

THE PROBLEMS OF RAISING  
AND ARMING THE  
CONFEDERATE ARMY  
1861-1865  
BY  
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## CHAPTER I

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## CHAPTER I

### PREPARATION OF THE CONFEDERATE STATES FOR THE WAR

When the seceded Confederate States found that in order to establish their independence they must do so by means of an armed conflict, they were faced with a mammoth task, that of putting their frontiers in a state of defense. The first obstacle to defense was the South's geographical situation. The states on the northern and western frontiers lay along the hostile borders of the enemy; the states on the Atlantic seaboard and on the Gulf of Mexico had long stretches of undefended seacoast; still other states such as Virginia had navigable rivers and bays which seemed to invite the enemy far into the interior of the country. Besides these disadvantages, the Confederacy was divided into two parts by the Mississippi River. Thus it would seem that this quadrilateral of Southern States having all sides exposed to the Union army and navy, and having a panhandle reaching up into the very jaws of the enemy, could be easily crushed.

Another obstacle to the Confederacy was the fact that from a material standpoint the Union had practically all the advantages. The North had a population of twenty-two millions against nine millions in the South. In the North were the great industries, the mineral resources, the shipbuilding

yards. The North was not only more self supporting but also more able to import what was needed, since it owned its merchant ships. The North had all the navy there was, all the rank and file of the regular army, and four-fifths of the officers. The South on the other hand, had few industries and few ships. It was an agricultural section, which was largely dependent upon slave labor to till the soil. For this reason, when thrown back upon itself to supply the necessities of life and war, the South found itself at a great disadvantage. Not all of the advantages, however, were on the side of the Union. The South had two advantages which made it triumphant in the first stages and at one moment, nearly gave that section the victory. The first was that its aristocratic squirearchy was better fitted for a military organization than Northern democracy. The great majority of its citizens were country folk who could march and shoot, and it was a nation of horsemen. This advantage is of course terminable; it is very real at the start, but it lessens as the enemy begins to learn his job. In the second place, it was the fortune of the South to have fighting on its side by far the abler generals. Lee and Jackson have had few superiors in the art of war. The North produced many competent generals--Grant, Thomas, Sherman, Sheridan--but no one of them reaches the select brotherhood of the greatest generals. "Taking the whole of history, you

limit that brotherhood to more than six names, you must include Lee.<sup>1</sup> Those of you who study his campaigns will find that the more carefully they are analyzed, the more you will marvel at their supremacy. ~~Free himself. Therefore, those who followed~~

Both the Union and the Confederacy faced an obstacle which, at the beginning of the conflict, few on either side fully realized--the fact that each was fighting for a great principle. Although both sections up to the War Between the States were living under the same government, the two sections were not integrated. Both sections believed in representative government, the rule of the majority; both believed in the Constitution of the United States; but both interpreted the Constitution differently. The North believed that the vital thing was the Union. Lincoln's view that the union was, with older than the states, was so strong among the states of the Northwest that they could never see in any way the Southern point of view. Because of this loyalty to the Union, the States which fought under the "Stars and Stripes" felt they must give their choicest blood, if need be, to preserve that Union which the Southern States were trying to sever.

On the other hand, in the South, from the days of Thomas Jefferson, even up to the present, the vital thing around

1. Buchan: Two Ordeals of Democracy, pp. 19, 20

which all its affections and sentiments were intertwined was the state. Any nation or power which would try to usurp the rights of the states was to every true Southerner a despot from which he must free himself. Therefore, those who followed the "Stars and Bars" felt that they were as truly fighting against tyranny as did the patriots of the Revolution, and to protect themselves from the tyrant, fought to the bitter end because "their cause was just." Since each side was fighting for an honest ideal, and since each side stood for no mean cause, the War Between the States was one of the longest and most tragic wars in history and was "one of the cleanest and most chivalrous as well as one of the most heroic campaigns ever fought."<sup>2</sup>

To defend a territory, similar to that of the South, with such great physical, material, and moral odds against it would be a terrific task for a well organized government with a well trained army and navy. The Confederate Government was neither well organized, nor did it have an army or navy. How then did it meet the task before it?

2. Ibid, p. 5

1. Cooley, *State Rights in the Confederacy*, p. 3

## CHAPTER II

### STATE RIGHTS IN THE CONFEDERACY

The principle of State Rights, for which every true patriot of the South was fighting and which nearly defeated the North in the early stages of the war, later became one of the most serious problems which the Confederate Government had to face. Therefore, no discussion of the great problems of the Confederacy can be complete which fails to consider the doctrine of State Rights. If, indeed, in the North the idea of state supremacy was strong, and if indeed it weakened the power of the Federal Government during the period of the war, in the South, the principle of state supremacy was clung to with such tenacity that the "Confederate Government found itself blocked by the state governments in every field of activity connected with the conduct of the war."<sup>1</sup>

When the Confederate Government called for troops, the states either assumed control or tried to assume control over them, in some cases refusing to allow troops to leave their respective states without the consent of the governor. When the Confederate Government tried to organize its troops under

1. Owsley, State Rights in the Confederacy, p. 3



well trained officers, the states would insist upon their right to name officers for their units. When the central government tried to pool the resources of the Confederate States and to feed, clothe, and arm the troops, the States would refuse to turn over their supplies and would insist upon supplying the needs of their own troops, whether the needs of soldiers from other states were supplied or not.

The distance away from the principal scenes of conflict of the states in the far South and the states across the Mississippi River made it impossible for these distant sections to supply their troops. Therefore, one cannot wonder at the discontent which must have arisen among soldiers of those states when they saw how much better the soldiers of other states fared than they. Again, when the Conscription Acts and the various acts against deserters were passed, and when the Writ of Habeas Corpus was suspended<sup>2</sup> in order to increase the size of the army, they too failed to accomplish the purpose for which they were intended because of State Rights opposition. So heated were the controversies arising between the states and the Confederate Government, President Davis in particular,

2. The Writ of Habeas Corpus was suspended in the North during the entire period of the war. The Writ was never suspended in the South except in emergency.

and so embittered did each side become that a successful prosecution of the war was almost impossible. Such men as Vice-President Stephens, Toombs and Brown of Georgia, and Vance of North Carolina were unable to wait until after the war to air their theories and differences;<sup>3</sup> they could not see that their very existence as an independent group depended upon a successful termination of the war.

The actions of these men were opposed by outstanding citizens like Howell Cobb,<sup>4</sup> and Thomas R. R. Cobb<sup>5</sup> of Georgia, men who were in close touch with the Confederate Government and knew how much depended upon the establishment of a strong centralized government. They bitterly denounced the action of Governor Brown and Vice-President Stephens. When Governor Brown secretly sent Rockwell to Augusta and had shipped all of the good arms to Savannah before the agent of the government could get there,

3. Governors Letcher of Virginia, Pickens of South Carolina, and Moore of Alabama opposed the Confederate Government, but not so bitterly as did those above mentioned.
4. Howell Cobb was speaker of the House of the 31st Congress; member of the cabinet under President Buchanan; President of the Montgomery Congress; and Brigadier-General in the Confederate Army.
5. Thomas R. R. Cobb strongly influenced the secession of Georgia, was a delegate from Georgia to the Montgomery Congress, was Brigadier-General in the Confederate army, and was killed in the battle of Fredericksburg. Earlier he had established the Lucy Cobb School in Athens, Georgia.

Mr. T. R. R. Cobb, who was then fighting at the front, wrote his wife that "under other circumstances it would be wrong, but at that time it was disgraceful." Again and again Mr. Cobb complained about Brown's refusal to send out troops "unless accepted by the governor;" and condemned Stephens as being a "poor, selfish demagogue trying to ride on the wave of popular clamor and create factious opposition to everything."<sup>6</sup> However, the voice of these men was powerless against the State Rights leaders. Mr. Oweley believes that had the voice of Stephens, Toombs, Brown, and Vance been silenced, and had they and other State Rights leaders been willing during the space of the war to grant the Confederate Government as much power as that enjoyed by the Federal Government (weak as that was) it would have been almost an impossibility for the South to suffer defeat.<sup>7</sup> At any rate, it cannot be doubted that the Confederate Government was paralyzed much of the time because of State opposition. Some of the disastrous influence of State Rights on the organization and administration of the Confederate Army will be shown in the following discussion.

6. Cobb, Thos. R. R., "Extracts from Letters", Southern Historical Society Papers, v. 28, pp. 286-290  
(This will be cited hereafter as S. H. S. P.)

7. Oweley, State Rights in the Confederacy, p. 2

### CHAPTER III

#### RAISING THE ARMY IN 1861

When the Confederate States seceded from the Union, even though many of the leading citizens and statesmen realized the seriousness of the situation and felt that war was imminent, the prevailing idea among the people in the South was that there would be no war or, if any, that it would be of short duration. The most distinguished politicians, the wisest commercial men, and capitalists of all classes, indeed every household acted upon this view.<sup>1</sup> Since the Southern States believed that they had a constitutional right to secede, they thought they would be allowed to depart in peace.<sup>2</sup> Nevertheless, each state, because of its fear of servile insurrections and its desire to protect its political entity against any sovereign power, thought it best to put itself in a state of defense. As early as January 14, 1861, Governor Moore of Alabama wrote to the House of Representatives of that State that he "would recommend that the State of Alabama be placed at as early a period as prac-

1. Davis, Rise and Fall of the Confederate Government, v. 1, p. 304; *Idem*, Appleton's Annual Cyclopaedia, 1863, p. 203
2. Stephens, War Between the States, v. 1, pp. 495 ff; Terney, Military and Naval History of the Rebellion, p. 55

licable upon the most efficient war footing," and suggested that the General Assembly "make provision for raising, officering, and arming a regular force of troops of the State, and adopt such army regulations therefor as might be necessary.<sup>3</sup> Every "Sovereign State" acting upon this fear, built up small armies of its own, which were often inefficient and undisciplined and which were often withdrawn during the war to protect that State when every man was much needed at the battle front.<sup>3a</sup>

Even though the several states were preparing for their own defense, this was not sufficient to carry on war. In the same letter in which Governor Moore urged the state to prepare for war, he pointed out "that experience has proved that however efficient such troops are for sudden or for short campaigns, it will not do to rely upon them to sustain a long, protracted contest."<sup>4</sup> Therefore, the Provisional Government of the Confederacy prepared without delay to raise an army. The first bill passed February 28, 1861, sets forth unmistakably the

3. War of the Rebellion; Official Record of the Union and Confederate Armies; IV, v. 1, pp. 50, 51. For other states see: Florida, *Ibid.*, pp. 85, 88; Georgia, *Ibid.*, pp. 168, 169; Texas, *Ibid.*, pp. 713, 722, 727, 728; Mississippi, *Ibid.*, I, v. 53, p. 696; Virginia, *Ibid.*, I, v. 51, pp. 2, 22 (Hereafter this will be cited as O. R.)

3a. Owsley, State Rights in the Confederacy, p. 6

4. Cf. Ref. 3

doctrine of the supremacy of the State. Section three of this act provided that "the President be authorized to receive into the service of the government such forces now in the service of the said states as 'may be tendered,' or who may volunteer 'by consent of their state' in such numbers as he may require for any time not less than twelve months unless sooner discharged."<sup>4a</sup> This bill also shows very clearly the general belief, even among the members of Congress, that the war would be of short duration. As first drawn up, the bill provided for service of only sixty days, but as President Davis says: "The Chairman of the Committee on Military Affairs in deference to my earnest request returned the Bill to the House and procured a modification by which the term of service was extended to twelve months unless sooner discharged. I had urged the adoption of a much longer period, but he assured me that one year was as much as Congress would agree to."<sup>5</sup> This act further provided that the President, who was Commander-in-Chief of the Army and Navy of the Confederate States and of the militia of the several states when called into the actual service of the Confederate States, should assume control of all military operations in every state; that he should

President be, and he is hereby authorized to employ the militia,

Bill 4a. O. R., IV, v. 1, p. 117 Confederate States of America,

5. Davis, Rise and Fall of the Confederate Government, v. 1, p. 304

4a. O. R., IV, v. 1, p. 117

receive such forces tendered by the states with their officers by companies, battalions, or regiments; and that he should receive from all states all the arms and munitions in their possession. The forces received from the states were to form a part of the Provisional Army of the Confederate States. These troops were to receive the same pay and allowances as should be provided by law for volunteers entering the service or for the Army of the Confederate States and should be subject to the same rules of government.<sup>6</sup>

The Provisional Government soon realized that the troops provided for in the Act of February the twenty-eighth were inadequate. The South was disabused of the misapprehension that secession could be accomplished without the shedding of blood. The stand taken by Mr. Lincoln and the United States Congress made it evident that a conflict was inevitable. Therefore, on March 6, 1861, two other acts were passed which were designed for war. To show that immediate preparation was necessary, the first act to provide for the public defense approved March 6, 1861, began with these words: "In order to provide speedily forces to repel invasion, the Confederate Congress do enact that the President be, and he is hereby authorized to employ the militia, military and naval forces of the Confederate States of America,

6. O. R., IV, v. 1, p. 117

and to ask for and accept the services of any number of volunteers not exceeding 100,000 who may offer their services either as cavalry, mounted riflemen, artillery, or infantry." The militia that were called into service by virtue of this act or any other act were to be compelled to serve for a term not exceeding six months after being mustered into service. The volunteers offering their services were to be accepted by the President in companies whose officers were to be appointed in the manner prescribed by law, in the several states to which they respectively belonged; but when mustered into the service of the Confederate States, these troops were to be regarded in all respects as a part of the Army of the Confederate States. The volunteers were to serve for a period of twelve months. All the companies were to be organized into battalions, battalions into regiments, and regiments into brigades and divisions. As in the Act of February twenty-eighth, the President was to appoint the commanding officers for the brigades and divisions subject to the confirmation of Congress. These officers were to hold their offices only while the brigades or divisions were in service.<sup>7</sup>

7. O. R., IV, v. 1, p. 126

(For full text of this Act: See pp. 126, 127)



The Army composed of the troops tendered by the states as of the act of February twenty-eighth, 1861, and the militia and volunteers received as of the Act of March sixth, 1861, formed the Provisional Army of the Confederate States of America. The acts which were passed to create the Provisional Army embodied three noteworthy features: first, the principle of State Sovereignty; second, the principle of short enlistments; and third, the principle of election of officers. The last was maintained in one form or another throughout the war and served to act as a menace to efficient leadership and to promote friction between the states and the Confederate Government.

The second act passed on March 6, 1861, provided for the establishment and organization of the "Army of the Confederate States of America." This was the first provision for a regular standing army and, as Mr. Davis says, "was in contradistinction to the Provisional Army provided for in the previous act of defense." The troops authorized in this bill were as follows: four brigadier-generals and four aides to the brigadier-generals; an engineer corps consisting of one colonel, four majors, five captains and one hundred enlisted men; forty batteries of artillery with one colonel, one lieutenant colonel, ten majors, forty captains, eighty first lieutenants, forty second lieutenants, thirty-two hundred enlisted men, one adjutant, and one sergeant-major; sixty companies of infantry with six colonels, six

lieutenant-colonels, six majors, sixty captains, sixty first lieutenants, one hundred and twenty second lieutenants, six thousand, one hundred and twenty enlisted men, six adjutants and six sergeant-majors; ten companies of cavalry with one colonel, one lieutenant-colonel, one major, ten captains, ten first lieutenants, twenty second lieutenants, seven hundred enlisted men, four farriers, four blacksmiths, one adjutant and one major—all these making a grand total of ten thousand, seven hundred and forty-five men. The bill provided that the President should appoint the officers by and with the advice of Congress and that the rank and file should be enlisted for not less than three nor more than five years. To prevent the appointment of incompetent or unworthy persons as officers, all officers were to be required to stand a creditable examination. Promotions in the army were to be made according to seniority and ability. In the infantry and cavalry, promotions to and including the rank of colonel were to be made regimentally; in the staff departments and in the engineers and artillery, according to corps. Appointments to the rank of brigadier-general after the army was organized were to be made by selection from the Army. The rules and articles of war of the United States, with slight exceptions, were adopted by the Congress of the Confederate States. "Since there was no right of promotion above that of colonel in the Army of the United States, selection for the appointment to the rank of general had no

other restriction than the necessity of confirmation by the Senate."<sup>8</sup> The bill further provided that all officers who had left or should leave the Army of the United States to join that of the Confederate States should be given commissions bearing one and the same date as that held in the Army of the United States so that the relative rank of officers of each grade should be determined by their former commissions in the United States Army held anterior to the secession of the Confederate States.<sup>9</sup> Mr. Stiles of Brunswick, Georgia, writing in The Confederate Veteran says that "enacting the law is as far as the regular army got, although Georgia, Louisiana, and South Carolina each had a regiment known as the first regulars, and the records show that the officers of these organizations were appointed by the President (at least those from Georgia were) which was not done in the case of other State line officers. However, on January 31, 1862, an order from the War Department changed the 36th Georgia into the 1st Confederate, the 25th Mississippi into the 2nd, and the 18th Arkansas into the 3rd, and this possibly might have been the birth of our standing army; but there is nothing further on record to throw any light on the

8. Davis, Rise and Fall of the Confederate Government, V. 1, p. 306

9. O. R., IV, v. 1, pp. 127-131

10. Stiles, "Notes on the War Department O. S. A.", Confederate Veteran, V. 23, p. 90, March, 1910

subject.<sup>10</sup> Except for the officers it may truly be said that a regular army was never raised. It was merely an army on paper.<sup>11</sup> On the sixth of May another bill was passed which All during March, conditions between the North and South became more and more serious. Then came April; and with April came war. All efforts to bring about a peaceful settlement of the question had failed. Fort Sumter had been fired on; President Lincoln had called for 75,000 volunteers to coerce the seceding states. The Confederacy needed more troops, and they needed to get them with the least possible delay. Therefore a bill was proposed in Congress which authorized the President "to receive into service such companies, battalions, or regiments, either mounted or on foot, as may tender themselves and he may require without the formal call upon the respective states to serve for such time as he may require." The volunteers offering themselves were to be organized by him into squadrons, battalions, or regiments. The President was to appoint all field and staff officers, but company officers were to be elected by the men composing the company, and if elected, were to be commissioned by the President. Vacancies in the ranks were to be filled by volunteers accepted under the rules of the company; and vacancies occurring in the officers were to be filled by

10. *Ibid.*, p. 231.

10. Stiles, "Notes on the War Department C. S. A.", Confederate Veteran, v. 28, p. 90, March, 1920

elections in accordance with the same rules.<sup>11</sup> This bill with some changes passed the House on May 7th<sup>12</sup> and was approved on May 8th.<sup>13</sup> On the sixth of May another bill was passed which empowered the President to use the whole land and naval force in the prosecution of the war.<sup>14</sup>

It is of striking interest to note that these men, representing people who had seceded to uphold the principle of State Sovereignty, took a very definite step toward centralization when a real state of war existed. Instead of troops being raised by the states and tendered by the states to the Confederate Government as of the previous acts, troops now were to be tendered directly to the President "without the delay of a formal call upon the respective states and were to serve for such a time as he might require."<sup>15</sup> Another noteworthy fact is that enlistments were to be made for the war instead of for twelve months or three years as the other acts had been. Still a third important fact is that in the first effort of the Confederate Government to raise troops independent of the state, the

11. Journal of the Confederate Congress, v. 1, pp. 180, 189

12. Ibid, p. 196

13. O. R., IV, v. 1, p. 302

14. Ibid, p. 281

15. O. R., IV, v. 1, p. 302; Ibid, p. 310

17. O. R., IV, v. 1, p. 279

legislators provided that the election of the company officers be left to the men composing the company.

Perhaps there is nothing in history to parallel the enthusiasm for volunteering which swept the South when war was actually declared. Volunteers came in such numbers, offering their services either for the war or for twelve months, that the Confederate Government could not accept them because it lacked arms. Secretary Walker in his report on July 24, 1861, stated: "From the applications on file in this office there can be no doubt that if arms were only furnished, no less than 200,000 additional volunteers for the war would be found in our ranks in less than two months. As the Government has not been able to arm all volunteers for the war, it has of course declined to arm those who have tendered their services for twelve months only."<sup>16</sup> This assertion is further backed by Secretary Benjamin on March 4, 1862, when he stated: "In order to conduct the war with the vigor and success required for the prompt expulsion of the enemy from our soil, it would be both necessary and desirable to have in the field an additional army of 350,000 men. . . The great deficiency under which we suffer is the want of small arms and powder. . . The existing legislation would suffice as regards men."<sup>17</sup> Neither had the Confederate Government

16. O. R., IV, v. 1, p. 497; *Ibid.*, p. 549

17. O. R., IV, v. 1, p. 970

camp of instruction to which the volunteers could be sent for training. As a result, many of these volunteers, anxious to crush Abe Lincoln and all the other "tyrants" in the North who were trying to deprive them of their sovereign rights, tendered their services to their respective states. These volunteers became a part of the state local defense troops or of the state reserve corps and many never went into the Army of the Confederate States.<sup>18</sup> Had it been possible for the Confederate Government to arm these troops, it is very probable that some peaceful settlement might have been made after the battle of First Manassas.

Armed troops, however, were not furnished to the Confederate Army, and First Manassas did not end the war. In vain on July 12, 1861, did Secretary Walker beseech Governor Brown "for the sake of our cause and the country" to send forward "two regiments, . . . indispensable to success . . . without standing upon the point of the brigade organization."<sup>19</sup> In vain did Secretary Walker tell him that "the crisis of our fate may depend upon your action" and that "if you refuse you will regret it."<sup>20</sup> To this

18. Owsley, State Rights in the Confederacy, pp. 24, 74

19. The Confederate law did not allow a State to organize a unit larger than a regiment. O. R., IV, v. 1, p. 117

20. O. R., IV, v. 1, p. 466

21. *Ibid.*, p. 247

Governor Brown answered: "It will be estimated as one of the

"The brigade which I am training at the State's expense under an act of her legislature<sup>21</sup> consists of two regiments and three battalions. . . . If the regiments are indispensable to success, why are not the three battalions needed? I have tendered all together. If armed men are indispensable to success, I offer you 2500 together in place of 1500 and beg you for the sake of our common cause to accept them. If it is desired to do an act of justice to the State, the President can obviate all legal difficulties in the way of accepting them in a moment by commissioning the general in command."<sup>22</sup>

Despite this answer, Secretary Walker renewed his appeal on July 16,<sup>23</sup> but not until August 1, ten days after the battle of Manassas did Governor Brown "in view of the emergency" feel obliged "to yield the brigade organization" and determine "to send the troops to the field."<sup>24</sup> The advantage which the South had at the beginning of the war was possibly lost forever because of the insistence of a governor of a state upon his right to appoint a brigadier-general. What a price to pay! Nevertheless, the people of the South were jubilant over the results at Manassas, and thought that the war was really about over. Even some of the leaders were over-confident. After the battle, General Cobb wrote home, "As the smoke rises from the field of

21. Governor Brown had managed to get his legislature to enact a law providing for the organization of an entire brigade.

22. O. R., IV, v. 1, p. 477

23. Ibid, p. 480-481

24. Ibid, p. 527



Manassas, I feel assured it will be estimated as one of the decisive battles of the world. . . . The battle of Manassas has secured our independence."<sup>25</sup> Another officer in a letter home in July wrote: "The WAR IS ENDED except for the enemy to skirmish a little while they can most decently get out of the difficulty they are in."<sup>26</sup> In their rejoicing, the South, however, failed to take into consideration the corresponding feeling of chagrin felt in the North over this ignominious defeat and the determination of Mr. Lincoln and the Federal Government to make the proper preparation for war and to preserve the Union, whatever might be the cost of men and money. Immediately following Manassas, the Federal Government made gigantic efforts to prepare for the spring campaign. A complete reorganization of the recruiting system was adopted,<sup>27</sup> a large number of volunteers were called for and enlisted, and the army was trained

25. S. H. S. P., v. 28, p. 289

26. Wayland, Virginia Valley Records, p. 256

27. Mr. Shannon says that the machinery thus established might well have been made the basis of a national system of recruiting or even of levee en masse had not a burst of over confidence on the part of Secretary Stanton led him to commit one of the colossal blunders of the war. . . . He issued on April 3, 1862, an order discontinuing the recruiting system for volunteers. Shannon, Organization and Administration of the Union Army, v. 1, p. 256

28. S. H. S. P., v. 1, p. 237

and equipped. Food, clothing, and ammunition of all kinds were abundant, and money to pay the army had been appropriated.

This preparation on the part of the North and the call of the Union for 1,000,000 volunteers under the acts of July 22 and 25, 1861, led the Confederate Congress just before its adjournment in August to pass another act to further increase its army to meet the emergency. This act authorized and directed the President to employ militia, military and naval forces, and to ask for any number of volunteers not to exceed 400,000 to serve for a period of not less than twelve months nor more than three years.<sup>28</sup> It will be noted that the principle of enlistment "for the war" was partially abandoned for the principle of enlistment for a definite period of time. This change was probably due to the enthusiasm in the South over the results at Manassas and the erroneous belief that the war either was practically ended or would certainly end within a year.

Despite this feeling of elation just after Manassas, when Congress re-assembled in November, the members were gravely concerned over the situation. Volunteers had not answered the last call to service with the same enthusiasm that they had displayed when the earlier calls went forth. But worse than this--the term of service of the twelve months men was nearly

28. O. R., IV, v. 1, p. 537

up. The backbone of the army was about to be broken just when the Federal forces would be swinging into operation. In some way these men must be induced to re-enlist. To solve this problem the Provisional Congress passed an act on December 11, 1861, known as the "bounty and furlough" act.<sup>29</sup> This act granted to all privates, musicians, and non-commissioned officers who would re-enlist for a period of three years a bounty of \$50, a furlough of 60 days and transportation to and from their homes. The men could at the expiration of their terms organize themselves into companies and elect their company officers. These companies could organize themselves into battalions and regiments and elect their field officers. As if to insure the fact that all company officers were the creatures of their subordinates, the act further provided that all vacancies thereafter should be filled by promotion from the company, battalion, or regiment in which the vacancy occurred. In the lowest grade of commissioned officer the vacancy should always be filled by election. To avoid any conflict with State authorities, Congress provided that in case of troops regularly enlisted into the service of any particular state prior to the formation of the Confederacy, the officers should not be elected, but appointed and promoted in the same manner and by the same authority as they

28. Upton, *The Military Policy of the United States*, p. 469

29. O. R., IV, v. 1, p. 825

had been heretofore. No more disastrous act could have been passed than the "bounty and furlough" act. Had the Provisional Congress set about to disorganize completely its army, it could not have succeeded more completely. Mr. Upton declares that in reality it should have been entitled "An act to disorganize and dissolve the Provisional Army."<sup>30</sup> It surely meant nothing less than that the army had to be reconstructed in the face of the enemy.

No one was more deeply concerned over the expiration of the terms of the twelve months' men than was General Lee. On December 24, 1861, he wrote Magrath: "I tremble to think of the consequences that may befall us next spring when all our twelve months' men may claim their discharge. At the opening of the campaign when our enemies will take the field fresh and vigorous, after a year's preparation and winter's repose, we shall be in all anxiety, excitement, and organization of new armies. In what different conditions will be the opposing armies on the plains of Manassas at the resumption of active preparations!"<sup>31</sup> To provide against the danger of the disorganization of the volunteer forces of the Confederacy, he felt that the only thing to do was to conscript the man power of the South. On December 26, 1861, General Lee wrote Governor Letcher: "I know of no way of ensuring the re-

28. S. H. S. P., v. 1, p. 462

30. Upton, The Military Policy of the United States, p. 460

31. O. R., I, v. 6, p. 350; *Idem*, S. H. S. P., v. 1, p. 462

enlistment of our regiments except by a law drafting them for the war. . . I want troops badly, and I want them for the war.<sup>32</sup> General Lee felt that the great object of the Confederate States was to bring the war to a successful issue and that every consideration should yield to that.<sup>33</sup> Governor Letcher, as a result of this appeal from Lee, induced the General Assembly of Virginia to provide in February for a general enrollment of all citizens between 18 and 45 years of age.<sup>34</sup>

While Congress and General Lee were worrying over the deplorable condition of the Provisional Army, the year 1861 drew to a close. To the outside observer, and to the average person in the Confederate States, there seemed nothing to cause deep concern. The measures enacted had been sufficient to take care of the situation. Troops were still numerous. As far as the war itself was concerned, the South felt that it had nothing to complain of except that hostilities were not over. The army created by the joint action of the State and Confederate Governments had won renown at Bethel, Lexington, Manassas, and elsewhere, and the Southerners were justly proud of it. Few people in the South realized that this army was about to

32. S. H. S. P., v. 1, p. 462

33. Ibid, v. 1, p. 462

34. O. R., IV, v. 1, pp. 1114-1115

be dissolved,<sup>35</sup> nor did they realize the great price they must pay for this one blunder in military legislation--that of short enlistments--made in deference to the principle of State Sovereignty. They did not realize the almost Herculean task facing their Congress in 1862.

February 18, 1862, affairs in the Confederacy were in a critical

35. Moore, Conscription and Conflict in the Confederacy, note, p. 10. The twelve months' men were generally estimated at one-third of the entire force in the field. Hon. A. H. Kenan asserted in an address before the Georgia Legislature, September 7th, 1862, that 200,000 of the 300,000 men in the field were twelve months' men.

of supplies, were in the hands of the enemy. These reverses were followed by the desperate battle of Shiloh on the sixth of April which cost the Confederacy the irreplaceable loss of one of its ablest generals, Albert Sidney Johnston,<sup>1</sup> and forced the army of Arkansas to fall back to Corinth. Still another great disaster was added to these; New Orleans and the forts that guarded the mouth of the Mississippi had fallen into the possession of the foe. The entire line of

1. President Davis in his message to the Confederate Congress April 9, 1862, said of General Johnston: "Without being injurious to the living, it may safely be asserted that the loss is irreparable. Among the shining hosts of the great and good who now cluster around the banner of our country there exists no purer spirit, no more heroic soul than that of the illustrious general whose death you are lamenting. In his death he has illustrated the character for which through his life he was conspicuous--that of single-minded purpose and devotion to duty, with his world energy." Quoted in Seney, Military and Naval History of the United States, p. 179

#### CHAPTER IV

##### CONSCRIPTION IN THE CONFEDERACY 1862-1863

When the First Confederate Congress met in Richmond on the February 18, 1862, affairs in the Confederacy were in a critical condition and were going from bad to worse. In the West the loss of Forts Henry and Donelson had forced the Confederate troops to evacuate Kentucky and Tennessee; Nashville and Memphis, important centers of supplies, were in the hands of the enemy. These reverses were followed by the desperate battle of Shiloh on the sixth of April which caused the Confederacy the irreparable loss of one of its ablest generals, Albert Sidney Johnston,<sup>1</sup> and forced the army of defense to fall back to Corinth. Still another great disaster was added to these: New Orleans and the forts that guarded the mouth of the Mississippi had fallen into the possession of the foe. The entire line of

1. President Davis in his message to the Confederate Congress April 8, 1862, said of General Johnston: "Without doing injustice to the living, it may safely be asserted that the loss is irreparable. Among the shining hosts of the great and good who now cluster around the banner of our country there exists no purer spirit, no more heroic soul than that of the illustrious general whose death I join you in lamenting. In his death he has illustrated the character for which through his life he was conspicuous--that of singleness of purpose and devotion to duty, with his whole energy." Quoted in Tenney, Military and Naval History of the United States, p. 179

needed, resolved to re-enlist and prepared to turn over the burden of defense in the West had been swept away. At any time the Federal troops might march into the Southwestern States.

In the West the prospect too was very gloomy. The Union had successfully started its blockade of the Atlantic seaboard by the capture of Roanoke Island, a strategic point guarding the inland waters of North Carolina. Moreover, the Army of the Potomac, the largest, best equipped, and best disciplined army the Union had ever put in the field, was all ready to move toward Richmond.

The situation was desperate; the crisis had arrived; something had to be done. The last desperate efforts of the Provisional Congress to raise troops had availed little. Recruits were coming in slowly; volunteers were not filling the ranks as rapidly as they were being depleted.<sup>2</sup> Many of the short term men had already gone home and many more were anxiously awaiting their time to leave.<sup>3</sup> Secretary Randolph wrote President Davis that "large numbers of our men, yearning for home, weary of the discomforts of camp life, and deceived by the inactivity of the enemy into the belief that their services were no longer

1. O. R., IV, v. 2, pp. 42, 43

2. O. R., IV, v. 2, pp. 42, 279

3. General T. R. R. Cobb in a letter to his wife on April 15, 1862 said: "The conscription act is raising a stir among the twelve months' men. The date of service of Cash's South Carolina Regiment expired today. More than three hundred of them wanted to go home with the enemy in our front." S. H. S. P., v. 26, p. 291



needed, declined to re-enlist and prepared to turn over the burden of the war to those who as yet had borne none of it."<sup>4</sup> In fact, by the middle of May the terms of enlistment of 148 regiments of twelve months' men would expire. Besides those who had refused to re-enlist, there were "many who had entered corps which could never be assembled, or, if assembled, could not be prepared for the field in time to meet the invasion already commenced."<sup>5</sup>

As we have already seen, Virginia had tried to meet the emergency by providing a general enrollment of all her citizens between the ages of 18 and 45 who were capable of bearing arms.<sup>6</sup> States other than Virginia also attempted to keep their ranks filled by the draft system. On February 11, 1862, Governor Brown issued the following very stirring proclamation to the people of Georgia:

With a view to meet the present emergency, the President of the Confederate States has made a requisition upon the Governors of the different States for such additional force to serve for three years or during the war . . . Under this requisition from the President it becomes my duty to call upon the chivalrous sons of the Empire State who still remain at home to emulate the noble example of those who have gone before them to the field and to contribute their part to sustain the high character won for Georgia by the valor of her troops in every contest where they

4. O. R., IV, v. 2, pp. 42, 43

5. Ibid, p. 43

6. Cf. p. 21; O. R., IV, v. 2, pp. 1114-1115

7. O. R., IV, v. 2, pp. 918-922

have met their country's foe. . . Surely no true patriotic son of our State when all the property he possesses, his life, and the liberty of his posterity are at stake, will wait to be forced into the field by draft. Should I have the mortification to find that I am mistaken in this most reasonable expectation, I shall immediately proceed to detach or draft such number from each regiment or independent battalion in this State as may be necessary. . . Let it be remembered no bounty will be paid to the soldier who has to be forced by a draft to defend his home, and that the proper authority has the right to assign to him the officers by whom he is commanded. The bounty and franchise belong under the law only to the brave volunteer.

In South Carolina drafting also became a necessity. On March 6, 1862, a decree went forth from the Executive Council Chamber making it the duty of the Adjutant and Inspector General "to cause all male citizens of the State between the ages of eighteen and forty-five not now in the active service to be enrolled as soon as may be after the passage of these resolutions." Every person who failed to report himself within ten days after the notice for enrollment had been posted (unless there was sufficient excuse for such failure) was to be drafted among the first levies to be drawn from his district. If any person or officer charged with this work of enrollment failed in his duty, he was subject to a fine of not less than fifty dollars nor more than a thousand dollars. This law further made it possible for any volunteer or conscript before he had been mustered into service to furnish an able-bodied man, well-clothed, as his

substitute. If, however, the substitute should be subsequently drafted, the person furnishing him had to take his place or else furnish another substitute on the same terms.<sup>8</sup>

It is very probable that all the Southern States would have eventually adopted the draft plans of Virginia, Georgia, and South Carolina. Doubtless that is what Congress and the President had hoped for, as they preferred the odium of drafting to fall upon the states. They knew, too, that a general draft would raise a storm of protest from the State Rights group and the Confederate Government already had more than it could well handle. But the action of the twelve states would be too slow. Troops from all the states were needed at once.

While Congress was debating what was the wisest course to pursue, the press was calling upon that body to take "courage in council." The Enquirer on April 14, 1862, expressed the view that the "legislators in some cases manifest a distrust of the spirit of the people" and assured them that "the people will not only hear, but they ardently desire, any call upon them which is necessary to the successful and energetic prosecution of the war." It could see no need of "legislative timidity" and called upon Congress to "strike wisely, but strike boldly!" At this

8. Ibid, p. 975-975  
Detailed notes were taken by President Davis who approved the principle. President Davis then had Secretary [Name] call the bill to present to Congress. The bill had been so amended and paroled that there were in it many evils which General Lee had fought continually--substitution and election of officers. President Davis did not favor conscription of men over thirty-five. He felt that there would be needed for State Militia. Freeman, Life of Lee, v. 2, p. 29

point the Confederate Congress did rise boldly to the occasion and asserted the extent of its power to raise and support armies. Appalled, but not unmanned, it met the emergency by passing an act on April 16, 1862, by a vote of more than two to one,<sup>9</sup> declaring every able-bodied white man between the ages of 18 and 35 subject to military service in the Confederate Army.<sup>10</sup> President Davis, in his message to Congress March 28, 1862, had urged conscription for several reasons. First, he felt it imperative to do away with short term enlistments which he had never favored; second, the frequent changes in the law had often made it difficult to determine what the law really was; third, there was often embarrassment from conflict between Confederate and State legislation since no well-balanced military machine could possibly exist created by the independent action of twelve governments; and fourth, the act was necessary to keep the burden from falling too heavily or exclusively on the most ardent and patriotic.<sup>11</sup> Primarily, the

9. Journal of the Confederate Congress, v. 5, p. 228

10. O. R., IV, v. 1, p. 109

11. O. R., IV, v. 1, p. 1031; *Idem*, Appleton's Annual Cyclopaedia, 1862, pp. 242, 243. In March, 1862, General Lee had Major Marshall, a new lawyer member of his staff draw up the head of a bill providing for conscripting all able-bodied men from 18 to 45. This finished paper Lee took to President Davis who approved of the principle. President Davis then had Secretary Benjamin prepare the bill to present to Congress. The bill which passed had been so amended and mangled that there were in it many evils which General Lee had fought continually--substitution and election of officers. President Davis did not favor conscription of men over thirty-five. He felt that those would be needed for State Militia. Freeman, Life of Lee, v. 2, p. 28

Conscript Act was passed to keep in the service the twelve months' men. The exigencies of the country made it necessary to have seasoned troops to face the well-trained Union Army. Raw recruits at this time would have been disastrous. To appease those in the army, several concessions were made. First, those in service were to be continued in service for three years from the date of their original enlistment. Second, they were to have the right within forty days, on a date to be fixed by the commander of the brigade, to reorganize their companies, battalions, and regiments and to elect all their officers which they had a right heretofore to elect. These officers were to be commissioned by the President. Those who preferred guerilla service were authorized to form as partisan rangers by an act passed especially for that purpose. Third, those who had not received the bounty and furlough provided for in the act of December 11, 1861, were to receive their bounty of \$50 and a furlough not exceeding sixty days. The furlough, however, was to be granted only in such numbers as the Secretary of War saw fit and at a time when he might deem it most compatible with the public interest. In case a soldier did not wish the furlough, he was to receive in lieu of it the commutation in money of the transportation charge. To take care of the twelve months' men who were either under eighteen or over forty-five, the law provided that they should be required to remain in service for ninety days unless their places could be filled by recruits

not then in the service. This law set aside all previous contracts. The Government retained all the soldiers in the field and sought to add to them every man between the required ages. President Davis in a letter to Governor Brown gives this as his reason for the injustice to the volunteers:

I would have very little difficulty in establishing to your entire satisfaction that the passage of the law was not only necessary but that it was absolutely indispensable; that numerous regiments of twelve months' men were on the eve of being disbanded whose places would not be supplied by new levies in the face of superior numbers of the foe without entailing the most disastrous results; that the position of our armies was so critical as to fill the bosom of every patriot with the liveliest apprehension; and that the provisions of the law were effective in warding off a pressing danger.<sup>12</sup>

A second section of the Conscript Act permitted all companies, battalions and regiments which were then being formed by the volunteer method to complete their organization and be mustered into service, provided they did not include in their number any who were then in the service and provided they completed their organization in thirty days. The officers of these companies were, as before, to be elected by the men.

A third section gave the President power, with the consent of the governors of the respective states to employ state officers for enrolling conscripts. In case the President did not obtain such consent from the state, he was empowered to employ Confederate officers for the enrollment. The management of the enrollment,

12. O. R., IV, v. 1, pp. 1094-1095; Idem, Appleton's Annual Cyclopaedia, 1862, pp. 243-244

however, was left entirely to the Secretary of War. When enrolled, the conscripts were to be assigned by him to companies from the states from which they had come until the companies were filled to the maximum number. According to this law, the maximum of each company of infantry was 125 rank and file; of the artillery 125, rank and file; and of the cavalry 80, rank and file. In case any state did not have enough units in the service to take care of all the conscripts, the residue was to be held in reserve and each company in the field was to be kept filled by these reserves drawn by lot at stated periods of not more than three months. The reserve troops were to remain at home until called for and were not to receive any pay until actually called into service in the field. If the President felt that an emergency had arisen, he had the power to call into service the entire reserve. If called, they were to be granted the privilege of reorganizing themselves into companies, battalions, and regiments, and of electing their officers. Troops raised in any state were not to be combined with the troops raised in any other state.

The Conscript Act further provided that the President, by and with the consent of Congress, was to fill all vacancies by promotion according to seniority, except in case of disability or incompetency. If, however, he thought it proper, he might fill the vacancy by the promotion of any officer or private in such company, battalion or regiment who had been distinguished

in the field by exhibition of extraordinary valor or skill. In the lowest grade of commissioned officers, the vicious system of election was still retained. This section was modified on April 21, 1862, by an important proviso which granted the President the power when he thought proper to fill any vacancy by the promotion of any officer from any company, battalion, or regiment, in which the same might occur who had distinguished himself by extraordinary valor or skill. When the vacancy occurred in the lowest grade of commissioned officers of any company, that position might also be filled by selection by the President of any non-commissioned officer or private from the company in which the vacancy occurred who had distinguished himself in the service.<sup>12a</sup>

The ninth section of the Conscrip Act permitted a conscript to employ as a substitute any able-bodied person not liable for service. The method of supplying the substitute was very simple. The conscript had only to report himself with his substitute to the camp of instruction, and if the substitute was lawfully exempt from military service, and was pronounced by a surgeon to be physically fit for military service, he might be enrolled and the person furnishing such a substitute might be discharged by the commandant of the camp.

12a. O. R., IV, v. 1, pp. 1091-1092

13. Ibid, p. 1099



The last section of the act, recognizing the individualistic instinct of the Southern people and their natural aversion to conscription, provided that all persons who were not then in the service, should be permitted, previous to the enrollment, to volunteer in companies then in the service.<sup>14</sup> Recruits were allowed to choose any corps to which they desired to be attached in which vacancies occurred. They could also join any corps, the formation of which had been authorized by the government.<sup>15</sup>

In each county, parish, or district, and in any city in any county, parish, or district in the state, a place of rendezvous was established in which conscripts were enrolled for duty in the field, and there they were examined by surgeons. If they were declared fit for military service, they were then sent on to a camp of instruction.<sup>16</sup> To take care of the training of recruits, one or more camps of instruction were authorized to be established in each state.<sup>17</sup> The President appointed, by and with the consent

The Conscript Act allowed that since May, 1861, when the

14. For the entire Conscript Act see: O. R., IV, v. 1, pp. 1095-1097

15. Appleton's Annual Cyclopaedia, 1862, p. 24; Idem, O. R., IV, v. 1, p. 1152

16. O. R., IV, v. 2, p. 163

17. The camps of instruction were not very desirable places. One soldier in service commenting on the lot of a conscript said: "He should have gone out earlier and escaped the den. But there are men who would rather suffer martyrdom at Camp Lee than fill an honorable place in the line of battle. Poor fellows! They are to be pitied." Jones, Under the Stars and Bars, p. 126

18. Ibid., IV, v. 2, pp. 77, 78

of the Senate, an officer with the rank of Major who acted as the commandant of conscripts. The commandant of each camp could appoint as many drill masters as he needed to assist him in this work. Usually cadets of the Military Institutes were used for this purpose, and when so used received the pay of a second lieutenant.<sup>18</sup>

In many instances the places of rendezvous became camps of instruction, and drill masters were authorized by law to begin at once the training of recruits. As the Secretary of War wrote President Davis:

The advantages of preparation are obvious. The Department considered camps of instruction a necessary part of the military system. The call for men had been so importunate that the camps of instruction have been little more than points of rendezvous, and the unprepared condition of the conscripts has been felt as an evil and made the subject of complaint from the Army.

The Department never contemplated to hold conscripts one day after they were fit for service in the field, but it was hoped they would be left a few weeks for preparation.<sup>19</sup>

The Conscript Act showed that since May, 1861, when the first act was passed to raise troops without a formal call upon the states, Congress had gone a long way in its march toward centralization of power. This march had been broken many times in deference to the principle of State Rights; nevertheless, it had been rather steady. In the new military act, except in section three, which recognized the state only as far as its

18. O. R., IV, v. 1, p. 1145

19. Ibid, IV, v. 2, pp. 77, 78

officers could be made useful to the Confederate Government,<sup>20</sup> and in section six, which allowed conscripts of a state to be assigned only to units of their own state, there was no vestige of State Rights. The act entirely dispensed with the direct call upon the state for troops for the Confederate Army; furthermore, though it still allowed volunteering under certain conditions, it made compulsory service, which was diametrically opposed to the spirit of Southern individualism, the basic principle of raising an army. Yet the end seemingly justified the means. The reorganization was immediately completed; the ranks were filled up; the army which took the field against the great Army of the Potomac again covered itself with glory; Richmond was saved.<sup>21</sup>

Despite the fact that the Conscript Act seemed to save the Confederate Army from disintegration, with such wide assertion of

of affairs,<sup>22</sup> The Columbia mag approved of it because of its  
"ever 20. The experiment of using State officers for the purpose  
country of enrollment proved a failure because the military  
systems of many States had so deteriorated that either  
no enrolling officers could be found, or none could be  
had who were trustworthy. O. R., IV, v. 2, pp. 44, 215,  
724

21. Secretary Randolph, writing to President Davis said:  
"Four months have elapsed since the passage of the  
Conscript Act, and the present condition of the Army  
sufficiently proves its wisdom. Four months ago our  
armies were retiring weak and disorganized . . .  
now we are advancing with increased numbers, improved  
organization, renewed courage, and the prestige of  
victory upon an enemy disheartened, and sheltering  
himself behind defensive works and under cover of his  
gun-boats. O. R., IV, v. 2, pp. 42, 43 of the  
WAR, pp. 42, 43

the power of Congress, it is not surprising that the act aroused a great deal of interest throughout the entire country, North and South. Nor is it surprising that there was quite a diversity of opinion in regards to it. Some of the State Rights leaders, such as Vice-President Stephens, Brown, Toombs, and Vance, thought that the law was unconstitutional and unnecessary; other State Right champions, such as Pollard, Rhett, and Yancey, thought that it was constitutional and said that he had not heard or read any argument against it that was tenable.<sup>22</sup> Leading newspapers as a rule supported the Conscrip Act. Some favored conscription, but opposed the exercise of that power by the Confederate Government; some, such as the Augusta Constitutionalist, the North Carolina Standard, and the Montgomery Mail, denounced conscription as being unconstitutional; others supported it because of the condition of affairs.<sup>23</sup> The Columbia Sun approved of it because of its "overwhelming necessity to meet the pressing exigencies of the country and to enable us to repel the enemy now invading our soil." The Southern Confederacy regretted to see some of its contemporaries opposing it "on the merits of the question." It should have been adopted at the commencement of the war. It is

22. Owsley, State Rights in the Confederacy, p. 26

23. For similar opinion concerning the enrollment act passed by the Congress of the United States see: Shamon, Organization and Administration of the Union Army, pp. 299, 300

the only just, equitable and practicable method of raising and keeping the army, and we hope the people everywhere will approve it. It treats all men alike and puts every man in the Confederate States upon an equal footing." However, it was the opinion of the Southern Confederacy that "the State governments and not the general government should exercise it. The Confederate Government ought to control the army after it is raised and turned over to it by the States, but . . . the States should proceed in their own way to furnish their quotas and in our judgment that way should be by conscription." The Clarke County Alabama Journal thought that conscription was "the fairest and best mode of raising men; volunteering, most unequal and unjust, and levies by States the most uncertain and hazardous," for it made the "unpatriotic perform the same duty as the most devoted citizen," and brought "the rich to the same level with the poor." It believed that levies of troops by States in the Revolutionary Armies were almost an absolute failure." The Examiner thought the law a "stringent one, but it was based on a necessity which could not be avoided and none should be disposed to avoid the responsibilities which it imposes and which its necessity has long point out."<sup>24</sup> of State Rights."

24. Moore, Conscription and Conflict in the Confederacy, pp. 21-23

25. For Davis-Brown controversy see: C. B., IV, p. 1, pp. 1112-1120; 1122-1126; 1129-1132

The Conscription Act was popular with those who had already volunteered, as well as with the press. The soldiers in service felt that those included in the Act should have been out earlier helping in the great cause. President Davis in a letter to Governor Vance said that the Conscription Act had not been popular anywhere outside of the Army, but that in the Army it served to check the discontent which resulted from retaining the twelve months' men beyond their term of original service.<sup>25</sup>

Despite the support given the Conscription Act by many leading State Rights leaders, by the press, and by the Army, the opposition party started a vigorous campaign against the new military act. The leader of the opposition was Governor Brown of Georgia. He attacked the act on the ground that it was neither constitutional nor necessary, and engaged President Davis in a long controversy over the matter. He said he regarded conscription as a "bold and dangerous usurpation by Congress of the rights of the States."<sup>26</sup> In vain President Davis pointed out the fact that the constitutionality of the law was sustained by a large majority of both Houses of Congress and of the Cabinet. The President argued that the act "may be pronounced constitutional in spite of its seeming invasion of State Rights."

25. O. R., IV, v. 2, p. 154

26. For Davis-Brown controversy see: O. R., IV, v. 1, pp. 1116-1120; 1133-1139; 1156-1169

Governor Brown, however, would not be pacified and finally succeeded in testing the constitutionality of the law before the Courts of his State. James N. Levingood, who had been enrolled as a conscript sued out a writ of habeas corpus before the Judge of the Superior Court in Elbert County, Georgia. The principal point was that the Conscript Act was unconstitutional, and therefore the act itself and all regulations and orders based upon it were likewise void. After a lengthy debate the Court handed down this decision:

The preamble of the Constitution has taken care to assert and maintain that the States are sovereign and independent and that this in no sense could be true in Georgia if all her militia can be taken from under the control of her commander-in-chief without her consent; that if the Confederate Government could prescribe what shall be the militia, they can conscribe at pleasure and may take the Governor, general assembly, and the whole judiciary and thus annihilate the State Government; and that this plea of necessity was not true.

For these reasons they declared the act void, and released and discharged the conscript from the custody of the sheriff and set him at liberty to go wherever he pleased.<sup>27</sup>

The case was immediately thereupon taken to the Supreme Court of the State which overruled the decision.

27. Appleton's Annual Cyclopaedia, 1862, p. 245

28. *Ibid.*, p. 244. For the ruling of Alabama on a similar case see *ibid.*, p. 243

It decided that the Conscription Law was clearly constitutional under the provision of the Constitution which gave to Congress the power to raise armies, distinguished from the power to call out the militia.<sup>28</sup> When, however, the Federal forces approached Georgia and an application was made to Governor Brown for authority to call out the local militia for its defense, he laid the matter before the Legislature. While the discussion was going on in the House Committee (which was divided) Mr. A. H. Kenan, a member of the Confederate Congress, took up the matter with the people in a public address at Milledgeville, the seat of government. In this address he said:

Georgia is the last State that ought to complain and resist this law. Georgia has not yet been invaded. We have not yet suffered at our doors and in our estates from the presence of the hostile foe. The battles in our defense have been fought hundreds of miles away from us. The Virginians have suffered in person and property to an extent that you who are at home and far from the enemy cannot appreciate. You have never had your patriotism and devotion to our cause and country tested. The people of Virginia have lost their property, their negroes, their food, their all. Their houses, their barns and fences, have been burned before their eyes, their wives and children insulted and driven from home, and themselves carried away captives, and still they are true. You know nothing of the ravages of war. When you and your wives and children are driven from home without food and clothing, to hide in the mountains and caves, your negroes stolen and the torch applied to your premises, then your patriotism will be tested. Can

unconstitutional and refusing to obey orders based upon it."

28. Ibid, p. 494. For the ruling of Alabama on a similar test case see: Ibid, p. 245

29. Ibid, pp. 245, 494



you endure that? Had you not better do all you can to keep the war away from your borders? Is it well for you to be squabbling about State Rights and who shall appoint captains and colonels when the enemy is thundering at your doors? We have had brilliant victories, and our arms have performed such deeds as history has nowhere recorded. Conscription has done it for us. If we whip them, conscription will have done it--without it we will fail.<sup>29</sup>

Although the appeal of Mr. Kenan was most eloquent and seemingly convincing, the legislature, which was under the control of Brown, Toombs, and the Stephensens, reported most decisive resolutions against the constitutionality of the Conscrip Act; however, the minority recommended acquiescence in the measures of the Confederate Congress on the ground "that the safety of the States demanded that no opposition be made to any measures adopted by the Confederate Congress in the exercise of powers granted and intended for the common defense."<sup>30</sup>

Despite the decisions handed down by the Courts, and despite the urgent appeals of its citizens, the State Rightists, not willing to be outdone, resorted to other means which did untold damage to the cause. Brown even took his quarrel into the Army. Colonel Benning of Georgia "got into a controversy with General Lee and Secretary Randolph about the Conscrip Act, Benning saying it was unconstitutional and refusing to obey orders based upon it."

29. Appleton's Annual Cyclopaedia, 1862, p. 245

30. Ibid., pp. 245, 494

He was about to be arrested and his men to mutiny when General Cobb interceded and, as he believed, warded off "a bitter war between Georgia and the Confederacy, for Brown was backing Benning."<sup>31</sup> Inside and outside the army, Governor Brown did all he could to cause discord between state and Confederate authorities.

Nor was conscription the only problem facing the Confederate Government. Substitution, which turned out to be one of the greatest evils in raising troops and which had been practiced in the Confederate Army as early as October, 1861,<sup>32</sup> was continued in the Conscript Act. The "chief purpose of substitution was to utilize the potentialities of men along industrial lines" and to make the proper allocation of its man power,<sup>33</sup> but many simply looked upon it as a means of escaping service. All methods were resorted to by private individuals to escape the operation of the law. Some men of wealth who were not eligible to exemption made a rush for substitutes and would resort to any means, legal or illegal, to secure one. Neither

31. Cobb, "Extracts from Letters," S. H. S. P., v. 28, p. 494

32. O. R., IV, v. 2, p. 694

33. Moore, Conscription and Conflict in the Confederacy, p. 29

the character no physical fitness of the substitute mattered<sup>34</sup>

All the "principal" wished was someone to keep him out of the army so that he could be a normal, private citizen once more capable of engaging in private business for his own personal gains and to the corresponding hurt of the Confederate Government. Mr. Robert S. Hudson of Mississippi wrote President Davis:

Substitution has been a great evil in many cases. Very worthless men have been bought at high prices and brought into the service as substitutes, while generally the principals have gone into speculation and extortion to reimburse themselves for the money they have expended for substitutes. Indeed, so far as any observation extends, the principals who have purchased their exemption by substitution have done so in order to speculate and were either then engaged in the business or soon entered upon it.<sup>35</sup>

It had been estimated "that there were at least 20,000 substitutes in the army, for planters and planters' sons were generally unwilling to take the field, excepting as officers."<sup>36</sup> This is a very conservative estimate. The

34. Governor Milton of Florida wrote President Davis that the camp of instruction in his State had more the appearance of a camp provided for those afflicted with lameness and disease than a military camp. He said that the great majority were invalids and that not more than 300 able-bodied men were obtained by the Act. O. R., IV, v. 2, p. 92

35. O. R., IV, v. 2, pp. 857, 858

36. Lossing, The Civil War, V. 3, p. 96; Idem; Appleton's, 1863, p. 17

substitute market became most flourishing. As soon as enrollment began. Substitutes were sought out and engaged at bounties from one hundred to two thousand dollars.<sup>37</sup> By July, 1863, advertisements in papers offered \$4,000 for substitutes, and "one man in Hanover County, Virginia, offered a farm of 230 acres. By the latter part of the year the price had gone to \$6,000, and Chief Justice Pearson of North Carolina spoke of substitutes receiving as much as \$5,000 to \$10,000." The papers were full of "want ads" for substitutes. In society as well as in the army the principal and the "substitute were regarded as contemptuous cowards and moral weaklings"; therefore the name of the principal was rarely disclosed. Transactions were usually made through newspapers, mercantile firms, banks and business offices.<sup>38</sup> Many people went into the business of procuring substitutes and many of them disregarded entirely all substitute laws of decent business. The Dispatch of June 24, 1862, said that there were immense frauds and villainy being carried on in Richmond in buying and selling substitutes by men who make a regular business of the nefarious trade. Substitution had become such a serious evil in

37. Appleton's Annual, 1862, p. 246. (See also 1863, The Superintendent of Conscription in

37. Appleton's, 1862, p. 246. ing expert detectives to as in their habitual

38. Moore, Conscription and Conflict in the Confederacy, pp. 29, 30

38. Moore, v. 2, pp. 210, 246

39. Moore, p. 246; Appleton's Annual, 1862, p. 27; Moore, v. 2, p. 24

Richmond by August 1, 1862, as to cause the issue of the following order:

The obtaining of substitutes through the mediums of agents is strictly forbidden. When such agents are employed, the principal, the substitute, and the agent will be impressed into the military service, and the money paid for the substitute, and as a reward to the agent will be confiscated to the Government. The offender will also be subjected to such other imprisonment as may be imposed by the court martial.<sup>39</sup>

Laws issued against substitution did not stop the practice. Abuses continued. Unnaturalized citizens, diseased men, old men unfit for service, and even those between the ages of 18 and 35 were accepted as substitutes, and principal's certificates were forged by able-bodied men who could not employ substitutes.<sup>40</sup> It was reported that there were at least ten thousand fraudulent substitute papers held by persons not in the service.<sup>41</sup>

Almost without exception, men who were enrolled as substitutes by these illegal methods were absolutely worthless. The generals did not wish such cowards in their armies, and it was reported to Congress that one general

39. Appleton's Annual Cyclopaedia, 1862, p. 246. (In June, 1863, the Superintendent of Conscripts indorsed the plan of employing expert detectives to apprehend substitute agents in their habitual fraud. O. R. IV, v. 2, pp. 583, 611)

40. O.R., IV, v. 2, pp. 670, 946

41. Ibid., p. 946; Appleton's Annual Cyclopaedia, 1863, p. 17; Lossing, The Civil War, v. 2, p. 96

went so far as to refuse to accept a substitute in his command.<sup>42</sup> Others probably did the same things since the Secretary of War ordered that any officer rejecting a substitute should state his reason.<sup>43</sup> One could not be surprised that generals would not want substitutes in the army since almost all of them were in it from a business standpoint, and joined the army for the sole purpose of getting the bounty and of deserting at the earliest possible moment. They were then in line to offer again as substitute and gain other bounties.<sup>44</sup> The Adjutant General of Virginia complained that many of the substitutes who had deserted "played the game over as many times as they had a chance to."<sup>45</sup> Absenteeism, straggling, and desertion from the army, as the winter approached, was without parallel. So large was the number absent that it was estimated that a half or three-fourths of them added to the forces in the field would be sufficient to give success at all points. It was declared

42. Journal of the Confederate Congress, v. 5, p. 331

43. Moore, Conscription and Conflict in the Confederacy, p. 33

44. O. R., IV, v. 2, p. 996

45. Rhodes, History of the United States, v. 5, p. 38

that more than half the men who went into service from the northeastern counties of Georgia were at home without leave and most of them were skulking in the mountains to avoid being arrested. Others had banded together under a few desperate leaders to resist any attempts that might be made to arrest them, or to release from jail those who had been arrested. Some of these bands had arms and subsisted by plunder. They were volunteers and not conscripts as the conscript laws had never been enforced in that section.<sup>46</sup>

As a result of this serious situation, President Davis, the War Department, and the press felt that something must be done at once. As early as August the first, President Davis made the following earnest appeal to this group of absentees:

I call on you then, my countrymen to hasten to your camps in obedience to the dictates of honor and of duty, and I summon those who have absented themselves without leave, who have remained absent beyond the period of their furloughs, to repair without delay to their respective

46. Temney, Military and Naval History of the Rebellion, p. 329. The desertion in the Federal Army at this time was even worse. It was estimated that to keep 500,000 effective men in the field, they must have 125,000 annual recruits--85,000 were to supply losses by death and discharges; 34,000 for desertions and missing in action, 6,000 for other causes. Ibid, p. 329

Military and Naval History of the Rebellion, p. 329

O. S., IV, v. 2, p. 46

commands; and I do hereby declare that I grant a general pardon and amnesty to all officers and men within the Confederacy and absent without leave, who shall with the least possible delay, return to their proper posts of duty; but no excuse will be received for any delay beyond twenty days after the first publication of this proclamation in the State in which the absentee may be at the date of publication. . . . I conjure my countrywomen--the wives, mothers, sisters and daughters of the Confederacy, to use their all-powerful influence in aid of this call. . . . and to take care that none who owe service in the field shall be sheltered at home from the disgrace of having deserted families to their country and to their God. No alternative is left you but victory or subjugation, slavery, and the utter ruin of yourselves, your families and your country. The men now absent from their posts would if present in the fields suffice to create numerical equality between our force and that of the invaders, and when with any approach to such equality, have we failed to be victorious? I repeat that the men . . . who have been called out and have not yet reported to duty, or who have absented themselves from their posts are sufficient in number to secure us victory in the struggle now impending.<sup>47</sup>

The War Department was also forced to take drastic steps.<sup>48</sup> With the consent of Governor Letcher, all sheriffs, deputy sheriffs, and constables in the State of Virginia were authorized and requested to apprehend deserters from the army, wherever they might be found, and to deliver them to an officer of the army at the most convenient post or station, or to lodge them in jail and report their names and regiments to the Adjutant and Inspector General in Richmond. Thirty dollars was to be paid for each deserter returned to

47. O. R., IV, v. 2, pp. 687, 688; Ibid, Tenney, Military and Naval History of the Rebellion, p. 413

48. O. R., IV, v. 2, p. 45



the army, and fifteen dollars for each lodged in jail. The jailers were requested to detain them and were promised the usual allowance for the support of prisoners.<sup>49</sup> Orders were also sent out to the enrolling officers of conscripts authorizing and requiring them to arrest deserters and all persons absent without leave from the army and to deliver them to the nearest camp of instruction or lodge them in jail. The Commandants of the camps of instruction were required to forward all deserters and absentees to their regiments. The enrolling officers were urged to discharge the duty of arresting deserters and enrolling conscripts "with the utmost activity and without fear, favor, or affection," as the victories of the armies depended upon their exertions to fill the ranks.<sup>50</sup>

The press also appealed to the citizens in all parts of the South to assist in the apprehension of deserters and stragglers from the army "by giving information to the authorities of the place of refuge of these creatures." One paper said:

There should be no resting place for the feet of these creatures. Every man and woman in the country is able to do

49. Appleton's Annual Cyclopaedia, 1862, p. 246

50. Ibid., p. 246

descriptions brought forth previous arrangements in the House  
and was passed only after bitter debate. Mr. Sumner of Georgia

something in pursuing, shaming and driving back in the ranks those who have deserted their colors and their comrades and turned their backs upon their country's service. Let all ages and sexes in the country assist the Government in reclaiming deserters and stragglers and in maintaining the integrity of our army. . . . Deserters are reducing our army, defying its discipline, corrupting its spirit and morale and seriously endangering the fortunes of our cause.<sup>51</sup>

The wholesale desertions and the corresponding depletion of the ranks in the army caused the Secretary of War to appeal to Congress in extra session in August to pass remedial measures. He recommended that substitution should be allowed only in cases where the principal could be of as much or more service to the cause at home as he would be in the field. A bill which abolished nearly the whole system did pass the Senate but was lost in the House by having been foolishly and unconstitutionally linked with another measure.<sup>52</sup>

While the Confederate Congress was making a desperate effort to increase its army, the enemy was marshalling 600,000 fresh troops into the field. In order to meet this situation the Confederate Congress did pass another act on September 17, 1862, amending the Act of April 16 by extending the conscript age from thirty-five to forty-five years. This bill providing for the further increase of the army by

51. Ibid, p. 246

52. O. R., I, v. 17, pt. 2, p. 791