conscription brought forth serious controversies in the House and was passed only after bitter debate. Mr. Kenan of Georgia urged that the bill be reconsidered and that instead of conscription the House Bill should authorize the President to resort to the old method and make a requisition upon the Governors of the states for the troops needed. To appease the State Rightists, Mr. Kenan felt that this was necessary and the only adjustment which could be made if there was to be peace between the State and Confederate Governments. There had always been dissention between the two governments over conscription. In the State of Georgia, the Conscript Bill had already been declared null and void on the ground that it was unconstitutional. Mr. Kenan felt that if the President were to make requisitions upon the Governors, they would be complied with, but he was sure there was danger of dissention between the Confederate Government and the states if conscription were resorted to. Despite Mr. Kenan's plea, the House failed to reconsider the bill by a vote of 62 to 24.

Congress felt that the bill as finally passed would solve a double problem: the ranks would be filled, and substitute material would be almost eliminated.[54]

53. Appleton's, 1862, pp. 267, 269

54. It was estimated that the number which this conscription would bring out would be as follows:

Ala.	10,393	Fla.	12,000	Ark.	5,000
Ga.	12,320	Miss.	9,000	Miss.	9,000
N. C.	14,000	S. C.	6,600	La.	8,000
Tenn	6,500	Va.	18,000	Texas	5,000
			77,323		27,000

Tennay, Military and Naval History of the United States, p. 42

The act, however, said nothing about the matter of substitution. Any person not subject to enrollment under this or the previous act, could still be employed as a substitute. Instead of this law's helping the matter, it simply caused more embarrassment to the Government. Since the law made many substitutes liable to service on their own account, at once the question was raised about the status of the principal and his substitute already in the service. The Secretary of War took the stand that when a substitute became liable to service that his principal also became liable unless exempt on other grounds. He also prohibited substitutes under eighteen.[55]

This stand of the Secretary of War did not appease the principal. He had employed the substitute for three years, and now Congress and the War Department would take the substitute and leave the principal without a proxy in the army. The principals brought suits in the courts which usually held that substitution did not involve a contract with the government.[56] Some judges gave adverse opinions, but the Secretary of War ignored them. In the fall of 1862 Congress seriously considered amending the law so that the principal would become liable as soon as the substitute deserted.[57]

55. O. R., IV, v. 2, p. 78

56. Moore, Conscription and Conflict in the Confederacy, p. 35

57. Journal of the House, v. 5, p. 312

By the end of 1862, people everywhere were generally disgusted with substitution and Congress was considering amending the system or abolishing it altogether. In December, 1862, Senator James Phelan of Mississippi wrote President Davis that he was satisfied that the whole policy of substitutes was wrong and that he was going to introduce a measure "to abolish it in toto." He asked the President to give his measure the benefit of his recommendation.[58]

At the beginning of 1863, the War Department started a vigorous campaign to prevent substitution frauds. Enrolling officers were ordered not to honor certificates of exemption of former soldiers who claimed he had furnished a substitute unless his certificate was signed by a battalion or regimental officer, Commandant of conscripts, and later by the general commanding the army.[59] Investigations were started to unearth substitute scandals. These investigations revealed the fact that "self-styled officers" were signing substitute papers without commission or authority and that regimental officers moved by corruption, complacence, or recklessness had exhibited a criminal disregard of the law and orders.[60] Finally the Superintendent of the Bureau of Conscription endorsed the use of detectives to discover all people breaking the law, especially professional

58. O. R., I, v. 17, pt. 2, pp. 790, 791

59. O. R., IV, v. 2, pp. 168, 412, 553

60. Moore, Conscription and Conflict in the Confederacy, p. 37

substitute agents and corrupt army officers.[61] Finally on July 20, 1863, because of the wholesale desertion of substitutes, an order was issued by the Adjutant and Inspector General which declared that "every person furnishing a substitute . . . shall become liable to service and immediately enrolled for military duty upon the loss of the services of the substitute furnished by him from any cause other than the casualties of war."[62] As a result of these wide-spread efforts of the War Department and the public in general to induct men into service, the entire South became "substitute-minded." General Bragg and other officers expressed the belief that more than 180,000 had been allowed substitutes and that not more than one out of every hundred of these substitutes was then in the army (July 25, 1863).[63] There was a general demand for abolition of the substitute system. Some even believed that unless the law were strictly enforced and the evil remedied early or substitution prohibited that it would prove a destruction to the cause and the country . . and that unless speculation and extortion were speedily put down, the country would soon be ruined.[64] The Secretary of

61. O. R., IV, v. 2, pp. 582, 583

62. O. R., IV, v. 2, p. 649

63. O. R., IV, v. 2, p. 670. Adjutant General Cooper expressed surprise at this statement. Ibid, p. 696

64. Ibid, pp. 856, 857

War believed that to have permitted substitution was a most glaring error which could not adequately be remedied except "by applying the ax to the root and undoing the whole system." He was persuaded that the people would cheerfully submit to a law annulling the contract between the principal, the substitute, and the government upon refunding the substitute money. The Secretary did not think that there were more than three or four thousand substitutes over the age of conscription acutally in the field, and that it would be a moderate estimate to assert that there were fifty thousand able-bodied conscripts out of the field by reason of substitution.[65] In a letter to President Davis in November, 1863, the Secretary expressed the idea that the law allowing substitution had already proved a means of depleting the army and had done more than any single measure to excite discontent and impatience among the men in the service. These substitutes, he said, "have proved for the most part wholly unreliable; have in many cases only entered to desert; and often offered elsewhere to make sale of themselves with a view to like shameful evasion." The fact that the wealthy could thus indirectly purchase liberation from the evils and dangers necessary for the defense of the country produced repining and discontent among the less fortunate and poorer classes. Therefore, the Secretary "earnestly recommended that the substitution act be at once repealed, and that all who have

65. Ibid, pp. 946, 947

enjoyed its benefits be now again subjected to the sacred duty of defending in arms their property, their liberties and country."[66]

A writer in the Whig was of the opinion that substitution was more seriously detrimental to the Confederacy than every defeat suffered for the war. "In fact," he said, "I am willing to pioneer the proposition that every other cause combined has not done more to defeat us than the allowance of the fatal principle." From the best data, he believed that there were 155,000 substitutes employed and that there were in actual service only 31,000, making a deficit of 124,000 able-bodied men.[67]

The authorities in Richmond were so completely disgusted that they turned their attention toward the abolition of the whole system as soon as Congress met. When Congress did convene on December 7, 1863, Mr. Simms of Kentucky and Mr. Clark of Missouri offered bills against permitting substitutes to be employed any longer in the army. On December 28, 1863, a bill was approved by a large majority in both houses which prohibited any person liable to military service

66. Ibid, p. 996. For full text of the letter see pp. 990 ff.

67. Whig, November 21, 1863. Note: No records seem to exist to show the exact number of principals who might be called into service. The best conjectural computations place the number at not less certainly than 50,000 men of an age and class calculated to make approved soldiers.

service to furnish a substitute.[68] On January 5, 1864, another act was approved providing that no person should be exempted from military service by reason of his having furnished a substitute. This act, however, did not affect persons who though not liable to render military service had, nevertheless, furnished substitues.[69] By this act was brought to an end the pernicious system of substitution, but not before it had done untold damage to the cause. The size of the army had been decreased by desertion and fraud; wholesale speculation both in and out of the army had been indulged in at the expense of the Confederate Government; the poor who could not hire a substitute had been forced into service where they must endure the privations of camp life and perils of war while their rich neighbors stayed at home in luxury and safety; class hatred was increased to such an extent that the cry "the rich man's war and the poor man's fight" was heard everywhere; and lastly, the State Rights leaders had been agitated by the substitute law, and the breach between the State and Confederate Government had been widened. Substitution had proved itself the most grievous error of conscription.

Besides the inadequateness of the Conscript Act of

68. O. R., IV, v. 3, p. 11; Ibid, Appleton's, 1863, p. 222

69. O. R. IV, v. 3, p. 12

April 16, 1862, in regards to substitution, this act soon proved itself inadequate in another way. It was even possible for State governments to be entirely broken up since there were no exemptions whatever allowed, not even for physicians. Accordingly, on April 21, 1862,[70] Congress passed an act providing for the exemption of practically all people in the employ of both Confederate and State Governments, and people in professional and industrial life whose services were deemed necessary at home.[71] So far as Congress was concerned, the purpose of the act was to preserve state governments and to use its man power to the greatest advantage, and to exonerate only a sufficient number of experts in various professions, trades, and mechanical pursuits to meet the requirements of society. Producers of clothing and ammunition were just as necessary as fighters.

Despite the fact that this act was intended to relieve the harshness of conscription, it proved another great drawback to

70. Ibid, v. 1, p. 1081

71. The following classes were exempted: Confederate and State officers, and the clerks allowed them by law; mail-carriers and ferrymen of post roads; pilots and persons engaged in the marine service; employees on railroads and river routes of transportation; telegraph operators; ministers in the regular discharge of their duties; employees in mines, furnaces and foundries; presidents and professors in colleges and academies; teachers of the deaf, dumb, and blind; teachers having twenty pupils or more; superintendents, nurses, and attendants in public hospitals and lunatic asylums; and one druggist in each drug-store. Superintendents and operatives in wool and cotton factories could be exempted at the discretion of the Secretary of War. O. R., IV, v. 1, p. 1081

the enforcement of the Conscript Act. To many people of conscript age, who because of cowardice or other reasons did not wish to go to the front, the exemption law was just another means of evading military life. The occupations which afforded exemption became popular at once and were soon filled to overflowing. Drug stores, post-offices, and schools were erected in the most insignificant villages and out of the way places. According to the Sun some drug stores "turned their establishments into large speculating concerns dealing indiscriminately in everything from strawberries and watermelons up to sugar, coffee, molasses, and spool cotton, including cards at "15 a pair." Some of the exempted "apothecaries" knew as "little of chemistry, either theoretical or practical, as a Patagonian does of Sunday."[72]

School teaching had never been very popular in the South before the War, but the clause which exempted teachers in schools having twenty or more pupils made that profession very attractive, and over night teachers sprang into being. There were no specified qualifications for the teacher except the number of pupils required; consequently, "many of these impromptu school masters knew as little of the substantial and practical parts in the usual academic course as Don Quixote did of knight errantry."[73] Some in their zeal to serve their country taught for a very meager

72. Quoted in Moore, Conscription and Conflict in the Confederacy, p. 55

73. Ibid, p. 54

salary and some who tried to make people think themexceptionally patriotic even taught "gratis" if they could get the required twenty pupils. Congress was urged to amend the exemption act to meet this flagrant injustice and abuse, and several suggestions were made. One person pointed out that women could meet the demands for teaching; and, if they could not, elementary education might be interrupted temporarily for the sake of independence from an implacable foe.[74] Another person, Hudson of Mississippi, suggested that women and old men be conscripted or impressed for the purpose of teaching.[75] Surely the people at large might well complain about the quality of education to which its youth was being subjected and the class of people who were doing the instructing.

Still another class of people found an asylum in the section of the act which conscripted only "residents" of the Confederate States. Aliens and foreign born, even those who had been clamoring for offices before this time, at once proclaimed their allegiance to some foreign power.[76] When their cases went before the Courts, they had usually secured the signature from someone

74. Ibid, pp. 54, 55

75. O. R., IV, v. 2, p. 945

76. The Enquirer as early as April 2, 1862, said: "There are numbers of foreign born population in active business all over the States who upon a call for militia have thrown themselves upon the protection of foreign powers represented by consuls in the Confederacy

in the consular service confirming their foreign citizenship; therefore, the Judges usually exempted them from service in the armies. The Sun complained that before hostilities broke out foreigners could rarely be found, but that now it was astonishing to observe the great number in our midst. Instead of going to the defense of the government which had sheltered them, "these foreign born immediately engaged in the nefarious trade of smuggling and amassing their fortune at the expense of the cause."[77] When some of conscript age would find no reason they could use for being exempted under the exemption act, and they could not claim citizenship in any other country, to avoid any danger of being inducted into service from too long a residence in one place, they would move into another locality or another state. The Provost Marshall of Georgia complained that hundreds of men were strolling through the country without any visible means of support to show who they were and that some were traveling through the country on orders "forged by themselves purporting to be signed by a commander at some distant post." This wandering class was probably engaging in the pernicious practice of trading with the United States Government."[78]

Trying to keep up with the foreign born and the migratory bands was a severe drawback to the Conscript Bureau in carrying forward its work of enrollment, and the fact that these aliens were not conscripted caused a great deal of discontent through-

77. Moore, Conscription and Conflict in the Confederacy, p. 61

78. O. R., IV, v. 2, pp. 9, 10

out the Confederacy during the entire war. In many towns, practically all the business was being carried on by this group. They charged extortionate prices for their goods, which led to a depreciation of the currency. As early as April, 1862, Virginia passed a law prohibiting the issue of licenses to sell any kind of merchandise to any other foreign born citizen than those who were naturalized.[79] By 1863, the discontent against the foreign born had become so wide-spread, that the press, through its columns, made a vigorous campaign in favor of conscription for this class.[80] Finally the Secretary of War recommended that conscripts be enrolled "wherever they may be found since conscription may be altogether avoided by large numbers of men if merely crossing a line exonerates them from it."[81] Congress thereupon proposed a law for the conscription of aliens,[82] and the act conferring the power asked for by the Secretary of War was passed on October 8, 1862.[83]

Another place of refuge for those seeking to avoid the dangers at the front was in some state position. The exemption law gave to the states the right to exempt all state officers

79. Enquirer, April 2, 1862

80. Enquirer, April 7 and August 27, 1863. The Examiner, March 22, 1864

81. Journal of the Congress of the Confederate States, v. 3, p. 236

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

83. O. R. IV, v. 2, p. 162; Idem, Upton, Military Policy of the United States, p. 477

and officers of the state militia.[84] Many of the State Rightists used this as a means of fighting conscription and the growing power of the Confederate Government. Foremost in the use of this power and noisiest among the ranks of the opposition were Governors Brown of Georgia and Vance of North Carolina. At once clerks, deputy clerks, sheriffs and their deputies, magistrates, constables, notary publics, tax collectors and their deputies, judges and even the employees in the state and public railways and in factories were placed on the roll as Georgia State officers.[85] When a complaint was made by the Bureau of Conscription over the difficulties of determining state officers in North Carolina, Governor Vance wrote President Davis that when the hand of conscription laid hold upon officers "without whose aid the order and well-being of society could not be preserved nor the execution of the laws enforced and whose conscription is as insulting to the dignity, as it is certainly violative of the rights and sovereignty of the State" that he deemed it his duty not only to pause, but to protest against its enforcement. As for himself, he "should certainly place justices of the peace, constables and police organizations of our towns and cities in the class of State officers."[86] On the same date Governor Vance wrote General Mains, Chief of the Bureau of Conscription,

84. O. R., IV, v. 1, p. 1081

85. Ibid, pp. 1082-1085; (For exemptions in 1864-65 see IV, v. 3, pp. 345, 346

86. O. R., IV, v. 2, p. 464

that up until that time the conscript law had been executed more faithfully in North Carolina than in any other state in the Confederacy, and that heretofore, he had "not belonged to that class of politicians who made the night hideous with cries for State Rights," but that he was "not willing to see the State of North Carolina blotted from the map and her government abolished by conscription." In answer to the complaint that there was difficulty in knowing state officers, Governor Vance wrote General Kains that even though "you say there are no means short of supernatural power by which you can know officers and employees of the State . . . I do not know that it is required of you to know what officers are necessary to the ordinary operations of State Government." He further assured General Kains that - it was his business as Chief executive of the State and he was going to see that his officers were "not interfered with in the discharge of their appropriate function."[87] In the number of "so called" State officers exempted, Governor Vance with 14,675 led all the rest.[88] Lieutenant-Colonel Blake who was sent into the State on a mission of special registration reported

87. O. R., IV, v. 2, p. 466

88. The list of State officers exempted in each state on the certificate of the Governors of the respective states is as follows:

Va.	1,422	Ala.	1,283	Fla.	109
N. C.	14,675	Miss.	110	Ga.	1,012
S. C.	233	E. Tenn.	39	E. La.	20
				Total . .	18,643

O. R., IV, v. 2, p. 851

that North Carolina had exempted 25,500 by claim of the governor.[89] This number is believed by Mr. Owsley to be probably near the truth because of inaccuracy in the Bureau of Conscription and the fact that the Governor did not give certificates to all who were exempted.

Governor Brown, who had entered the ranks against conscription from the very first was even more persistent in his fight than Governor Vance. A law passed by Congress on May 1, 1863, exempting all state officers whom the governor of any state might claim to have exempted for the due administration of its government and its laws[90] was all he needed. By 1864, Brown had become so obstreperous that he succeeded in getting the General Assembly of the State of Georgia to pass a law specifying what State officers should be exempt.[91] This list was so wide in its scope that the governor could exempt any man whom he wished even though he had to create a visionary office. In a proclamation to the people of Georgia, Brown announced that if any enrolling officer "assumed command of the officers in the State" and "sit in judgment upon the legality of their commissions" that such enrolling officers had no jurisdiction over them and that they did not have to obey orders "from any Confederate

89. O. R., IV, v. 3, p. 98

90. Upton, Military Policy of the United States, p. 485

91. O. R., IV, v. 3, pp. 345, 346

officer.[92]

After Governor Brown had created as many officers in civil life as he wished, he then turned to the militia and granted commissions to almost every person enrolled in that branch of service. It was common talk that "every man in Joe Brown's militia holds an officer's commission."[93] This statement is not far from true, for Colonel Browne, Commandant of Conscripts in Georgia, reported the total number of militia officers who were subject to general service as being 2,751.[94] General Howell Cobb of Georgia placed the number at even more than this. He wrote the Adjutant General that if Governor Brown had complied with the requirments of the law of Congress and exempted only those who were necessary for state government that there would have been several thousand more men in the service.[95] Later, in a letter to Governor Brown, General Cobb wrote that he believed there were over four hundred deputies exempted who were not needed at home; that there were two thousand justices of the peace and over one thousand constables whose places could be filled by men over fifty (the upper age limit of the Conscript Act of February 17, 1864); that from the best data he could get there were over three thousand commissioned officers, and that he

92. Ibid, p. 346

93. Macon Telegraph, Montgomery Mail, March 31, 1863. Quoted in Owsley, State Rights in the Confederacy, p. 206

94. O. R., IV, v. 3, p. 870

95. Ibid, p. 344

felt quite sure "the State service would not suffer any grievous injury if all such were put into regular military service of the country,"[96] and urged that they be released for the Confederate Army. President Davis thought that the number of able-bodied men in Georgia who were classed as officers was as great as fifteen thousand,[97] a number probably right, since Governor Brown exempted many without certificates.

By the middle of the summer of 1862, a situation arose which called for the exemption of classes not included in the original act. Requisitions made upon manufacturers of army supplies could not be filled because the conscription act had deprived these industries of their employees. In order to meet this labor shortage, the Quartermaster-General urged that the requisite number of men be discharged or detailed to enable the contractors to furnish the supplies.[98] Immediately, the Secretary of War made use of his "discretionary powers" and enrolled and detailed men to work in Government plants which were supplying the Government. On October 9, 1862, a law passed Congress authorizing the President to detail men to make shoes for the army, the number not to exceed ten thousand.[99] The compensation of three

96. Ibid, p. 349

97. Davis, Rise and Fall of the Confederate Government, v. 2, pp 560 - 566

98. O. R., IV, v. 1, p. 1127

99. Ibid, v. 2, p. 204. Soldiers detailed for this duty were entitled to pay for extra duty and also 35 cents per pair for shoes manufactured by them severally in addition to regular pay and rations.

dollars a day in lieu of rations and all other allowances which was offered these detailed men was very attractive.[100] Immediately, factories, foundries, railroads, mines, and furnaces — all of which offered an excellent excuse to evade service on the battlefield — were besieged by persons of the draft age seeking employment. By September of 1862, Governor Milton complained that many people had come into Florida to engage in salt making to avoid conscription, and that ten men who had engaged in salt making for six weeks had not produced a bushel of salt. In December of the same year the Superintendent of the Niter Bureau, in order to guard against abuses of exemption, instructed all niter agents "to assess every individual holding a certificate at a reasonable per diem of work" because many attempts had been made "by designing men to avoid military service through niter as well as through commissary, ordnance, and other contracts of the service."[101]

The original exemption act, and the acts passed in reference to detailing men fell far short of solving all of the problems of the Confederate Government. The classes of industry not included in the list of exempts became very much dissatisfied, especially when the manufacturers of necessities of life who were exempted began to sell their surplus goods at exhorbitant prices. One class of people not included in exemption and

100. Ibid, p. 577. For conscripts detailed for service a/o ibid, p. 579

101. Ibid, pp. 223, 224

deemed by many to be most essential was the producing class. Governor Milton felt particularly that since agriculture was dependant upon slave labor and since overseers were necessary for the direction of slaves, that overseers for their management should be exempted. He urged that the safety of the Confederate States demanded the exemption of overseers for two reasons: first, because the subsistence of the armies in the field and the support of their families was dependent upon them; and second, because the obedience to an overseer was necessary to keep down the insubordination and insurrection of slaves. He also felt that "a more effectual auxiliary to the emancipation scheme of Lincoln for the subjugation of the South could not be devised . . which would entrust the agriculture and the lives of families to the slaves unrestrained by the presence, authority and skill of overseers."[102] The old feeling of class legislation became so strong that those not fortunate enough to be exempted began to circulate propaganda to stir up feeling in their favor. By constant effort they succeeded in getting Congress to pass an act on October 11, 1862, which greatly increased the number of exempted classes. Added to those already exempted were factory owners, tanners, salt-makers producing twenty bushels or more per day, mechanics and employees for the manufacture of war

102. O. R., IV, v. 2, p. 401

munitions, miners of lead and iron, one white man engaged in raising stock for every 500 head of cattle, 250 head of horses or mules, or 500 head of sheep, one white man on each plantation having twenty or more negroes,[103] the public printer and his employees, one editor and necessary printers for each paper, shoe makers, wagon makers, and millers.

While increasing the number of classes exempted, Congress did try to increase the rigors of exemption by being very definite in the wording of the law to avoid any confusion in its interpretation. Furthermore the law provided that people had to furnish affidavits proving that they were then actually employed in work which was indispensable to the service. The religious sects exempted either had to furnish a substitute or pay five hundred dollars to the public treasure. A teacher had to prove that he had been in the profession two years; a doctor that he had been practicing medicine for five years. Profits of establishments exempted should not exceed seventy-five per cent upon the cost of production.[104] Examining surgeons were also given drastic orders to the effect that they were not to exempt for trivial disabilities and that any conscript who was capable of performing detail duty in any of these civil occupations was also capable of doing military service.[105]

103. If there were two or more plantations within five miles of each other and each had less than twenty negroes, but as many as twenty between them, one man might be exempted to oversee them. This was known as the "twenty-nigger" law. O. R., IV, v. 2, p. 162

104. O. R., IV, v. 2, pp. 160-162

105. Ibid, p. 408

The addition of this new class of exempts had been forced upon Congress by strong pressure from the outside; yet no sooner had the new law been passed than Congress realized that a veritable hornet's nest had been overturned. From Congress, from civil life, and from the army came protests, especially about the clause which exempted the overseer. The "twenty-nigger law" and "class legislation" were expressions on almost every tongue. Senator Phelan of Mississippi expressed his disapproval in very strong terms. "Never," he said, "had a law met with more universal odium than the exemption of slave-owners." Its injustice, gross injustice, was denounced even by men whose positions enabled them to take advantage of its privileges. Its influence upon the poor, he believed was "most calamitous" and had "awakened a spirit and elicited a discussion of which we may safely predicate the most unfortunate results." He further said that it had aroused a spirit of rebellion in some places and that he was informed that bodies of men had banded themselves together to resist.[106]

In the army dissatisfaction was also very great. General Hill, in speaking to his troops about the law, expressed the views that some of the exempts who "claimed to own twenty negroes" might with justice "claim to be masters of an infinite amount of cowardice."[107] Doubtless the soldiers felt little inclined to

106. O. R., I, v. 17, pt. 2, p. 790

107. Moore, Conscription and Conflict in the Confederacy, p. 71. Quoted in Clark County Journal, May 14, 1863

trust their families at home to the tender mercies of such cowards. In fact, the dissatisfaction in army circles was so great that some felt the only thing needed was some daring man to raise the standard to develop a revolt.[108]

The widespread discontent caused Congress, when it convened in January, 1863, to consider the question of abolishing statutory exemptions and of restricting class exemptions. The opposition of some to exemption as it then stood was strong. In a letter to President Davis, Senator Phelan wrote:

"Open, bold, unblushing attempts were made to avoid getting in and to keep out of the Army. All shame has fled and no subterfuge is pretended, but a reckless confession of an unwillingness to go or to remain. All that gave attractive coloring to the soldier's life has now faded into cold, gray shadow, with nine-tenths of the Army, and if permitted, in my opinion, would dissolve tomorrow, heedless of the future."

Senator Phelan felt that a rigorous enforcement of conscription would tend to allay the spirit of discontent. He proposed a reorganization of the whole system which would attract popular attention "by the prominent, rich, and influential being swept into the army."[109] The opposition, however, was not strong enough to make much revision in the law. The "twenty-nigger" clause was repealed, but in its stead was put one which proved almost as unsatisfactory. One white man was still exempted on farms having twenty or more negroes which were the sole property of a minor, a person of unsound mind, a woman, or a person absent

108. O. R., I, v. 17, pt. 2, p. 790

109. Ibid

from home in military or naval duty. The man was exempted provided he was not liable to military service and had acted as an overseer prior to April 18, 1862. The owner had to verify these facts by making affidavits. The owner was also required to pay five hundred dollars annually into the Treasury for every person thus exempted. To pacify the laboring class, the President was allowed to exempt white labor whenever he thought their services were indispensable to the production of grain or provisions necessary for those remaining at home and also "on account of justice, equity and necessity."[110]

This law of May 1, 1863, did not in any way satisfy the poorer classes, or the army. The conduct of all classes of exempts was a constant thorn in the flesh. Many of them, by their intolerable abuse of their freedom from service, by speculating not only upon their own labor, but also upon the articles of prime necessity of life, had made themselves and their trades engines of oppression to all classes, especially the poor. Mr. Hudson of Mississippi wrote President Davis that the appointment and detail of able-bodied conscripts to petty offices was a serious mistake. He was of the opinion that these exempted doctors, blacksmiths, tanners, shoemakers, and artisans generally, together with all speculators, constituted the main body of extortioners, and that they were the men who were depreciating

110. Ibid, v. 2, p. 553; Upton, Military Policy of the United States, p. 485

the currency and shaking the army and country from center to circumference. Mr. Hudson also expressed the belief that other factors which had caused "the real and admitted disloyalty, discontent, and desertion in the army, and the manifest indifference among the people "were the incompetent conscript officers and even the Government itself." He severely berated many of these officers for their open and palpable failure to enforce the conscription law against the exempted extortioners, and for the mysterious discharge of many able-bodied conscripts and the conscription of many who should be discharged. He hurled bitter invectives against the Government because of "a fact very notorious" that it had made many contracts with able-bodied exempts within conscript age "at the most extraordinary prices instead of conscripting them."[111]

The opinion of Mr. Hudson was substantiated by that of others. General Bragg together with other generals complained that an enormous number had been lost to the army from details alone. They thought that many more were being sent out than were actually needed.[112] Colonel John S. Preston of the Conscription Bureau in a letter to the Secretary of War on August 17, 1863, said that if the exemption act had been entitled "an act to aid

111. O. R., IV, v. 11, pp. 856, 857

112. Ibid, p. 670

the enemy in diminishing the number of men in the army and answered its nomenclature it could not more thoroughly have effected its purpose.[113] As a result of the situation, the Superintendent of the Bureau of Conscription wrote a l early in September to the Inspecting Officer c. complaints were frequent, that details were exce many cases illegally granted, and instructed him to see that details "be not so employed as to be evasive and a refuge from active service in the field.[114]

The work in Georgia was only the beginning of a vigorous attempt on the part of the Bureau of Conscription to investigate the whole system of detailing. On September the fifth, a circular letter was sent to all the Commandants of Conscripts to obtain correct returns of all persons detailed in any department.[115] The results of the inventory which was forwarded to the Secretary of War on December 31, 1863, showed that the whole number of details outside of the army numbered thirteen thousand.[116]

The complaints which had drifted in to the Secretary of War about details had also spurred him to vigorous action. In November, 1863, he recommended to President Davis that the number of details made from time to time be lessened or withdrawn as they had "swollen to a number that constituted a serious

113. Ibid, p. 781
114. Ibid, p. 781
115. Ibid, p. 792
116. Ibid, p. 1070

abstraction from the Army." Instead of using able-bodied men on detail duty, the Secretary, probably at the suggestion of Major Milton, Assistant Adjutant-General,[117] recommended that some system of impressing or engaging the labor of free negroes be adopted. He believed that the ranks could be further filled by using the free negro as teamsters, cooks, and other camp employees who were then largely supplied from the ranks.[118] Acting on these recommendations, President Davis in his message to Congress, December 7, 1863, suggested that men acting as wagoners, cooks, and other employees doing service which the negro could do would be placed in the ranks. In many instances detail duties were being performed by men in the ranks which could be done by others over conscript age; therefore, Mr. Davis further recommended that the age limit be extended to include persons over forty-five and physically fit for service, and that these men be used in guarding posts, railway bridges, and such like.[119]

The murmurs of displeasure over exemption which were heard at the beginning of 1862 had grown to a veritable avalanche of discontent by the end of 1863. The law had utterly failed to allocate its man power to secure the greatest good to society.

117. Ibid, p. 948

118. Ibid, pp. 997, 998. The Provost Marshall of South Carolina had also recommended that "free men of color between sixteen and fifty do menial service and much of the mechanical service of the Army for the war at moderate wages." Large numbers of men then detailed he believed could be filled by the free negro, thus giving to the ranks many thousands of able-bodied men. O. R., IV, v. 2, p. 978

119. Ibid, p. 1040

The organization of the army was going to pieces, and upon the army rested the sole hope of independence. Something had to be done. The Bureau of Conscription was planning to have an examination of all exemptions previously granted.[120] The President had already asked that all men of draft age be enrolled and that authority be given to the Executive Department to detail for special duty such as were thought necessary for the needs of society.[121] But this wasn't enough. Congress must act. Thus, as the year 1863 drew to a close, the same body which had just abolished substitution and passed more severe laws against deserters was pondering over a radical revision of the entire exemption system.

120. The Bureau sent out such an order on January 9, 1863, and ordered Commandants of Conscription to require affidavits from two reliable persons for each application, and urged that whenever possible, they should push inquiries beyond affidavits. O. R., IV, v. 2, pp. 12, 24, 36

121. Ibid, v. 2, pp. 990-1018

CHAPTER V

PROBLEMS OF RAISING AN ARMY FROM 1864 TO THE END OF THE WAR

The feeling with which the Confederate Congress faced the approach of the year 1864, must have been very anxious, if not, gloomy. Doubt, uncertainty of the results, and apprehension for the future now found a place in every mind. The year, 1864, would mark a most critical period in the history of the Confederacy. On every side the South was hard-pressed by the enemy. The North was making extensive preparations for the spring campaign. Large bounties were being paid its soldiers, and its ranks were being filled and even enlarged by the use of mercenaries. Both the civil and military authorities in the South knew that they must call out all their resources and put forth every effort to fill their ranks if they stemmed the tide and emerged victorious. Congress, in an address to the people of the Confederate States, January 22, 1864, told them that they must prepare just as vigorously for the coming campaign as their implacable foes. "Without murmuring," it said, "our people should respond to the laws which the exigency demands. Everyone capable of bearing arms should be connected with some effective military organization. The utmost energies of the whole population should be taxed to produce food and clothing, and a spirit of cheerfulness and trust in an all-wise and overruling Providence should be cultivated."

Even though it said, "the situation is grave," it still believed that there was "no just cause for despondency if the people would stand united in their efforts." Congress begged that "instead of harsh criticism of the Government and our generals," that the people would be "of good cheer and spare no labor nor sacrifice" that might be necessary "to enable them to win the campaign." It begged "that the supplies and resources of the country, which are ample, may be sold to the Government to support and equip its armies" and that "all spirit of party faction and past party differences be forgotten."[1]

From civil life went forth another most impassioned plea to awake the people to the real dangers which surrounded them:

"Everything," says the writer, "is at stake - property, honor, liberty, life itself; and a great danger presses. 'The Philistine be upon the Samson.' If we act our part, the dangers which menace us will be averted. The point of anxious solicitude is, are we all prepared and resolved to do our whole duty?

"Do we appreciate the magnitude and the vital character of the crisis that is upon us? Are we all ready to make every sacrifice which the cause may require, to go with the ranks if called for; to contribute our property; to be ready with our personal service wherever wanted? Are we ready to respond without murmuring to the military laws which Congress shall judge the exigency to require? Are we prepared to hail the new law which shall impose heavy taxes upon us to retrieve our currency and establish our finances?

"Fellow citizens, if we are not ready for all this, we must become so . . . we must be ready to risk all, and offer all, if we do not wish to lose all. Everyman who is able to level a musket must be ready to shine in arms; if too old or infirm for the army, then as State guards, or home defenders, or reserves. Every producer must arouse his utmost energies to provide food and clothing for the soldiers and the people. All must be ready to renounce comforts or endure hardships without murmuring or com-

1. O. R., IV, v. 3, pp. 126-127

plaint."[1a]

The acid test of true patriotism thus called for was soon applied to all the people. As we have already seen, Congress had already passed a law on December 28, 1863, which prohibited any person liable to military service to furnish a substitute, and on January 5, 1864, had passed another law providing that no person should be exempted from service by reason of his having furnished a substitute.[2] It was at that time also considering an entire revision of its exemption policy and a further extension of conscription. Just as in 1862, the army was again facing reorganization. The terms of service of 315 regiments and 58 battalions would expire during the spring and summer, and the Secretary of War was urging "that these organizations be not broken up by any legislative action."[3] These men could not be discharged, for the country's need was too urgent.

In the Senate, in January, 1864, Senator Brown of Mississippi urged that one of the greatest needs was to strengthen the army. He proposed that this should be done by declaring every white male person residing in the Confederacy capable of bearing arms to be in the military service. There were to be no exceptions. "He would include the President, members of Congress, and Governors of States in this call." To Mr. Brown, this was no time to be talking of "invading the rights of the States." He believed that

1a. Appleton's Annual Cyclopaedia, 1863, p. 219

2. cf., p. 62

3. O. R., IV, v. 2, pp. 1000,1001

the best way to preserve the rights of a state was to defend the state from the enemy. He even thought that it would be better to "invade the rights of a State by calling out all arm-bearing citizens, than dispute over constitutional quibbles while the enemy was taking away the whole State." Besides conscripting the entire man power of the Confederacy, capable of bearing arms, Mr. Brown made the following propositions. First, he proposed that the exemption act, which, next to substitution, had caused more trouble than any other Act of Congress, should be swept from the statute books.4 He would have neither substitute nor exempts. Second, he proposed that the President should issue a proclamation requiring all foreigners to take up arms or leave the country in sixty days. Mr. Brown pointed out, not only that they were of no use, but that "their presence here was of great disadvantage." Against this class his hatred knew no bounds. He said he "would rather this day have a regiment of Yankees turned loose on this city than to tolerate the presence of such people."[5] Senator Brown was ably supported by his colleague, Senator Clark, who thought that to put the country on a perfect war footing, every man should put his shoulders to the wheel and do his part. Military service should be required of every man capable of bearing arms, and then make discriminations in favor of agriculture and other pursuits

4. In the House on January 30, a bill was debated to amend the Act of January 5 by abolishing exemptions. Appleton's, 1864, p. 207

5. Appleton's, Annual Cyclopaedia, 1864, pp. 206, 207

as would seem advisable. Senator Phelan thought that all modifications which would prevent evasion were necessary. "The laws now," he said, "are encumbered with too many 'unlesses' and 'wherases' which render them unintelligible to the majority."[6]

While the debates were going on in Congress, leaders throughout the land were undertaking to tell Congress what to do, and the press was vigorously protesting the proposed measures. All agreed that the army needed to have its thinning ranks filled, but few wanted to see it done by any further draft. Governor Vance realizing that desertion was on the increase had tried to stop it by issuing a proclamation to the people commanding "all such evil disposed persons to desist from such treasonable conduct" and warning them that they would "subject themselves to punishment in the civil courts of the Confederacy."[7] He suggested to Congress that this evil could be remedied if it would grant the furloughs which had been promised and never redeemed, and if the soldiers would be permitted to enter regiments of their choice with their neighbors and relations, which they had been refused.[8]

The Examiner of January 4, 1864, believed that the army could be filled if the stragglers were collected. However, it offered no workable plans by which this could be accomplished. On January 12, 1864, the Examiner remarked that there was much talk about a

6. Whig, January 1, 1864
7. O. R., I, v. 51, pt. 2, pp. 707, 708
8. Ibid, pp. 709, 710

stronger government, but it counseled the public never to trust its birthright to the unhampered discretion of Davis. Governor Brown, on January 29, 1864, expressed the belief that there must be a producer class at home. Therefore, he suggested that it would be infinitely better to make but little further drafts upon the producing class, and to put in this army the troops whose names were then on the muster roll and who were in the pay of the Government, especially the almost countless swarm of young, able-bodied officers, who were to be seen on all the railroad trains and in all the hotels. This would increase the armies from 25 to 50 per cent. He also suggested that able-bodied conscripts who were serving as details in petty office should be released to relieve the strain upon the producing class, and that in some way the absentee ought to be kept in the army. "If," he said, "it is the policy of the government to put the whole people . . . into military service, the struggle for the future must necessarily be short."[9] The Governor of Virginia had also expressed the opinion "that Virginia could not stand another draft."[10]

The New York Times commenting on Senator Brown's speech said that it was "one of the most remarkable attempts on record to embody despair in legislation" and expressed the belief that if the Confederacy could only be saved by turning it into one gr nd military camp then "there is nothing more certain than that

9. O. R., IV, v. 3, pp. 61-63

10. Appleton's Annual Cyclopaedia, 1864, p. 208

its doom is sealed and its destruction certain." The Times also expressed the idea that "the force and capacity of endurance of a country in war depends not so much on the number of men it can put into the army as on the extent to which it can leave civilians free and undisturbed in the pursuit of their ordinary avocations."[11] The editor of the Whig, on that same date, begged that the Confederate Congress "take counsel even from the enemy." It was his belief that the inefficiency of the armies was not owing to the condition of the muster rolls but to the inefficiency of every class of officers and the insufficiency and want of organized and effective systems of supplies, and he urged that the authorities "be mordiless upon incompetency, disobedience, and neglect of duty." A writer in the Whig of January 1, 1864, expressed the belief that if the present policy were pursued, the Confederacy would be ruined. Independence, he believed, would have to be gained by preparing for a long war, and if all men capable of bearing arms were put in the field at one time, it would be "only a question of time as to our annihilation."

Despite all the vindictives hurled against the Confederate Congress by the people and the press, it went manfully to the task before it and made one last desperate effort to raise the army by conscription. The act passed February 17, 1864,[12] and extended the age limit to include all white men residents of the

11. Quoted in the Whig, January 8, 1864

12. O. R., IV, v. 3, pp. 178-181

Confederate States between the ages of seventeen and fifty and avoided the blunder of short enlistments by extending the military service "to service for the war." With a view to avoiding any reorganization of the army in the face of the enemy, it retained all persons between the ages of eighteen and forty-five who were then in service in the same regiments, battalions, and companies to which they then belonged with the same organization and the same officers, unless they should be regularly transferred or discharged. There was, however, a proviso to this act which permitted any man or company from one state, serving in regiments from another state, to transfer to organizations of the same arm of service from his own state. To compensate the man whose terms were about to expire and to discourage absenteeism, a bounty of one hundred dollars was promised to every enlisted man who should be in the service for six months from April 1, 1864, provided he was not absent without leave during that period. The purpose of this act was to keep in actual service in the field the men from eighteen to forty-five. Those between the ages of seventeen and eighteen and between forty-five and fifty were to constitute a reserve for state defense and detail duty. They were given thirty days to enroll east of the Mississippi and sixty days west of that river. In case they failed to enroll, they were made liable to punishment by being placed in service in the field for the war.

To avoid the odium of conscription, Congress, as in 1862, once more permitted volunteering. All within the new draft age were allowed to form themselves into volunteer organizations and

to elect their officers in accordance with the existing law, provided the organization was completed within the time allowed for enrollment. After organizing they could tender their services to the President for the war. Still further privileges of volunteering were embodied in this section which would allow those who had failed to form volunteer organizations before being enrolled to assemble at the place of rendezvous and there, at the discretion of the President and under regulations prescribed by him, to form their organizations and elect their own officers.

Congress, in its effort to appease the states, made a colossal error in the section relating to the new group of conscripts. Could this group have been speedily organized and trained, it might have formed a very important second line which could have been used to support the troops in the field when they were sorely hard-pressed. Such timely aid, even during the last year of the war, might have insured success to the Confederate cause. But this same Congress which had declared all between seventeen and fifty to be in military service rendered this impossible by declaring that "in no event should those in the conscripted reserve group or those volunteering for service in the State be required to perform service out of the State in which they reside." This mistake of legislation, "which destroyed the last chance of reenforcement and concentration, doomed the Confederate armies in the field to waste away by death, disease, and desertion, until, overwhelmed by numbers, they were finally compelled to surrender."[13]

13. Upton, Military Policy of the United States, p. 491

Another section of the act repealed all former exemption laws and radically changed the entire exemption system. Even though there had been much dissatisfaction over "class exemption," Congress did not think it wise to abolish this principle altogether and to place entire control in the hands of the Executive Department. It did, however, greatly reduce the number of exempted classes and under certain conditions it gave authority to the President and Secretary of War to detail men in these classes. Those exempted by Congress were largely of the public and professional group, such as Confederate and State officers, which the President or the governors of the respective state might certify to be necessary for the proper administration of the Confederate or State Governments, ministers of religion, editors of newspapers, physicians, college presidents, and teachers who had been engaged in that work for the preceding two years. The classes which were not exempted were those engaged in industrial and agricultural pursuits. The President became the director of these industries and could exempt or detail men at will for all kinds of production. This marked the turning point in the exemption system and a further step forward in centralization of power in the hands of the Executive. This was an experiment, and had the President satisfied Congress in the wise use of the principle, his power might have been further extended.

Looking to the support of the army and the people at home, Congress exempted one person as overseer on each plantation employing fifteen able-bodied field hands between the ages of sixteen and fifty. Instead of paying the five hundred dollars which

was required under the Act of May, 1863, each overseer who was exempted had to give bond that within twelve months he would deliver to the Government 100 pounds of bacon, or its equivalent in pork, and 100 pounds of net beef for each able-bodied slave on the plantation, at prices fixed by the commissioners appointed under the impressment act. Each exempt also had to bind himself to sell all surplus provisions to the Government or to the families of soldiers at the front at prices fixed, as above.

Apparently, Congress left unturned no stone which it thought would aid in increasing the army. Enrolling Officers were urged to use the greatest caution in exempting or detailing men between the ages of eighteen and forty-five. They were instructed to use men over forty-five for detail duty wherever suitable ones could be found. Any person or any Bureau in any branch of the Confederate service which employed a person of conscript age, unless that person were exempted, was subject to punishment. All applications for exemption or detail had to be made in writing to the enrolling officer and had to be supported by an affidavit of the applicant under oath accompanied with proof of one or more credible witnesses. As a further precaution, temporary boards were established in all the states to obtain all possible information about each applicant and to avise the Conscript Bureau relative to the necessity or propriety of exemptions or detail.

Changes were also made in the system of medical examination. To avoid any favoritism, the law provided that "in appointing

local boards of surgeons for the examination of those liable to service, no member composing the same could be from the same county or enrolling district in which they were to serve." The Bureau gave the examining board permission to exempt for disability, provided this exemption was approved by the enrolling officer of the Congressional district. Besides this, the examining board had to furnish to the Commandant of Conscripts a monthly copy of all conscripts examined. In case any conscript was judged unfit for service in the field, but capable of performing other duties, he was to be examined by the board of examiners who had to state distinctly for what service or for which department of the army such conscripts were best fitted.

Besides the Conscript Act, another act to augment the size of the army was passed on February 17, 1864. The law declared that all free Negroes and other free persons of color, between the ages of eighteen and fifty, and slaves, not to exceed twenty thousand, should perform such duties in the army, or in the military defense of the country as the Secretary of War might prescribe.[14] Slaves, however, were not to be used if free Negroes could be obtained, and those under eighteen and above fifty were exempted. The free Negroes were to receive as compensation, besides their food and clothing, eleven dollars a month. Slaves were to receive food and clothes, but the owners were to receive such wages as

14. O. R., IV, v. 3, p. 208

had been agreed upon between Congress and the owner.[15]

As an aid toward carrying out these new laws and making possible a more efficient working of the Bureau of Conscription, Congress on February 15, 1864, at the very urgent request of President Davis, once again suspended the writ of habeas corpus until August 1, 1864. The act left nothing to the discretion of the President, but suspended the law throughout the entire Confederacy in case of treason, conspiracy to overthrow the government, assistance to the enemy, attempts to incite servile insurrections, desertions or encouraging desertions, attempts to avoid military service, spying, trading with the enemy, liberating prisoners of war, burning or destroying railroads, bridges, telegraphic communications, or other property of the Confederate States. A Commission was to be appointed by the President "to investigate the case of all persons so arrested or detained, unless they may be speedily tried in the due course of the law."[16]

With these new laws in force, the Administration once more took courage and started out on the great task before it. Jones in his Diary "predicted that there would be enough men to fill the armies, if the Secretary of War and the Conscription officers did not strain the meshes of the seine too much."[17] Even the Examiner on February 20th, felt that the conscription act was

15. Ibid, p. 209
16. Ibid, pp. 203, 204
17. Moore, Conscription and Conflict in the Confederacy, p. 310

generally accepted. With the abolition of substitution, the creation of Executive details, and the suspension of the writ of habeas corpus to aid the Bureau in bringing in conscripts, deserters, and skulkers, it seemed that the prospects were brighter for centralized action than they had been at any time during the war. But there were forces about to be set in motion which upset the hopes of Congress and the President.

Despite the fact that Congress and leading statesmen everywhere were trying to point out the necessity for unity of action to avert the impending perils, despite the fact that General Lee was begging for troops to fill up his thinning ranks, before the Conscript Bureau could get itself reorganized for the new set-up, the voice of the State Rightists burst like a thunder cloud over the entire Confederacy. Even in the States which up to this time had made no serious objections to conscription or the growing power of the Central Government, opposition became most vehement,[18] and Brown and Vance became more obstreperous than ever. There was opposition not only to conscription but also to the suspension of the writ of habeas corpus. The champion of the opposition group was Vice-President Stephens. In the hall

18. There was some conflict in South Carolina when the first conscript act was passed since that State had passed a draft law just prior to the Confederate Act. There were these two conscript systems in the State: one under Confederate and the other under State authority, and they overlapped. Some insisted upon giving deference to the State law, but the matter was amicably adjusted in favor of the Confederate Government. O. R., IV, v. 1, pp. 973, 977, 1140, 1141, 1144, 1153-1154

of the Georgia legislature before a house crowded to capacity with citizens and legislators, on March 16, 1864, Mr. Stevens denounced the last military act of Congress as being "unconstitutional, unnecessary, injudicious, dangerous, and hurtful." He said that he believed the effect and object of this act was not to raise armies and procure soldiers but to put all the population of the country between those ages under military law. Whatever the object, he believed the effect would be to put much the larger portion of the labor of the country both white and slaves under the complete control of the President. "Under this system," he says, "almost all the useful and necessary occupations of life will be completely under the control of one man. . . His is certainly an extraordinary and a dangerous power."[19]

But Vice-President Stephens and his Georgia compatriots were not the only opponents. After the passage of the law on April 17, 1864, which had for its aim the transfer of all the effective state troops to the Confederate service, practically every state arrayed itself against conscription. With the passage of the first conscript act, the state militia was practically broken up, but the governors set themselves to work to build it up again and

19. The entire speech may be found in the Whig of April 15, 1864. That paper on January 5, 1864, had already stated that the exemption law is "a striking exemplification of Congress to consolidate all power in the hands of the Executive" and in the name of the people protested against their representatives handing over this great and delicate power to the Executive Branch of Government.

soon had a very effective organization. These troops were not sufficient, however, to repel an extensive invasion of the enemy; consequently, when the states of the lower South were threatened, President Davis called upon the governors of these states to organize for local defense the Confederate reserves who were capable of bearing arms. The troops so called for were to serve for a period of six months from August 1, 1863.[20] Before the time for which these troops were mustered had expired, they had become a thorn in the flesh of the Confederate Government. Some of the state legislatures passed acts calling out for local defense all able-bodied men not acutally in Confederate service.[21] Because of the critical situation, this was done without any opposition from Richmond. As a result, before the end of the year many skulkers had gone into home service. Cavalry units were especially popular. They sprang up simultaneously and operated without authority from any source.[22] When the time came for these troops to be disbanded, the state governments retained them as state troops. In these troops were derelict conscripts, and those who were subject to conscription under the new act. When the enrolling officers tried to get the state troops, there was serious opposition. The governors claimed that these were "troops of war" and could not be taken

20. O. R., IV, v. 2, pp. 580-582. The quotas called for were as follows: South Carolina, 5,000; Georgia, 8,000; Tennessee, 6,000; Virginia, 8,000; Florida, 1,500; Mississippi, 7,000; Alabama, 7,000; North Carolina, 7,000.

21. Ibid, p. 926, 172, 8, 322, 463

22. Moore, Conscription and Conflict in the Confederacy, p. 240

from the states by conscription; the War Department of the Confederate Government claimed that these troops were simply militia.[23] The governors would not yield, and in June, General Preston wrote the Secretary of War that "these claims by local authorities for troops . . . are having the effect at defeating the law in relation to the reserve forces." If the governors persisted in their course, he believed that the act of February 17, 1864, would be neutralized.[24] The Governor of Alabama would not under any conditions allow the Confederate Government to disband the troops and conscript them into reserves according the law. He looked upon these state troops as "troops of war" and felt that they should be kept just as they were and received as organized. He instructed the commandant of conscripts that "unless you order the enrolling officers to stop interfering with such companies, there will be a conflict between the Confederate General and State Authorities."[25]

Governor Clark of Mississippi also refused to give over his state troops for conscription and insisted on keeping the organizations intact. He claimed that he had a right to them as troops of war. After a long period of haranguing, the case was taken to the Supreme Court which in 1865 decided against the governor. Despite this decision, General Brandon, acting for the

24. Ibid, p. 464

25. O. R., IV, v. 3, p. 466 (The President said, "In the case as stated, it would seem proper to receive the companies as organized either in reserve or active service.") Ibid, p. 323, 472

Confederate Government, feeling that Governor Clark was "actuated by patriotic motives and an overweening solicitude for the defense of the States . . . and not from a factious spirit of opposition," decided to take over the troops as organized.[26] However, the verdict of the Court came too late to be of any service to the Confederacy. It did not much matter then how the troops were organized. The Controversy had been disastrous. It had added to the difficulties of the Confederate Government and weakened the strength of Mississippi in the most critical period of the war.[27]

By an act of the legislature in 1863, Texas also put in her local defense army all able-bodied men who were not acutally in the Confederate service or who were not exempted by the state law.[28] As a result, this group was likewise composed of many deserters and derelict conscripts. Governor Murrah tried to keep these organizations intact, but General J. B. Magruder, the Confederate officer in charge, refused to accept them. Under duress these troops were yeilded by Texas to be organized under the acts of Congress.[29] There is evidence that there was some trouble with Louisiana,[30] but General Smith acted so promptly

26. Moore, Conscription and Conflict in the Confederacy, p. 246

27. O. R., IV, v. 2, pp. 742, 759, 761, 925; v. 3, pp. 902-904, 1162.

28. O. R., I, v. 53, p. 926, 935, 986

29. O. R., I, v. 34, pt. 3, pp. 720, 735, 739, 747, 748

30. Ibid, v. 53, pp. 843, 844, 982, 986

that the trouble was settled before any serious difficulty arose.

Another sharp conflict over conscription between State and Confererate Authorities came as a result of the exemption of state officers. The law provided that Confederate and State officers could be exempted; but it also provided that governors must certify that officers exempted would be necessary for the proper administration of their government.[31] The majority of the governors abused this trust which was placed in them and used this as a very dangerous weapon with which to fight conscription.[32] As we have already seen, Governor Vance easily led the ranks in the number of state officers exempted. He wrote to Governor Bonham that he had certificated 16,000 or more persons. "There were many in the various State offices who might be spared," he wrote, but he withheld them from service, not only on account of the necessity of them in administering the government, but also because the principle of State Sovereignty rendered it improper to allow the Confederate Government to conscript them.[33] Governor Brown, however, was most noisy in his quarrels with President Davis; yet the other states created opposition which was just as detrimental to effective army organization as the opposition of North Carolina and Georgia. General Walker complained bitterly

31. Ibid, IV, v. 2, pp. 101, 553

32. Governor Milton of Florida used his usual policy of co-operation with the Confederate Government; Ibid, p. 680

33. O. R., IV, v. 3, p. 685 (Governor Vance also sent similar letters to the governors of Ala., Ga., Fla., Miss., S. C., Tenn., and Va.)

about the conditions existing in Mississippi, especially in regard to the states not sending in to Richmond the list of state officers exempted. The number of exempts to which the state was entitled would "aggregate over 2,300 county officers and enough State officers to swell the number to at least 4,000. Yet the records showed only 205 reported." Even though General Walter realized that the abuse of exempting was greater in Georgia, yet, he said, "that State shows in the conscript report the truth, however discreditable."[34]

A very sharp conflict arose in Alabama over the conscription of petty civil officers. Governor Watts assured the enrolling officers that "all officers of the state which were certified by me will be exempted, and I will be compelled to protect my State officers with all the forces of the State at my command." He even threatened conflict between the State and Confederate Governments, should there be any interference with his policy.[35] The Governor's wrath was further kindled when the enrolling officers conscripted privates and officers of his military organizations. He claimed that his militia officers were state officers and no longer subject to Confederate authority. Finally the Governor succeeded in arousing the legislature which passed a law imposing a fine of from $1,000 to $6,000 with imprisonment from six months to two years upon conscript officers who forced exempts into

34. O. R., IV, v. 3, p. 976

35. Ibid, pp. 817-821, 849

service.[36]

Virginia, which up to 1864 had caused little serious trouble to the Confederate Government,[37] now joined the opposition party. Governor Smith was at all times sympathetic with the Confederate policy, but the legislature of Virginia was not. When the Senate and House of Delegates met in December, 1864, Governor Smith delivered a most stinging rebuke to that body for the policy it had pursued in exempting state officers. He told them that it was "utterly impossible" for him "to understand the logic which exempts State officers who are not necessary for the State government; and yet it is the fact that the judges are undertaking to turn loose from the grasp of military authority men without any duty to perform, upon the ground that they are officers provided by the constitution and the law." At the time the address was given there were about fifty counties within the enemy's lines and under the government of the enemy. As a result, the state officers had fled from that section and could be used in active service. The governor thought that this group, which

36. Fleming, Civil War and Reconstruction in Alabama, p. 88 Quoted in Moore, Conscription and Conflict in the Confederacy, p. 242

37. The State did prohibit the conscription of the V. M. I. cadets until the "constitutionality of the act called the conscript act shall have been tested." In October, 1862, however, General Smith, the Superintendent, did not object to sending out the "cadets in the hour of need" but felt that he must bow to the will of the state whose institution it was. O. R., IV, v. 3, p. 723

numbered about 2,000, was sufficient if need be, "to turn the tide of a great battle." He pointed to a decision of the Court of Appeals in the case of Burroughs vs. Peyton which declared:

"The power of coercing the citizen to render military service for such time and under such circumstances as the Government may think fit is a transcendent power - A nation cannot foresee the dangers to which it may be exposed. It must therefore grant to the government a power equal to every possible emergency; and this can only be done by giving it control of its whole military strength . . . All grants of privileges and exemptions from general burdens are to be construed liberally in favor of the public, and strictly against the grantee."38

In accordance with this decision, Governor Smith claimed that "to exempt this large class of officers, or any portion of them, when they had no service to perform, was plainly unconstitutional." "If," he said, "all officers designated in the constitution and the laws made in pursuance thereof are to be exempted, the spectacle might be presented of a nation subjugated and destroyed at a time when it had within its limit citizens amply sufficient to defend it against all the assaults of its enemies, but whose services could not be commanded, because, forsooth, the Government had contracted with them, that they should not be required to serve in the army." Though the conditions which existed in Virginia were deplorable, "the number of exempts in the State was comparatively small."39 Governor Smith begged the legislature

38. O. R., IV, v. 3, p. 909

39. Governor Brown claimed that according to newspaper reports Governor Smith had exempted more men than he had. O. R., IV, v. 3, p. 432. Others felt that Smith was exempting very many unimportant officers. Jones Diary, v. 2, pp. 177, 332, 336, 359

that it would make it one of its first duties "to take into consideration the measures to bring into the field all able-bodied men who are not necessary to State Government."[40]

South Carolina, which was the first State to secede, had entered the war with the grim determination of establishing her independence; and had given hearty cooperation to the authorities in Richmond in almost all its policies. After the trouble over conscription in 1862[41] had been peacefully settled, there was no further serious trouble until the late fall of 1864. According to the claim of Governor Bonham, on September 28, 1864, all persons had gone into Confederate service from the militia officers and magistrates up to the highest class of officers. There were he said, "no state reserves." He concurred with Governor Vance that there should be a permanent state force, but he thought it "better that every man who can be spared should go into the Confederate services."[42] At the time the Governor was writing this, Sherman was beginning his memorable advance. Fearing the inability of South Carolina to protect itself against the enemy, Governor Bonham had called upon the Confederate Government for help. As early as June he wrote the War Department that there were very few so-called "reserves" in South Carolina because that state had not claimed as state officers those exempted by Georgia and North Carolina but instead had sent them into Confederate

40. For full content of speech cf. O. R., IV, v. 3, pp. 905-926

41. cf. O. R., IV, v. 1, pp. 973, 977, 1140, 1141, 1144, 1153, 1154 (p. 96)

42. O. R., IV, v. 3, p. 693

service. For this reason he urged that the Confederate Government would furnish some troops from the South Carolina forces for the protection of the mountain districts where there was scarcely an able-bodied white man left. He also urged that if forces were needed at Charleston, the need would be filled by troops already in the field.[43] This request went unheeded,[44] and evidently later calls went unanswered. When, therefore, Sherman was preparing to make his invasion of South Carolina, the authorities set themselves to the task of saving their state. Since no relief came from Richmond, the legislature passed a law the last of December which virtually repudiated all obligations to the Confederate Government.[45] With one fell swoop, South Carolina, by exempting virtually everyone in the state capable of bearing arms, went to the front ranks of opposition. General Preston said that the exemption act was intended "to nullify the existing act of Congress and to forestall any future legislation of Congress looking to citizens of South Carolina for an increase in the army except by express permission of the Governor of the State." This legislation he said, "is an explicit declaration that the State does not intend to contribute another soldier or slave to the public defense except on terms of her authorities." He was of the opinion that the "folly and wickedness " of Governors

43. O. R., I, v. 35, pt. 2, pp. 519, 520

44. Ibid, p. 520

45. Ibid, IV, v. 3, p. 980

Brown and Vance and the Legislature of South Carolina had already done what military conscription would have done before March - disintegrated the Confederacy and "saved it from the shame of an idiotic suicide."[46] Thus by the end of the year, 1864, practically every state in the Confederacy was in rebellion against the central government. The concerted state efforts to keep the Confederate Government from robbing them of their "troops of war" - their only means of protecting their fireside - kept many thousands of troops from going into service, and materially weakened the organization of the army.

The conflict over conscription, however serious, was not as serious as the conflict occasioned by the suspension of the writ of habeas corpus. The first act suspending the writ, which was passed on February 27, 1862, and amended April 19, 1862,[47] had brought forth much protest from some of the State Rights leaders. On July 14, 1862, Mr. Toombs complained "that Davis and his Janissaries (the regular army) conspire for the destruction of all who will not bend to them, and avail themselves of the public danger to aid them in their selfish and infamous schemes."[48] Yet civil law had practically disappeared in the section of the country which had been lost to the Confederacy in the early part

46. Ibid, p. 979

47. O. R., IV, v. 1, pp. 984, 1075

48. Toombs, Stephens, Cobb Correspondence, American Historical Report, 1911, v. 2, p. 601

of 1862, and some kind of martial law was necessary. It is very probable that some of the military authorities went too far in the exercise of the law, especially in light of the Southern ideas of state sovereignty, but on the whole, the law did achieve much good and brought order out of chaos in any state where there was no civil law.

Because of the belief that the President and his generals had assumed more power than was granted them, Congress passed another more definite law on October 13, 1862 to expire thirty days after the meeting of the next Congress. This was to take the place of the law about to expire.[49] The principal opposition to the new act came from Vance, the newly elected governor of North Carolina. Through his efforts, he got the state legislature aroused by telling it that if Congress should give power to the President to suspend the writ of habeas corpus that no man would be "safe from the power of one individual." He urged that the assembly "would take proper steps to maintain the laws and preserve the rights of our people."[50] Vance's opposition must have been sown in fertile soil, for the law suspending the writ became so very unpopular that the President resorted to it very seldom, and, when he did make use of the power granted him, he moved very cautiously - a fact very unusual considering the character of Mr. Davis and the great needs of the country in 1862

49. O. R., IV, v. 2, p. 121

50. Ibid, p. 188. For full text of the Governors message see pp. 180-190

and 1863. Despite the sparing use of martial law, the opposition to the power of the President became so very great that after the law expired on February 13, 1863, no law was passed in its place until the Act of February 15, 1864. Opposition to the President and any form of military rule was growing all through the year 1863. Mr. Toombs wrote that he did not see that anything was left for him "or anybody else except the entire surrender of the country, executive, legislative, and judicial departments to Mr. Davis, as the government seemed determined to rely upon force and fraud to strengthen the army."[51]

The legislature of Alabama, where civil law was virtually non-existent and where martial law had pressed rather heavily, passed a law which declared that the military should at all times be in strict subordination to the civil power. Any person who should prevent the writ of habeas corpus from being sued out or executed should be guilty of a felony and, if convicted, should "be fined not less than $1,000 or imprisoned in the penitentiary not less than one nor more than five years at the discretion of the jury trying the case."[52] The whole country seemed to be a great powder horn of opposition waiting for the torch to be

51. Toombs, Stephens, Cobb Correspondence, A. H. S. R., 1911, v. 2, p. 629. Commenting on the suspension of the writ Jones says, "Now the President is clothed with DICTATORIAL POWERS to all extent and purposes so far as the war is concerned." Jones Diary, v. 2, p. 153

52. Whig, January 5, 1864

ignited.

The passage of the act suspending the writ seemed that necessary torch. Never was there such a storm of protest from every quarter as was occasioned by the passing of the act, and this in spite of the fact that military leaders had begged for the suspension as a necessary war measure to get out all conscripts, deserters, and skulkers, and in spite of the fact that some states were practically without any form of government. In Mississippi, Louisiana, Virginia, and all the states which were partially or completely under the control of the Federal forces, affairs were in a terrible condition. General Maury of the Confederate Army wrote:

> There is a body of armed traitors in Jones County, Mississippi who have become so formidable that I have sent a force to break them up. They have been seizing government stores, have been killing our people, and have actually made prisoners of and paroled officers of the Confederate Army. They now threaten to interfere with the repairing of the Mobile and Ohio Railway. They are represented to be more than 500 strong, with artillery.[53]

Yet with the great need of martial law in that district, there was opposition to the suspension of the writ, and the legislature of Mississippi passed resolutions against any suspension.[54] Secretary Seddon wrote General Smith, commanding in the Trans-Mississippi District, that there had been "much embarrassement from the eccentric decisions of inferior judges who have had the

53. Stiles, "In the Years of War," Confederate Veteran, October, 1923, v. 31, p. 383

54. Journal of the Confederate Congress, v. 7, p. 55

power to issue writs of habeas corpus."[55] He advised that the most ordinary case in which the act would be required was that "in which persons seek to avoid military service" because he was anxious "to give evidence of professional ability, sound discretion, and personal honor so as to avoid any appearance of evil."[56]

In Louisiana a very strong hand also was needed to restore order. Spies, deserters, draft-dodgers, and disloyal men openly stalked about the country, and many people were carrying on an extensive and very lucrative trade with the enemy. Those who were defying the government resented being interfered with and protested violently any suspension of the writ. A letter to Governor Allen on May 8, 1864, reveals the fact that Colonel Sandidge had been sent to Richmond to protest against "the high-handed and lawless manner in which Confederate officers have

55. In December, 1863, General Greer of the Trans-Mississippi department complained that "certain judicial officers of the State of Texas have seriously obstructed the execution of the laws of conscription, and unless a suitable remedy is applied, consequences disastrous to the Confederate cause may, and probably will result. It seems to be a favorite scheme of some of the Texas judges to override the Confederate laws and to discharge from service in the Army any and all who apply to them for relief . . . They have it in their power to do much harm for the reason that, as a judge in Texas may issue a writ of habeas corpus, to any part of the State, those who wish to be discharged from service know to whom to apply for a discharge." He particularly complains of the action of Judge Hill. O. R., I, v. 26, pt. 2, pp. 493-495

56. O. R., IV, v. 3, pp. 231, 232

violated and are still violating the rights of persons and things in this State." Preston Pond, the writer of the letter, claimed that "the evils were enormous and demanded prompt and effective correction. The lives, liberties, and property of our citizens are disposed of with the same facility of subordinate military officers as if each of them was an hereditary despot in the district or department assigned to his command." He was deeply perturbed because "citizens of the State are taken, conveyed into the State of Mississippi, and executed without trial, civil or military. He wrote:

"I am at a loss to know by what authority any military commander of whatever grade, from the President to the corporal, assumes to annul these great conservative provisions of the Constitution; to move across the lines of State sovereignty as if they did not exist; and by simple military orders to deprive our citizens of life. I am at a loss to know in what article of the Confederate Constitution the power is lodged which authorizes the military power of the country to try and punish offenses committed by persons not enrolled in the Army and Navy. This invasion of the just and constitutional authority of the civil and criminal tribunals of the country is a common portent of revolution; is the premonition of civil decay and political anarchy, and calls for the most sleepless vigilance."

He further pointed out that "the constitution of the State, her jurisprudence, her original and undelegated custodianships over the civil rights of her citizens, her territorial lines are all set aside and annulled by a military proceeding which has no use or respect for one nor the other." "It is to be regretted that military men cannot keep in view the great cardinal principles of our Government and preserve the harmony of its structure and action, even through the convulsions of war. The evil results

from the ignorance and recklessness of men in military power who at once imagine themselves to be the exclusive and absolute authority in the district assigned to their command over all questions of property, liberty, or life, and the idea that such authority is restrained by any consideration of State jurisdiction or State sovereignty, is received with open and violent contempt." He predicted that this loss of the great cardinal principles of our government "may excite a bloodier revolution than the present."[57]

North Carolina had been the most vigorous opponent to the former law suspending the writ of habeas corpus, and now Governor Vance became more vigorous in his opposition than ever because he felt that the law was aimed particularly against that state, and not without grounds. One, Foster, wrote that General Cartrell who claimed to be the author of the bill declared it was necessary because of the state of things in North Carolina.[58] On February 9, 1864, while the passage of the bill was pending, Governor Vance wrote President Davis that he heard "with deep regret that a bill is certainly expected to pass the Congress suspending the writ of habeas corpus throughout the Confederacy, and that certain arrests will immediately be made in North Carolina." He expressed the opinion that if the bill "be strictly within the

57. Ibid, pp. 398-400

58. Toombs, Stephens, Cobb Correspondence, A. H. S. R. 1911, v. 2, p. 634