"We've got to Fight or Die:" Early Texas Reaction to the Confederate Draft, 1862

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In 1862 the Confederacy passed “An Act To Further Provide For the Public Defense.” As the first national conscription law in American history, it became one of the most controversial issues of the Civil War. Widespread opposition to the draft brought consequences that ranged from increased volunteering to armed confrontations. Southerners objected to the law because of questions about its constitutionality as well as practical concerns over implementation. Conscription had a major impact on military and social aspects of the war. Considering this, it is surprising that more has not been written on the topic. Even less has dealt with the issue as it pertains to Texas.

The most comprehensive work to date dealing specifically with the Confederate conscription law is Albert B. Moore’s *Conscription and Conflict in the Confederacy* (1924). Though Moore’s book is quite old, it is still a good source, addressing such controversies as constitutionality, the struggle between the states and the Confederacy over control of manpower, and the historiographical question of whether conscription was a failure or a success. Since Moore’s primary concern was with the conscription law as it applied to the Confederacy as a whole, he only briefly referred to Texas. Wilfred Buck Yearns dedicated two chapters to the discussion in *The Confederate Congress* (1960). As with Moore, Yearns’ work was broadly based, dealing with the Confederate Congress as a whole without specifically addressing attitudes or actions in specific states.¹

Recent works addressing the broader topic of dissent within Texas necessarily consider conscription. James Marten offers an excellent overview of the various dissenter groups in *Texas Divided* (1990). Scholarship focusing on individual cases of dissent or objection to conscription include *Frontier Defense in The Civil War: Texas’ Rangers and Rebels* by David P. Smith (1992). A major conflict developed between the Confederacy and Texas over the loss of manpower needed to defend the frontier against Indian attacks. Conscription was central to the debate. Richard McCaslin has done extensive work on the mass hanging in Gainesville, an incident resulting, in part, from opposition to the draft. The unpublished theses of Billy Don Ledbetter and Fredricka Ann Meiners provide the best coverage of Texas Governor Francis R. Lubbock’s role in raising manpower and his cooperation with the Confederate law. Still, there is no comprehensive work specifically addressing conscription in Texas.²

Existing scholarship shows that most problems with conscription displayed later in the war. War weariness, coupled with dissatisfaction over specific exemptions or unfair enforcement procedures, caused problems as the war dragged on. But the question remains: what was the initial response of Texans to the law? Understanding how Texans reacted to conscription will

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lead to a more complete knowledge of how the draft influenced volunteerism, resistance, and desertion. Motivations of the men who delayed volunteering until prompted by the conscription law, and of those who joined the fight only after being drafted, may be clarified.

In order to examine this question of initial reaction, other questions must be addressed. If Texans opposed the law, on what grounds did they do so? Were objections strong enough to warrant noncompliance? What role did public figures play in acceptance or rejection of the law? Since this paper deals primarily with the first response of Texans, these questions will be addressed within the scope of the year 1862.

Ascertaining when Texans became aware that the law had been passed and when that law was implemented are additional goals of this work. Researchers dealing with the issues of volunteerism and desertion or studying unit histories will find this information useful. The main impact of the draft is believed to have been in its encouragement of volunteerism. A volunteer received better enlistment terms than a conscript, such as the right to vote for officers and join the unit of his choosing. Establishing a working date for researchers allows historians to determine the extent to which this holds true for Texas. Since enthusiasm may have been lacking among these post-law volunteers, this working date will enable researchers to make clearer distinctions between the early volunteers and those who felt compelled to enlist lest they be conscripted.

By the spring of 1862, the South had suffered major setbacks. The fall of Fort Henry and Fort Donelson and the capture of New Orleans had devastating effects. The Confederacy was in dire need of more troops, yet volunteerism waned. In addition, the tour of duty was almost up for the “twelve-month volunteers,” a group comprising almost half of the veteran army. These early volunteers had not anticipated a long war, and the realities of war diminished their enthusiasm; chances of voluntary reenlistment were slim. The Confederate force, however, could not afford to lose these trained and experienced troops. Measures were needed to ensure the recruitment of new soldiers and to keep the existing units intact.

On April 16, 1862, the Confederate Congress passed “An Act to provide further for the public defense.” This law allowed the president to conscript all able-bodied men between the ages of eighteen and thirty-five, not otherwise exempt, for a term of three years. Those already serving were required to remain in the military for three more years or the duration of the war. Five days later Congress provided certain occupational exemptions. Still other changes were made throughout the year, such as the addition of the “twenty-slave law.”

Texans probably expected this development. Warnings had been coming from Governor Francis R. Lubbock. The problem of raising troops occupied much of Lubbock’s time. Upon taking office, he realized that the current system of recruitment was inefficient. He immediately pressed for a new law that would empower the state to meet demands for manpower. Scarcely in office a week, Lubbock delivered an address to Texas legislators beseeching
them to draft a new militia law or amend the existing one. On Christmas Day, 1861, the legislature passed “An Act to perfect the organization of State Troops, and place the same on a war footing.”

This law divided the state into thirty-three Brigade Districts, then further subdivided and organized it. Every able-bodied man between the ages of eighteen and fifty was now liable to perform military duty unless specifically exempted. Exemptions are discussed below. Each man was placed on the muster roll in his own district. Should an individual be required to “march out of his county, district or State,” he could hire a substitute. All volunteer companies formed under the old system were to be incorporated and subjected to the same regulations as the newly organized State Troops. Companies were to meet for drill every two weeks; regiments, no less than once every two months. Under this law commissioned officers were required to swear to uphold both the Texas constitution and the constitution of the Confederate States.  

This act placed state troops at the governor’s disposal to be used whenever he deemed it in the best interest of the state or to answer the call of the president of the Confederate States for troops to prosecute the “present war.” At such times the governor was to issue a proclamation calling for volunteers. If volunteering proved insufficient, he could institute a draft. This draft would be conducted within the individual companies that were called up for service. Commanding officers were to copy each name from the muster roll on to a separate piece of paper. Then names of draftees would be, literally, drawn from a hat. No more than three-fourths of the company was to be drafted, and all officers were required to serve. 

The state law gave the governor leverage in dealing with the reticent element of the population. Late in February Lubbock informed the people of a new requisition from the War Department requiring an additional fifteen regiments within thirty days. His proclamation was a passionate appeal to the spirit of patriotism and the love of liberty that lay within the hearts of Texans. Lubbock spoke of the “spirits of those brave and departed heros,” and of “mothers, daughters, sisters, wives, and little children” who called upon the men of Texas to drive out “the hireling Hessians of a debased and corrupt Government from the soil they [had] polluted by their unhallowed touch.” He backed up this emotional appeal with a blatant, though polite, threat of a draft. The governor insisted that he would not insult Texans by doubting that they would volunteer in sufficient numbers, but “if in thirty days the required number of men be not reported, [he would] proceed under the law to fill up the number by drafting.” Lubbock admitted to this coercive maneuver in a letter to the secretary of war in which he questioned whether the need for more troops was really so urgent as to warrant such tactics. 

The state never actually resorted to a draft, preferring to use the possibility of one as a persuasion. Lubbock’s papers include many requests for exemptions from the “state draft,” however. Individuals feared that if a draft were implemented, they would be forced to fight out of the state. In attaining an exemption they ensured that their names would be kept off the muster list,
which was in effect a draft registration. The governor’s threat and the prepara-
tion for a potential draft were enough to cause a great deal of consternation.4

Section two of the state law enumerated the standard exemptions. They
included vocations necessary to the maintenance of the postal and transporta-
tion systems, law enforcement personnel, specific positions within the judicial
system, and all Confederate officers. A number of men who did not fall into
these categories requested special exemptions. Often others made requests on
their behalf. Reasons put forth for the exemptions varied and reflected a
concern for local and personal interests.

Frontier communities feared being left without enough manpower to
defend themselves against the Indians. Chief Justice G. Gay of Bell County
appealed to the governor’s office on behalf of the citizens of Atascosa County,
saying that the region could spare no more men. A petition signed by the
citizens of Bandera County, claiming the same problems, stated that a draft
would be equivalent to issuing an order for the deliberate breakup of the
county and would cast the remaining families on the charity of the state.
Communities feared the loss of specific individuals who were crucial to the
well-being of the local population. Those individuals usually represented such
occupations as physician, druggist, or blacksmith – although several shoe-
makers seem to have been valued highly as well.

Individuals offered many personal reasons for being unable to serve, such
as dependent family members or physical ailments. As the only male family
member still not fighting, some men were needed at home to tend to the
family’s needs. There seems to have been little objection to the law on such
ideological grounds as civil rights or unconstitutionality. Only one letter found
in the governor’s correspondence on conscription in 1862 discusses refusal to
serve based on principle. This letter concerned the fate of two San Antonio
Unionists. But in general, the public conceded the right of the state to impose
such a law. Concerns remained practical in nature.

Despite the pleas for exemption, the threat-only strategy did not prove as
effective as the governor had hoped. On April 17, Lubbock wrote to the com-
manding general in Texas, P.O. Hebert, that he was aware enlistment was slow
despite his call. The governor blamed Confederate recruiters within the state
for taking men away from the Texas quota count. They were enlisting men
directly into the Confederacy without giving Texas credit for the troops, leav-
ing the state with an increasingly difficult task. He was optimistic, however,
that the Confederate government was in the process of correcting this problem.
Once this situation was corrected, Texas surely would surpass her quota.
Lubbock seemed relieved that he would not have to “force a draft on our
people.”10

The state law may have acted as a softening agent for the Confederate
law, allowing the novelty of a draft time to accustom the people to the idea that
forced service was a possibility. Whether a draft was imposed by the State of
Texas or by the Confederate government, the practical effect was basically the
same. Nevertheless, Texans may have been more receptive to a law imposed
by their own state than they would have been to one coming from Richmond. Thus, the state law served as a sort of psychological stepping stone.

Citizens became aware of the possibility of a national draft through public discussion that helped to prepare them for the reality. The Marshall Texas Republican indicated that controversy over the topic of conscription had existed for six months prior to its passage. As early as February 1862, Assistant Adjutant-General Samuel Roberts warned that the Confederacy desperately needed more troops and if the Texans hesitated too long, a draft would be inevitable.11

Certainly by March Texans were being informed of the possibility. The Austin Texas State Gazette carried an article on March 8 discussing President Jefferson Davis’ speech to Congress in which he condemned short enlistments. While the possibility of a state draft still existed, a national law loomed on the horizon. Throughout the month newspapers across the state addressed the topic. The way to prevent the draft, they claimed, was to volunteer. Editors continually printed emotional calls for noble volunteers, stressing the peril of delay. A suggestion on how the draft could be avoided appeared in a Galveston newspaper. Each company should voluntarily administer a self-imposed draft. The suggested procedure was basically that dictated by the state law, that is, a lottery within the company. By doing this the “repugnance” and “odium” that all Southerners felt toward drafts would be avoided and the company would benefit from enlisting as volunteers. On March 29, the Austin Texas State Gazette praised Parker County for the patriotic fervor it displayed when 100 men volunteered for the twenty-five positions requested. Seventy-five had to be “drafted out to stay at home.” The article was entitled “The Texas Way of Drafting.”12

On April 16, the day conscription was made law, the Houston Tri-Weekly Telegraph printed an article on the conscription measure proposed by President Davis two weeks earlier. The editor was concerned that the people would yield too much freedom in the name of necessity and that tyranny would be the eventual result. In addition, conscription was not part of the Southern mindset. Southerners, he claimed, volunteered for the love of the cause. A conscript would make “a doubtfully good soldier at best.”

This same article demonstrated an awareness of the debate being conducted in Congress and of the role of Texas congressmen in the debate. Since legislators from Texas were major participants in the dialogue about conscription, it would be logical to assume that their constituents were cognizant of the issue, at least to some degree.

The Houston Tri-Weekly Telegraph became the first major newspaper to inform the public that the bill had become law when it printed an article on April 25. The San Antonio, Austin, and Marshall papers each carried the story the next day. The Galveston Weekly News trailed behind the others a few days, not printing the information until April 29.

Details were delayed until May, and in some cases, until June. A thirty-day grace period was given for those wishing to volunteer, but most men
probably had at least a couple of weeks beyond that before enrolling officers began their work. It was not until June 2 that General Hebert appointed Colonel John Salmon "Rip" Ford as superintendent of conscripts for the Department of Texas. On June 5 Governor Lubbock wrote to General Hebert concerning future enforcement of the law, which gives the impression that implementation had not yet begun. Enrolling officers placed advertisements in local newspapers citing dates when they would arrive in particular localities. The enrolling officer for Red River County began his task on June 9 and continued at least through the end of July. Enrollment began in Houston on or around June 20. The enrolling officer there was responsible for twenty other counties in addition to Harris County. The enormity of such a task indicates that persons in outlying areas probably were not approached for quite some time. Nevertheless, a letter to the governor dated June 13 mentions an already formed company of conscripts. Given the existing evidence, it is safe to say that implementation of the conscription law began sometime between June 5 and June 13.\textsuperscript{11}

Meanwhile, newspapers promoted volunteerism by printing appeals from editors and enrolling officers. Evidently, volunteering did increase. In a speech given to the House of Representatives early in 1863, Governor Lubbock discussed the disorganization of state troops that resulted from a great number of men volunteering for the Confederacy, having been prompted to do so by the conscription law.\textsuperscript{14}

Once the law was a reality most newspapers gave it their support. The Houston Tri-Weekly Telegraph backed away from its earlier anti-conscription position. Taking its social responsibility seriously, the Telegraph urged Texans not to be insulted or to jump to conclusions. Obviously, the paper concluded, the law was made necessary by other, more populous states failing to meet their obligations. The government could maintain impartiality only by placing all states under one law. Surely, the paper contended, enforcement would be less stringent in states such as Texas that deserved leniency. It advocated a wait-and-see approach until more details were known. Meanwhile, the regiments would be filling up quickly as men rushed to volunteer to avoid conscription.\textsuperscript{15}

The San Antonio Semi-Weekly News welcomed conscription as a fair way of distributing responsibility. The Texas Republican of Marshall considered conscription to be a more equitable and efficient system than the current one. It would provide the South with an "immediate and vigorous army" whereas the volunteer system had filled the ranks with "old men and boys." The paper urged its readers to put behind them the arguments of the past months and accept the new law as a necessity. The editor went so far as to say that Texans should rejoice over the passage of the law. Galveston editors agreed, saying the law was essential to the survival of the Confederacy. Interestingly, both papers thought that the law was not applicable to Texans, for they had proven their willingness to share the burden. According to R.W. Loughery, editor of the Marshall paper, there would "be no conscripts in Texas because every one between the ages of eighteen and thirty-five [was] volunteering."\textsuperscript{16}
Despite such posturing about the noble volunteerism of Texans, newspaper editors printed articles designed to shame those who had refused to volunteer into action. The Belleville Countryman seemed to think that a reprinted article from the Atlanta Confederacy was appropriate for its readers. The article chastised the public, "... sentiment has not yet viewed with a sufficient stern frown, the able bodied men ... who are taking no part in the public defense."\textsuperscript{17}

Not only did newspapers try to influence public opinion, they were mirrors of popular attitudes. An admonition from the Marshall newspaper that citizens set aside their disagreements suggests a dichotomy of public opinion. The Houston article mentioned above implies that Texans were apt to think of conscription as an affront to their honor. The Galveston Weekly News elaborated on the ideological objections held by some Texans. Apparently, they considered conscription "derogatory to the character of Americans and inconsistent with the genius of free government" and challenged the constitutionality of the law.\textsuperscript{18}

Readers of J.P. Ousternout's paper in Belleville expressed their resentment of the editor's continual pushed for volunteering. When Ousternout chose to run for district judge, a draft-exempt position, local citizens sent him a petition, stating that since he had "talked longer and louder than anybody else," he should hold some "responsible station in the Confederacy." The fifty-two signatories suggested he volunteer as a private so that his acts might "accord with [his] preaching."\textsuperscript{19}

By late May a poem appeared in the Houston Tri-Weekly Telegraph that serves as another example of the disaffection from conscription. It provides some insight into the effects of conscription on the personal level. "The Lament of A Conscript" was submitted by "an unhappy conscript" and includes the following lines:

\begin{quote}
O groan brothers, groan,
We are called and have to go.
The Conscript man's in town
For a soldier told me so;
He told it with a grin
That made my blood run cold;
The man seemed devilishly glad—
He did upon my soul.\textsuperscript{20}
\end{quote}

The poet expressed trepidation over the inevitable encounter with an enrolling officer in lines such as: "I felt my face grow pale, And cold sweat down me run" and "... I grew all cold and limp, Like a cat-fish on a hook." He coupled apprehension over the prospects of going to war with dissatisfaction with the government. President Davis, he believed, was a fool; Governor Lubbock and General Hebert were just "pro-Confederate tools." Nor did the writer have any use for ideological rationales such as the preservation of liberty and defense of country. To him, they "weren't even worth talking about."

This conscript adamantly desired to avoid military service, yet he submitted to the law. He gave no indication that he would consider doing more
than complain in his opposition to the draft, as is made clear in the final stanza of the poem:

I see it plain as day—
We've got to fight or die;
I now will split the difference,
and go to bed and cry.
Perhaps I'd rise improved
A stronger, braver man,
And if a woman laughs at me,
I'll whip her if I can.

This anonymous poet seems to convey the attitude embraced by the majority of Texans. Former Confederate officer and Texas Supreme Court Justice O.M. Roberts played down any negative reaction to the law in his account of Texas during the Confederacy in 1899. He admitted that some occasional annoyances and criticisms surfaced in a few localities but denied that it was widespread or of much consequence. The reason for general compliance, according to Roberts, was that “the war spirit at the time was at fever heat, and controlled the action of the mass of the people.” He did concede that many volunteered to avoid being arrested and that an unknown number of conscript camps were maintained throughout the war for the purpose of seeking out draft dodgers and impressing them into the military.

Although Roberts minimized dissension, his general premise seems to have been correct. His assertion is backed up by a Texas representative to the Confederate Congress, Peter Gray. Gray wrote to President Davis in November that the “act met with very general approbation,” and noted that only the means by which the Jaw was enforced had “created some clamor, which was mistaken for opposition to the law itself.” It appears that most Texans complied with the law, even if they found it disagreeable.

Swift and severe suppression thwarted the organization of widespread resistance. Resistance was not the norm; it was confined geographically and to specific minority groups. The term “resistance” implies a preservative or defensive stance. Nonetheless, loyal Texans often perceived dissension as a widespread phenomenon, aggressive in nature. This misconception encouraged rash and unnecessary action on the part of official and vigilante forces. In many instances, merely being suspected of objecting to the war or to the draft subjected one to violence at the hands of fellow Texans, a point carefully omitted from an official state publication concerning the Civil War.

Many German-Texans were disinclined toward the Confederacy, openly espousing Unionism. The Battle of Nueces is the most famous incident regarding German resistance. In May 1862, Confederate troops marched to Fredericksburg in Gillespie County to suppress activities of the “Loyal Union League,” formed by those opposed to the war and conscription. Naturally, these Unionists opposed a law requiring them to fight on the side to which they were opposed. Throughout the summer the troops harassed and arrested citizens, burned crops, and even lynched many of those they suspected of disloyalty. As a result, a group of over sixty men attempted to flee to Mexico.
On August 10, Confederate troops attacked their encampment on the Nueces River, killing over thirty men. Nine more surrendered, only to die before a firing squad. News of the massacre triggered a violent protest in San Antonio. Confederate troops restored order and established martial law. Following these events the German threat was no longer perceived as a serious problem. For several months some fairly large unionist groups continued to engage in anti-conscription activities such as petition signing and harassing enrolling officers, but by the new year overt activity had been squelched and most German men were in compliance with the law.24

Five months after the Nueces incident, Texans conducted the largest mass execution in American history. Hysteria and paranoia led to this latter-day witchhunt commonly known as the “Great Hanging in Gainesville.” The tragedy centered on an anti-Confederacy, anti-conscription group called the “Peace Party.” As Richard McCaslin has shown, conscription was one of several things that pushed many Texans to oppose the Confederacy. The unpopular measures of sequestration, impressment, and taxation already had fostered a degree of disaffection. Conscription was the proverbial last straw that brought about the organization of the Peace Party. Thomas Barret, a member of the citizens’ jury, penned an account of the events. He emphasized the important role of conscription in the sequence of events when he wrote, “This law was very offensive to many…. In riding through the country I called at a steam mill and found about a dozen men:… we had a good chance to talk. Some one [sic] named the conscript-law; its effect was like a spark lighting on powder; all was in a blaze of opposition as deep and as fierce as it was possible for it to exist in the human mind was plainly manifested.” The Peace Party was quickly halted from any protest activities it may, or may not, have been considering, when forty-two Texans were hanged for treason.25

The Tejano population, concentrated in South Texas, was adamantly opposed to a Confederate draft. Relations between Mexicans and Anglo-Texans were characterized primarily by deep-seated racism and hatred. Jerry Don Thompson’s account of Hispanics in the war points out that Tejanos who chose to join the Union Army did so because of their hatred for Texans, not out of love for American ideals. Mexican-Texans had little political influence and were socially segregated. None were present at the secession convention, most felt no affection for the Confederacy, and they did not have a stake in the preservation of slavery. The Hispanic population was the least likely to support a Confederate draft, but that did not stop Confederate enrolling officers from trying to force them into compliance. Thompson believes enforcement was more severely and unfairly pursued with regard to Tejanos than with other Texans. Accordingly, conscript officers were sent to South Texas “without hesitation” to enlist Mexican-Texans. Nonetheless, Tejanos staged an effective passive resistance by means of evasion, often fleeing to Mexico to escape enrollment. Eventually, because of its ineffectiveness, enforcement was virtually discontinued in Hispanic regions.26

In addition to local political groupings and draft evasion, Texans attacked conscription through the court system. The Confederacy had no Supreme
Court, a situation that required state courts to rule on the constitutionality of Confederate laws. Prominent citizens throughout the Southern states encouraged cases that would test the validity of conscription. By July the case of *Ex Parte Coupland* had reached the Texas Supreme Court. The defense attorney was George Washington Paschal, an anti-secessionist who was convinced that the Confederacy had exceeded its limits in the prosecution of the war. He believed conscription had hampered the spirit of volunteerism and was symptomatic of a disease that was killing the Confederacy. He lamented that while the Northern armies had been unable to subjugate the South, the South had managed to subjugate its own people.  

The three-member court upheld the law, ruling that the draft was constitutional only as long as a need existed and as soon as the need ceased, the law would become unconstitutional. Texas became the first of several Southern states to uphold Confederate conscription as constitutional. By doing so it shored up the law's legitimacy and prestige. The court's opinion was not unanimous, another example of diversity on the issue. Justice James Bell dissented. Bell was an anti-secessionist who chose to remain in Texas despite his unpopular views. His opinion stated that it "was contrary to reason" to think that necessity could dictate legality. Since the power to draft was not enumerated, the law was unconstitutional.  

No doubt the anti-conscription ideas of prestigious men such as Bell and Paschal had some impact on the opinions of others. But the Texas Supreme Court’s decision in favor of the law certainly carried more weight with the general public. Likewise the words and actions of elected officials probably give an even better view of general opinion in Texas. As with newspapers, politicians can be both influential and reflective of popular ideas.  

If Louis T. Wigfall, Confederate senator from Texas, is the measuring stick for public opinion, then Texans must have strongly and passionately favored conscription. Wigfall introduced the bill to the Senate, but William S. Oldham, the other Texas senator, vehemently opposed it and was one of only five senators who voted against the bill. Representative of two polar positions, these two men provide an excellent example of the diversity of opinion within the loyal population.  

Wigfall was a militarist, concerning himself primarily with the good of the military and the prosecution of the war. He preferred that all civilian institutions be subordinated to the military. Besides conscription, he supported presidential suspension of the writ of habeas corpus, the use of martial law, and the "twenty-slave law," all of which were controversial as being oppressive to civil rights. For Wigfall, the necessities of war were paramount; civil rights were of little consideration. Although he had been an avid state’s rights proponent, he was flexible on that issue when it helped to further military endeavors. When the law passed, Wigfall was displeased that provisions for hiring substitutes and for electing officers were included. State’s rights and civil rights took a subordinate position to strengthening the army.  

Oldham was in many ways the antithesis of Wigfall. He stoutly defended
state's rights and endeavored to keep the military subordinant to civil authority. Oldham believed that the conscription law was unconstitutional in that it interfered with state control over state militia. It violated the rights of individual citizens and would demoralize the citizenry, stifling true patriotism and volunteerism. He believed conscription had a dehumanizing effect on an army, turning men into machines who fought on command rather than because of their love of country or liberty. Herein lay the possibility for a military regime to seize control of the government. Conscripted soldiers, "manacled by the chains of military law and military subordination," were potential tools in the hands of an ambitious military leader who would have them "become destroyers of their own and their country's liberties."30

These two senators engaged in a heated argument on the Senate floor over how to answer President Davis' request for a draft. Oldham stated that he did not believe Congress had such power without the intervention of the states. Besides, he said, there were always more volunteers than the Confederacy could arm. Oldham misread this situation as an overabundance of men, rather than an arms shortage. Wigfall called upon the Congress to "cease [the] child's play [of volunteerism]." He further stated, "No man has any individual rights, which come in conflict with the welfare of the country." After a lengthy oration by Wigfall, Oldham countered his colleague's argument by declaring that only in European despotisms did conscription prevail.31

In the House of Representatives, Texan C.C. Herbert opposed conscription. In August, Herbert initiated a discussion on the efficacy of continuing to "press the conscription law too far upon the people." According to Herbert, the majority of Texans held the law to be unconstitutional, even though most people did submit to it. He sought to prevent proposed extensions on the age limit to include persons over thirty-five years of age. The frontier already was depleted of its manpower, he asserted. If Congress considered it necessary to continue this violation of the Constitution, Herbert would advocate "raising in his State the 'lone star' flag that had twice been raised before."32

Frank B. Sexton, another Texas representative, denounced this threat of secession. He regretted the necessity of conscription but denied that the people of Texas had displayed any significant degree of dissatisfaction. A third Texan, Malcolm Graham, supported Sexton, claiming that Texans cheerfully supported conscription because they realized it was essential to the cause. He was offended by Herbert's attempt to make Texas an exception - the state was as loyal to the Confederacy as any other state. As for Herbert's concern for local defense, Graham was certain that Texas women and children were capable of defending the state in the absence of the male population.

As mentioned earlier, Representative Peter Gray sided with Graham and Sexton in believing that the law had been well received. He stated that Texans had shown disapproval for those opposing the law in Congress, "some of their sentiments [having] received unqualified condemnation." To a degree this statement is refuted by the Houston Tri-Weekly Telegraph, which printed its opinion in favor of Oldham's position.33
Within the state, the governor was probably the most observed and well-known public figure. Although comments about the actions and opinions of state legislatures are not found in newspapers, the governor's messages were constantly before the people. Since responsibility for raising troops and coping with dissension fell to the governor, newspapers continually carried his proclamations and speeches.

Governor Lubbock adhered to a policy of cooperation with the Confederacy and worked hard to raise the requested troops. He poked and prodded at the consciences of Texans, hoping to arouse a chivalric spirit that would prompt men to volunteer. He mingled fear-mongering, shame, and republican idealism in both public speeches and official proclamations. According to Lubbock, the vile Yankees were at the doorstep of Texas, ready to destroy all that was sacred. This desperate situation required sacrifice. A speech, given early in March to Galvestonians, is an excellent example of Lubbock's tactics. He dramatized the danger, calling Texans to stand together in the "hour of need, when the dark and lowering clouds of war hover o'er our sunny land, with gloomy forebodings." Appealing to their sense of patriotism and love of liberty, he said the time had come to "strike out for [their] fires and homes." He scorned those who would not share responsibility. The "mere on lookers [sic] in Vienna," as he called them, "... must shoulder their muskets, or leave the country." If appeals to the noble spirit failed, perhaps guilt would be more successful. If neither of these was enough, Lubbock threatened to use the draft.

Lubbock was not compelled to impose a draft, since he was relieved of such responsibility when the national conscription law was enacted. Lubbock immediately lent his support to the new law. Upon receiving a request from General Hébert for permission to use state officers as enrolling officers, Lubbock replied with courtesy and promptness, graciously offering more than was asked. Lubbock believed the law was constitutional and necessary. He was offended by the idea that anyone would have taken the issue before the courts and was pleased by the Supreme Court's decision in its favor.

Lubbock explained his views to the Texas legislature early in 1863. The Confederacy was fighting for the freedom of all of its states. If each state decided the number of troops it wished to supply and whether those troops would be allowed to go beyond the state's borders, then the lack of coordination would result in chaos. Any efforts to defend the South would be futile. Lubbock believed that there should be "one sole head" in military matters, and he recognized that head to be President Jefferson Davis. Lubbock was pleased with his accomplishments over the last year in filling the Confederate quota for troops to serve the Confederacy and managing to keep an adequate number of troops within the state for coastal and frontier defense.

The issue of whether Texas troops should be required to leave the state evidently had been a major debate the previous year. Lubbock defended cooperation in this matter as a means for keeping the enemy from encroaching on Texas' borders. "Each battle fought in Virginia, Tennessee, Mississippi, or Arkansas is a battle for the freedom of Texas," he explained. He believed
conscription was necessary and legal, and encouraged compliance as the proper behavior for loyal citizens. He abhorred the idea that some men shirked their responsibility. Were it not for this element, he would have preferred the volunteer system.37

Lubbock’s support for the Confederacy did not forego his concerns for the people of Texas. He understood the need for frontier and coastal protection and was aware of the hardships the war had imposed on citizens. Concerned that the draft would be executed too rigorously, he wrote to General Hébert on June 5, before implementation had begun, requesting lenient enforcement. The reasons he cited for his request were those given to him in letters requesting exemption from the state law. He explained that the cases presented were not “exaggerated, or infrequent, or unusual.” He hoped that the general might consider exempting persons who were necessary to the protection of farms, ranches, or to the support of families. Lubbock also requested the exemption of public millers and blacksmiths since both professions were essential to agricultural areas.

When Lubbock disagreed with certain practices of the enrolling officers or with requirements of the central government, he did not go public with grievances. All of his public statements are in support of the Southern cause and the measures taken by the national government. Desiring to preserve a positive relationship between the Confederacy and the people of Texas, Lubbock used his powers of persuasion carefully.

As with the governor, Texan military officers faithfully discharged their duties as they pertained to conscription. Superintendent Ford prided himself on executing his duty with fairness and honesty. When Ford took the post, he had not received instructions on the particulars of the law. He instituted his own system based on a policy that all men were to be treated equally without regard to wealth. He refused bribes and disdained the “twenty-slave law,” which he believed unjustly favored the wealthy. Though Ford was required to grant this exemption, he did not hesitate to offer his opinion that it was an unfortunate enactment that caused much harm. One day a man inquired of Ford as to whether his slaves and property exempted him from service. Ford told him that it did, then added, “But where a man has so much he ought to fight for it.” Not wishing to make any man act against his conscience, the superintendent did not intentionally force any person into the army who disagreed philosophically with the Confederate cause. These early policies surely helped to shape a favorable public attitude.38

Colonel Elkanah Greer, of the Third Texas Calvary, became the head of the Conscript Bureau for the Trans-Mississippi Department in October 1862. Greer took his duty as a Confederate officer seriously. He agreed with the Confederacy’s objection to the state practice of enlisting men in the militia who were eligible for Confederate conscription. Less information is available on Greer’s work or opinions about conscription than on Ford’s. Nonetheless, it is worth noting that a prominent Texan held this position and faithfully executed his duties of that office.
Whether following the lead of military and political leaders or acting solely on independent thought, most Texans acquiesced to the law. This is not to say that they welcomed it with a loving embrace. Theirs was more of a resolved compliance based on the inevitability and necessity of the law. The vast majority of Texas citizens were willing to make the sacrifice they believed was necessary by submitting to the conscription law.

NOTES

1 Albert Burton Moore, Conscription and Conflict in the Confederacy (New York, 1924); Wilfred Buck Yearns, The Confederate Congress (Athens, 1960).


3 Yearns, Confederate Congress, p. 64.


5 Lubbock to O.M. Roberts, May 19, 1861, Executive Record Book, Governor Francis R. Lubbock, Archive Division-Texas State Library, Austin, hereinafter cited as TSL; Address to Senate and House of Representatives, November 15, 1861; Laws of Texas, edited by H.P.N. Gammel, Vol. 5 (Austin, 1898), p. 455-465.

6 Laws of Texas, p. 499-406.


8 Correspondence concerning conscription, 1862, Governor Lubbock papers, TSL.

9 Lubbock to Hebért, April 17, 1862, August 24, 1861, Executive Record Book, Governor Francis Lubbock, TSL.


11 Texas State Gazette, March 8, 1862 and March 29, 1862; Galveston Tri-Weekly March 15, 1862. See also: Belleville Countryman March 29, 1862, Marshall Texas Republican, March 1, 1862.

12 W.J. Hughes, Rebellious Ranger Rip Ford and the Old Southwest (Norman, 1964), p. 206; Lubbock to Hebért, Executive Record Book; Clarksville Standard, June 9, 1982 and June 27, 1862; Terry to Lubbock, June 13, 1862, Governor's Correspondences, TSL.


14 Houston Tri-Weekly, April 16, 1862 and April 25, 1862.

15 San Antonio Semi-Weekly News, April 26, 1862; Galveston Semi-Weekly, April 29, 1862.

16 Belleville Countryman, May 3, 1862 and May 10, 1862. See also Marshall Texas Republican, April 26, 1862, May 10, 1862, and May 3, 1862.

17 Marshall Texas Republican, May 10, 1862; Galveston Weekly News, April 29, 1862.
Belleville Countryman, May 10, 1862.

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Crist, Papers of Jefferson Davis, p. 502; Houston Tri-Weekly Telegraph, April 16, 1862.

Austin State Gazette, March 2, 1862. The speech was made on March 4, 1862. Subsequent quotes in this paragraph have the same citation.

Lubbock to Hebert, June 5, 1862, Governor’s Correspondence, TSL; James M. Day, ed., Senate Journal of the Ninth Legislature, First Called Session of the State of Texas (Austin, 1963), pp. 27-30.

Senate Journal, p. 28; House Journal, p. 12.


Ralph A. Wooster, Texas and Texans in the Civil War (Austin, 1995), p. 105; See also Jack Thornton Greer, Leaves From a Family Album (Waco, 1975).