, ask for nullification, and then move to accommodate it.³⁵

The assembly's refusal to extend militia ages and nullify conscription did not mean a rejection of Brown's argument. Dade County Representative Robert H. Tatum's claim that the governor could call out all *militiamen* not enrolled by the Confederate government showed that at least some members accepted Brown's claim of conscription as a militia-based power. Otherwise, Tatum would have been more likely to claim that conscription called *men*, as under the army powers claimed by President Davis.³⁶ Nor did it mean a rejection of the need to accommodate local defense needs with state forces. The evidence supplied by the Camden raids in early November 1862 had been more than enough to demonstrate the Confederacy's inability to defend every Georgia position. Georgia already had two companies of Bridge Guard units operating in north Georgia, and the legislature had already agreed to use these companies as the core of two full regiments of state guard troops known as the Georgia State Line.³⁷

But the governor had not wooed the assembly fully into his corner. Brown may have been quick to boast that the legislature had "condemned [conscription] and repudiated the binding force of the acts of Congress" by forming the State Line, but the new organization offered neither the protection from nor the repudiation of conscription

³⁵ *Ibid.*, December 13, 15, 1862.

³⁶ Tatum served as a delegate to the Georgia secession convention from Dade County in 1861. Tradition holds that Tatum, angry that the convention was taking too long to decide to secede, took his county out of the Union independently and created the "State of Dade." The "state" did not official rejoin the Union until July 4, 1945. E. Merton Coulter debunked this story in his "The Myth of Dade County's Seceding From Georgia in 1860," *Georgia Historical Quarterly* 41, No. 4 (December 1957), 349-364.

³⁷ Bragg, *Joe Brown's Army*, chap 2, and 23-28.

he claimed of it.³⁸ And such protection and repudiation had not been the goal. While the State Line did offer the additional military resources everyone agreed the state needed, it also offered a way to weaken the governor before the 1863 state elections by stripping him of the appointment powers he had heretofore enjoyed. Criticism of Brown's protection of militia officers was still strong and many claimed that Brown was using his patronage to appoint political allies to key (and sometimes fraudulent) militia posts to protect them from conscription. From the wording of the State Line legislation, it was clear that the new regiments were to be formed under Confederate, not state, laws, and as such were not to be considered state militia. Brown would not enjoy the same freedom to organize and reorganize to make room for new political appointees as he had in the past. There had even been an unsuccessful move to require Senate approval of all non-elective military appointments, meaning that enlisted men casting ballots and the Senate would have final say on State Line officers, not the governor.³⁹

The legislative assault continued on April 16, 1863, one year to the day after the passage of the first Conscript Act, when the House of Representatives voted to abolish the state militia.⁴⁰ The ballot was on a reiteration of Brown's earlier militia expansion bill, but under the guidance of opposition member Representative C. G. Cabiness, it had become a tool to weaken the governor by stripping him of his "pets," as militia officers had become known. Rather than extending existing militia liability to create a force for domestic policing, Cabiness' bill proposed an entirely new force composed of men

³⁸ Brown to Dr. O. R. Broyles, January 22, 1863, in Joseph E. Brown Papers.

³⁹ Bragg, *Joe Brown's Army*, 25-28.

⁴⁰ Only ten days earlier, the General Assembly had questioned the continuance of the state's Adjutant and Inspector General's Office lest it conflict with the operations of conscription. CRG, 2:437-439; Macon *Telegraph*, April 18, 1863.

between the ages of eighteen and sixty. The core of these men would come from existing militia officers stripped of their commissions and men too old for Confederate service. Brown could only interpret this as the all-out assault on his powers that it was and promptly vetoed the bill.⁴¹

Earlier in the year, he had written to longtime friend Dr. O. R. Broyles of South Carolina that he had “yielded all I could yield.”⁴² The Confederacy might well be on its way to accepting conscription, but Brown was not. He had acquiesced in a law he felt patently unconstitutional. He had granted agents of what he considered a foreign government nearly free reign to command citizens of his state. He had suffered the loss of his enlisted militiamen. He had bitten his tongue when Confederate agents arrested state officials within the very halls of the state government. Now political opinion appeared to be shifting in favor of a Confederate militia under a bastardized states' rights rather than supporting the confederated militia-army true states' rights envisioned. And even his own state legislature denied him the means to regain the militia he had watched waste away. Enough was enough. It was time to draw a line across which neither President Davis nor the Confederate military could cross. It was time to start reclaiming the rights and powers that had been weakened by Confederate and state action.

SO FAR AS THE LAW ALLOWS

The path to reclamation began in Chancellorsville, Virginia. Around noon, May 1, 1863, Brigadier General Paul J. Semmes formed his brigade into offensive lines just

⁴¹ Savannah *Daily Morning News*, April 23, 1863, and May 12, 1863; Macon *Telegraph*, May 4 and 14, 1863.

⁴² Joseph E. Brown to Dr. O. R. Broyles, January 22, 1863, in Joseph E. Brown Papers.

south of the turnpike connecting Chancellorsville and Fredericksburg. The 51st Georgia, under the command of Colonel William M. Slaughter, took the right flank, with the 10th, 53rd, and 50th Georgia Regiments arrayed to its left across an open field. Across the road to their right, Brigadier General Billy Mahone's 12th Virginians pursued Union cavalry and skirmishers back towards Chancellorsville while directly in front General George Syke's United States Regulars, the main Union assault force, steadily advanced.⁴³ Semmes ordered the 10th Georgia forward across the field as skirmishers, while the 51st laid down an enfilading cover fire. For a time, field and road were covered with a thick acrid smoke, visibility dropped, and few could see the Union response. But they could hear it. The artillery barrage came in low enough to force some of the Georgians to the ground.

Colonel Slaughter, along with his friend and aide Private Jesse S. Mangham and Company B's Captain Daniel Absalom Joshua Sessions had taken their places at the head of the 51st, and as soon as the first shells hit they dove for cover.⁴⁴ Slaughter was slow to get up, stunned as we was by the closeness of the blast, and he settled on one knee, his right hand draped over his right thigh as he waited for his head to clear. He never saw the second shell. A single piece of Union solid shot hit Captain Sessions, cutting him in half,

⁴³ Henderson, *Roster*, 5:370-441; *Macon Weekly Telegraph*, June 10, 1863; *Official Records I*, 25:1:834; Edward J. Stackpole, *Chancellorsville: Lee's Greatest Battle* (Harrisburg, PA: The Stackpole Company, 1958), 184-186; Ernest B. Furgurson, *Chancellorsville, 1863: The Souls of the Brave* (New York: Alfred A. Knopf, 1992), 124-126.

⁴⁴ A tribute offered to the Dougherty County Superior Court refers to Mangham as Moughon. *Macon Weekly Telegraph*, June 10, 1863.

then decapitated private Mangham before hitting Slaughter in his right arm and leg. Slaughter died several hours later.⁴⁵

During the three-day battle at Chancellorsville, the 51st Georgia lost 175 men.⁴⁶ In total, almost 13,000 Confederates were killed, wounded, or declared missing, including the celebrated General Thomas J. “Stonewall” Jackson.⁴⁷ But the South was victorious, and its success led Robert E. Lee to one of his most fateful decisions of the war. It would also provide Georgia’s governor with the opportunity he so desperately wanted to begin expanding the states’ role in raising troops for national service, reclaiming the role conscription had taken away.

Elsewhere, the Confederate army was not faring so well. In the west, Confederate forces had begun the long siege defense at Vicksburg, the key to Southern control of the Mississippi River.⁴⁸ Along the Atlantic coast, Union warships tested the defenses at Savannah and Charleston. And in Tennessee, Confederate General Braxton Bragg was locked in a series of bloody and inconclusive battles with Union Major General William Rosecrans.⁴⁹ Some in the War Department thought it wise for Lee now to move to Bragg’s relief, preventing Rosecrans from breaking through to Chattanooga and Atlanta, but Lee refused. Instead, he wanted to press north into the United States, perhaps to threaten Harrisburg, Philadelphia, Baltimore, or Washington. The war would end sooner,

⁴⁵ Savannah *Daily Morning News*, May 12, 1863; Macon *Weekly Telegraph*, June 10, 1863; *Official Records* I, 25:1:834.

⁴⁶ William F. Fox, *Regimental Losses In The American Civil War, 1861-1865* (Albany, NY: Albany Publishing Company, 1889), 568.

⁴⁷ Eicher, *The Longest Night*, 488.

⁴⁸ *Ibid.*, 438-443.

⁴⁹ *Ibid.*, chap. 14.

he argued, if the South proved its mettle, pressed its initiative, scared the Northern public, gave support to the Northern peace movement, and, perhaps, spurred foreign recognition of the Confederacy amid renewed hopes for victory.

While Lee's invasion relieved military pressure on Virginia by drawing Union troops northward in pursuit, it did little to protect the other Southern states, especially Georgia where Union soldiers had already made late April raids on the Western and Atlantic Railroad and had reached into the interior of the state as far south as Rome.⁵⁰ To compensate for the reduced Confederate military presence, Secretary of War James A. Seddon – the Confederacy's fourth such officer – issued a June 6 "suggestion" that Southern governors organize six-month Confederate troops for local defense. "The numerically superior armies of the enemy," he explained, "confronting us in the field at all the most important points render essential [a] greater concentration of our forces, and their withdrawal in a measure from the purpose of local defense."⁵¹ The states would have to pick up the slack.

The secretary set Georgia's quota at 8,000 men and specified two Confederate laws under which the men were to be raised. The first, dating back to late 1861, organized independent volunteer companies and authorized the president to call them into or out of service at will. The troops raised under this act, the men Seddon thought the "best qualified for service" outside the conscription laws, would be organized for general state security for a term of six-months beginning August 1, 1863. The second law, passed in October 1862, organized small squads of volunteers – some no larger than

⁵⁰ Ibid., 447-449; CRG, 2:447.

⁵¹ CRG, 3:339-346.

twenty men – over the age of forty-five for domestic policing and neighborhood defense units. The two laws were to be supplemented by “the apprehension at least of a [state] draft [which] would aid powerfully patriotic impulses.”⁵²

But Brown refused to cooperate. Local defense troops raised under the two Confederate laws would be considered Confederate troops. As Confederate troops, by law, they would have to be raised from men outside the control of the conscription laws, those under eighteen and over forty-five years of age. And state officers, Brown claimed, could not enroll men in those age brackets. State militia laws would not allow it.⁵³ The governor could have circumvented the law and raised Seddon’s troops by volunteering, but Brown was having problems finding recruits for the State Line.⁵⁴ In addition, on May 26 he had issued his own call for local defense volunteers, at least one company in each of 132 counties.⁵⁵ If the governor was having problems filling two State Line regiments, or roughly twenty companies, in north Georgia, how could he organize the 132 local defense companies for which he had called plus the additional 8,000 men requested by Seddon? In addition, it was one thing for the Confederacy to accept the services of state local defense forces, something that it had been doing for some time. It was entirely different for the Confederacy to create a Confederate local defense force to usurp the remaining duties of state defense.

Brown countered by offering Seddon his previously raised local defense troops as a portion of the state's quota. Thus, he could appear the dutiful Confederate governor,

⁵² Ibid., 3:339-346.

⁵³ Ibid., 3:347-348.

⁵⁴ Brown to H. V. Johnson, January 2, 1863, in Joseph E. Brown Collection.

⁵⁵ CRG, 2:447-448.

retain charge of the enlistment process, and tender the 8,000 men, organized and with state-commissioned officers. Although the men would be for local defense, it would be national service, and Brown would gain influence within Confederate military circles.⁵⁶

Seddon, however, was uncomfortable with the idea. State-raised troops might not qualify for prisoner exchanges should they be captured by the Federal army. It was in their best interest to be Confederate-raised.⁵⁷ Yet he saw no other choice but to accept Brown's offer. Given the turmoil that had broken out among the State Troops in Savannah following the first conscription act, Seddon dared not risk a repeat by breaking apart existing state units and reforming them as Confederate. He also did not need a renewal of Brown's antics while Vicksburg hung the balance and Lee moved ever more deeply into enemy territory. Besides, Brown was offering to give volunteers a choice of organizing under either state or Confederate law. At least some of the guards would be guaranteed exchange privileges.⁵⁸ So, he agreed to Brown's offer as long as the governor could "organize State volunteer organizations of equal duration and equal liability to call" as Confederate-raised troops. If so, "they will be cheerfully accepted and put on like footing as constituting when in service part of the Provisional Army."⁵⁹

Under this arrangement, Brown not only met the state's quota, he exceeded it. No one was spared. Every militia officer, every civil officer, every able-bodied man in the state was to assemble on July 1, 1863, to organize into companies of local defense. All recently organized companies carrying Confederate papers were to report immediately to

⁵⁶ Ibid., 3:347-348.

⁵⁷ Ibid., 3:348-349.

⁵⁸ Ibid., 3:354.

⁵⁹ Ibid., 3:348-358, quotes on 357-358.

either Brown or Adjutant General Wayne with their muster rolls. All military posts, state and Confederate, were to do the same. Brown even claimed authority over all men between the ages of forty and forty-five – men subject to but not yet called for under the second conscription act.⁶⁰ In all, the governor would report over 15,000 men raised, not counting those brought in by the draft.⁶¹

There was concern over the manner in which the governor had accomplished his goal. Colonel George W. Raines, commander of the Confederate arsenal at Augusta, complained that the governor was accepting militia-sized companies of forty-four rank and file rather than larger Confederate-sized companies of sixty-four.⁶² This allowed him to commission company officers prior to their transfer to Confederate command, and forced “officers to be subject to his orders, if I understand them properly, although mustered for Confederate service.”⁶³ But neither Davis nor Seddon were about to question success. Brown may have manipulated the proceedings to reclaim the power of appointment and organization, Seddon wrote in response to Colonel Raines’ warning, “but with the patriotic spirit he has manifested, and the success he has had in raising troops, he will have strong ground to appeal to the Department to give sanction to his proceedings so far as the law allows.”⁶⁴

⁶⁰ Ibid., 2:456-464; Savannah *Daily Morning News*, July 6, 1863.

⁶¹ CRG, 2:471, 3:409. Brown would later claim 18,000 men. See, *Journal of the Senate of the State of Georgia, at the Annual Session of the General Assembly, Begun and Held in Milledgeville, the Seat of Government, in 1863* (Milledgeville, GA: Boughton, Nisbet, Barnes & Moore, State Printers, 1863), 32.

⁶² *Official Records IV*, 2:602-603, 746-747.

⁶³ Ibid., 2:746-747.

⁶⁴ CRG, 3:412.

“THE CHARACTER OF THE TROOPS”

Brown’s success only emboldened his claims to authority. For example, the death of Colonel Slaughter left a void in the 51st Georgia that was soon filled by the controversial field promotion of Lieutenant Colonel Edward Ball. Although Ball was undoubtedly respected by the men – he, too, had been wounded in the fight at Chancellorsville – he was not necessarily their first choice to assume command, and Brown was quick to support the undeniable right of all Georgia soldiers to elect their officers as militia employed in the service of the Confederate States. The conflict soon erupted into a contentious debate between Brown and Secretary of War Seddon that exceeded in many respects the disrespectful tones of the 1862 Brown-Davis debates.⁶⁵

Seddon, however, was in no mood for Brown’s antics. In the north, Lee’s forces had suffered a devastating July 3 loss at Gettysburg, while the following day Vicksburg had fallen to General Ulysses S. Grant. Four days later, Port Hudson, Louisiana, itself under a seven-week siege, surrendered to Union forces, while Braxton Bragg, still sparring with Rosecrans in Tennessee, was slowly being pushed south toward Chattanooga. On July 11, the United States held its first military draft under March 3, 1863, legislation that made every able-bodied Northern male between twenty and forty-five liable to military service, soon followed by President Davis’s call under the second conscription act for men between forty and forty-five.⁶⁶ So much was happening so fast

⁶⁵ *Correspondence between Governor Brown and the Secretary of War Upon the Right of the Georgia Volunteers, in Confederate Service, to Elect Their Own Officers* (Milledgeville, GA: Boughton, Nisbet, Barnes & Moore, State Printers, 1863), 3.

⁶⁶ *Official Records* IV, 2:636, and III, 3:88-93.

that Seddon had little time to reengage a debate over “what the meaning of the word *militia* is.”⁶⁷

To him, it was more important to get the new local defense troops into the field. But doing so required appointing officers, and the challenge was deciding, given the manner in which the troops had been accepted, which men Brown commanded and which Seddon commanded. The local defense troops included men raised under state law, others raised under Confederate law, organizations staffed to militia standards, others to Confederate standards. Thus, Brown’s first question to the president was “to whom do the men report?” Was Brown to select a general or was Davis? Was Brown to order the men out or was Davis? “The question depends,” Davis suggested through Secretary Seddon on September 4, “on the character of the troops. If militia, I have no power to appoint the commander or other officers; if troops of the Confederate States, I have no power to delegate the appointing power.”⁶⁸

Not satisfied with the President’s equivocation, Brown took it upon himself to order all local defense companies from the counties in northeast Georgia to one of two assembly points, one in Atlanta and another on the Georgia Road at Kingston.⁶⁹ He also approved Adjutant General Wayne’s appointment of Colonel William H. Stiles, 60th Georgia Volunteers, a long-time leader in Georgia’s Democratic party and one of Brown’s gubernatorial opponents in 1857, to oversee the organization at Kingston.⁷⁰

⁶⁷ *Correspondence between Governor Brown and the Secretary of War*, 12.

⁶⁸ CRG, 3:410.

⁶⁹ *Ibid.*, 2:470-473; *Official Records IV*, 2:791-792.

⁷⁰ Parks, *Joseph E. Brown*, 22, 61; Fielder, *Life of Joseph E. Brown*, 38, 86, 87; Hill, *Joseph E. Brown*, 2; *Official Records IV*, 2:800-801.

Stiles had been authorized the previous June to raise non-conscripts in north Georgia for local defense, but his authorization had coincided with Seddon's suggestion that governors begin organizing their own local defense forces. While Stiles was able to raise close to fifty companies between Atlanta and the Tennessee state line, these organizations posed a potential challenge to Confederate-state relations should his effort conflict with Brown's. In a preemptive move following Davis' August 31 call-up, he had ordered his fifty companies to report to the governor and volunteered his services to oversee the local defense's organization.⁷¹ Thus by the fall of 1863, Governor Brown may not have placed all of Georgia's troops "entirely under my supervision and control," but he felt had made significant progress.⁷² He had held his own against Secretary Seddon, assumed control of local defense enlistment with very little Confederate opposition, and dispatched Stiles' local defense forces to north Georgia likewise with little resistance.

But all was not so promising as Brown saw it. On September 8, Confederate General Bragg evacuated Chattanooga. He had expected Rosecrans' Army of the Cumberland to attack the city from the north, closer to Union reinforcements in east Tennessee. But when Rosecrans divided his forces along a forty mile stretch of the Appalachian mountains to cross the Tennessee River in northern Alabama, Bragg ordered his forces south toward La Fayette, Georgia, where they could attack the divided Union elements as they came down out of the mountain passes. It was a calculated risk. His primary directive had been to protect Chattanooga, but he had voluntarily given it up in exchange for the chance to attack a divided army and stop Rosecrans' southern advance

⁷¹ *Official Records IV*, 2:713, 818-819.

⁷² CRG 2:456-464; *Savannah Daily Morning News*, July 6, 1863.

once and for all.⁷³ The shifting of Bragg's campaign to north Georgia meant that the recently called out local defense forces would play an even larger role in the Union repulse. Although Brown and Wayne had already ordered Stiles and his men to the defense, it was not until two days later that they informed the War Department of their actions. By that time, President Davis had made his own selection for a commanding officer.⁷⁴

General Howell Cobb loomed as one of the largest figures in Georgia politics: five-term member of the United States House of Representatives, Speaker of the House from 1849 to 1851, Secretary of the Treasury under President James Buchanan, Governor of Georgia from 1851 to 1853, and contender for the Confederate presidency in 1861.⁷⁵ He held little love for Joseph E. Brown, and the feeling was mutual. It was particularly irksome to the general that his orders required him to respect Brown's military exemption of numerous county officials – Cobb thought an excess number – and to accept the election of company and regimental officers as a right due all state-raised units, whatever that percentage of local defense troops might be. To make things even more confusing, instead of having a unified force, he was to be guided by the territorial limitations the volunteers themselves had imposed on their service and organize the guard into three separate classes: those who agreed to serve anywhere in the state, those who agreed to serve within a particular district, and those who would serve only in a certain town. But,

⁷³ Eicher, *The Longest Night*, 578-579.

⁷⁴ CRG, 3:411.

⁷⁵ See, Horace Montgomery, *Howell Cobb's Confederate Career*, Confederate Centennial Studies, no. 10, William Stanley Hoole, ed., (Tuscaloosa, AL: Confederate Publishing Company, Inc., 1959), and John Eddins Simpson, *Howell Cobb: The Politics of Ambition* (Chicago: Adams Press, 1973).

as he wrote his wife, he would submit “without murmur or complaint.”⁷⁶ Simultaneous with Cobb’s appointment, Davis issued a personal response to Brown’s inquiry into appointment and command authority. As of the August 31 call-up, he wrote, local defense forces were under Confederate control, and the president would appoint all officers.⁷⁷

It is not exactly clear, but it appears that the first word of Cobb’s appointment came with a telegraphed message to Adjutant General Wayne on September 11, 1863. It was followed the next day by a message from President Davis who suggested that Brown visit Richmond so that the two men could “concert more effectively than through letters measures which will increase the strength of the army and the security of the state.”⁷⁸ Although Davis hoped to tap the governor’s knowledge of north Georgia, it is not hard to imagine that he was also hoping to avoid the inevitable conflict between Brown and Cobb over the command of the local defense forces.

Brown did not respond immediately. One can surmise that he hoped to talk with Cobb first and find some equitable arrangement that would not require his absence while enemy forces were within Georgia’s borders. But a September 14 meeting with Cobb dashed Brown’s expectations. Cobb claimed authority over the local defense as well as the right to appoint general officers, and just as in the period following the first conscription act, there was little Brown could do about it while Union forces threatened Confederate – and this time state – security. Although he left the meeting offering “every

⁷⁶ Montgomery, *Howell Cobb’s Confederate Career*, 98.

⁷⁷ CRG, 3:411.

⁷⁸ *Ibid.*, 3:416.

disposition in his power to aid [Cobb] in the business,” Brown was clearly uncomfortable with the situation.⁷⁹

There was little disposition on Cobb's part to accommodate Governor Brown's leadership. Under Brown's guidance, the local defense troops were plagued by the same problems of state oversight, provincialism, short-term service, and electioneering that had rendered the Confederate Army nearly worthless in the spring of 1862. He claimed to have raised almost 15,000 men, but Cobb doubted it would number more than 10,000. As he pointed out, the governor's number failed to discount the nearly one-sixth of the men detailed for local governance, for the sick and infirm who had to be discharged, and for the large number of drafted men who failed to appear. At best, Cobb reported he could field 5,000 men, if that. In addition, the companies organized by the governor, as Colonel Raines had earlier complained, contained only forty-four men, too few to meet Confederate standards. Rather than face a rebellion by reorganizing them, Cobb accepted the companies as offered, but made it a rule to have no composite organization smaller than a regulation-sized Confederate regiment. This was extremely difficult for the provincial nature of the companies – some agreeing to serve throughout the state, others only in certain districts or towns – sometimes meant there too few companies of like service areas to group together. In most cases, he was able to convince companies through personal appeals to agree to state-wide service, but such agreements were fragile and Cobb had no guarantee they would last.⁸⁰ Cobb was also forced to continue the

⁷⁹ *Official Records IV*, 2:807; CRG, 2:476-477; *Columbus Daily Enquirer*, September 17, 1863.

⁸⁰ *Official Records IV*, 2:831-833.

election of officers within the State Guard, lest its denial bring on yet another conflict with the governor.⁸¹

Such problems Cobb might have managed if it were not for the six-month terms of service. No sooner had he received his understaffed companies, negotiated areas and conditions of service, and trained and organized his regiments then it was time to disband and cobble together a new organization. If the Confederacy was to have a local defense force within the states, Cobb suggested to Secretary Seddon, it needed to be a permanent organization with longer terms of service. All white men between the ages of sixteen and sixty should be compelled to military service, those between eighteen and forty-five in the Confederate army, all others in a reserve force.⁸² But for the time being, the best sense of stability Cobb could offer was the renaming of the local defense as the Georgia State Guard, a title that implied a more durable military presence than simply a local defense force.⁸³

Still, nothing in Cobb's attitude or in the meeting with Davis dispelled Brown's belief that the local defense forces were militia and that the state held constitutionally protected rights over them. So despite the conference, Adjutant General Wayne continued to press for Stiles' confirmation with the understanding that Cobb's orders only gave him the "duty of organizing at Atlanta, Georgia, the militia and such of the local forces from that State have been ordered to that point."⁸⁴ Likewise, the Atlanta *Intelligencer* pointed out that Cobb had been appointed merely to organize the troops, not

⁸¹ CRG, 3:420.

⁸² *Official Records IV*, 2:831-833.

⁸³ *Macon Daily Telegraph*, October 13, 1863.

⁸⁴ *Official Records IV*, 2:800-801, 818-819; *Columbus Daily Enquirer*, September 17, 1863.

to command them. “Perhaps he may be appointed to command them,” the paper explained, “though up to this time he has received no order to that effect.”⁸⁵ Nothing yet prevented Davis from confirming Stiles or acknowledging the states’ command authority. Yet the Davis administration remained unwavering in its opposition to Brown’s maneuvers.⁸⁶ When Brown recommended General Henry R. Jackson, the former commander of the Georgia State Troops, for promotion to major-general of the local defense men, Davis agreed only to a promotion to brigadier-general and a brigade command under Cobb whom Davis promoted to major-general instead.⁸⁷

“I DO NOT SEE SATISFACTORY EVIDENCE”

By the opening of the November 1863 Georgia General Assembly session, Brown once again was losing faith in his ability to regain command of Georgia’s troops. He had begun his efforts small, using the State Guard as an inroad to limited authority of troops under Confederate command. But the War Department had denied his attempt to appoint its officers, and although he had gained (or regained) acknowledgement of the right of election and other perquisites of militia status, the ultimate recognition of militia identity remained elusive. Now it appeared the Confederacy was exploiting the State Guard into a more permanent Confederate reserve. Brown had asked to have the State Guard sent home after the Confederate victory at Chickamauga, but his request had been ignored and

⁸⁵ *Atlanta Intelligencer*, quoted in *Savannah Daily Morning News*, September 15, 1863.

⁸⁶ *Official Records IV*, 2:810-811, 818, 818-819.

⁸⁷ CRG, 3:416-417; *Savannah Daily Morning News*, September 26, 1863; *Fayetteville (NC) Observer*, September 28, 1863.

the men kept in the field.⁸⁸ “And I regret to say,” he lamented, “that I do not see satisfactory evidence of an intention on the part of the Government, to discharge them at as early a day as our home interests imperatively require.”⁸⁹ It was the very thing volunteers had feared during the enrolling period. The Confederate government had assumed control over them and refused to let them leave. It was slowly becoming clear that Brown’s acquiescence to Cobb’s appointment, rather than the appointment of someone more amenable to state authority like Stiles or Jackson, had been a mistake. Reclamation was thus going to be a long, difficult process, too long to appease Brown’s fears for state security. So while he continued to press his claims against President Davis amid the compromises made for conscription’s existence, Brown also began to rebuild Georgia’s militia.

To create this new militia, Brown once again asked the General Assembly to extend militia liability to white males between sixteen and sixty years of age with the added provision that Georgia only allow their conscription for Confederate service if guaranteed the right to elect their own officers.⁹⁰ It was a dangerous proposition. No previous militiamen had been guaranteed such rights. The inequitable guarantee of rights among Georgia’s troops might provoke outrage among existing organizations, leading them to make their own demands for similar guarantees. But for Brown, the threat of intra-military strife paled in comparison to the potential gains. If the Confederacy could

⁸⁸ *Ibid.*, 3:417-419; *Macon Daily Telegraph*, October 5, 1863.

⁸⁹ *CRG*, 3:524.

⁹⁰ *Ibid.*, 2:525. In his November 5 speech, Brown requested the enrollment of men eighteen to sixty. By the time the assembly began debate, he had lowered the range to sixteen.

be convinced to make such a guarantee it would ratify his claim of militia status for the Confederate army.

Perhaps without realizing it, Brown had adopted his own version of Confederate conscription within the very framework that Howell Cobb had proposed to Secretary Seddon: expanded liability within a two-tiered military structure.⁹¹ Enrolled militiamen would comprise two classes. The first, men between seventeen and fifty, would constitute the Militia Proper and would serve unless liable to Confederate conscription. The second, men between sixteen to seventeen and fifty to sixty, would constitute a Militia Reserve and would be called out – by compulsion if necessary – in response to presidential requests or when emergencies warranted.⁹² In addition, Brown adopted the Confederacy's administrative model. Rather than rely on company commanders to oversee militia enlistment, as had been done in the past, the governor now relied on gubernatorial aides-de-camp, officers appointed to oversee the administration of state senatorial districts much as Confederate enrolling officers oversaw Confederate congressional districts. Each aide-de-camp could then select three or more assistants, one for each county in his district, just as the enrolling officer could choose sub-enrolling officers for each county in his district. These assistants would then undertake the enrollment of all eligible militiamen just as sub-enrolling officers had undertaken the enrollment of Confederate soldiers.⁹³

⁹¹ CRG, 2:525.

⁹² *Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in November and December, 1863; also, Extra Session of 1864* (Milledgeville, Ga.: Boughton, Nisbet, Barnes, & Moore, State Printers, 1864), 51-52, 54.

⁹³ *Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in November and December, 1863; also, Extra Session of 1864* (Milledgeville, Ga.: Boughton, Nisbet, Barnes, & Moore, State Printers, 1864), 51-52, 54.

Some newspapers questioned the proposal. Why petition the Confederate government for the return of the State Guard so it could finish the fall harvest, and then compel militia service from the same men in the same season? It was opinion of the *Macon Telegraph* that “a single good field of corn or potatoes will be of more substantial service to the cause of Southern independence.”⁹⁴ Of greater concern, though, was the expansion of military liability into a segment of the population that many thought unfit for duty. “The Legislature may, in its wisdom, decide that men sixty years old are fit for military service,” the *Telegraph* continued, “but the God of Creation and Providence has a different opinion.” Sixty-year-old men were too old for the rigors of camp.⁹⁵ But such concerns did little to reign in Brown’s proposed reorganization.

In the General Assembly, the Senate suggested adjusting the bill to apply only to eighteen to fifty year olds, such proposals were quickly rejected.⁹⁶ The House offered greater opposition. Hancock County’s representative Charles Wilds DuBose referred to the army as a “great school of vice for the young and impressionable,” and he was wary of granting any man, “even to so good a Governor as Gov. Brown,” the power of compelling such youths into service. Perhaps referencing the formal similarities between Brown’s proposed militia and the Confederacy’s conscript army or perhaps the unflinching tendency of the Confederate Congress to assume control of practically every state force, Dubose doubted whether the governor’s “*Aid de-Congs*” would be any more successful

⁹⁴ *Macon Daily Telegraph*, November 10, 1863.

⁹⁵ *Macon Daily Telegraph*, November 10, 1863.

⁹⁶ *Journal of the Senate of the State of Georgia, at the Annual Session of the General Assembly, Begun and Held in Milledgeville, the Seat of Government, in 1863* (Milledgeville, GA: Boughton, Nisbet, Barnes & Moore, State Printers, 1863), 72, 126-127.

than Confederate conscription officers in rounding up eligible men. The reporter for the *Macon Telegraph* noted that the other representatives laughed in agreement. But even this body acquiesced to the governor's wishes, albeit in a limited measure that applied only to men between eighteen and fifty.⁹⁷

In the end, a compromise bill gave the governor the militia of sixteen to sixty-year-old men he desired. The Militia Reorganization Bill of December 14, 1863, gave the governor not only the unrestricted power to commission officers for the Militia Proper but additional officers for the Militia Reserve as well as the district aides-de-camp and their assistants. For militia requisitioned as local defense troops by the Confederacy, he, not the president, had the power to organize the new companies, regiments and battalions as he saw fit, to protect the right of election of officers, and to appoint replacements to fill vacancies. It appeared that the state was beginning to recoup some of the military powers and organizations it had sacrificed earlier in the war.⁹⁸

Yet Brown still faced significant hurdles. The final bill had authorized compulsion of the Militia Reserve in local emergencies, but it absolutely denied such power to meet presidential quotas.⁹⁹ This mandatory reliance on volunteerism for Confederate troops placed Brown at a disadvantage. By his own understanding of military law volunteers by definition were regular army and subject solely to national control. Only those compelled to national service under state laws unequivocally remained state militia. So while the law reinvigorated his domestic power, it did nothing

⁹⁷ *Macon Telegraph*, December 7, 1863.

⁹⁸ *Senate Journal 1863*, 230-231; *Acts of the General Assembly, 1863*, 54.

⁹⁹ *Ibid.*

to further his claims to authority outside of the state. And only six days earlier, President Davis had proposed sweeping reforms of the conscription system that threatened to destroy all of the gains the governor had just made.

“I FEAR DISASTROUS CONSEQUENCES”

President Davis' sent his address to the newly seated Congress on December 8, 1863, and the news was not good. “Grave reverse befell our arms soon after your departure from Richmond” last May.¹⁰⁰ The long Confederate defense of Vicksburg had ended in surrender on July 4, the same day General Robert E. Lee had limped away from Gettysburg. Little Rock had fallen soon thereafter placing almost three-fourths of Arkansas under Union control.¹⁰¹ By mid-August, Union General Ambrose Burnside had crossed the Cumberland Gap uncontested to occupy Knoxville, and Confederate General Braxton Bragg had evacuated Chattanooga lest he be trapped by the rapidly advancing troops.¹⁰² It was, as War Department clerk John B. Jones noted in his diary, among “the darkest day[s] for the Confederacy.”¹⁰³

The president tried to emphasize the positive. Vicksburg may have fallen, but the “resolute spirit of the people soon rose superior to the temporary despondency naturally resulting from these reverse [and] inflicted repeated defeats on the invading armies in Louisiana and on the coast of Texas.” The defeat at Gettysburg may have hurt morale, but the battle had successfully drawn the Federal army away from Richmond and

¹⁰⁰ JCCSA 3:435.

¹⁰¹ McPherson, *Battle Cry of Freedom*, 668.

¹⁰² *Ibid.*, 670.

¹⁰³ Jones, *War Clerk's Diary*, 238.

“inflicted such severity of punishment as disabled them from early renewal of the campaign” against the Confederate capitol.¹⁰⁴ Bragg may have surrendered Chattanooga but in so doing he was able to check the Union advance at Chickamauga.¹⁰⁵ Knoxville was now under siege by Confederate General James Longstreet and looked ready to be reclaimed. “Our success in driving the enemy from our soil has not equaled the expectations confidently entertained at the commencement of the campaign,” he admitted, but the Confederacy was bettered by the experience. Union progress has been checked.¹⁰⁶ Confederate soldiers were now “familiar with danger, hardened by exposure,...[they] endure privations with cheerful fortitude and welcome battle with alacrity.”¹⁰⁷ The soldiers were battle hardened, their officers more skillful and efficient. The army was, he asserted, in “a better condition than at any previous period of the war.”¹⁰⁸

But silver linings did little to mask billowing black clouds. The battle losses of the previous year would be difficult to overcome. The siege at Vicksburg had cost the Confederates 10,000 killed or wounded and another 37,000 captured.¹⁰⁹ Lee had lost 24,000 at Gettysburg, more than a third of his army.¹¹⁰ Yet these numbers paled in comparison to the numbers lost to desertion. As one South Carolina conscription officer

¹⁰⁴ JCCSA 3:435.

¹⁰⁵ Ibid., 3:435.

¹⁰⁶ Ibid., 3:345-346.

¹⁰⁷ Ibid., 3:436.

¹⁰⁸ Ibid., 3:346.

¹⁰⁹ McPherson, *Ordeal by Fire*, 332.

¹¹⁰ McPherson, *Battle Cry of Freedom*, 664

noted in August 1863, “it is no longer a reproach to be known as a deserter,” and thousands of Confederate soldiers willingly assumed the title with each Southern defeat.¹¹¹ Nearly all of the soldiers from the Trans-Mississippi region deserted after the fall of Vicksburg, and elements of Lee's forces began deserting soon after Gettysburg. The roads north out of Arkansas streamed with deserters following the capture of Little Rock.¹¹² Following his loss at Missionary Ridge in November, Braxton Bragg had as many as 7,000 men desert his lines.¹¹³ It was a pattern that would repeat itself throughout the end of the war. As more and more Southern territory fell to Union control, those soldiers whose families now lay behind enemy lines were increasingly likely to desert and return home to defend their own.¹¹⁴

Official War Department estimates placed the number at somewhere between 40,000 to 50,000. John B. Jones claimed it was as high as 136,000. Historian Ella Lonn estimated the number at 100,000 to 125,000 with the caveat that this number included repeat offenders and stragglers struggling to keep up with the rapidly shifting lines of battle. The actual number is moot. What mattered was the Confederate War Department's earnest belief that one-third to one-half of its military was absent without leave.¹¹⁵ Provost marshals, enrolling officers, conscription detectives, detached cavalry units, and local sheriffs all patrolled the Southern landscape, but with the ability of

¹¹¹ Lonn, *Desertion during the Civil War*, 32-33.

¹¹² *Ibid.*

¹¹³ Judith Lee Hallock, *Braxton Bragg and Confederate Defeat*, vol. 2 (Tuscaloosa and London: The University of Alabama Press, 1991), 22, 30, 145-146.

¹¹⁴ See, for example, Mark A. Weitz, *A Higher Duty: Desertion Among Georgia Troops during the Civil War* (Lincoln and London: University of Nebraska Press, 2000).

¹¹⁵ *Macon Weekly Telegraph*, December 12, 1863.

deserters to hide behind the advancing Union lines, new avenues of escape sprang up faster than old ones could be plugged.¹¹⁶

The only recourse, according to Mississippi Senator Albert Gallatin Brown, was to refill the ranks faster than they could drain with a much more efficient conscription system. The current system had settled into a cycle of monotonous paperwork and exhilarating deserter chases but very little enlistment. As district enrolling officers had long ago discovered, and the Confederate government now began to realize, conscription had its greatest effect during the initial months of enforcement when the majority of the men either volunteered or answered conscription notices. Such an enlistment pattern meant that rather than creating a system of continuous replenishment in which “the majority of men in each company would consist of those who joined it at different dates,” it perpetuated a system in which enlistment dates, and consequentially discharge dates, coincided. In addition, because Congress approved too many exemptions and the military granted too many details and accepted too many substitutes, large segments of capable arms-bearing men remained untouched.¹¹⁷ Troop replenishment could only come through a reform of the system. All white males able to shoulder arms should be liable. All foreigners who remained in the Confederacy should be liable. All substitution and exemption laws should be repealed.¹¹⁸ Senator Wigfall offered his own bill for a *levee en masse* the following day. It was not as drastic as Brown's, but it was still comprehensive enough to lead the Richmond *Examiner* to refer to it as the “Everybody in the Army”

¹¹⁶ Lonn, *Desertion during the Civil War*, chap. 3, and Weitz, *Higher Duty*.

¹¹⁷ JCCSA 3:447.

¹¹⁸ “A Resolution,” in CI, reel 4, no. 112; JCCSA 3:455. See also, Brown, *State of the Country*, 2-3, and JCCSA 3:455.

bill.¹¹⁹ The Senate Committee on Military Affairs bill, while a modification of Wigfall's proposal, was even more restrained, yet it was still strong enough to give the Confederate government compulsory power over every Southern white male between the ages of sixteen and fifty-five with very few exemptions.

To the military, such proposals were long overdue. Unaware of the pending Congressional measures, the commanding officers of the Army of Tennessee had asked the Confederate House to conscript every white male between sixteen and sixty, while a journalist traveling with Robert E. Lee's army wrote that Lee's men were ready to “strike bold and decisive blows during the ensuing spring and summer” but could only do so “by bringing every able-bodied young man to the field this winter.”¹²⁰ An officer in the 4th Alabama Infantry wrote from his camp near Morristown, Tennessee, to Senator Clement C. Clay that “the army must be increased. [The Senate's] late Conscript Bill will do some good.... Then bring out the 16 and 17 year old boys, if necessary (one boy at that age is worth two men over 45).”¹²¹

But to others, Congress appeared “to have gone stark mad on the subject of putting soldiers into the field.”¹²² Universal conscription was impractical, the *Richmond Daily Dispatch* complained. The army could not discipline the soldiers it had.

Expanding conscription to a *levee en masse* would only provide more soldiers who could

¹¹⁹ SHP 50:34.

¹²⁰ *Richmond Daily Dispatch*, December 25, 1863; SHP 50:140-142.

¹²¹ An Officer to Hon. C. C. Clay, January 12, 1864, in C. C. Clay Papers, 1811-1925, Rare Book, Manuscript, and Special Collections Library, William R. Perkins Library, Duke University.

¹²² *Savannah Republican*, quoted in *Richmond Daily Examiner*, January 11, 1864.

then desert.¹²³ Rather than make new laws, Congress should enforce the ones already on the books and repeal the ones that did not work. Roundup the deserters. Replace healthy detailed soldiers with the wounded and overaged. Replace white manual military labor with slaves and free blacks. Simple steps such as these would make new law unnecessary.¹²⁴ Universal conscription was also dangerous, added the *Chattanooga Rebel*. Those exempts upon whom the Confederacy depended for food production and slave management would become “suplicants and beggars at the foot of military power. [They] would scorn the humiliation of approaching military authority with hat in hand, to ask for an exemption.... Such men would take their places in the army without hesitation, rather than subject themselves to the rebuffs and insolence of gold lace officials.”¹²⁵

Trains would stop running for lack of crews.¹²⁶ Factories would close for lack of management.¹²⁷ People would starve for lack of agriculturalists.¹²⁸ Slaves would rebel for lack of oversight. From his sickbed in his Crawfordville, Georgia, home, Vice President Alexander H. Stephens warned President Davis that “our strength does not lie in an attempt to match the enemy in the size of our armies or number of men in the field. In the great inequality of numbers existing between us & our enemy we must rely upon and use our advantages. We must preserve and keep our essential resources active. We

¹²³ *Richmond Daily Dispatch*, December 17, 1863.

¹²⁴ *Ibid.*, January 8, 1864.

¹²⁵ *Chattanooga Rebel*, quoted in *Richmond Daily Examiner*, December 28, 1863.

¹²⁶ *Macon Weekly Telegraph*, December 29 and 31, 1863.

¹²⁷ *Macon Daily Telegraph*, January 12, 1864.

¹²⁸ *Richmond Daily Examiner*, January 11, 1863.

must not collapse for want of subsistence.”¹²⁹ As the Richmond *Examiner* ridiculed, the “General Assembly of the Highfallutin and Impracticable” had proposed “universal conscription, leaving the negroes and grub-worms to till the soil and raise bread for the universal army.”¹³⁰

Concerns over universal conscription initially slowed Congressional debate on expansion. The Senate postponed debate until January 7, 1864, after it had argued several important reform measures that, if successful, might have lessen the degree of expansion needed. But the need for troops far outweighed such measures. The Senate eventually made several changes to the bill, raising the low end of liability to seventeen and modifying or repealing several exemptions, and then sent the bill to the House nine days later.¹³¹

The House had already seen several proposals to expand conscription. Following the repeal of substitution, Georgia Congressman Lucius J. Gartrell had claimed he would introduce a bill expanding conscription liability in lieu of sweeping legislation on principal liability.¹³² Congressman Augustus H. Garland offered a resolution on January 16 to conscript an additional five hundred men until “next grass” as well as all Confederate congressman under the age of seventy-one.¹³³ But there was no comprehensive effort on expansion until the Senate bill was referred on January 18.

¹²⁹ A. H. Stephens to Jefferson Davis, January 22, 1864, in Alexander Hamilton Stephens Papers, 1822-1911, Rare Book, Manuscript, and Special Collections Library, William R. Perkins Library, Duke University.

¹³⁰ Richmond *Daily Examiner*, December 17, 1863.

¹³¹ JCCSA 3:522, 524, 546-547, 550, 554-556, 558-560, 567-568, 572-574, 580-583.

¹³² SHP 50:115.

¹³³ JCCSA 6:639.

Even then, the bill sat unaddressed for ten days while the House debated amendments to the principal liability act.¹³⁴

Congressional critics of the measure foretold grave threats to the Confederate-state political balance. Cries of despotism and tyranny had been raised earlier, but they had withered against a political shift that took military relations from a hierarchy of supremacy and subordination to a coordination of equitable powers between national and state military organizations that increasingly expressed themselves in militia terms. In the wake of the second conscription act, for example, national military liability had expanded to all men between the ages of eighteen and forty-five, the traditional age limits of state militiamen. Phelan's description of the army as a national militia had only reiterated its growing alignment with the state organizations. And the acceptance of coordinated-concurrent powers had made Confederate men of military age equally liable to Confederate and state service. Even the proposed third conscription act showed elements of militia influence, adopting a tiered organizational structure that mirrored the state militia organizations of Georgia and Virginia.¹³⁵ As in those two states, the Confederacy would establish a reserve force of men between the ages of seventeen and eighteen and forty-five and fifty-five or sixty depending on which version of the bill Congress approved.

Against this background, the expansion of age limits appeared a betrayal by the Confederate government. Congress believed it was doing what was necessary to provide

¹³⁴ Ibid., 6:647-648, 680-681, 684-686, 700.

¹³⁵ "An Ordinance to Reorganize the Militia" in *Ordinances Adopted by the Convention of Virginia at the Adjourned Session, in November and December, 1861*, 60-63. Richmond, VA: Wyatt M. Elliott, Printer, 1861; *Acts of the General Assembly of the State of Virginia, Passed in 1861-2, in the Eighty-Sixth Year of the Commonwealth* (Richmond, VA: William F. Richie, Public Printer, 1862), 40-46.

a viable military force, but by advancing a claim against the traditionally over- and under-aged militiamen as reservists, it was also tipping the scales of power in their favor. Granted, such tipping tended toward equilibrium rather than supremacy. Georgia's governor had already exploited the Confederacy's concession to states' rights to advance his claims over the enrollment of the Georgia State Guard and to reinvigorate an expanded state militia. But for Brown, this had reestablish the status quo, not overthrown a political balance. The state government *should* be able to exercise greater authority over the population than the Confederate government. Thus even a tendency toward equilibrium was out of balance and extended Confederate control over a segment of the population where the states had begun to reassert their military authority. Although coordination had not been rejected, and the Confederacy would not necessarily hold a superior claim to conscripts in many Southern courts, the conscription bill still appeared regressive to staunch states' rights advocate who had benefitted from the Confederate government's relatively weak stance on national supremacy.

Just as disconcerting was the degree of power the president would wield under the new law. One of the goals of the third law was to refine the operation of conscription to such a degree that civilian input would be limited. The role of the civilian courts in freeing conscripts under the writ of habeas corpus, for example, was particularly irritating and led Senator Albert Gallatin Brown to advocate making the conscription and exemption laws war measures or military laws thus eliminating civilian jurisdiction in all matters of exemption and service.¹³⁶ Congress was unwilling to go that far, but many members were willing to give the president greater powers to name details from the

¹³⁶ Albert Gallatin Brown, *State of the Country. Speech of Hon. A. G. Brown, of Mississippi, in the Confederate Senate, December 24, 1863* (Richmond, 1864), 15-16.

reserve forces. Under the first and second acts, exemptions of mechanics, agriculturalists, overseers, railroad workers and others had cut wide swathes across the occupational landscape, preempting enrollment and allowing every practitioner of an exempted profession to avoid any connection with the military. Under the third act, such exemptions remained, but their scope was limited: one editor per newspaper, one overseer or agriculturalist per farm, one apothecary per apothecary store, and so on. Those professionals in excess, the vast majority of those previously exempted, were to be held liable. The president, through the War Department, could then make an executive decision to grant details, not exemptions, to additional editors, overseers, agriculturalists, or apothecaries, as needed from the reserve force. They might continue their civilian employment, but they did so at the pleasure of the president throughout their term of service.¹³⁷

It is doubtful whether Davis or Congress gave much thought to the consequences of such a bill. Davis may have believed the law a benign extension within the Confederacy's established sphere of military powers, nothing that would have an impact on the negotiated Confederate-state political settlement. Others thought he and, more especially, Congress, acted with more desperation than deliberation. "On this, as upon other subjects Congress has legislated as if in a panic," wrote Georgia Senator Herschel V. Johnson to Vice President Stephens after the Senate sent its version of the bill to the House, "and I fear disastrous consequences."¹³⁸ Still others saw more sinister motives. Joseph E. Brown and several other state governors interpreted the new law as a crucial

¹³⁷ *Official Records* IV, vol. 3, pp. 178-183.

¹³⁸ Herschel V. Johnson to A. H. Stephens, February 5, 1864, in Herschel V. Johnson Papers, 1812-1880, Rare Book, Manuscript, and Special Collections Library, William R. Perkins Library, Duke University.

betrayal of the Confederate agreement on the coordination of powers. That agreement had granted a pliability to conscription that allowed states to mold the policy to the particular needs of the various states. Governor Brown had used such suppleness to gain control of the enlistment of the State Guard as well as the appointment of some of the State Guard officers. He was also well on his way to resurrecting the state militia outside of the limitations imposed by the first two acts. Now, this new law threatened to take all of that away. Once again the Confederate military presence matched that of the militia and claimed precedence over it. Worse, the Confederate military now claimed authority over heretofore independent civilian labor forces. So while Brown's opposition to the third conscription act was laced with disappointment, it, and the opposition of other Southern governors, centered on the realization that the suppleness of conscription was coalescing into a firm policy of centralized military power.

CHAPTER SIX A WILLINGNESS TO BREAK FAITH

Throughout 1862 and 1863, the polemics of President Davis and Governor Brown had remained peripheral to the compromises made by the greater portion of the Confederate population. Congress acceded to executive requests for expansions of conscriptive powers but always with stipulations that limited that power. The co-existence of a state militia and a national army came to be based on a shared ability to tap a common pool of military labor, and the Confederacy's primary, though not exclusive, right to draw from that pool had been based on state acquiescence rather than an inherent Confederate supremacy. At the same time, efforts to understand conscription's effects on the polity had strengthened Confederate commitments to state over national allegiance and redefined conscription as a militia power. Confederates appeared willing to accept this arrangement not only because in so doing they helped the war effort, but because they retained a degree of control over how conscription would be implemented at the local level.

Such concessions appeared to give Governor Brown's defense of the mythical purity of states' rights the upper hand. He tapped Confederate allowances on the exemption of state officials (although never conceding that these exemptions were *because of* Confederate allowances) and shielded every possible officer as a sign of undiminished state political power. Then, tired of yielding state citizens, militiamen and defense to Confederate mismanagement, he exploited the Confederacy's weak commitment to conscription's omnipotence to resurrect the Georgia militia as the bulwark of state military power. But such gains were fleeting in the wake of the defeats at

Gettysburg and Vicksburg, and Brown and others decried the breach of political faith occasioned by the increase in Confederate power under the third conscription act.

Many in Congress had been reluctant to pass the third act, hoping to reform the existing system, end fraudulent or redundant details and exemption, and arrest deserters and stragglers. They believed that only after those men liable to service were made to serve could additional recruits be enlisted.¹ The vast majority of the civilian population agreed. But even in reform, dangers lurked for those whom Congress hoped to reach tended to be the same individuals upon whom civilian support for conscription depended. The disappearance of details and exemptions in late 1863 and early 1864 aligned Brown's political and theoretical opposition with a rising civilian sense of betrayal, a configuration that would force the Confederate government to make a choice between military control and civilian control of conscription.

“THE FAILURE OF THE GOVERNMENT TO KEEP ITS FAITH”

The elimination of substitution was the most contentious of the reforms. The Conscription Bureau estimated in December 1863 that 13,080 substitutes had been enrolled in just the four states of Georgia, North Carolina, South Carolina, and Virginia.² Bureau Superintendent Colonel John S. Preston guessed that 20,000 to 25,000 had been accepted throughout the Confederacy, and a second Bureau report filed a few weeks later substantiated this higher estimate.³ Meanwhile, Congressman R. B. Hilton of Florida

¹ JCCSA 3:434, 455, 457, 6:515, 520, 523-526; SHP 50:2, 34, 36.

² SHP 50:105-106.

³ *Macon Daily Telegraph*, January 5, 1864; *Richmond Daily Dispatch*, December 30, 1863; *Official Records IV*, 3:103.

estimated the national total at 30,000 while muster rolls filed with the War Department claimed a total of 74,000 substitutes.⁴ In fact, no one knew how many substitutes the military had accepted, and it is difficult to determine if the greater shock came from the size of the estimates or their uncertainty.

Few people doubted that substitution had provided numerous honest and brave soldiers, but few also doubted that most substitutes had proven to be nothing more than profiteers, speculators, cowards and mercenaries.⁵ Georgians, for example, need look no further than Camp Randolph, the state's first Confederate camp of instruction. As soon as the camp opened in the summer of 1862 a “traffic in white human flesh - a blood-money speculation” developed in nearby Calhoun. Substitution agents scoured the north Georgia mountains for overaged and disabled men and then stationed themselves at the Calhoun depot, offering their human wares to anxious recruits. Conscripts who arrived with their own substitutes stood little chance of having them accepted by camp surgeons as medical officials routinely rejected any but agent-supplied replacements. These substitutes would then desert and offer themselves as substitutes to other unsuspecting conscripts.⁶ This kind of activity took place throughout the Confederacy, and it attracted anyone with an eye for fast and easy money. Justices of the peace, whom many principals used to draw up and notarize substitution contracts, acted as brokers, advertising in local papers for men to add to their catalog of available substitutes. A. H. Wyche, a justice of the peace in Macon, added a postscript to his legal advertisements

⁴ Macon *Daily Telegraph*, December 23 and 30, 1863.

⁵ Congressman William Porcher Miles estimated that nine out of every ten deserters was a substitute. SHP 50:51; Macon *Weekly Telegraph*, January 10, 1863; Moore, *Conscription and Conflict*, chap. 3.

⁶ Augusta *Daily Chronicle and Sentinel*, August 20, 21, 22, 1862.

that he was looking for substitutes “at all times” for his clients.⁷ Europeans frequently offered themselves and then deserted, as did Marylanders who collected their fees and then fled across the Virginia-Maryland border into Union territory.⁸ Worst of all, substitution allowed wealthy planters to hire poor, usually non-slaveholding, whites to fight in their stead, prompting critics to decry the growing appearance of a rich man's war and poor man's fight. “If there be a spectacle,” condemned the *Macon Telegraph*, “every feature of which is bloated a hideousness, it is a man of large property, with several sons, not one of which is in the army - the father having purchased their exemption with substitutes.”⁹

Despite such complaints, substitution had survived. It had been interrupted. The expansion of age liabilities under the second conscription act had made many substitutes liable on their own merits, nullifying prior contracts and forcing principals to find new, even older, substitutes or submit to conscription. And it had been limited. Military companies had been restricted to accepting only one substitute per month, and tighter administrative and evidentiary requirements had made substitution papers harder to obtain and forge.¹⁰ Yet it doggedly remained.

Congress would repeal substitution, but repeal would not be enough.¹¹ The goal of reform was to make conscription more efficient and bring in additional men not simply

⁷ *Macon Weekly Telegraph*, August 30, 1862.

⁸ *Richmond Examiner*, March 21, 1863.

⁹ *Macon Weekly Telegraph*, August 7, 1863.

¹⁰ Moore, *Conscription and Conflict*, chap. 3, esp. 28, 37.

¹¹ JCCSA 3:455, 6:532-533; SHP 50:26, 53; “A Bill to Prevent the Enlistment or Enrollment of Substitutes in the Military Service of the Confederate States, and to Repeal All Laws Permitting or Authorizing the Same,” in CI, reel 4, no. 113.

to eliminate inefficient exemption programs. The measure of success was not the ease with which substitution could be eliminated. It was the ability of Congress to reverse the damage that had already been done. Measured by that standard, repeal was ineffective. It may have prevented the future acceptance of substitutes, but it did nothing to rid the army of current substitutes or bring in the principals who had hired them.

For many legislators, logic dictated a third conscription act. As under the second act, the expansion of age limits would make current over and underage substitutes and their principals liable by default. However, others quickly pointed to serious flaws. Expanded age limits would only affect over and underage substitutes, not substitutes exempted by alienage, occupation, or any number of other reasons. And there was no consensus on principal liability in the wake of substitute liability. The Georgia and Mississippi supreme courts had sided with the Confederate government on principal liability, accepting the argument that a principal's exemption was based on his substitute's exemption.¹² Once the substitute became liable, the terms of the agreement were concluded, and the principal's liability was reinstated. But the supreme courts of North Carolina, South Carolina, and Alabama had disagreed.¹³ Thus, the *Macon Telegraph* complained that while repeal of substitution had made principals liable, such liability

¹² The Virginia Supreme Court likewise supported principal liability but also ruled that substitutions granted under state law could also be abrogated by Confederate action. *Opinion of the Supreme Court of Appeals of Virginia in Regard to Liability to Military Service of the Principals of Substitutes* (Richmond, VA: James E. Goode, State Printer, 1864).

¹³ 33 GA 413; *Weems v. Farrell*, GSCCF, A-3759, and *Weems v. Williams*, GSCCF, file A-3760; SHP 50:130; 60 NC 195. Despite the North Carolina court's ruling against principal liability in the wake of substitute liability, it would later rule that substitution contracts, if they did exist, could be abrogated by Congressional action. 60 NC 325.

amounted to little because it was “shorn of its efficacy by the discordant rulings of the State [Supreme] Courts.”¹⁴

A proposed bill to create principal liability without a new conscription law posed its own problems. As Georgia Congressman William H. White argued, any attempt by Congress to enroll principals through positive legislation “would be a breach of faith” held by all Confederates that government would not interfere in the terms of a legal contract.¹⁵ There was merit in this argument. The official War Department substitution document dated July 1, 1863, clearly states that it is a “Contract of Substitution” and spells out an “indenture tripartite” between the captain commanding the regiment, presumably as an agent of the Confederate government, the principal and the substitute.¹⁶ But whether this putative contract guaranteed exemption following a substitute’s death, desertion or new-found liability was a matter of debate. The Georgia Supreme Court already had ruled principal exemption a “gratuitous privilege” rather than a contractual obligation, one that could be amended or revoked by Congress at will.¹⁷ However, although the military, several courts, and many lawyer-politicians accepted principal liability, almost everyone else held to the inviolability of contracts.¹⁸ The Richmond

¹⁴ Macon *Daily Telegraph*, December 25, 1863.

¹⁵ SHP 50:106.

¹⁶ Order Book, 1864, pp. 9-11, in Jeremy F. Gilmer Papers, 1839-1894, Southern Historical Collection #276, Wilson Library, University of North Carolina at Chapel Hill.

¹⁷ 33 GA 413. See also the public debates over this Supreme Court decision in *Augusta Chronicle & Sentinel*, February 12 and 17, 1863.

¹⁸ On military support for principal liability see, Harry T. Hays to Thomas J. Semmes, in Thomas J. Semmes Papers, 1835-1899, Rare Book, Manuscript, and Special Collections Library, William R. Perkins Library, Duke University, and “Poor but honest men of the ranks” to C. C. Clay, January 4, 1864, in C. C. Clay Papers, 1811-1925, Rare Book, Manuscript, and Special Collections Library, William R. Perkins Library, Duke University. For denials of government contracts in substitution, see 33 GA 413; JCCSA 3:446; Macon *Daily Telegraph*, December 17, 1863; Albert Gallatin Brown, *State of the Country. Speech of*

Examiner feared “that the change will not now be made without causing great and apparently reasonable complaint... it is difficult to perceive how [substitution] can be altered at this date without seriously affecting vested rights.”¹⁹ And the *Macon Telegraph* encouraged Congress to state explicitly an absence of contractual obligation and “clear the government of all reasonable suspicion of a willingness to break faith.”²⁰

The beginning of principal liability in early January 1864 set off two related debates that only highlighted the breach of faith Congressman White had warned against. The first involved the disposition of the Georgia State Guard. As Congress debated the third conscription act, the six-month terms of the Guard were coming to an end. Howell Cobb, knowing that many of the guardsmen had avoided Confederate service under the now defunct substitution system, assumed that those now liable to conscription would be enrolled into the main Confederate army upon discharge. But he also knew that principles - men he considered to be of good social standing - would be loath to share ranks with privates whom they had previously hired as substitutes. “Our object should be to make the service as acceptable as possible to all our soldiers,” he wrote to Secretary Seddon. “Men make better soldiers and do all their duties far better when they feel content and satisfied than when forced against their will to serve with those with whom they feel no sympathy.” Cobb was sure he could raise a respectable force from the men, but given their character, only if he could organize them into new companies and

Hon. A. G. Brown, of Mississippi, in the Confederate Senate, December 24, 1863 (Richmond, VA, 1864), 5-6; SHP 50: 115-116, 128-130.

¹⁹ *Richmond Daily Examiner*, December 24, 1863.

²⁰ *Macon Daily Telegraph*, December 31, 1863.

regiments.²¹ Seddon disagreed, as did the president. Davis' endorsement on Cobb's request simply read: "The law forbids."²² Enrolling officers began conscripting eligible members of the State Guard almost immediately.²³

To replace these guardsmen, Secretary of War Seddon hoped to be able to call up the remainder of the State Guard Brown claimed he had enrolled the previous summer. Only 8,000 men, the original quota, had been mustered; the rest, some 7,000 men, had remained at home as an unorganized reserve.²⁴ But Brown refused to give up the men. The governor had made the enrollment in July 1863 even though the organization and deployment had not taken place until September. For him, the Guard's term of service had begun at the date of requisition, not at the date of organization. Thus all of the guardsmen, even the unorganized ones, had completed their terms and were no longer liable for duty.

The denial was as much a rebuke of the Confederacy's breach of faith as it was about laws and dates. The State Guard had been called and organized as a temporary force to meet the threat of Union invasion with a promise of furlough once the danger had passed. But following the Confederate repulse of Union forces at Chickamauga in September, the men had been kept in the field, long after the threat of invasion was gone. "The failure of the Government to keep its faith with that part of the State Guard," he explained, "has caused great dissatisfaction with and great distress of the Government, and has engendered a feeling which will render it very difficult to enlist another similar

²¹ *Official Records* IV, 3:13.

²² *Ibid.*, 3:14.

²³ *Macon Daily Telegraph*, January 30, 1864.

²⁴ CRG 3:452.

force in the State.”²⁵ Brown was not about to let the Confederate government increase its power despite prior pledges, contracts and agreements.

The second, largest, and arguably most important confrontation was that over the suspension of the writ of habeas corpus. Upon passage of the liability measure, the Richmond *Sentinel* noted that “many of the parties interested [in preserving their vested rights] have employed counsel to contest the case,” and Congress had little doubt that the parties in interest were going to put up a fight to protect their exemptions.²⁶ Mississippi Senator A. G. Brown made the controversial recommendation that the president suspend the writ to prevent such lawsuits, and South Carolina Senator James Orr reluctantly agreed that principal liability “could never be executed, except by the means recommended the other day by the Senator from Mississippi in his revolutionary speech.”²⁷

Silencing civilian courts and preventing conscripts from protesting their enrollment was dictatorship to most Confederates. Vice President Stephens, writing from his home in Crawfordville, Georgia, warned the president that suspension would be “exceedingly unwise & impolitic as well as unconstitutional.”²⁸ The editor of the Richmond *Examiner* was equally concerned. Although the Lincoln administration had used suspension to combat disloyal citizens, even it had not done so over simple contract

²⁵ Similar disputes were taking place in other Confederate states as well. *Ibid.*, 3:459; *Official Records IV*, 3:38-39.

²⁶ Bureau of Conscription, “Circular No. 1: January 13, 1864” (Richmond, VA, 1864); Richmond *Sentinel*, quoted in *Macon Daily Telegraph*, December 31, 1863.

²⁷ SHP 50:129-130.

²⁸ Alexander H. Stephens to Jefferson Davis, January 22, 1864, in Alexander Hamilton Stephens Papers, 1822-1911, Rare Book, Manuscript, and Special Collections Library, William R. Perkins Library, Duke University.

disputes.²⁹ “The joy of the devils in hell over the fall of Lucifer was not so frantic as that with which the Yankee nation will greet this news,” he wrote. “It is to be feared that there is a powerful influence in Congress advocating, and anxious for the establishment of a military dictatorship over this country.”³⁰ Thus, every member of Congress had to be clear as to what kind of suspension he supported. Few advocated presidential over congressional authority to suspend. Senator James Phelan, who introduced a suspension bill on January 6, made certain to frame his bill as “purely a legislative act with which the President had nothing to do.” Suspension was and would remain under the control of the people's representatives.³¹ A. G. Brown explained that suspension would focus only on principal liability and other exemptions, war measures that were inherently outside civilian jurisdiction, and nothing else. And few congressional leaders were willing to advocate openly a military authority to suspend. Still, almost all agreed with Orr that the “country should not be lost because of the opinion of every petty judge, authorized to issue a habeas corpus, giving different decisions in Virginia, Tennessee, Alabama, and Mississippi.”³²

Congress' secrecy during the suspension debate did little to calm people's fears. Phelan's original proposal, made in open session, was enough to spark the public's interest. A separate bill submitted by Georgia Congressman Lucius Gartrell, again in open session, fanned the flames.³³ But all subsequent news remained hidden behind

²⁹ *Richmond Examiner*, January 7, 1864.

³⁰ *Ibid.*, January 10, 1864.

³¹ SHP 50:188, 197; JCCSA 3:517.

³² SHP 50:133.

³³ JCCSA 6:621; SHP 50:228.

closed congressional doors. No one knew that Phelan's bill died in committee.³⁴ No one knew that the House tabled its original bill.³⁵ And no one saw President Davis' February 3 plea to reconsider suspension as a “sharp” but necessary remedy to the presence of spies and traitors around Richmond and, more importantly, to the interference of courts in the conscription of principals throughout the Confederacy.³⁶ It left the country, as Alexander Stephens politely described it, in a “state of apprehension” until the final congressional authorization passed on February 15, two days before the passage of the third conscription act.³⁷

Within a few weeks, despite the suspension of the writ, legal challenges to the third act made their way to Georgia's courts.³⁸ Warren County's Inferior Court released two principals in late February based on the breach of faith claim.³⁹ That same month, the state's attorney general filed suits on behalf of seven principals in the Taliaferro County Inferior Court.⁴⁰ As in Warren County, the court ruled the new law

³⁴ JCCSA 3:517-518, 546, 601-602.

³⁵ *Ibid.*, 6:756.

³⁶ *Official Records IV*, 4:69-70.

³⁷ Alexander H. Stephens to Jefferson Davis, January 22, 1864, in Alexander Hamilton Stephens Papers.

³⁸ Georgia's courts were in an uncomfortable situation. They were not supposed to issue writs of habeas corpus under Confederate law, despite the fact that the Georgia state legislature had passed a law in early February penalizing any Superior or Inferior court \$2,500 for refusing to grant a writ of habeas corpus. *Richmond Examiner*, February 3, 1864.

³⁹ *Kinsey v. Rhodes, Farr v. Rhodes and Johnson v. Rhodes*, Warren County Inferior Court, Minutes, 1850-1868, p. 433, 437.

⁴⁰ *State of Georgia ex. rel. Richard D. L. Peck, State of Georgia ex. rel. Felix Y. C. Peck, State of Georgia ex. rel. James H. Peck, State of Georgia ex. rel. Richard M. Saggus, State of Georgia ex. rel. John W. Swan, State of Georgia ex. rel. Thomas J. Rhodes, State of Georgia ex. rel. William H. H. Chapman*, Taliaferro County Inferior Court, Writs: Book E, 1852-1865, pp. 172-183; *James H. Peck v. Woodruff, Felix Y. C. Peck v. Woodruff, Richard D. L. Peck v. Woodruff*, GSCCF, file A-3877.

unconstitutional. Similar rulings were handed down in the Oglethorpe and Fulton County Inferior and Superior Courts.⁴¹ Although most of these rulings were later overturned, there were so many principal cases coming to trial that on February 29 enrolling officer James A. Blackshear suspended the enrollment of principals in his district pending appeals to the Georgia Supreme Court.⁴² The high court eventually ruled in favor of principal liability in the wake of an enforceable substitute liability, as did numerous other courts throughout the South, but the rulings did little to prevent many of Georgia's lower courts from continuing their recognition of principal exemptions.⁴³ The Glascock County Inferior Court found in favor of continued principal exemption in April 1864. The Taliaferro County Inferior Court upheld it again the following October, while the Appling County Inferior Court upheld it through November.⁴⁴ Nor did it change some superior court judges' opinions. While Washington County Superior Court Judge James S. Hook adhered to the Supreme Court's ruling, he offered an *obiter dictum* in *Murphy*,

⁴¹ *Tiller v. Norton*, *Mattox v. Norton*, *Watkins v. Norton*, *Hawks v. Norton*, *Adkins v. Norton*, and *Arnold v. Hawkins*, Oglethorpe County Inferior Court, Minutes, 1863-1869, pp. 86-89, 106-107, 116, 117, 119, 120-124, 125-128, 129-130; *Tiller v. Norton*, Oglethorpe County Superior Court, Minutes, 1857-1866, pp. 528-530; *Cohen v. Harwell*, file A-3805, *Norton v. Harris*, GSCCF, file A-3809. c.f., Judge Osborn Lochrane's ruling in favor of principal liability, *Southern Recorder*, February 23, 1864.

⁴² *Deadwyler v. McCurdy*, Madison County Inferior Court, Minutes, vol. C: 1845-1866, March 4-5, 1864; *Norton v. Tiller*, Oglethorpe County Superior Court, Minutes, 1857-1866, pp. 528-530; *Woodruff v. Richard D. L. Peck*, *Woodruff v. Felix Y. C. Peck*, *Woodruff v. James H. Peck*, *Woodruff v. Richard M. Saggus*, *Woodruff v. John W. Swan*, *Chapman v. Woodruff*, and *Rhodes*, *Woodruff*, Taliaferro County Superior Court, Book F, 1856-1867, pp. 176-178, 201, 206-208, 212, 214; *Rhodes v. Farr* and *Rhodes v. Johnson*, Warren County Superior Court, Minutes, Book H, pp. 556, 557, 568. See also, *Swindle v. Brooks*, file A-3811, and *Fitzgerald v. Coker*, GSCCF, file A-3831.

⁴³ 33 GA 413; *Weems v. Farrell*, GSCCF, file A-3759; *Weems v. Williams*, *Ibid.*, file A-3760, and *Cohen v. Harwell*, *Ibid.*, file A-3805; *Southern Recorder*, February 16, 1864.

⁴⁴ *Reid v. Norton*, Taliaferro County Inferior Court, Writs: Book E, 1852-1865, pp. 186-187; *Norton v. Reid*, Taliaferro County Superior Court, Book F, 1856-1867, pp. 215-216; *Taylor, et. al. v. Molton*, and *Redish v. Lichtenstein*, Appling County Inferior Court, Minute Book A: 1857-1882, pp. 121, 157; *Harris v. Usry*, *Hart v. Usry*, *Wilson v. Usry*, and *Kitchens v. Usry*, Glascock County Inferior Court, Minutes: 1858-1876, p. 125; *Harris v. Usry*, *Hart v. Usry*, *Wilson v. Usry*, and *Kitchens v. Usry*, Glascock County Inferior Court, Minutes: 1858-1888, pp. 24-30; *Usry v. Harris*, *Usry v. Hart*, *Usry v. Wilson*, and *Usry v. Kitchens*, Glascock County Superior Court, Minutes: 1858-1874, p. 151-153.

et. al. v. Roughton that he would not “hesitate to discharge the applicant if the Supreme Court had not in the course of the decision [upholding principal liability] held that the whole matter of substitution is a mere gratuitous privilege” rather than a contractual arrangement.⁴⁵

Such obstinacy in the face of a supreme court ruling reflects an attachment to politics that frequently conflicted with the law. Judge Thomas W. Thomas, who issued the rulings of unconstitutionality in Warren County, was a supporter of Governor Brown's anti-conscription stance, as was Judge Hook in Washington County. Judge Richard Henry Clark of the Southwestern Judicial Circuit, based in Albany, frequently issued rulings in defiance of the Supreme Court, not out of disrespect for the court but from a deep-seated belief in the correctness of his judicial stance.⁴⁶ Still, his legal opinions were not so deep-set as to be immovable. He had initially thought conscription a constitutional exercise of Confederate army powers, although an “outrageous exercise of power if it was meant to be fully executed.” But when Governor Brown, a long-time friend and political ally, began his anti-conscription efforts in the summer of 1862, he reversed his position. “I had not examined the question,” he admitted in a July 1862 letter to Brown. “I have [since] carefully read the controversy between yourself, and the President, and I was made fully satisfied it was unconstitutional.”⁴⁷

It also reveals the mechanics that helped perpetuate the image of a rich man's war. Principals, with few exceptions, were elite agriculturalists, merchants, and their sons.

⁴⁵ *Murphey, et. al. v. Roughton*, GSCCF, file A-3810.

⁴⁶ Clark, *Memoirs*, 1-2.

⁴⁷ Colonel R. H. Clark to Governor Joseph E. Brown, July 16, 1862, Governor's Subject Files.

With average slaveholdings large enough to classify them as planters, nearly two-thirds of the principals' examined in this study had access to higher household wealth than that of almost every other citizen in their respective counties, on average almost \$18,000 per principal, money with which to hire substitutes and pay legal expenses for the protection of their exemptions. For the majority of these principals, their first plea for protection went to the five-person inferior court, the most powerful of the county administrative, judicial and legislative elective bodies. Like their petitioners, justices of the inferior courts were members of the local political and economic elite, some with substantial slaveholdings, and on average almost twice the wealth of their neighbors.⁴⁸ Usually legally untrained, these justices would have reference to general treatises and legal guides, but in the rapidly shifting currents of war-time legislation, it is not unreasonable to assume that these men would have resorted to equity judgments when peace-time legal standards proved unsatisfactory, judgments that would have taken into account local needs for stability either in the hands of, optimistically, a republican elite, or, more pessimistically, a self-conscious and self-serving ruling elite.

Perhaps most importantly it reflects an entrenchment of local elites against the apparent dissimilitude of the Confederate government. In 1862, they had accepted conscription, believing that it accommodated the hierarchy of support that a successful war effort required. A corps of economic and political leaders helped enrolling officers send those best suited for military labor to the front while they remained behind for home

⁴⁸ This data is drawn from a compilation of 1860 United States federal population census data on the thirty-nine Georgia principals known to have filed lawsuits following the repeal of substitution and the twenty-one justices of the inferior courts who sat on their trials. Ralph A. Wooster, *The People in Power: Courthouse and Statehouse in the Lower South, 1850-1860* (Knoxville, TN: The University of Tennessee Press, 1969), 65-66, 157-159.

front stability, food production, and slave management.⁴⁹ Colonel Weems' success at Camp Cooper was in direct response to his relationships with James Nisbet and other elites in Macon. Captain Blackshear's successes, limited though they were by his own indolence, were encouraged by his relationships with local elites in Athens and Griffin, and Lieutenant Coker's successes drew from the support he received from community leaders in Albany. Now, these same local elites questioned the intentions of Confederate leaders to abide by this understanding. The pledges they thought they had received from their government and its agents - might it be said, their friends and allies? - to accept substitutes so they might stay behind appeared worthless. Enrolling officers were conscripting and arresting members of their old support system, and few knew what repercussions this might have for future cooperation. As the *Macon Telegraph* admitted, "the party in interest [principals] is but small and unpopular," but it was the wrong party to anger if a successful civilian-military relationship were to be maintained.⁵⁰

"LEGISLATIVE DOGBERRIES"

The third conscription act, principal liability, and the suspension of the writ threatened to dismantle the accords that had supported the first two acts. Almost every element of civilian independence appeared under attack, as were the leading advocates of that independence. Vice-President Alexander Stephens, quick to sense a growing alignment of Confederate powers, warned Governor Brown in late January 1864, that there was a distinct possibility "of a war to be waged against [us] at Richmond." It was a

⁴⁹ *Macon Daily Telegraph*, January 1, 1864.

⁵⁰ *Ibid.*, December 31, 1863.

warning that prompted a renewed vigilance on the part of Brown, Stephens, and the Stephens' brother Linton against the rise of the military dictatorship they had foreseen. Not everyone agreed with their dire visions. Georgia Senator Herschel V. Johnson refused to see conscription as an act that “sneakingly drives a vital blow at liberty without a manly avowal of the purpose.” Instead, it was the result of good men who sought but could not always find successful war measures.⁵¹ And the majority of the members of the Georgia State House shared Johnson's attitude, so when Brown and the Stephens brothers attempted to gain state nullification of the act in March 1864, they were forced to reconcile themselves to a simple, though forcefully worded, denunciation of conscription.

Brown had planned to draft a formal protest to the third act even before its passage, but he never put pen to paper in the hopes that Congress might temper its own actions or President Davis might temper it for them. His old faith in Davis' states' rights past remained. But his faith was dwindling fast, and as passage of the third act drew near, Brown hoped he, Alexander and Linton could craft a proper response together. The three met at Linton's house in Sparta on February 25, 1864, and co-authored a resolution of nullification and a fifty-page gubernatorial address that, among other things, asked the legislature to join him in condemning conscription and suspension.⁵² Brown then issued resolutions denying Confederate authority to conscript forty-five to fifty-year old men and convening a special session of the General Assembly on March 10.⁵³ The plan was

⁵¹ Herschel V. Johnson to A. H. Stephens, February 5 and March 9, 1864, in Herschel V. Johnson Papers.

⁵² Phillips, *Correspondence*, 632-633; Joseph E. Brown, *Message of His Excellency Joseph E. Brown, to the Extra Session of the Legislature, Convened March [10], 1864* (Milledgeville, GA, 1864); *Macon Daily Telegraph*, March 14, 1864.

⁵³ *Official Records* IV, 3:196-197; *Macon Daily Telegraph*, February 29, 1864.

to have Linton and Brown offer the resolution and address respectively while Alexander used his national prestige to convince swing voters to endorse both.⁵⁴

Few outside Brown's inner circle were sure what the governor planned. Many feared the governor's intentions and pressed the legislature to reign in its wayward governor. "Gentleman," they implored, "show your faith [in the Confederacy] by your works."⁵⁵ However, most kept a wait-and-see attitude. "The objects for which the legislature is called together are not developed by Gov. Brown," observed a correspondent to the *Macon Daily Telegraph*. If called to create a "compliance with the recent acts of Congress...the call may be justified. If the Governor or his advisors contemplate any issue direct or indirect with Congress or the President... the call is not only to be deplored, but denounced by loyal men in the State."⁵⁶

The triumvirates' efforts did not begin well. Throughout much of February and early March, Alexander was confined to his plantation at Crawfordville with kidney stones, and he unable to attend the opening of session. Linton could tell early on that his absence had damaged their chances for success. The House clerk had read Brown's message "in a manner which is seldom equaled," he wrote his brother, but Representative Nathan Atkinson's reading of the suspension resolution had been lackluster and few in the legislature were prepared to support them as yet. "The whole mass of them, is opposed to suspension, but not willing, I am afraid, to declare their opposition," Linton wrote his ailing brother. "I do wish you would come here and make a speech. I think a

⁵⁴ Joseph E. Brown to Alexander H. Stephens, March 4, 1864, in Phillips, *Correspondence*, 634.

⁵⁵ *Macon Daily Telegraph*, March 9, 1864.

⁵⁶ *Ibid.*, March 4, 1864.

great majority of them would like to hear from you, and would be influenced by your views.”⁵⁷

Linton's assessment was correct. On March 12, the Senate Committee on Confederate Relations reported unfavorably on the resolution, and two days later both houses entertained their own resolutions expressing confidence in President Davis' judgment that suspension was a necessary evil.⁵⁸ Reportage likewise was almost uniformly critical of the seemingly unpatriotic assaults on the Davis administration.⁵⁹ Even prominent national figures with whom Brown and Stephens had hoped to find common cause were less than enthusiastic. Neither of Georgia's two Confederate senators would publicly endorse the proposals. Herschel V. Johnson had voted against suspension “according to my convictions of right [but] after they had passed over my head, I... acquiesced in them and [will] not set up my opinion against the laws of the government.”⁶⁰ Likewise, Benjamin H. Hill disapproved of suspension, but he “had to admit I have *confidence* in Mr. Davis. I have not agreed with him in many things. But I think his *heart* is right and that nothing could tempt him to be a dictator.”⁶¹

In part, it was this view of suspension as a well-intentioned error rather than an unconstitutional act that led Alexander to forego his sickbed and heed Linton's plea for

⁵⁷ Linton Stephens to A. H. Stephens, March 10, 1864, in Alexander Hamilton Stephens Papers.

⁵⁸ Macon Daily Telegraph, March 16, 1864; *Journal of the Senate at an Extra Session of the General Assembly of the State of Georgia, Convened under the Proclamation of the Governor, March 10th, 1864*, (Milledgeville, GA: Boughton, Nisbet, Barnes & Moore, State Printers, 1864), 57-58.

⁵⁹ Macon *Daily Telegraph*, March 15, 1864; *Daily South Carolinian*, March 16 and 17, 1864; Richmond *Daily Dispatch*, March 18, 1864. c.f., *Augusta Chronicle and Sentinel*, quoted in Macon *Daily Telegraph*, March 15, 1864.

⁶⁰ Herschel V. Johnson to A. H. Stephens, March 10, 1864, in Herschel V. Johnson, Papers.

⁶¹ Phillips, *Correspondence*, 636-637.

an appearance. But also influencing his decision was Brown's corruption of the original message. Alexander was the probable author of Brown's address. Senator Hill thought so and praised the vice-president for his clarity of thought and argument.⁶² But the final speech bore the unmistakable marks of the irascible governor who had edited the draft after the Sparta conclave to match his more aggressive style. No matter how well the message had been read, ultimately it had been too confrontational and frightened potential supporters away. Thus, the vice-president's March 16 address to the state legislature echoed the sentiments of Brown's gubernatorial address but shifted from its combative tone.

The third conscription act was bad policy, Stephens said, not only because it stripped the states of the productive elements of society and placed them under Confederate control, but because it created an unknown military force. Differences over the constitutionality of the first two conscription acts had been settled judicially because the military forces and powers in question had fit within a constitutional paradigm. But the third act created an anomalous force, an army for national service composed of eighteen- to forty-five year olds and a militia for state defense and army reinforcement composed of seventeen to eighteen and forty-five to fifty-year-old men. For those who ascribed to Phelan's national militia model, the organization was nothing more than the national application of the regular and reserve militia scheme that Virginia had implemented in 1861 and Georgia had used not four months earlier. But for those who disagreed with Phelan and adhered to the traditional model of a national army

⁶² Ibid., 634-637.

supplemented by state militias, this was a hybrid military that the constitution had not foreseen and did not allow.

Stephens also assailed the suspension of the writ as unconstitutional, not only because it reflected a Confederate disdain for civilian rule but because it granted the chief executive what was an exclusively legislative power to suspend the writ. Support Davis or not, well-intentioned error or not, constitutionally the executive could not do what the legislature had authorized him to do.⁶³

The moderated tone and clarified constitutional arguments were effective but not conclusive. The House spent most of March 18 in prolonged debate over Linton's resolution and a substitute resolution to abstain from legislative action. The margin for victory appeared so slim that Alexander suggested to his brother that he change the resolution from one of nullification to one of censure. Even then, it was not until around eleven o'clock that evening that Linton finally could convince a bare majority that censure was not the same as disloyalty. His resolution passed on a narrow 71 to 69 vote.⁶⁴ A similar debate between censure and abstention occurred within the Senate, again with each resolution careful not to appear unfaithful to the Confederate cause. It, too, was a

⁶³ Linton most likely measured the potential response to his brother's coming address through a test resolution offered earlier in the day by Senator Edward H. Pottle, Linton's classmate at the University of Georgia in the 1840s, framing a similar argument against suspension. James D. Waddell, *Biographical Sketch of Linton Stephens* (Atlanta, GA: Dodson & Scott, 1877), 398-401; *Journal of the Senate at an Extra Session of the General Assembly of the State of Georgia, Convened under the Proclamation of the Governor, March 10th, 1864*, 68-70; *The Great Speech of Hon. A. H. Stephens, Delivered before the Georgia Legislature on Wednesday Night, March 16th, 1864*, in CI, reel 92, no. 2848, passim, esp. 7-14. c.f. William L. Sharkey, "Essay on Habeas Corpus," F. Garvin Davenport, ed. *The Mississippi Valley Historical Review* 23, no. 2(Sept. 1836): 243-246.

⁶⁴ *Macon Daily Telegraph*, March 20 and 22, 1864; *Savannah Daily Morning News*, March 22, 1864.

lengthy, and in this case multi-day, debate that ended in a 20 to 12 vote in favor of the resolution.⁶⁵

The final resolution read like something Governor Brown would have written, not the diluted responses the Assembly would have issued in the past when it had avoided offering guidance on Brown's militia powers under conscription. Still, the Assembly realized that nullification was too harsh a stance to take and would have accomplished little other than to position the state as a potential rival of the Confederate government. Even conscription's harshest critics did not wish to appear unpatriotic toward the Southern cause. To soften the censure, the General Assembly coupled its resolution with a second expressing its “undiminished confidence in the integrity and patriotism of Jefferson Davis, Chief Magistrate of the Confederate States” and warned Brown against any interference in operation of conscription.⁶⁶

This seemingly contradictory stance led many in the Confederacy to miss the importance of Georgia's actions. The Richmond *Daily Examiner* dismissed the affair as the misguided energies of a vitriolic governor. As an awkward man, “unquiet, self-assertive, wrong-headed, contentious and troublesome, to whom the plain beaten road of common sense, common feeling, and common duty, is odious,” Brown had decided to focus his taxing but relatively harmless attention on “two or three great measures which

⁶⁵ Eleven of the twelve voting against censure signed a minority resolution expressing their faith in the president's actions and abstaining from any action that would impair Confederate success. *Journal of the Senate at an Extra Session of the General Assembly of the State of Georgia, Convened under the Proclamation of the Governor, March 10th, 1864*, 98-99.

Brown was concerned that the debate was taking too long and threatened to call the legislature back for an additional special session on March 21. *Ibid.*, 91-99; CRG 2:673-676.

⁶⁶ *Macon Daily Telegraph*, March 23 and 26, 1864; *Official Records IV*, 3:244. The North Carolina Senate passed a similar resolution without the statement of confidence in June 1864. *Resolutions of the General Assembly of the state of North Carolina concerning certain acts of the late Congress of the Confederate States* (Richmond, 1864), in CI, reel 5, no. 166.

the spirit of the people have forced on their political representatives.”⁶⁷ The *Macon Daily Telegraph* proclaimed it the work of “legislative Dogberries” who, like the namesake night constable Dogberry in Shakespeare's *Much Ado about Nothing*, provided a comic aside to the more substantial work of winning the war.⁶⁸ Misguided or not, Brown and his allies had succeeded in guiding the state legislature to a statement, however diluted, that was critical of the administration's breach of faith with the suspension of the writ of habeas corpus. The task now was to build on this minor victory to bring censure on conscription in its entirety.

“WE REGARD THEM ALL AS EXEMPTS”

Brown's actions spurred renewed, prolonged and heated confrontations over Confederate policy and the future of Confederate-state relations. The most private was that between Vice-President Stephens and Senator Herschel V. Johnson. Although they remained good friends and congenial opponents, their views of Confederate policy were irreconcilable: Stephens, stubbornly convinced that any adjustment of the political balance through conscription or suspension of the writ tended, perhaps irreversibly, toward military dictatorship, Johnson, firm in his states' rights beliefs but flexible in their application to admit contingencies that might appear politically incongruous.⁶⁹

The most far reaching dispute was that between Governor Brown and Howell Cobb over the protections granted state officers, protections made even more important

⁶⁷ *Richmond Daily Examiner*, March 21, 1864.

⁶⁸ *Macon Daily Telegraph*, March 24, 1864.

⁶⁹ See, for example, the letters of Stephens and Johnson dated from December 1863 to June 1864 in Herschel V. Johnson Papers.

by the expansions of the third act and the failures of principal liability. Expansion of conscription had been counterproductive when measured against agricultural production. Although the law exempted men owning fifteen or more slaves for the production of food stuffs, very few of these men produced surpluses for market. Those upon whom the country relied for food were actually the small producers who owned fewer than fifteen hands and who had already been and continued to be conscripted. The manufacturing sector was in a similar, if not worse, condition. The extension of principal liability also brought in very few new men, most principals being exempted for other reasons or detailed for industrial production. Conscription had been “narrowed down to a system of delicate gleaning from the population of the country,” Colonel John S. Preston, superintendant of the Confederate Bureau of Conscription explained to Secretary Seddon, “involving the most laborious, patient, cautious, and intelligent investigation into the relations of every man to the public defense.” The only resources available were “a stern revocation of all details, [and] an appeal to the patriotism of the State claiming large numbers of able-bodied men [shielded as state officers], and the accretions of age” which would slowly admit the only truly renewable source of military labor.⁷⁰

Reaching these officials in Georgia would be difficult. Justices of the peace, court clerks, bailiffs, constables, jailers, and militia officers, fearful that the governor's protections would be stripped away by the third act, inundated the governor's office with letters and petition throughout the late spring.⁷¹ Brown pledged his continued protection,

⁷⁰ *Official Records* IV, 3:354-364.

⁷¹ *Macon Daily Telegraph*, April 4, 1864; *Georgia Weekly Telegraph*, May 9, 1864; S. H. Causey to Joseph E. Brown, March 29, 1864, E. Faw to Joseph E. Brown, March 30, 1864, R. H. Bulloch to Joseph E. Brown, April 13, 1864, G. R. Lewis to Joseph E. Brown, April 14, 1864, Henry Braswell to Joseph E. Brown, May 5, 1864, G. F. Bristow to Joseph E. Brown, May 7, 1864, and Ephraim H. Platt to Joseph E. Brown, May 12, 1864, in Governor's Subject Files.

but such promises led to reported abuses throughout the state. The Confederate enrolling officer from Dooly County complained to Governor Brown that Dooly County had not had a jail for four years nor a jailer for eight. Yet following the passage of the third conscription act, a newly liable jailer had been appointed and commissioned. In addition, the county, which comprised one militia district, had divided itself into two districts, formed a second militia company with newly commissioned officers who now claimed exemption as well.⁷² W. W. Burke of Echols County in south Georgia complained that his county, which had never needed a deputy, now had several, and “we have no more use for them as deputies then there is a fifth wheel to a wagon.” Brown answered that he had no discretion and was “required to carry out the resolutions of the Legislature and protect all officers” regardless of appointment date or condition. He regretted that able-bodied men were holding offices that older men might fill, but he felt “obliged to commission those who are legally elected, and under the general rule of law and obliged to extend to them the same protection which afforded other commissioned officers.”⁷³ Brown's adamancy in protecting state officials no matter their circumstances caused Howell Cobb no end of trouble in filling his ranks. As the newly appointed commander of Georgia's Confederate Reserve forces, it was his job to organize those seventeen to eighteen and forty-five to fifty-year old men brought in under the new conscription act.

Cobb's decision to confront the governor was at once professional and personal. Although not an admirer of conscription, he nonetheless bowed to administration wishes and supported it, even when its terms thwarted his attempt to reorganize the State Guard

⁷² U. M. Gunn to Joseph E. Brown, May 19, 1864, in Governor's Subject Files.

⁷³ W. W. Burke to Joseph E. Brown, May 2, 1864, in *Ibid.*; *Official Records* IV, 3:347.

into new regiments. But Brown's refusal to turn over unorganized guardsmen had affected Cobb's career. The inability to call these men as replacements effectively ended the State Guard program, eliminating Cobb's command, and throughout the late winter of 1863-1864, he began organizing regimental meetings and public forums to encourage support for the administration's war policy and undermine support for the governor.⁷⁴

Brown, too, began organizing. He ordered copies of his message and Linton's resolution to be sent to the captain of every Georgia company in Confederate service and an additional 3,000 copies of Alexander's speech to the company lieutenants with the hopes that "if the Capt[ain] is against us and does not let the company have the one, the Lieut[enant] may let them have the other." Likewise he sent copies of the message and resolution to every clerk of the court in every county within the Confederate lines with copies of Alexander's speech to every county sheriff.⁷⁵ To bolster judicial support, he offered Linton a circuit judgeship where rulings favorable to Brown anti-conscription/anti-suspension politics could be handed down. (Linton refused the judgeship and kept his House seat, a decision that Brown later praised. By May 1864, it appeared that the pro-administration consolidationist faction within the General Assembly would make "a desperate effort next winter to carry measures though the legislature favorable to their purpose [with] Cobb... as high priest," and Brown agreed that Linton's service would be needed there to prevent a consolidationist majority.⁷⁶)

⁷⁴ It was Cobb, for example, who helped organize the Twenty-fourth Georgia's meeting condemning Brown's policies and praising "with admiration the patriotic efforts of Gen. Howell Cobb [the Twenty-fourth's old brigade commander] in supporting the government [and] as an expounder of the true policy for the State to pursue. *Official Records* IV, 3:74-75; *Savannah Daily Morning News*, April 6, 1864.

⁷⁵ Phillips, *Correspondence*, 640-641.

⁷⁶ *Ibid.*, 641-643.

Brown relished such political maneuvering and his pleasure grew with every sign that Cobb's frustrations mounted. "I learn that Genl. Cobb is getting in the crazy state of fury," he wrote Alexander Stephens. "A friend from Atlanta writes me that he denounced me on the R. R. car between Macon and that place the other day as a *traitor*, a *Tory*; said I ought to be hung and would be soon; that he had never been to a hanging but would go some distance to see it done, etc. He is no doubt deeply mortified that he had not influence to defeat the measure prompted by me but he should not be blamed. He did all he could to serve his master."⁷⁷

Despite the rancor, Cobb did his best to convince the governor to limit his protections to only those officers necessary to the administration rather than the preservation of state offices. Brown was undeterred, and the two men began a correspondence in May 1864 more personal and vindictive than any between Brown and Davis or between Brown and Seddon in 1862 and 1863.⁷⁸ In a *quid pro quo* of political protectionism, Cobb accused the governor of shielding men in their "official retreats," while Brown claimed Confederate officers placed their favorites in "safe and comfortable positions in the rear." Perhaps Cobb was one of these favorites, Brown suggested, since "while your fellow-generals were in front of the enemy in the field, [the general] spent days and nights in Milledgeville lobbying and lecturing the members of the Legislature at its late session for the purpose of convincing them that it was their duty to sanction the late act of Congress suspending the privilege of the writ of habeas corpus."⁷⁹ Little was

⁷⁷ Ibid., 640.

⁷⁸ A similar debate was taking place between North Carolina governor Zebulon Vance and Secretary Seddon. *Official Records* IV, 3:425-429.

⁷⁹ Ibid., 3:347-349, 381-386, 417-422, 431-439, 442-444, 455-457, quotes on pp. 420 and 434.

accomplished other than to intensify their personal hatred and convince Cobb that Brown had nullified Confederate standards of exemption in favor of his own.⁸⁰

President Davis had anticipated this renewal of Brown's antics and in early April had dispatched his aide-de-camp, Georgia native and former acting Secretary of War Colonel William Montague Browne, to be the new state commandant of conscription.⁸¹ Browne's relationship with the governor was less confrontational but no more successful than that of Cobb. The governor would continue to protect all state officers and would demand the release of all conscripts elected to any state office prior to their actual enrollment in the Confederate army, even if that conscript had already been sent to the camp of instruction.⁸²

The state protected so many men that Cobb was convinced the number of reservists he could raise would fall well below Confederate estimates.⁸³ Indeed, he saw this protection of state officers not as a means of preserving state administration but as a tactic to poach eligible Confederate reservists for militia service.⁸⁴ Unlike the army of the first conscription act which left thirty-five to forty-five-year-old men for militia duty and the army of the second act which paralleled the militia under a coordinated vision of concurrent powers, the army of the third act centered on a rejection of previous agreements on liability and exemption. Substitution contracts were worthless, occupational exemptions were invalid unless under the control of the Confederate detail

⁸⁰ *Ibid.*, 3:476.

⁸¹ *Ibid.*, 3:269-270, 274.

⁸² *Ibid.*, 3:416, 440-441.

⁸³ *Ibid.*, 3:344, 473-475.

⁸⁴ *Ibid.*, 3:473-474.

system, and state officials were targeted by frustrated Confederate enrolling officers. It was thus for resourceful governors like Brown to devise alternative means to preserve state military power. On May 18, 1864, for example, Brown ordered all commissioned militia officers, all gubernatorial aides-de-camp, and all state and county judicial officers not in session to report to Atlanta for the protection of north Georgia. While he later claimed he was calling these men as militia (under his now expanded definition of *militia* as the whole of the arms-bearing population) and not as civil officers (over which he had no authority to order into militia service), it was clear that his authority was being exercised *because* of their exemption as state officials.⁸⁵ Otherwise, these men would already have been enlisted into the reserves by General Cobb.

Cobb was also concerned that Brown was enlisting men into the State Line and other home guard forces only to detail them to agricultural and industrial pursuits.⁸⁶ The Confederacy was doing the same thing, but Brown's details were suspect because no one was sure if they were being made to prevent Confederate control of white labor, to reduce the amount of time needed to call men back into active service, or simply to protect men from Confederate conscription.

Brown's relationship with President Davis and Secretary Seddon took a similarly vitriolic turn as disputes over Confederate defensive strategy heightened Brown's sense of betrayal. The defeat at Chickamauga had been a temporary setback for the Union military, and General William T. Sherman's army now marched toward Atlanta.⁸⁷ When

⁸⁵ CRG 2:703-704, 3:568.

⁸⁶ *Official Records IV*, 3:473-474.

⁸⁷ For information on the role of the Georgia militia in the defense of Atlanta, see Bragg, *Joe Brown's Pets*, chap. 2.

the invaders attacked Confederate General Joseph E. Johnston's defenses at Kennesaw Mountain on June 27, Brown became convinced that a cavalry assault on Sherman's supply lines could force a retreat and save the city. But Davis refused, citing more pressing manpower needs in other regions.⁸⁸ For Brown, the juxtaposition of the third act and the threat to Atlanta brought back memories of the first act and the threat to Savannah in 1862. Savannah had been saved but Fort Pulaski had fallen, and the city had lived under Union threat ever since. Sherman's forces posed an even greater threat, and the renewed sense of abandonment stripped Brown of any semblance of professional courtesy.⁸⁹ For his part, Davis was no more patient nor courteous than Brown. "Most men in your position," he responded on July 5, "would not assume to decide on the value of the service to be rendered by troops in distant positions."⁹⁰

Confederate patience for Brown's behavior had reached its end. Davis' response of the fifth coincided with orders from Secretary Seddon to Colonel Browne to "proceed in the execution of the [conscription] law strictly, without respect to any claims or pretensions which may be asserted by [Brown] or his agents." Seddon was tired of "attempts at conciliation, harmony and co-operation." Brown was blocking conscription and shielding excessive numbers of state officers. His correspondence with President Davis and General Cobb had violated common decency and respect. His personal attitude and political opposition were giving aid to the enemy abroad and prompting men to dodge the draft at home. He had no right to poach militiamen within conscription age,

⁸⁸ CRG 2:703-704, 3:582-583.

⁸⁹ *Ibid.*, 2:703-704, 3:587.

⁹⁰ *Ibid.*, 2:703-704, 3:588. For Brown's response see, *Ibid.*, 2:703-704, 3:589.

no right to detail agriculturalists, manufacturers or craftsmen, and no right to shield any more county or municipal officers. Colonel Browne was to go into the countryside and round up those men who had hidden behind the governor and his protection. “A few judicious examples... would probably strike wholesome terror, and induce prompt compliance with the call for enrollment by all the rest.”⁹¹

Four days after Seddon's orders, Brown issued his own orders. Convinced that the Confederacy had left Georgia to “her own resources to supply the reinforcements to Gen. Johnston's army,” Brown called out the reserve militia of men aged sixteen to seventeen and fifty to fifty-five, all Confederate exempts and all white males not in actual service of the Confederate army to join the “bullet department” of the active militia already in the field.⁹² “If the Confederate Government will not send the large Cavalry force to destroy” Sherman's supply lines, he explained, “the people of Georgia... must.”⁹³ The state draft of Confederate details, exempts and local defense forces began almost immediately, and the men organized into militia companies to be sent to Atlanta.⁹⁴

The conscription of Confederate details quickly brought the governor into conflict with Cobb, Browne and Confederate conscription officers. As soon as Howell Cobb read the proclamation he sent a telegraph to Secretary Seddon asking how far Brown's orders would be allowed to proceed. Part of Cobb's duty as commander of the Confederate Reserves was to oversee reservists in agricultural and mechanical details. Were these men in actual service, or were they liable to militia duty under Brown's “remarkable

⁹¹ *Official Records IV*, 3:530-531.

⁹² CRG 2:711-712.

⁹³ *Ibid.*, 2:715.

⁹⁴ *Ibid.*, 2:726.

proclamation?”⁹⁵ Seddon's contention was that detailed men were in Confederate service even if they did not fire a weapon. Details might be suspended or revoked and the men sent to the reserves, something Seddon left to Cobb's discretion, but details could not be enrolled as militia. And local defense forces definitely could not be enrolled as militia without being disbanded first.⁹⁶

Governor Brown's enrollment and detail of workers at the Ocmulgee Factory in Butts County drew fire from Colonel Browne. The colonel had been scheduled to leave the state in August, his assignment as state commandant being only a temporary one, but with the growing obstinacy of the governor and his recent order to arrest and enroll Confederate details, both Cobb and President Davis thought it best to keep the colonel in the state for the foreseeable future.⁹⁷ Browne claimed the workers as Confederate soldiers despite having been beaten to the punch by state officials. Even if one acknowledged a concurrency of jurisdiction over the men, he complained, “it must be admitted that whichever exercise the power first, by so doing exclude the other, and that a citizen rightfully in the service of the one cannot be taken out of the service and put into the service of another.” The third conscription act “apart from any action of the Officers of Conscription” had placed the workers within conscription age under Confederate control well before the state could offer a counterclaim. Browne also took issue with the governor's drafting of actual Confederate details who, despite their non-combatant roles, “are as much in the actual military service of the Confederate States as if they were

⁹⁵ *Ibid.*, 3:591-592.

⁹⁶ *Official Records IV*, 3:592, 595-597, 709-711.

⁹⁷ *Ibid.*, 3:580, 722.

fighting in the ranks.⁹⁸ But Governor Brown was unapologetic. “In this matter,” he responded, “I shall not modify my proclamation but shall execute the orders therein contained independently of all opposition or resistance which may be offered by Confederate officers or others.”⁹⁹

The numbers of men caught between the two governments was in the thousands, a slight majority of whom were protected by the Confederacy from state service. The monthly return of the Georgia conscription headquarters that August showed 4,156 men exempted from Confederate service automatically liable and 2,397 medical exempts potentially liable to militia service. To this could be added an additional 1,264 men detailed for agricultural and mechanical purposes, plus another 508 detailed for government service, for a total of 8,325 possible militiamen to be added to the state ranks. Georgia, on the other hand, reported an official tally of 1,015 exempted state officials, although this number is based solely on those names actually reported to conscription officials by Governor Brown. Brown most likely relied on his proclamations protecting all state officers rather than filing the proper paperwork. Colonel Browne estimated that this number could actually be as high as 5,478, plus an additional 2,751 protected militia officers, for a total of 8,229 potential new Confederate soldiers.¹⁰⁰

In this face-off, many judges sided with the Confederacy. In a ruling handed down just days before the governor made his defiant response to Colonel Browne, Judge

⁹⁸ William M. Browne to Joseph E. Brown, July 20, 1864, in Joseph E. Brown Papers.

⁹⁹ Joseph E. Brown to William M. Browne, August 9, 1864, in *Ibid.*

¹⁰⁰ *Official Records* IV, 3:871-874.

William Reese of the Wilkes County Superior Court expressed his belief that the law “clearly intended to give the Confederate government preference over persons liable to conscription” with the militia gaining access to recruits only “when the Confederate officers have rendered their performance and have declared in their most solemn manner that they do not desire certain persons in the military by giving exemptions.”¹⁰¹ Such statutory primacy was dangerous to state supremacy since the Confederate right “to conscribe portions of the militia [the arms-bearing population] and take them from the control of the State authorities... has almost prostrated the power of the Sovereign State to repel invasion or put down insurrection.” But statutory primacy did not equate to automatic enrollment nor did it give the Confederacy the right to conscript previously enrolled militiamen or to disband militia organizations already in existence. Thus, while Governor Brown's protection of militiamen and state officials was politically unseemly, it was perfectly legitimate. The state legislature's resolution on the third act had only *suggested* the governor not offer resistance, Reese pointed out, it did not preclude him from doing so when state independence was threatened.¹⁰²

Courts also upheld the state's right to enlist Confederate details, in particular, agriculturalists enrolled but then sent home to grow food.¹⁰³ The state Supreme Court

¹⁰¹ *Cleveland v. McGuire*, Wilkes County Superior Court, Minute Book 1859-1867, pp. 207-212.

¹⁰² *Oglesby vs. McGuire and King*, *Ibid.*, pp. 212-215.

¹⁰³ Almost every lower court ruling on the militia draft of Confederate exempts and details supported Governor Brown's position. See, for example, *Mills vs. Mayo*, GSSCF, file A-3872; *Jones v. Cutliff*, *Ibid.*, file A-3862; *Oglesby vs. McGuire and King*, Wilkes County Superior Court, Minute Book 1859-1867, pp. 212-215; *Cleveland v. McGuire*, *Ibid.*, pp. 207-212; *Barwick v. Snell*, Johnson County Inferior Court, Minute Book A, 1859-1873, pp. 89-90; *Hawks v. Moore*, Oglethorpe County Inferior Court, Minutes 1863-1869, p. 159; *Gholston v. Scott*, Madison County Inferior Court, Minutes, Book C:1845-1866, September 10, 1864; *Mercer v. Jones*, Dougherty County Superior Court, Book L, pp. 160-161; *Billingslea v. Jones*, *Ibid.*, pp. 148-149; *Hawks v. Moore*, Oglethorpe County Superior Court, Minutes 1857-1866, pp. 518-520; *Bacon, et. al. v. Lamkin*, Columbia County Superior Court, Minutes 1860-1879, pp. 198-199; *The State ex.*

saw no distinction between exemption and detail other than as procedures of removing military liability. “None of them [detailed agriculturalists] are in the army,” the court ruled, “none of them are subject to the rules and articles of war. They are all at home, attending to their ordinary pursuits. We regard them all as exempts... as equally subject to the military service exacted of them by the State of Georgia.”¹⁰⁴ Neither could Georgians hide behind Confederate local defense forces. Numerous potential militiaman chose to enlist in these small home-grown units rather than report for the defense of Atlanta. Emboldened by a recent court decision negating the militia exemption of local defense forces, Brown ordered members of the First Division Georgia Militia, home on furlough after the fall of Atlanta, to arrest any able-bodied white male not a member of the local militia.¹⁰⁵

The assault on the superiority of Confederate enlistment and detail powers continued on October 17, when the governors of Georgia, North Carolina, South Carolina, Virginia, Alabama and Mississippi met in Augusta to discuss uniform state initiatives to bolster military and civilian morale, end the high levels of desertion, and find new sources of military labor.¹⁰⁶ The meeting had been suggested by North Carolina Governor Zebulon Vance who was convinced new troops could be found among the excessive numbers of Confederate and state officials, not only those withheld from

rel. Charles Baston, Richmond County Superior Court, Minute Book 22, pp. 444-445; *Saggus v. Taylor*, Taliaferro County Inferior Court, Minutes 1853-1867, p. 121.

¹⁰⁴ 34 GA 27.

¹⁰⁵ The court case was probably *Hawks v. Moore*. *Hawks v. Moore*, Oglethorpe County Inferior Court, Minutes, 1863-1869, p. 159; *Hawks v. Moore*, Oglethorpe County Superior Court, Minutes, 1857-1866, pp. 518-520; CRG 3:609-612.

¹⁰⁶ Governor John Milton signaled his intention to attend but did not. *Official Records IV*, 3:721-722.

service for government administration but those state officials withheld “because the principals of State sovereignty rendered it improper to allow the Confederate Government to conscript them.”¹⁰⁷ But the other governors were unconvinced. Both Milledge Bonham of South Carolina and Joseph E. Brown of Georgia denied their states had any excess officials, and the final resolution passed by the governors made no statement on surrendering civic personnel beyond a pledge of shared military resources for mutual defense.¹⁰⁸ Instead, the resolution recommitted the states “to maintain our right of self-government, to establish our independence, and to uphold the rights of sovereignty of the States” and to the discovery of new military labor sources in Confederate officials.¹⁰⁹ While it was the suggestion that the Confederacy “appropriate such part of [the slave population] to the public service as may be required” that garnered the most interest, it was the emphasis placed on raiding Confederate offices and not state offices that was most representative of the governors' resolution.¹¹⁰

Thus, by the winter of 1864-1865, conscription was at a crossroads. Most people recognized that ages limits could not be expanded any further. Substitution had been eliminated, but not without sacrificing the trust of vital segments of the Confederate population. Exemptions had been pared down - and possibly could be reduced even further - but there was only so far the government could draw from the agricultural and

¹⁰⁷ Ibid., 3:684-685.

¹⁰⁸ Ibid., 3:692-693, 706-707, 735-736.

¹⁰⁹ “Letter from the Governor of Virginia, communicating a series of resolutions passed at a meeting of the governors of the states of Virginia, North Carolina, South Carolina, Georgia, Alabama and Mississippi, held in Augusta, Ga., on Monday, the 17th day of October, 1864,” in CI, reel 5, no. 166-1.

¹¹⁰ Ibid., 2. Newspapers as far away as Wisconsin and Ohio, while accurately reporting the governors' proposal merely to “appropriate” slave labor, emblazoned their headlines with the statement that the governors had recommended “the arming of negroes.” *Daily Ohio Statesman*, November 3, 1864; *Wisconsin Daily Patriot*, October 27, 1864.

mechanical segments of society without further damaging the nation's productive capabilities and public support for the war. The argument over which government shielded more unnecessary officers had ended in a draw, but the governors' meeting in Augusta had placed powerful public pressure on the War Department to purge its own ranks in the search for fresh troops. State officials were nearly untouchable and state details soon would be.

The question was where to turn for recruits? The gubernatorial proposal for slave conscription (for that was what “appropriation” really meant) had been a godsend to Northern propagandists and a severe bone of contention for Southern purists. Although many supported the conscription of slave labor for military use, very few actively supported arming blacks.¹¹¹ Howell Cobb became convinced that the only way to get more troops was to admit conscription a mistake and return to volunteerism. By his estimates, Georgia could then supply an additional 5,000 to 10,000 men. “Popularize your administration,” he pleaded with President Davis, “by some just concession to the strong convictions of public opinion [and] yield your opposition to volunteering.”¹¹² But Davis had other ideas, and he urged Cobb to crack down on the state's reserve enrolling officers to prevent any evasion of duty through their “remissness, inefficiency, or connivance.”¹¹³ The future of conscription would now turn on proposals made by Davis and others to militarize the process and remove any civilian interference.

¹¹¹ The most recent work on Confederate plans to arm slaves is Bruce Levine's *Confederate Emancipation: Southern Plans to Free and Arm Slaves during the Civil War* (New York: Oxford University Press, 2006).

¹¹² *Official Records* IV, 3:964-965, 1009-1010; Howell Cobb to Jefferson Davis, January 20, 1865, in “Georgia and the Confederacy, 1865,” *The American Historical Review* 1, No. 1 (Oct. 1895): 97-102.

¹¹³ *Official Records* IV, 3:1030-1031.

“TO REPUDIATE GOVERNMENT FAITH”

Throughout 1863, a military-run supplementary conscription system commanded by General Gideon Pillow and based in Marietta, Georgia, had operated in Alabama, Tennessee, and Mississippi, an area designated as Department No. 2. Although empowered by the same conscription acts that drove the enrollment efforts in the eastern Confederacy, Pillow's western efforts frequently came into conflict with the more bureaucratic enrollment system controlled from Richmond. He ignored state commandant's orders, countermanded enrolling officer granted exemptions, and ignored the standard reporting protocols required by the War Department. Pillow's cavalymen - roughly 2,000 to 6,000 men with supporting infantry - rode roughshod through the deserter-plagued regions of northern Alabama, rooting out fraudulent exempts and layouts shirking their duties and putting the lie to Alabama conscription officials' efforts to “elevate the character of the conscript... by impressing upon him the feeling that there is no stigma or reproach properly belonging to the term 'conscript'.” For Pillow, these were not men to be coddled into service; they were resources to be rounded up. His work was unpopular with locals, and he was the frequent target of protests over the heavy-handed nature of military control. But Pillow was successful, arguably more so than any officer under the civilian-run conscription of the east. By some estimates he enrolled 25,000-30,000 men in just the last three and one-half months of his operation, roughly one-third of what eastern conscription officials did in three years.¹¹⁴

Pillow's sullied success had wooed more than a few prominent politicians and military commanders into supporting a shift to military conscription. Already General

¹¹⁴ Purcell, “Military Conscription in Alabama,” 94-106, quotes on pp. 100-101; Moore, *Conscription and Conflict*, chaps. 9 and 10.

Howell Cobb and other Confederate officers had taken control of the Confederate Reserves and the conscription of its men. In October 1864, General Orders No. 77 from the Confederate Adjutant and Inspector General's Office ended the detailing of conscripted agriculturalists, effectively nullifying civilian exemption laws and placing planters and farmers under military control.¹¹⁵ By early winter 1864-1865, both General James Kemper and General Braxton Bragg, Pillow's commander in Department No. 2, were actively politicking the War Department to adopt military conscription.¹¹⁶

Brigadier General John S. Preston, chief of the Bureau of Conscription, decried the use of two competing systems, the one whose reported outrages damaged the reputation and efficiency of the other. He was a frequent critic of Pillow's work, and he warned House Committee on Military Affairs Chairman William Porcher Miles against an expansion of Pillow's conscription effort. "The true issue is, whether the law of Congress is that conscription is to be determined by pure military authority and administered by military force... or whether it is a law covering and protecting civil and personal rights" in the securing of troops, only secondarily enforceable by military force. Congress had determined that "the absolute rule of all experience and logic is that the state makes armies, the generals fight them..... Undertake to make or maintain armies by the means of the armies themselves and you establish military despotism."¹¹⁷ Preston asked Secretary of War Seddon, when the present system "had commended itself to the approbation of the people, the States, the Congress, yourself, and the President, [why]

¹¹⁵ *Official Records* IV, 3:715.

¹¹⁶ *Ibid.*, 3:948. The Richmond *Enquirer* and Macon *Telegraph* both advocated a military state on the Prussian model with a standing army of conscripts and volunteers supplemented by a reserve of military trained artisans and mechanics. Macon *Daily Telegraph and Confederate*, December 30, 1864.

¹¹⁷ *Official Records* IV, 3:883-886, quotes on 885.

change it for a [military] scheme which has already failed [under Pillow], and which has done as much to chill the patriotic ardor of the people as any one error or misfortune which has befallen us, and which has no one principle, element, or instrument adapted to the duties growing out of the law?"¹¹⁸ The results of expanding Pillow's scheme would be to "violate [Confederate] law and all tried regulations, and to repudiate Government faith pledged under that law and those regulations." National morale would only suffer with the dispatch of press gangs and domestic spies who forced a "wasted and enfeebled people of the Confederacy... to be dragged forth to the death grapple for their liberties."¹¹⁹ It would be an unenforceable policy, one that might lead the states to nullify an act of Congress or, worse yet, rebel.¹²⁰ At his diplomatic best, he merely pointed out to President Davis that "executive strength is always best, based on the exercise of civil rule."¹²¹

Preston obviously had a vested interest in eliminating any threat to the Bureau, especially now that it was under fire for inefficiency and corruption. Kentucky Congressman James W. Moore claimed that "a more tedious and inefficient system could not have been devised than the present one. It was as slow as making a trip to the Holy Land."¹²² According to Georgia commandant William M. Browne, the problem with the Bureau of Conscription was the quality of men being detailed to its offices. "Out of the

¹¹⁸ Ibid., 3:947-948.

¹¹⁹ Ibid., 3:785-789, quotes on 787.

¹²⁰ Ibid., 3:947-948. Governor Brown was also concerned with the rise of military power under conscription, but he saw the seat of that power as President Davis rather than the military leadership. *Macon Daily Telegraph and Confederate*, November 23, 1864.

¹²¹ *Official Records IV*, 3:946-947.

¹²² SHP 51:283.

whole number employed in the conscript service in the State," he complained, "there are not twenty who possess one qualification for the office.... For the most part, the enrolling and sub-enrolling officers belong to the lower and poorer order of society. They are ignorant and stupid and even where they are not lazy, are inattentive to their duties." He, no doubt, referred to men such as James Appleton Blackshear, whom he had brought to task earlier in the year, and many more such officers he had under arrest for fraud and incompetency awaiting courts-martial. When Howell Cobb pushed Browne for greater results, Browne claimed there was little he could do without better quality enrolling officers. And when Seddon asked Preston why the Bureau was manned with such poor officers, Preston reminded the Secretary that the War Department, not the Bureau, held appointment powers. Preston was doing the best he could with the men he received.¹²³

With such concerns over conscription's efficiency, few congressmen were willing to see any adjustment in the Confederacy's ability to call out new troops. President Davis wanted permission to call out under Confederate authority all state militiamen otherwise exempt from Confederate service. But Congress was cool to the idea. The Senate did not address the issue until March 14, 1865, near the agreed March 18 adjournment, when for lack of time it could postpone the measure until the next session.¹²⁴ The House Committee on Military Affairs had discussed Davis' request back on November 14, delegating it to a sub-committee that later returned a draft bill.¹²⁵ But after two days of debate and amendment, the committee indefinitely postponed the measure, and on March

¹²³ *Official Records* IV, 3:1048-1050.

¹²⁴ Congress adjourned on March 18, 1865. SHP 52:486.

¹²⁵ PCMA, November 19 and December 7, 1864.

16, 1865, reported back to the full House the inexpedience of such a bill.¹²⁶ The extension of the president's militia authority would have only depleted local defense efforts, and Congress was “indisposed to extend an erroneous policy by recommending the adoption of any measure to place other persons over the age of forty five in the general military service of the Confederate States.”¹²⁷

Congress was also cool to any expansion of the president's powers under conscription. On January 11, 1865, Congressman William Ephraim Smith of Georgia proposed a fourth conscription act that enrolled all able-bodied white male citizens, regardless of age, and amended the dual-class system of the third act with a third class of white males over age fifty and those unfit for duty in the first two classes. Class one, men aged eighteen to forty five, would be the main fighting force of the Confederate military. No details would be allowed from this class. Class two, men aged seventeen to eighteen and forty five to fifty, would act as a reserve for the first class and be assigned to guard and provost guard, garrison, and policing duties. No details other than mechanics and artisans would be allowed from this class. Class three, organized into county companies of up to 125 men, would act as a reserve for the second class and be assigned to slave patrol duty, deserter chasing, tax collection, and conscription enforcement.¹²⁸

Smith's bill was referred to the Committee on Military Affairs, but the committee minutes

¹²⁶ SHP 52:486, 494-495; PCMA, December 12, 13, 14, 1864 and March 14, 1865.

¹²⁷ *Official Records* IV, 3:1145-1146.

¹²⁸ Smith apparently also prepared a draft exemption bill to work with his new conscription bill. JCCSA 7:445; “A Supplementary Act of Conscription [1864]” in William Ephraim Smith Papers, 1844-1882, Rare Book, Manuscript, and Special Collections Library, William R. Perkins library, Duke University.

do not reflect any discussion of it, and it does not appear in any further congressional records.¹²⁹

Nor was Congress likely to rescind any elements of conscription as they then stood. Georgia Congressman Mark Harden Blandford proposed a bill to amend the conscription laws in early November 1864, and it, too, was referred to the Committee on Military Affairs. Blandford hoped that disgust with the corruption and confusion of conscription would make Congress more amenable to the early war proposals that used conscription as a secondary means of recruitment. His bill would limit conscription to able-bodied white men between eighteen and forty-five years old only after the failure of the state governor to meet quotas and requisitions for new troops. In addition, any soldier in the army or reserves could petition for discharge at age forty five, effectively disbanding the existing reserve corps, even if their term of service had not expired.¹³⁰ But the committee postponed deliberation on the bill until January 30, 1865, in favor of debate on the exemption reform that most congressmen felt was more important.¹³¹ The bill eventually reported back to the House was a substitute bill drafted by the committee, but it called for a similar degeneration of conscriptive power.¹³² The age limits of eighteen to forty five remained but all soldiers would be discharged automatically at age fifty. All reservists over the age of forty five would be discharged by September 1865, leaving only seventeen-year-old boys in charge of enrolling duty under military supervision. And no conscription would take place unless the states failed to meet

¹²⁹ JCCSA 7:445; PCMA, *passim*.

¹³⁰ "A Bill to Amend an Act to Organize Forces to Serve during the War," in CI, reel 8, no. 523.

¹³¹ PCMA, November 15, 1864, January 28 and 30, 1865.

¹³² *Ibid.*, February 2, 4, 7, 8, and 9, 1865.

Confederate requisitions and quotas.¹³³ When the House took up debate on March 16, James McCallum of Tennessee attempted to commandeer the bill and convert it into an expansion of conscription much like W. E. Smith's bill of two months earlier. McCallum wanted to conscript all white males between sixteen and fifty with two tiers of reserves for reinforcements.¹³⁴ But the chair ruled McCallum's amendment out of order, and the bill died a quick death in the rush to adjourn by March 18.¹³⁵

Congress, however, saw little problem in transferring logistical control over military enlistment to the military. It saw little difference in conscription being directed by a government agency under the guidance of the president as commander-in-chief or by the military under the direction of the secretary of war. Both methods ultimately fell under civilian control. A bill to turn conscription over to military commanders in the Confederate Reserves, to require the use of invalid and medically unfit troops as enrolling officers, and to disband the Bureau of Conscription quickly passed both houses of Congress.¹³⁶

“BAD FAITH ... HAD ALMOST BECOME A BYE-WORD”

Congress took seriously the task of making conscription more efficient, even if that meant giving logistical control to the military. But to many congressmen, altering exemption and detail policies precipitously risked an additional breach of faith with the public. The conscription of principals and bonded agriculturalists in 1863 already had led

¹³³ “A Bill to Amend an Act to Organize Forces to Serve during the War,” in CI, reel 8, no. 542.

¹³⁴ JCCSA 7:783-884.

¹³⁵ Ibid., 7:786-788.

¹³⁶ SHP 52:332-334, 373-375; *Official Records* IV, 3:1176-1177.

many planters and farmers to take the punitive step of abandoning the production of marketable produce in favor of subsistence farming. Details had alleviated some of the discontent, but details had been ended by General Orders No. 77. Many congressmen worried that the Secretary of War in issuing these orders had nullified an act of Congress and usurped the power to determine who should provide military service. Senator James Orr of South Carolina even wondered if Congress needed to amend exemption laws to defend agriculturalist protections and reclaim legislative control.¹³⁷ Allowing the military to oversee the operation of conscription was justifiable. Allowing the military to set the rules of conscription was not. Compounding concern was the proposal to conscript slaves and mechanics. “Surely, there can be no greater waste than this,” complained the *Macon Daily Telegraph*, “in a country where all the mechanics combined would make scarcely a division of the army... instead of hunting up absentees, you propose to enroll still more from classes who should not be enrolled.”¹³⁸

Few in Congress were sure how many men had been exempted or detailed since April 1862. A Bureau of Conscription report of February 1865 showed 40,456 exempts, exclusive of the physically infirm. And although General Orders No. 77 had eliminated details the previous October, 28,236 still remained on the books.¹³⁹ The numbers were highly contested. Mathematical errors in the February report tended to overstate the numbers of men brought in by the conscription laws and understate the numbers of

¹³⁷ SHP 51:305-308.

¹³⁸ *Macon Daily Telegraph*, November 2, 1864.

¹³⁹ *Official Records* IV, 3:1101-1110.

exemptions, although not so grossly as to suggest fraud.¹⁴⁰ But such errors only confirmed to many states that the Bureau's numbers could not be trusted. North Carolina, in particular, seriously questioned the Bureau's claim in November 1864 that that state had the highest number of men claiming exemption as state officers - 18,101 - far in excess of the number two state, Virginia, which only claimed 1,422 men.¹⁴¹ But even with the disputed numbers, almost every agreed that there were enough exempts and details that more troops could be had by reducing or eliminating some or all of the laws granting such exceptions to the conscription laws.

The greatest attention focused on the approximately 18,000 exempted state officers listed by the Bureau.¹⁴² Reaching these state exempts would not be easy. South Carolina had passed a law in late 1864 requiring that state's governor to claim the exemption of all state and local officials required for governance and policing, including members and employees of relief boards, banks, schools, newspapers, hospitals, and manufactories, a far broader sweep of state protection than statutorily required in Georgia.¹⁴³ Georgia already protected its officers and details while poaching potential Confederate troops for state duty. And it would only get worse. By early 1865, Governor Brown would claim Confederate medical exempts detailed for light duty as

¹⁴⁰ General Preston incorrectly reports 76,206 conscripts not passing through camps of instruction and 66,586 exemptions instead of the correct figures of 72,292 and 67,054 respectively. Numbers reported by President Davis to the House on February 23, 1864, also had slightly different figures for several categories of exemptions, details, and enrollments. See, SHP 52:388.

¹⁴¹ By the time of the February 1865 report, North Carolina's number had dropped to 5,589. North Carolina's representatives considered the discrepancies between their state's and other states' numbers as an attack on the patriotism of North Carolina and its people. They would make several calls for Preston's removal and censure. SHP 51:229-337; 52:428-432; *Official Records IV*, 3:1102.

¹⁴² *Official Records IV*, 3:1101-1110.

¹⁴³ *Ibid.*, 3:979-980.

sub-enrolling officers, clerks, and guards as militiamen.¹⁴⁴ And in a fitting tribute to the struggle to regain state preeminence, the Greene County Inferior Court would rule on April 1, 1865, just days before Robert E. Lee's surrender at Appomattox, that these Confederate details and exempts enrolled for militia service could not be restored to Confederate control until the militia had been disbanded.¹⁴⁵ The Confederate primacy that Judge Reese had seen in the third conscription, that had allowed the Confederate government to claim almost every able-bodied white male as an active soldier or a detailed reservist, increasingly became limited as the new year dawned. State commandant Browne was forced to admit that “the class of men now liable to conscription, and who have hitherto kept out of the service [under state protection], cannot be reached.”¹⁴⁶

On November 19, the House proposed a joint Congressional delegation to ask the state legislatures to make a greater number of state officers available for conscription. With the exact number of exempts disputed, it was difficult (and inappropriate) for Congress to make specific suggestions, but it was hoped that the state legislatures would make changes in local laws to reduce state protections. One House member from each of the eleven Confederate states plus Missouri and Kentucky were selected much to the chagrin of North Carolina's delegation who interpreted the delegation as a not-too-subtle attack on that state's inflated exemption numbers (which Congress still accepted was

¹⁴⁴ *Peck v. Swilling* and *Page v. Swilling*, Hart County Ordinary Court, Minutes for County Purposes, 1854-1866, February 3, 1865; *Brown v. Swilling*, *ibid.*, February 7, 1865; *Connag v. Swilling*, *ibid.*, February 21, 1865; *Swilling v. Satterfield*, *ibid.*, February 22, 1865; *Vickery v. Satterfield*, *ibid.*, February 28, 1865; *Jones v. Mercier*, Lincoln County Inferior Court, Records: Writs, 1858-1871, pp. 120-121.

¹⁴⁵ *Williams v. Amos*, Greene County Inferior Court, Minutes [Book R]: 1860-1868, pp. 133-135.

¹⁴⁶ *Official Records* IV, 3:1049.

around 18,000 at this time).¹⁴⁷ North Carolina Senator William Alexander Graham was equally angered, but he was able to cast his concerns in more universal terms by saying that any Congressional delegation on exemptions sent to any of the states was an assumption of duties usually performed by the president or the secretary of war. Such a lapse in protocol would imply censure and would only garner contempt. Although members understood, and for a brief time accepted Graham's complaints, the Senate eventually passed the resolution on December 9, 1864.¹⁴⁸ By this time, however, there was little likelihood Georgia's legislature would accept such a memorial. The day before the Confederate House heard the proposal for a congressional delegation, Georgia state Senator H. J. Sprayberry of Catoosa County made his own proposal to make every member of the state legislature liable to conscription. He had made a similar proposal almost a year to the day before to make all state civil and militia officers liable, as well.¹⁴⁹ Both ideas had been rejected long before any congressional memorial could be offered.¹⁵⁰

Congress did its best to limit as many exemptions as possible without going to the extremes pressed by President Davis of eliminating all forms of class exemption.¹⁵¹ On December 5, 1864, William Porcher Miles reported from the House Committee on

¹⁴⁷ SHP 51, 290, 297, 329-337; JCCSA 7:311.

¹⁴⁸ SHP 51:400-402, 408, 425-426, 440.

¹⁴⁹ *Savannah Daily Morning News*, November 19, 1863.

¹⁵⁰ *Journal of the Senate of the State of Georgia, at the Annual Session of the General Assembly, Commenced at Milledgeville, November 3, 1864* (Milledgeville, Ga.: Boughton, Nisbet & Barnes, State Printers, 1864), 71, 84.

¹⁵¹ "Report of the Select Committee to Whom was Referred that Portion of the Message of the President of the Confederate States, of the 13th Instant, Relating to the Action of Congress during the Present Session," in CI, reel 5, no. 246.

Military Affairs bill to amend the exemptions granted in the third conscription act. Exemptions would be offered only to Confederate and state officials, ministers, superintendants and physicians of asylums, newspaper editors and printers, official state and Confederate printers, apothecaries and pharmacists, physicians, teachers in schools with more than twenty students, railroad employees and owners, mail contractors and carriers, and members of the Quaker, Dunkard, Nazarine, Mennonite faiths who paid a \$500 fee.¹⁵² But the bill appeared just as convoluted and impracticable as every other exemption act passed up until this point. It sat unaddressed for over a month and then after a week of desultory debate was postponed.¹⁵³

In its stead, the House took up a bill on January 17, 1865, that attempted what most congressmen felt was really need, not an adjustment of the existing exemption system that squeezed a few more conscripts into the ranks, but a complete overhaul that eliminated rather than restricted most exemptions and all details. Opponents to the bill repeated the oft use argument that forcing more men into the ranks would destroy the agricultural capabilities of the Confederacy. It was better to enforce the laws already on the books, round up deserters and stragglers, and keep the existing soldiers in the field than remove agriculturalists from the fields where they were needed the most. But such concerns were of no avail. The House bill repealed the fifteen-hand law permitting slave owners of more than fifteen slaves to gain automatic exemption, and limited all presidential and War Department granted exemptions and details to the medically

¹⁵² SHP 51:445-449.

¹⁵³ *Ibid.*, 52:133-135, 142-144, 148-150, 153, 160.

unfit.¹⁵⁴ The Senate likewise questioned the wisdom of conscripting every planter, farmer and overseer, many of its members concerned that the revocation of agricultural details would be the same kind of breach of faith that the government had already exhibited with the repeal of substitution and principal liability. As James Orr of South Carolina lamented, he feared that the end of all agricultural details would prove to the Confederate public that “the bad faith of the Government had almost become a bye-word.”¹⁵⁵

Davis was disappointed by Congress' limited actions. He had hoped that Congress would repeal the exemptions of state officials as a part of the repeal of all class exemptions, thus overriding the obstructionism of state governors. He also had wanted undiminished authority to detail men as government-controlled labor and a general militia law that authorizing him to call and organize a national militia under presidential control. “The necessity for the exercise of this power can never exist if not in the circumstances which now surround us.”¹⁵⁶ But Congress refused to concede. State officials, whom Congress declared could not be graded a “class” similar to ministers and blacksmiths for exemption purposes, would remain beyond the reach of Confederate officials, civil or military, by right, not by permission. In addition, Congress hoped to restrict executive discretion in making details, something Davis' claimed would destroy his ability to preserve the employment of details expert in very specific, highly skilled job such as counterfeit detection. Congress was concerned that “in remarkable contrast to the number of persons relieved from military service by [congressional action], the report of

¹⁵⁴ Ibid., 52:160, 192-196, 208-211.

¹⁵⁵ Ibid., 52:351-352.

¹⁵⁶ Ibid., 52:481; *Official Records* IV, 3:1133.

the Conscript Bureau exhibits the fact that east of the Mississippi river twenty-two thousand and thirty-five men have been detailed by Executive authority,” a pattern Congress considered an “abuse of the power of detail.”¹⁵⁷ This had occurred while presidential detail authority was considered an exercise of civil power. Now that conscription was drifting toward military control, the possibility of such excesses under military rule were unacceptable. A Senate bill, approved February 17, restored some executive detail powers but limited its use by requiring consultation with Congress on the numbers and names of details.¹⁵⁸ A final compromise bill was nearly identical to the Senate version save an allowance for the completion of existing details instead of immediate revocation, while a later amendment addressed Davis' concerns by granting executive discretion, again, with Congressional oversight.¹⁵⁹ The general militia law was deemed inexpedient. “The whole military material of the country, so far as legislation is concerned, is absorbed by the conscription acts,” argued Congress. “There is none left on which a militia law can operate, except the exempted classes, and boys under seventeen, and the men over fifty years of age. It is deemed expedient to allow this material to remain subject to the control of the State authorities.”¹⁶⁰

The potential for further alienation of the public faith by the shift to military control came with congressional restrictions on citizenship. In 1862 and 1863, Congress

¹⁵⁷ “Report of the Select Committee to Whom was Referred that Portion of the Message of the President of the Confederate States, of the 13th Instant, Relating to the Action of Congress during the Present Session,” in CI, reel 5, no. 246, p. 4.

¹⁵⁸ SHP 52:289, 326-328, 342-343, 350-353, 359-362, 370-371.

¹⁵⁹ *Ibid.*, 52:459-461, 480-482, 486-487.

¹⁶⁰ “Report of the Select Committee to Whom was Referred that Portion of the Message of the President of the Confederate States, of the 13th Instant, Relating to the Action of Congress during the Present Session,” in CI, reel 5, no. 246, p. 5.

had attempted to define citizenship in terms of military service, hoping to boost recruitment among the alien population. It had failed more from a concern over diplomatic affairs than a lack of will. But diplomacy could not stop Congress from using citizenship as a tool to boost the retention of soldiers already in the ranks. Tentative moves had been made in 1861 when a sequestration legislation revoked the protections due southern properties of northern citizens.¹⁶¹ It was an October 1862 debate on the extension of this act that gave rise to the use of compulsory-volitional allegiance to require both Northern immigrants and unnaturalized European immigrants to affirm *de facto* or *de jure* citizenship or leave the Confederacy.¹⁶² However, by the late winter of 1862-1863, when Confederate patience for alien exempts had completely dissipated, the debate shifted away from the simple legitimization of allegiances to a more active expression of those allegiances through military service. There were moves to restrict the voting rights of “resident citizens of the Confederate States” who did not “aid us in our present struggle,” the property rights of aliens, and the ability of aliens to own and operate a business. To regain any of these rights would require either active participation in the war for citizens or naturalization and thus possible liability to military service under the conscription act for aliens.¹⁶³ By 1864, the links between military service and citizenship became more explicit. In May of that year, Representative Henry S. Foote offered a resolution that would have permanently denied citizenship to any immigrant

¹⁶¹ James M. Matthews, *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* (Richmond, VA: R. M. Smith, Printer to Congress, 1864), 201-207.

¹⁶² SHP 47:64-68.

¹⁶³ *Ibid.*, 47:226-227, 48:63; JCCSA 6:50-51.

who had not aided in the Confederate war effort.¹⁶⁴ Senator James Phelan's January 1864 bill would have expatriated any soldier deserting to the enemy while a House bill of the following December broadened the proposal to include anyone liable to military service who crossed into enemy territory and remained for at least sixty days.¹⁶⁵ Thus by the end of the war, it was clear that military service was no longer simply an expression or obligation of Confederate citizenship. It was prerequisite. Without it, even natal Confederates could be stripped of their honor, their rights, and their property.

“THE CONSTANT TENDENCIES OF THE WAR”

At the beginning of the war, Confederate Speaker of the House Thomas Bockock had asked his fellow congressmen whether the Confederate constitution could maintain its integrity and still supply the means necessary to win the war.¹⁶⁶ It was, in some ways, a surprising question since the model for the Confederate constitution, the United States Constitution, already had been tested in war twice before, once in the War of 1812 and again during the Mexican War. Both conflicts had resulted in anti-war rhetoric that had used states' rights rhetoric to question sectional commitments to national war efforts, but in both conflicts the suppleness and indeterminacy of states' rights had absorbed most of the complaints. The Confederate constitution, however, was an explicit recommitment to states' rights and the compact theory of national membership. Such reification had not been tested in war, and there was an implicit uncertainty in Bockock's question as to the

¹⁶⁴ JCCSA 7:17.

¹⁶⁵ Senate Bill No. 187, January 15, 1864, in CI, reel 5, no. 136; SHP, 50:240, 284, 298, 51: 412-414, 456-457, 464, 52:263-264.

¹⁶⁶ SHSP 44:12.

stability of the newly formed Confederate polity. Complicating this instability was what Governor Joseph E. Brown called the "constant tendencies" of war mobilization toward the subordination of the civilian world to military control.¹⁶⁷ Boccock's question, then, reflected two related concerns. Could the Constitution counter these tendencies and preserve the integrity of civilian rule? Were the divisions and grants of power between the states and the central government, between the civilian and military worlds, clear enough to avoid jurisdictional disputes over the logistics of war? Confederate conscription brought both questions into collision. With one law, the Confederate government appeared to distort all distinction between state and central authority and between civilian and military control.

Conscription was not the issue, but it was the catalyst for conflict. Each state had used its own form of conscription on its own citizens, so states clearly did not have a problem with the coercion of military manpower. The conflict arose from the very reification about which Boccock had been so concerned. Whose interpretation of states' rights had been hypostatized in the Constitution: those who adhered to a superior-subordinate model of concurrent power or those who held to a more coordinated vision? Few could agree, so states' rights tended to alternate between the two depending upon which was more beneficial. Following Lincoln's election in 1860, when Southern states feared a rising Northern threat to slavery and states' rights, the superior-subordinate model had provided a greater theoretical support to the campaign for secession and the mobilization of troops within each state as newly independent republics. Once united in

¹⁶⁷ *Journal of the Senate of the State of Georgia, at the Annual Session of the General Assembly, Commenced at Milledgeville, November 3, 1864* (Milledgeville, Ga.: Boughton, Nisbet & Barnes, State Printers, 1864), 8.

common cause within a confederation of slave republics, a more coordinated model better suited the harmonization of state war efforts. Such coordination allowed for national conscription, and while some people may have accepted the possibility of a military dictatorship, most discounted its actual threat. They adapted to conscription with political and military ideologies that were supple enough to mold theory to meet reality, to accept conscription as states' rights compatible within a rubric of civilian, rather than military, control. For those Confederates less ideologically flexible, however, who believed that *their* vision of states' rights was the constitutional one, conscription was an anathema. By its very nature it violated the superior-subordinate character of state-Confederate power relations, at the least placing the two governments at parity; at worst, inverting their relationship.

President Davis and Governor Brown were the personification of this division. Davis and his supporters held firm to the belief that conscription was a constitutionally coordinated power held both by the state and the central government, each operating within its own sphere of influence. National power could be expansive, might even appear to exceed the power of the states, yet it retained jurisdictional limits imposed by states' rights. Brown and his supporters, on the other hand, remained steadfast in their belief that the states were paramount, not equal, and did not share power with the national government.

Yet neither camp was fully aware of the other's position until after an airing of their constitutional visions following the first conscription act. Brown had assumed that Davis shared his interpretation, had assumed that Davis either had been led astray or had made a mistake, and he was willing to accede to conscription as a necessary war measure.

Only after the two men began their 1862 correspondence did the true nature of the conflict become apparent. This was not a contest over conscription. It was a contest of constitutional visions. Brown tried his best to impress the correctness of his vision. He argued it to the War Department, to the Georgia General Assembly, to the state Supreme Court, to the governors of other states, to militia companies, and to the people of Georgia. In almost every instance, he was denied. So, again, he submitted, although rarely respectfully and always plotting to resurrect the polity he hoped to preserve.

In the meantime, conscription settled into Confederate society, coercing and cajoling civilians to enroll and being coerced and cajoled in return by civilians wanting to be left alone. Georgia fought to protect its sovereign powers through the continued exemption of state officials and militia officers, while the Confederacy conceded the exemption of minor business, political and legal officials to sure up local support for the efforts of the enrolling officers. These officers established their headquarters and nurtured this local support by fostering social and business connections, while speculators, lawyers, merchants, physicians, planters, detectives, bounty agents, and professional substitutes built lucrative businesses aiding, supporting and exploiting the increasingly interconnected nature of civilian and military worlds. Newspaper editors and correspondents, artists and poets, song writers and playwrights published and performed both to praise and to punish the agents of conscription. It was through these relationships that the coordinated nature of political power was expressed and checked, that the civilian world reigned in the potentially oppressive nature of national power. For if each of these civilian allies of conscription - the surgeons and grocers and local artisans

- truly lost faith in conscription, they could inhibit its operation by withholding their support.

The danger of this vision came when times grew difficult. As the military increasingly demanded more and more men in late 1862 and early 1863, the Confederate government continually expanded the breadth of conscription's power. The suppleness of coordinated powers had allowed this phased expansion over two successive conscription acts and numerous War Department orders, but by the winter of 1863-1864, this suppleness had become a softness that appeared to justify anything the president asked for under the pretense of military necessity. The core of conscription's civilian support, the agriculturalists, principals, state officials and other influential exempts, soon succumbed to the draft. What civilian allies the military heretofore had enjoyed disappeared as they reported for military duty or became disillusioned by their government's apparent infidelity to the relationships they had built.

At the same time, the successes of Gideon Pillow in Department No. 2 made the more stringent application of conscription under military rule increasingly attractive. Congress was careful to limit military authority to assigning and controlling conscription officers, managing camps of instruction, and chasing deserters, but many of those concerned realized that President Davis believed his powers as commander-in-chief should increase in direct proportion to the level of military involvement, either with expanded authority to organize and command a national militia, to detail Confederate labor, or to conscript slaves as military support. Therein lay the danger. The power to conscript and detail artisans, agriculturalist and industrial workers would mark both a

nationalization and militarization of the civilian work force, while the conscription of slaves would signal a potential socialization of private property.

In addition, the coincidence of the shift to military conscription and the coalescence of a military definition of citizenship consolidated the military's grip on the Confederate citizenry. Political identity was becoming less dependent on communal standards of acceptance and more on the demands of the military itself. Davis' power to command the national military was well within the presidential prerogative, but when combined with the extraordinary power to conscript, detail, seize, command, naturalize, and expatriate all persons and property, it threatened to tear down the distinctions between Davis the commander-in-chief of the military and Davis the chief executive of the civilian government. The president might justify each of these actions as coordinated with the states under states' rights, but what did the war matter, his critics asked, if the results of four years of blood and sacrifice was a country that no one recognized or wanted?

The shift to military control and the concerns raised by Davis' dual role as chief executive and commander-in-chief resurrected the old threats of dictatorship that Governor Brown and others thought had been mitigated by the newly accepted coordination of states' rights and conscription. There had been little to be concerned about (other than departmental corruption and mismanagement) while the Bureau of Conscription, an executive agency under Congressional scrutiny, was in charge. But once the military assumed control and Davis as commander-in-chief gained the reins both of creating the military and commanding it, both Brown and Congress grew concerned that the military dictatorship so many had predicted might soon come to pass.

It was imperative restrictions be placed on the president. Congress passed legislation naming a General-in-Chief to take military command from Davis, but Brown's concern led him to propose a constitutional amendment formally divesting the president of his duties as commander-in-chief. This was different from the congressional action appointing a general-in-chief. The statutory creation of such a post could not sever the ties that made a general-in-chief subject to the orders of the president as commander-in-chief. Only a constitutional amendment could do this by creating a commander-in-chief as a separate and distinct military office leaving political power with the chief executive.¹⁶⁸ But as the war ended, the state assembly had failed to endorse his proposal or send commissioners to other Confederate states to organize a constitutional convention.¹⁶⁹

Governor Brown's language is illustrative of the rising concern and changing perceptions that many in the Confederacy had of Davis' increasing powers under the conscription laws. In 1862, Brown had spoken out against the first conscription act, referring to Davis in the deferential terms of “Confederate Executive” and “President,” a recognition of the civilian basis of Davis' office and powers.¹⁷⁰ By the time of the second conscription act, Brown stressed a more informal tone, making frequent use of the pronoun “you” instead of official titles, possibly in an attempt to make a personal appeal but more likely to assume a more strident tone.¹⁷¹ By the third conscription act, Brown

¹⁶⁸ CRG, 2:851-852; “Report of the Select Committee to Whom was Referred that Portion of the Message of the President of the Confederate States, of the 13th Instant, Relating to the Action of Congress during the Present Session,” in CI, reel 5, no. 246, p. 3; *Official Records* III, 5:688.

¹⁶⁹ *Ibid.*, 2:867-868.

¹⁷⁰ See, for example, CRG 3:198, 215.

¹⁷¹ See, for example, *ibid.*, 3:294-302.

had made a semantic shift that mirrored the change in conscription's administration.

“The constant tendencies of the war,” he addressed the General Assembly, “seem to have been to the subordination of the civil authorities and laws to the military, and the concentration of the supreme power in the hands of the Commander-in-Chief of the armies.”¹⁷² Gone was the recognition of conscription as a civilian power exercised by a chief executive, replaced by an emphasis on the military aspects of power under a commander-in-chief.

Governor Brown had begun the war as an ardent - he might have argued *the* most ardent - supporter of states' rights in the face of conscription. While Confederates around him slowly came to accept conscription as a coordinated power, he had remained fixated on a mythic purity of state supremacy that few others recognized. As ideological shifts and local pressures eased the effects of conscription, he came to accept this coordinated vision because it furthered his efforts to resurrect state authority in a rapidly changing political landscape. Thus, the man who claimed he had no choice but to transfer the Georgia State Troops to Confederate control in April 1862 would claim that any national authority to keep troops was checked by the state's right to maintain an equal force under state command.¹⁷³ The man who claimed in 1862 that conscription created a superior Confederate authority that “disorganizes the military systems of all the States” would claim in 1865 that “the jurisdiction of the Confederate and State Governments [were]

¹⁷² *Journal of the Senate of the State of Georgia, at the Annual Session of the General Assembly, Commenced at Milledgeville, November 3, 1864* (Milledgeville, Ga.: Boughton, Nisbet & Barnes, State Printers, 1864), 8.

¹⁷³ CRG 2:824, 3:197.

concurrent over the arms bearing population of the States in time of war.”¹⁷⁴ Yet no sooner had Brown embraced this new vision of states' rights when President Davis, in a desperate attempt to salvage the Confederate war effort, attempted to push conscription and national compulsory power beyond what most politicians were willing to accept, even within a coordination of state-Confederate powers.

How the continued expansion of conscription might have altered the war will never be known. The growth of governmental power over the Southern population, like almost every aspect of Confederate history, was a process interrupted. Certainly the social pressures on the unenrolled to present themselves for duty had become intense, if only to direct the attention of the conscription officer away from oneself. The watchful eyes of old men, young boys, business competitors, debtors, and others in disadvantaged positions sought any excuse to turn their tormenter over to military control. Those unenrolled aliens who remained in the South had become special targets, their continued presence a sign of contempt for rising Confederate authority. But manpower could be stretched only so thin before the stresses of increased demand forced a break, and where those forces would be directed cannot be seen. The balance between military and civilian power remained unresolved, and neither Governor Brown nor President Davis had fulfilled his vision of the Confederate polity. Both men had, in fact, altered their visions as the war progressed. So the Confederate public, frustrated, wary, watchful, and questioning, were left wondering. What would the Confederate government ask of them next? And could that government, indeed, any government, salvage a successful war

¹⁷⁴ Ibid., 2:824, 3:197.

effort from the growing internecine struggles over conscription without further breaches of faith?

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