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A Political Labyrinth:
Texas in the Civil War--Questions in Continuity

by

Nancy Head Bowen

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Corpus Christi, Texas

N.H.B.
TABLE OF CONTENTS

ACKNOWLEDGMENTS

LIST OF MAPS

INTRODUCTION

A LABYRINTH OF TEXAS POLITICS. ........................................ 1

Chapter

I. THE FAITHFULNESS OF FORMER YEARS: ELECTION OF A
   WARTIME GOVERNOR, 1861 ........................................ 19

II. A CONSIDERABLE AMOUNT OF BUNCOMBE LEGISLATION: THE
    SESSION OF NOVEMBER, 1861–JANUARY, 1862 ................. 48

III. AUTHORITY SHOULD BE LODGED SOMEWHERE: GOVERNOR AND
     LEGISLATURE, 1862–1863 ....................................... 78

IV. AN EMPIRE OF DISCORDANT AND DIVERSE FEELINGS:
    STATE ELECTIONS, 1863 ......................................... 118

V. THIS SIDE OF THE RIVER MUST BE SELF-SUSTAINING: THE
    LEGISLATURE, NOVEMBER–DECEMBER, 1863..................... 163

VI. TO SET THE GOVERNOR RIGHT: GOVERNOR, LEGISLATURE,
    AND ARMY, 1863–1864 .......................................... 208

VII. TO CHOOSE AN AVAILABLE MAN: THE SUPREME COURT
     ELECTION OF 1864 ........................................... 255

CONCLUSION

THERE ARE WORSE CONDITIONS TO WHICH WE MAY BE DRIVEN:
THE END OF CONFEDERATE TEXAS ................................ 284

BIBLIOGRAPHY .................................................... 296
<table>
<thead>
<tr>
<th>LIST OF MAPS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas Counties and Congressional Districts</td>
<td>21</td>
</tr>
<tr>
<td>Gubernatorial Election 1861</td>
<td>35</td>
</tr>
<tr>
<td>Gubernatorial Election 1863</td>
<td>138</td>
</tr>
</tbody>
</table>
INTRODUCTION

A LABYRINTH OF TEXAS POLITICS

This is a study of political activity in Texas during the Civil War, a subject to which surprisingly little attention has been paid. Nearly four decades ago Charles W. Ramsdell surveyed some of the problems involved in writing the history of the Southern Confederacy and urged the student of the Confederacy, among other things, to plunge into ante-bellum state politics. Ramsdell was convinced that local and intrastate issues were as important in state affairs as reactions and responses to Federal politics. Without being specific he also asserted that local ante-bellum political alignments, personal rivalries, and social and economic distinctions carried over into the Confederacy and helped to shape the peculiar nature of that exercise in nation-making.¹ More recently Frank E. Vandiver reviewed problems that remain unsolved in Confederate history. He has suggested that new questions, new source materials, and new analytical tools might produce new answers regarding the Confederate experience; he has cautioned, however, that old questions, including those that puzzled Ramsdell, persist and demand answers.²

Although Vandiver tends to view the Confederacy from the perspective of Richmond, or more particularly from the window of
Jefferson Davis' office, he has taken a rare, hard look at the Trans-Mississippi West and has tried to unsnarl some of the tangles in that oft-ignored Department. He admits, however, as Ramsdell attested earlier, that the history of the Trans-Mississippi Confederacy will become comprehensible only after historians prowl the labyrinth of intrastate politics, factional rivalries, and personal contests that fashioned the particular experiences of the western states.  

Some mysteries of the Western Confederacy Robert L. Kerby has pierced in his recent *Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-1865*. The title is somewhat misleading because Kerby devotes two full chapters to affairs in the West between 1861 and 1863, before Jefferson Davis appointed General Kirby Smith to command the Trans-Mississippi Department. In one of those introductory chapters Kerby points to problems Texans faced during the war: shortages of all kinds of supplies, inflation, inadequate transportation, unionism and suspected disloyalty, and, above all, demoralization among both soldiers and civilians as the western states became increasingly isolated from the Confederacy. These difficulties and their solution were necessarily subjects for political debate in Texas, but Kerby's real interest is the Western Confederacy as a whole. He sees Texas, therefore, from Shreveport, Kirby Smith's headquarters, and deals with the configuration of state politics only in passing.  

While historians have neglected the non-military aspects of Civil War Texas, they have not ignored the state's ante-bellum
politics. Randolph Campbell, for example, has lifted the Texas Whigs from obscurity and has managed to identify their stand on some public issues. Frank H. Smyrl and Ralph A. Wooster have scrutinized the Unionists and the Know-Nothings to the point that the two groups can no longer be equated. Indeed, Wooster, in sifting through the Federal Census returns for 1850 and 1860, has provided a body of valuable data on Know-Nothings, secessionists, legislators, wealthy Texans, slaveholders, and even foreigners in the state. Llerena Friend's biography of "the great designer," Sam Houston, has moved beyond its central figure to survey pivotal issues of the 1850's, including frontier defense. Earl Forsell's study of Galveston on the eve of secession has examined the island city's personalities and factions, scanned the development of informal banking operations, and sorted through at least some of the intricacies of railroad politics. Roger A. Griffin, in two recent articles, has delved into the sectional nature of railroad politics and has sketched in broad strokes the controversy that preoccupied many leading men of the state during the 1850's. In short, we know something about the parties, the major figures, and the critical issues of frontier defense and internal improvements in the decade before secession.

Still, historians have not seen fit to act upon the suggestions of either Ramsdell or Vandiver to determine whether and in what ways these ante-bellum alignments and issues carried over into the political experience of Civil War Texas. Instead, they have been content to follow the example of Oran M. Roberts, Democratic politician, state supreme court justice, and secessionist, who wrote
in 1897 that there had been "little controversy of a political character in Texas" during the war. Frank Lubbock, enthusiastic secessionist and war governor, similarly deemphasized—or disregarded altogether—dissension and discord in Texas. It is probably in part because Roberts and Lubbock were leaders intimately connected with state affairs during the war that later writers have found it difficult to quarrel with their assessment of political conditions. Consequently, those who have studied matters as significant as the complex wartime cotton trade, the state's tortured financial system under the Confederacy, and the massacre of German "Tories" have consistently dismissed or ignored the political matrix that formed these and other issues. In other words, and at the risk of oversimplifying, most accounts of "Texas in the Civil War" have been written as if flourishing ante-bellum politics had been starved and shriveled in a war-induced vacuum.

But a good deal of ordinary political activity, including controversy, took place in Civil War Texas: elections were held; courts handed down rulings; legislatures met and debated; and officials carried out their administrative duties. It is not at all obvious or necessarily true that conflicts occurring among wartime factions were disconnected from the course of ante-bellum politics. Nor is it certain that affairs in Civil War Texas can best be understood as a sub-species under the category "Confederate." Between her annexation by the United States and her secession in 1861 Texas took part in a federal political system for little more than fifteen years, hardly long enough to develop mature and stable
relationships within the Federal Union. Thus, Texas entered the Civil War as a kind of unfinished product and her political course, isolated as she was from the national politics of either Union or Confederacy, cannot simply be assumed. The aim of the present study is therefore to describe political activity in Civil War Texas, to find patterns of factionalism (where the often slender evidence allows), and to assess the impact of the war on the state's political development.

Additional reasons exist--beyond the statements made by Roberts and Lubbock--for the failure of historians to penetrate the maze of Texas wartime politics. To begin with, the absence of scholarly studies of either the Texas Democratic Party or of the state's leadership, with the important exception of biographies of Sam Houston, John S. ("Rip") Ford, John H. Reagan, and Louis T. Wigfall, limits the ability of historians to generalize or to write comprehensive political history of the period. Second, much of what occurred in Civil War Texas, especially after the spring of 1863, was dictated either by Confederate lawmakers in Richmond or by military officers in Shreveport. Thus, to understand Texas lawmaking, financing, purchasing, and peacekeeping requires a vision broad enough to encompass Richmond and the Trans-Mississippi as well as Austin. But third, and perhaps most important, historians have failed to probe the political labyrinth because they have worked from a limited definition of politics. Politics has to them meant party politics, or at least the controversies of identifiable factions. Consequently, they have often assumed, in the absence of the
traditional two-party division, the absence of politics altogether.10

It has been asserted, for example, that in the gubernatorial contests of 1861 and 1863 voters had no choice between issues or ideologies; rather their only choice was between candidates alike in their vigorous commitment to the Confederacy and alike, therefore, in the only thing that mattered politically at the time.11 And a glance at the election of 1861 (setting aside temporarily the election of 1863) would seem to confirm historical judgments that there were no controversies, no divisive issues, no politics—merely a pageant of personalities. The gubernatorial candidates in 1861, incumbent Edward Clark and challengers Frank Lubbock and T. J. Chambers, did support the Confederacy and oppose any "reconstruction" of the old Union. Each was, furthermore, a member of the old Democratic Party, itself an amalgam of supporters of the war by the summer of 1861. Thus, any gubernatorial candidate for whom a Confederate Texan voted could be regarded as dedicated, Southern, and safe.

But granting that in the first excitement of secession and war loyalty to the Confederacy was the only political qualification much discussed, how likely is it that voters perceived Clark, Lubbock, and Chambers as if each had been born politically only the day before secession? Texas Democrats were indeed united in support of the Confederacy, but their party was also an amalgam. Under the label of Confederate nationalism, in fact, three quite different kinds of Democrats (if not more) appeared during the war. For Frank Lubbock and E. H. Cushing, influential editor of the Houston Telegraph, for
example, enthusiasm for the Confederate experiment meant a willingness to put aside all qualms against subordination of civil to Confederate military authority. But in respect to the same crucial issue, Guy M. Bryan and Fletcher S. Stockdale, both in 1861 organizers of the secession movement, took loyalty to the Confederacy to mean state rights and, eventually, a curb on the tendency of the army to usurp Texas' state powers. William Pitt Ballinger, a lawyer of Whiggish background whose law seemed to flow from John Marshall and Joseph Story, took a third and undoubtedly more reflective position that the Confederate Constitution conveyed to the government at Richmond enough power to secure the public good and that, therefore, no further aggrandizement of military authority was necessary.  

Certainly the lack of a two-party system in Texas affected politics, even if it did not mean their absence, but no historian has yet examined the nature of one-party politics in Texas. By 1859 both the Whig and Know-Nothing parties, promising at various points in the fifties, had receded before the hurricane of the slavery question. The Democracy were left to quarrel alone about such issues as frontier defense, the slave trade, secession, and the merits of Sam Houston.  

It is certainly true that Democratic politicians spoke much about unity in the face of federal aggression during the secession crisis and afterwards, but the group that shouts loudest about unity is not necessarily the most unified. There can be no doubt that further close study of the Texas Democratic party from the fifties through the Civil War (and probably beyond) would be a highly desirable, if enormous, task to undertake.
On the level of national politics David Donald, David M. Potter, and Eric McKitrick have considered the consequences for the South of one-party politics. Their several articles suggest questions worth asking about Texas as well. All three historians find that the North's two-party system was an important asset in mobilizing and managing "the energies needed for sustaining the Union war effort," something that the South's "popular front" could not do. In the Confederacy, McKitrick and Potter in particular argue, the lines of party communication necessary to hold the "nation" together never existed; issues, interests, needs, and fruitful political opposition to the Davis administration could never find coherent expression.¹⁴

If McKitrick, Potter, and Donald are correct, if a congenital weakness of the Confederate "nation" was the failure to form a two-party system, one result for Texas was to accentuate her isolation from the rest of the Confederacy. That is, Texas politicians, lacking political allies, machinery, or interests at the national level, would have continued to concentrate on state issues—excluding those that carried over from the 1850's—rather than on strictly Confederate ones.

Furthermore, in the absence of such conventional party institutions as conventions, it would have been left to legislative sessions and informal caucuses to perform normal political functions. When legislators convened, one result of one-party government might well have been a less disciplined session, for example, even in the absence of great issues and in spite of the unity—always talked about by Confederate politicians. Differences had to be resolved somewhere
and accommodation reached, and a legislature thus occupied probably would have been less productive than one whose members were answerable to party dictates. The Texas legislature met formally for only 140 days—in two regular and three called sessions—after all, and much of its time was spent on routine matters, such as frontier defense, district court schedules, and finance, that could not be avoided whether in peace or war, prosperity or civil disintegration. And if legislators were also concerned with party questions that would normally have been dealt with in other ways and at other times, there would have been little time left to consider broad constitutional, legal, or political issues.

Richard E. Beringer, on the other hand, points to evidence that in the Confederate Congress at least factions had begun to emerge by 1864 that might have proved, if allowed by circumstances to continue, to be incipient political parties. The kind of statistical analysis Beringer used in grouping Confederate lawmakers is not at present possible for Texas. Nevertheless, the state's politics should be scrutinized for signs of the kind of factional behavior to which Beringer refers. Beringer notes that there were enough issues within the Confederate states to form the basis of party division; the exposition of Texas politics which follows might allow some sort of tentative conclusions concerning new groupings in Texas. Were these factions beginning by 1864, for instance, to fulfill the role of parties? If so, what was the relationship between the new groups and the old divisions in the Texas Democratic party? Was there ever in Texas, as Beringer finds in North Carolina, a
clear division between "Confederate diehards" and a "Peace Party".\textsuperscript{17}

A final general question that might be asked on the basis of the raw material of Texas politics during the war has to do with the true nationality of Texans. Political behavior might be seen, for instance, as largely a continuation of the politics of the United States, wrenched out of shape by the violence of the slavery controversy. Or Texas politics might have represented in concrete ways an emerging Confederate nation, still of undetermined continuity with the federal past. Or, as a third possibility, Texas nationalism, which had adherents in 1861 and again in 1864-1865, might have been the source of political attitudes and configurations. There is not nearly as much evidence as one would like concerning the political ideas of Civil War Texans, but if the conflict had something to do with nationalism, its various possible forms offer, in Texas, a picture that is at present confused. Neither this nor the other general questions outlined above can be asked, let alone answered, if it is assumed that Texas simply suspended political activity during the Civil War or if it is supposed that significant political developments could have appeared only after the Confederacy disappeared.

To return now to the gubernatorial election of 1861, it is clear that while Confederate loyalty was not a controversial question, no election in which more than 57,000 men voted (very nearly the normal electorate) and in which the margin of victory was 124 votes can be dismissed as if nothing was at stake but "personality." Such an explanation implies that personality is a matter of style rather than substance. Style, especially rhetorical style, and public
demeanor were obviously important to nineteenth-century politicians and their constituents. But equally important and more to the present point is that people represent issues or facets of issues even when the issues themselves are not being debated. Consequently, if historians intend to attribute the outcome of elections, for instance, to personalities, they must stretch and refine the meaning of personality to include all the elements that normally constitute "politics." Otherwise they explain nothing.

But if Texas historians would roam beyond their usual narrow definition of politics to look at the ways men have used the formal, public institutions of government to acquire and then to secure power, they might see state politics, whether involving one, two, several, or no parties, as a series of struggles and accommodations between factions, sections, personal rivals, and interest groups. Certainly the application of a broader definition of politics would allow the study of the election of 1861—and indeed of political activity in Civil War Texas—to become a reservoir of possibilities.

Thus, the present study: a history of politics in Civil War Texas, but by no means intended as a full-scale political history of the state in that period. The latter kind of work, a synthesis of biography, political analysis, detailed examination of Confederate relations, conclusions concerning economic issues, and further study of the war and public opinion, must await answers to several inquiries not undertaken here. One great need, already suggested, is for solid biographies of leading Texans. William P. Ballinger and Guy M. Bryan (brothers-in-law) are two for whom more than enough material exists
and whose roles before, during, and after the war need to be assessed. Ballinger's papers in particular are a rich source for further study and should lead to any number of more specialized topics, among them Whiggery in Texas and the administration of the Confederate Sequestration Act.

Another concern—also involving Ballinger—is the legal profession in Texas: backgrounds, training, attitudes, and relationships of all sorts, both among lawyers and between lawyers and planters. Texas supreme court cases need to be related to particular Confederate legislation. The activities of state district courts—especially in their administration of the writ of habeas corpus—have never been related to the overall history of the state, nor has there been a systematic study of William Pinckney Hill's Confederate Court for the Eastern District of Texas or of Thomas Devine's Western District Court. Further work is also needed on stay laws and on the connected question of legal tender. An eventual goal would be to understand the relationship between agrarian relief measures (that aided many besides the poor) enacted in the 1860's and the better known agrarian movements of the later nineteenth century.

Much work remains to be done with respect to economic affairs in Civil War Texas. Cotton purchasing (and transportation) needs comprehensive treatment especially since Judith F. Gentry's discovery that in 1864 the Texas Loan Agency, and not the State Military Board, was contracting for most of the cotton in the state.¹⁹ Competition for cotton between Confederate and Texas agencies needs further attention as do the related activities of well-known Texas merchants
and mercantile firms. State finances should be re-examined, although to render them intelligible will be a formidable task until the records of the State Comptroller are catalogued.

Military matters have been investigated, but the organization and operation of the state militia remains to be clarified, and no thorough analysis exists of relations between the militia and Confederate military authorities. Nor has there been a modern study of the Confederate Labor Bureau's slave impressment activities. Indeed, the Negro is the most "forgotten man" among Texas Confederates. A survey of laws enacted during the war relating to Negroes—which proved to be beyond the scope of this paper—and a study of their enforcement in local courts would be helpful. Since Texans, in the early months of 1865, began to consider arming slaves, it would be desirable to know what they regarded to be the implications—for the Negroes and for themselves—of such a drastic move.

But it is still the Democratic Party of Texas—and especially the state rights wing that led Texas out of the Union—that demands the historian's greatest attention. The state rights Democrats are more mysterious today than ante-bellum Whigs, Know-Nothings, Germans, or Union Democrats. Except for Ralph A. Wooster's analysis of the membership of the Secession Convention, no profile exists of state rights Democrats based on census data or other sources to match what is known about other politico-economic factions. Nor has the institutional anatomy of the state rights Democracy been examined, and the historian has at present no accurate guide to the intricacies of party organization. Much more needs to be known
about the Democratic party's organization in the 1850's and about continuity between the pre-war party and its Confederate successor. The Texas congressional delegation's activities should be explored and, with them, the larger question of state-federal relations. (Was Richmond as convinced as was Austin that the state of Texas was an isolated stepchild of the Confederacy?) On this question Texas may prove not to have been typical of the Confederate states in important ways. P. W. Gray, for example, deserves a close look, for his membership in the House Finance and House Judiciary Committees in Richmond, as does C. C. Herbert by reason of his extraordinary obstructions. Texas governors have been better studied, perhaps, than other political figures in the state (always excepting Pendleton Murrah), but even here such basic questions remain as the degree to which they used patronage in state politics or the veto in governing. Finally, the whole of Texas politics during the Civil War must eventually be connected far more carefully with Reconstruction. The political roots of Reconstruction Texas lie deeper than the beginning of the A. J. Hamilton Administration in 1865.

What remains to be done in Texas history—and this list is surely not exhaustive—suggests the truth of the call issued by a political scientist at one of the state's universities, "Come to Texas and study politics [or history] at their primeval best." 21
NOTES

INTRODUCTION


In his uniquely tantalizing way, Ramsdell touched on the immature and unfinished nature of Texas as a political community in "The Texas State Military Board," 253-254.


12 No attempt at systematic analysis is intended; the point is simply the diversity of constitutional and political opinion within the Democratic Party and under the label of "Confederate nationalism."


15 William Pitt Ballinger wrote on this point: "Unless I could anticipate a useful plan of action to be adopted, I see no particular good from a meeting of the Legislature. It is a weak body--for which I have very little respect in any particular. . . . Assemblies, consultations, pow-wows, are nothing, unless they be to carry out a well conceived, clearly marked policy prepared for them, or by them. Decision, wisdom, energy are not likely. . . . to come by them." See Ballinger to Guy M. Bryan, January 15, 1865, Guy M. Bryan Papers (Bryan-Ballinger Correspondence, Eugene C. Barker Texas History Center Archives, University of Texas at Austin.

16 Actual votes for many important issues are not known, unfortunately.


18 This expanded definition of politics is based on works cited


21 Professor Paul Van Riper, Chairman of the Political Science Department of Texas A&M University to this writer, March 29, 1974.
CHAPTER I

THE FAITHFULNESS OF FORMER YEARS:
ELECTION OF A WARTIME GOVERNOR, 1861

At the beginning of the Civil War, Texas was a part of the American frontier, vital, expansive, and immature. Its population, including slaves, was slightly more than 600,000, a near tripling since the 1850 census: 420,000 were free whites and of that number, between 125,000 and 130,000 comprised the potential electorate.\(^1\) Census figures for both 1850 and 1860 are available for eighty counties, and in all eighty population had risen during the decade. In the counties near the Rio Grande, the increase was modest, about 16\%, but in the recently settled north-central region of the state, Tarrant County (Fort Worth), for example, had grown by more than 700\%. Longer-settled counties in East and Central Texas increased usually from 50\% to 200\% between the two censuses. In addition, fifty-three counties not listed in 1850 reported 1860 populations—ranging from fewer than 50 people in several to more than 6,000 in Freestone and McLennan counties.

Towns had undergone the same explosive development: Austin from 600 to nearly 3,500; Galveston, the island city, from 4,000 to more than 7,000; Houston from 2,400 to nearly 5,000; and San Antonio from 3,500 to more than 8,000 people. Other substantial
towns included New Braunfels in the West, with some 3,500 inhabitants in 1860; Marshall, in the East, with 4,000; Brownsville, at the extreme southern tip, with a population of 2,700; and new northern and northeastern towns like Dallas, Paris, and Sulphur Springs with populations ranging from 1,500 to 2,500. In a period of almost runaway growth, mobility, not stability, was the prevailing social pattern, and optimism, conditioned by the evident growth, the prevailing attitude of Texans.

The Trinity River, flowing from near Dallas into Trinity Bay near Houston divided the state into eastern and western regions, two sections of nearly equal population in 1850; by 1860, however, the West was beginning to draw ahead slightly. In western Texas where there were nearly 20,000 Germans in 1860, 30% of the new immigrants came from free states or from foreign countries during the 1850's; a substantial number of Western immigrants came most recently from eastern Texas. The East, by contrast, got more than 95% of its new residents directly from slave states. But in both sections slave and free populations more than doubled in the decade before secession.

Farming was, of course, the principal occupation of the state, and the richest areas, some of them filling up by 1860, were the cotton lands of East Texas and of the river bottoms of the Brazos, Trinity, and Colorado rivers. By 1860, agricultural (stock-raising and grain cultivation) had extended to the edge of the great plains in North and Central Texas. Other occupations and professions were represented in the towns in quite ordinary proportions. There is
no evidence to show that, despite Texans' reputation for ferocity and frontier toughness, the state's pattern of settlement was much different from those of any part of the American western frontier. School-and dancing-masters found employment; literary societies formed; book stores opened—as westward migrating Americans attempted to carry with them the cultural baggage of more settled regions.

For political expression, the state's thirty-four newspapers of 1850 had become seventy-one in 1860; towns like Marshall, Austin, and Galveston were able to support two presses. Several periodicals were published in Texas, but most appear to have been religious or literary in nature; a few books published in the state, however, reflected in their titles a bitter division between Unionists and Secessionists. At any rate, there is no doubt that Texans in 1860-1861 were vocally concerned with politics; like other Americans, they were either excited by new developments or despaired because of them—but they were certainly alive to the rhetoric if not the realities of national politics. ²

Texas politics in the six months after secession followed such an unusual course that Oran Roberts could easily—if superficially—assert that all issues extraneous to the war itself were subordinated during the gubernatorial campaign in the summer of 1861. Even the statewide nominating convention, a device adopted first by the Know-Nothings in 1855 and then by the heretofore euphoric Democrats to meet the Know-Nothing challenge, seems to have been a casualty of the war. The Democrats, or to be more precise, the
state rights wing of the Democratic party, did hold a convention in Dallas on May 27, 1861. Only twenty-six counties sent official delegates, however, and although the convention organized and elected officers, it adjourned *sine die* without nominating a governor or lieutenant governor, congressional representatives, or Confederate electors.³

Several factors undoubtedly contributed to the failure of the convention to perform the tasks which had been customary since 1856: to adjust claims to office among aspiring politicians and to arrange and maintain a communications network that would facilitate the election of Democratic nominees. First, the "war fever" had gripped Texans to such a degree that even the leading men of the state could think of little else.⁴ Second, Texas had received a call for 5,000 troops and among the most ardent and energetic volunteers were some Democratic politicians who had figured prominently in recent party activities. Consequently, the convention could not be well-attended nor could it be representative of the aims of the county organizations.⁵ Third, there seems to have been a strong sentiment against holding a convention at all because, as one East Texan wrote, "we donnt [sic] want to raise any political issue upon which secessionists differ."⁶

In addition, the convention was to be a Democratic convention, but not all secessionists were Democrats. Many of them were, in fact, refugees from Whiggery, Know-Nothingism, and even Union Democracy. To bring together under the rubric of secession and "war fever" an otherwise disparate group of men might have led to uncompromisable differences of opinion on such persistent issues as tariffs, internal
improvements, railroads, and banking laws. When unity in the face of northern aggression was crucial, nominating conventions had to be avoided. Only a serious and organized challenge from Texas Unionists could have forced the convention to nominate a slate of candidates for state and Confederate offices. But such a coordinated effort to offer a complete ticket of candidates who sought a prompt "reconstruction" of the Union did not materialize.

Since 1861 was a gubernatorial election year, regardless of secession or of the state's new association in the Confederacy, it appeared in March--after the state's formal secession on March 2--and April at least that political activity was normal. That is, four men, Governor Clark, Lubbock, Chambers, and Fletcher S. Stockdale, declared they were candidates for the executive post; in addition, the newspapers mentioned as possible gubernatorial candidates a number of prominent men including John R. Baylor, John Gregg, M. D. Graham, P. W. Gray, E. E. Lott, and E. B. Nichols. Had the political situation developed according to the accepted pattern, the Democratic convention would have discussed these men, debated their qualifications publicly and privately, and selected an executive ticket based partly on sectional considerations, that is, upon an East-West balance. Moreover, the party leaders would have expected their peers and the rank and file to follow the party's dictates and support its nominees. Such party fealty was ingrained in many Democrats and Frank Lubbock, for example, despite his overweening desire to become governor, announced that he would withdraw his name if the convention met (he doubted that it would) and
nominated someone else. That it nominated no one left the race open, of course, to Lubbock and all other aspirants.

How the gubernatorial contest eventually shrank to a three-man race is not clear. Perhaps in the absence of official party nominations the politicians reverted to the pre-convention system of rallying around a candidate from the eastern or the western section of the state. The convention had been designed in part to distribute state offices between the sections and to prevent the often bitter clashes among sectional candidates. Without that regular forum for sectional accommodation, however, the leading candidates, Clark, an easterner and Lubbock from the West, may simply have shoved aside their potential sectional opponents and held fast in the race. At any rate, Stockdale, a westerner who might have cut into Lubbock's support, abandoned the campaign in mid-summer, probably in deference to Lubbock but perhaps also from a wish to concentrate the western vote on one candidate.

Chambers, the third candidate, initiated what turned out to be a lackluster campaign with a published circular in which he announced his candidacy for governor, reviewed his role in the secession movement, and affirmed his allegiance to the Confederacy of sovereign states. Although he had been a Texan since the 1830's and had twice before run for governor, Chambers seems never to have favorably impressed the public. Unaccustomed to "the ordinary means of electioneering," he nevertheless undertook an active speaking tour, during which he probably reiterated the contents of his circular and, when war actually commenced, emphasized
his former military exploits and fund-raising talents.\textsuperscript{13} Doubtless Chambers relied heavily on his record as a Major General in the Texas Revolution to persuade voters that they needed a man of his experience to lead them during wartime. That experience—and a substantial income enabling him to hold public office without financial sacrifice—was the route by which he hoped to win election.\textsuperscript{14} He knew, for example, that he lacked both "the extensive personal acquaintance" and the support of two leading newspaper editors, John Marshall and E. H. Cushing, on which Lubbock was depending for a victory. And Chambers also recognized that Governor Clark possessed the advantages of an incumbent: official patronage and official proclamations through which to publicize views at state expense.\textsuperscript{15} Furthermore, although a Democrat, a secessionist, and by strict geographical definition, an easterner, Chambers commanded little support among eastern party leaders. That is, whatever disciplined eastern Democratic organization remained intact after the outbreak of war and the enthusiastic volunteering, Chambers received no assistance from it.\textsuperscript{16}

Eastern Texas, or at least most of the area between the Trinity and Sabine rivers, had a favorite candidate in the race, incumbent Governor Edward Clark. A prestigious lawyer in Marshall, Clark had had a varied public career, serving as a delegate to the Texas Constitution Convention in 1845, as an aide to General (and Governor) James Pinckney Henderson in the Mexican War, and as Secretary of State under Governor E. M. Pease from 1853 to 1857. Clark has been dubbed a Democratic "middle-of-the-roader," but he might more properly
be labeled vacillating.\textsuperscript{17} For example, when the state Democratic party swung toward a more aggressive state rights-secessionist posture in the late 1850's, Clark, heeding the advice of such moderate Union men as Pease and Sam Houston, decided to break with the dominant party faction. That break and his solid identification with the eastern section of the state earned Clark a place on the "national Democratic" ticket headed by westerner Houston in 1859. Their opponents were state rights Democrats and incumbents, Hardin R. Runnels and Lubbock. Apparently a somewhat colorless and ineffective campaigner, Clark narrowly defeated Lubbock for the lieutenant governorship, although Houston, in a campaign that temporarily decelerated the secession movement in Texas, won a decisive victory over Governor Runnels.\textsuperscript{18}

By the winter of 1860-1861, however, sentiment had crystallized, and Lieutenant Governor Clark began to glide into the secessionist camp. Never a "rugged individualist," Clark probably sniffed the political winds and smelled opportunity.\textsuperscript{19} Consequently, when the Eighth Legislature deposed Governor Houston after his refusal to take an oath of allegiance to the Confederacy, Clark eagerly took the oath and appropriated the office.\textsuperscript{20}

The new governor certainly was not without political and executive experience; nevertheless, some secessionists, including George Flournoy, the "Soul of [the] great movement," expressed surprise that Clark was "doing his whole duty" and that he seemed to be "thoroughly devoted to the interest of the state."\textsuperscript{21} Somewhat less charitably Sebron G. Sneed acknowledged that Clark had done
well "considering he [was] such a fool."

Whether the more ardent secessionists liked him or not was for the time being irrelevant; they were stuck with him, as were the Unionists who had made Clark "the recipient of their deepest and bitterest anathemas...."

Governor Clark, despite his awareness that he had joined the secession movement late and that he had incurred the wrath of Unionists for doing so, decided sometime before May 14 to push for a full term.

Clark announced his candidacy in a newspaper circular, noting that the pressing duties of his office would prevent his undertaking an active canvass of the state. Instead of campaigning, he probably planned to rely on the organizational talents of his Democratic friends in the East, some of whom were leading party men who had helped garner votes for Clark in previous campaigns. The governor could in addition, as Chambers had apprehended, distribute patronage rather freely and delineate his views through official messages and proclamations. Finally, Clark apparently hoped to compile such an enviable record as governor that he could neutralize the effect of his long association with Pease, Houston, and other anti-secessionists. A successful tenure as executive would also prompt the voters to regard Clark as a "known quantity," a dependable, committed, efficient, and persevering Confederate. His opponents might be equally dedicated but only Clark would possess actual experience as a wartime governor.

Clark learned, however, during that summer when "no one [seemed] to care a fig about the office [of governor]," that being the incumbent
could be as detrimental as it was advantageous.\textsuperscript{27} Despite the "war fever" and widespread indifference toward the forthcoming election, Clark was a visible governor whose policies, actions, and decisions would affect all Texans in general and some in particular. In the matter of appointments, for example, Clark seems to have had little room to maneuver without estranging some particular group. Conforming to standard practice, Clark, upon his succession, removed several Houston appointees and replaced them with men acceptable to himself and to the secessionists in the current legislature. But many secessionists of a more "radical stamp" favored Clark's removing "all Submissionists," advocated, in fact, "decapitating all without benefit of clergy who [had been] lukewarm or laggards in the glorious cause of secession."\textsuperscript{28}

For Clark to move too quickly, especially in the case of Thomas Carothers, Houston's popular appointee to superintend the state penitentiary, would, on the other hand, have jeopardized the governor's standing in Walker County, site of the institution. Evidently several secessionists there had persuaded some Union Democrats to support the Ordinance of Secession and in return pledged themselves to keep Carothers as Superintendent. Thus, those Union Democrats would have considered the removal of Carothers a "breach of faith."\textsuperscript{29} And consequently, in whatever direction Clark moved, he was bound to encounter hostility. Whether the governor's decision to retain Carothers was the principal reason for his running a very poor third to Chambers and Lubbock in Walker County is not clear.\textsuperscript{30} The available evidence does suggest, however, that
the governor's power over patronage had its political drawbacks.

As governor, Clark seldom could recommend policies or act without producing occasional ill will. His request, for example, that the Eighth Legislature continue state aid to the railroads, although consistent with the "settled principle" of internal improvements, provoked at least one editorial attack.\(^3\) The Dallas Herald called Clark's proposal an unwarranted scheme that would extend "with locomotive speed" the railroad corporations' influence over state legislation.\(^2\) The Herald's editorial ignored the salient fact that refusal to aid the railroads would precipitate their bankruptcy and moreover, leave the state without a transportation system at a critical time. While the connection between the railroad companies' stability and the state's military needs was clear to Clark, and probably to Chambers and Lubbock, the two challengers could skirt the subject and concentrate instead on the glories of the Confederacy and the barbarities of the Union. When either of them was safely ensconced in the Governor's Mansion, he could then discuss freely his views on that factious issue.\(^3\)

A similar advantage accrued to Chambers and Lubbock in the case of official policy regarding treason and sedition. Again, although the two challengers probably were equally opposed to any business communication with Northerners, only Clark had the opportunity—and the burden—of defining treason and sedition in an executive proclamation that would appear in the state's newspapers and be posted in the county courts. His sweeping proclamation, dated June 8, 1861, demanded the cessation of all political or
commercial intercourse with citizens of the United States. In addition, it suspended contracts between Texans and their northern enemies, forbade the sale of property or goods to Northerners, and prohibited any payment of debts to Northerners during the war. Clark further warned citizens of the United States that they could not visit Texas without authorized passports and that they would be arrested as spies if they refused to leave the state within twenty days.34

In spite of broad nature of the prohibitions specified in the proclamation, Clark seems not to have emphasized their enforcement, except in special instances involving known Unionists. When, for example, Austin mercantile magnate S. M. Swenson asked to be exempted from the commercial restrictions, Clark replied that "the existence of war itself, by international law, stopped all intercourse of whatsoever character between the citizens of the belligerent states. . . ." He had weighed carefully Swenson's request, Clark added, but could find no reason to relieve him of "burthens . . . which are felt and endured uncomplainingly by all others."35 It is doubtful, however, that "all others" cheerfully accepted the regulations. In fact, Clark received similar requests, but those he at least treated confidentially; Swenson's petition Clark submitted to the State Gazette for publication.36 The governor probably intended the proclamation to convince the "super-patriots" of his devotion and loyalty.37 Whether or not it had that desired effect, it did earn for Clark, among some men lukewarm to the Confederacy, the epithet, "to [sic] good a Southern man."38
Additional disadvantages in Clark's position further offset the normal advantages of incumbency: Clark buried himself in administrative duties, which resulted in his inability to fashion a large personal following or to campaign extensively; and he complied with Confederate requests for troops to be sent to Virginia when many Texans were almost paranoid about local defense. Clark's exceedingly strong support in the eastern counties simply could not overcome the relatively meager support he received in the Central Texas counties and in the more heavily populated coastal counties. The outcome of the election might have been different in a two-man race, but the gubernatorial election of 1861 involved three candidates and one of them, Frank Lubbock, was a particularly effective campaigner who enjoyed the backing of E. H. Cushing and the *Houston Telegraph*, and perhaps more importantly, of John Marshall, state chairman of the Democratic party.  

Unlike Governor Clark, who was preoccupied with raising troops for local defense, fulfilling Confederate troop quotas, supplying arms and munitions, and solving the state's financial woes, Lubbock had ample opportunity to cultivate voters, at least in those areas near Harris, his home county. Furthermore, John Marshall, dynamic party organizer and *State Gazette* editor, probably exerted his influence in Lubbock's behalf among local Democratic leaders. It is clear, at least, that Marshall had relinquished all hope of persuading Senator Louis T. Wigfall to become gubernatorial candidate, had rejected Clark because of past apostasies, and had ignored even the possibility of Chambers' being a credible candidate. Marshall's
influence plus Lubbock's own personal following (formed during two earlier campaigns for lieutenant governor, the successful one in 1857 and the losing effort in 1859), gave Lubbock an advantage that neither Clark nor Chambers shared. The probable importance of Democratic organizational influence is accentuated, moreover, by a survey of the votes in the four major western population centers, Travis, Bexar, Harris, and Galveston counties. Lubbock carried them by margins of 62%, 69%, 73%, and 78%, respectively.43

Almost as valuable an asset as the Democratic organization's support was Lubbock's own consistency in adhering to the advance guard of the secession movement. His candor, commitment, and activity as a state rights Democrat since the inception of the organization led Charles De Morse of the Clarksville Standard to write just before the election that "Old Democrats and State Rights Whigs seem disposed to vote for Lubbock, and to reward the faithfulness of former years."44 Even Sam Houston, surely no secessionist Democrat himself, considered Lubbock a "patriot" and voted for him since Clark, Houston's former running mate, had, after all, forsaken the old chief.45 Others probably voted against Clark for similar reasons. However reluctant Texas Unionists may have been to vote for ardent secessionists such as Lubbock and Chambers, they were loathe to support Clark. Their antipathy towards him is most readily revealed by Clark's failure to carry more than six of the nineteen counties in which the Unionists had managed to defeat the February Ordinance of Secession.46

As late as July 27, E. B. Nichols, the Galveston financier,
confided to Governor Clark that the forthcoming election, scheduled for August 5, had stimulated little interest and sparked little conversation, at least in the island city. Nichols added that it was "impossible to form any opinion of the result [of the election]."47 Perhaps the absence of substantive differences among the candidates over matters pertaining to the war and Southern independence had subdued the normally vocal electorate. As in the case of the abortive nominating convention, had the Unionists mounted an overt challenge, the situation might have been altered dramatically. But without a Union candidate voters never really had to consider the loyalty of the three contenders; that had been established. Therefore, they voted on the basis of their particular perceptions of the candidates, taken from past politics more than from anything that was going on in the summer of 1861. In short, since no statewide political or economic controversies had been permitted, either by circumstance or design, to enter the election, and since there were no major quarrels with Confederate officials or policies, voters could only revive, and express at the polls, old attitudes toward the three candidates.

Despite seeming indifference throughout the summer, the voters turned out in quite respectable numbers. Those who have dismissed the election of 1861 as an inconsequential race among candidates of similar ideology have usually pointed to the shrunken electorate to prove their contention.48 In 1861, however, the total gubernatorial vote was 57,402. That vote compared with 63,727 polled in the frenetic Houston-Runnels contest in 1859 and 60,826 polled in the
secession referendum in February, 1861. Assuming that several thousand Texans had volunteered for military duty and had left the state, the number of men who voted was not insignificant and plainly suggests real concern--of some kind--about the choice to be made.

Curiously, Lubbock carried the day by the slim margin of 124 votes; Clark ran second with 21,730 votes and Chambers trailed with 13,733 votes. Thus, the election could be regarded as neither a mandate for Lubbock nor a repudiation of Clark. Instead, the closeness of the vote reveals again the impact of the absence of state and Confederate issues on the electorate. The voters went to the polls armed only with their impressions of the candidates, impressions formed through actual contact, through party propaganda, through newspapers, and through heresay.

Chambers' vote, much larger than he had received in his two previous races, suggests, for instance, that many Texans voted for an old "Texian" with adequate credentials rather than for an incumbent who had helped to unseat the "great designer," Sam Houston, or an avant-garde secessionist intimately tied to the Marshall-Runnels faction of the Democratic party. Furthermore, Chambers received heavy votes in counties with substantial German populations; although Chambers himself had once been associated with Know-Nothingism, it was not his but rather Clark's alleged connection with that moribund group that seems to have been resurrected during the campaign. Lubbock had charged Clark with Know-Nothing sympathies in the canvass of 1857; he probably revived those stories in 1861 only to discover that among German voters, many of whom had
opposed secession, the charges benefited him less than they helped Chambers.\(^{53}\) That is, Lubbock was the more vocal and visible secessionist and his stand on that issue had greater impact among Germans than any alleged flirtation with Know-Nothingism that Chambers may have had. In fact, a cursory analysis shows that throughout the western counties, where Lubbock might have expected to run very well, Chambers consistently cut into his strength. Without Chambers, whose candidacy nobody seemed to fear, Lubbock might have won the executive office by a wider margin.

Shortly after the election, but weeks before the outcome was clear, W. E. Oakes wrote Governor Clark that 500 fraudulent votes had been cast for Lubbock in Bexar County (San Antonio).\(^{54}\) No evidence exists either to substantiate or to refute Oakes' charge, but Lubbock had carried the county with 69% of the vote.\(^{55}\) That was a striking margin because Bexar County had been a Unionist stronghold throughout the secession crisis. In the election for delegates to the Secession Convention, for example, the San Antonio secessionists won victories "only by superior political diplomacy."\(^{56}\) And to ratify the Secession Ordinance in a county with a virulent anti-secessionist newspaper editor, James P. Newcomb, with several prominent Unionist leaders, and with a foreign-born population (German and Mexican) comprising 36% of the whole, undoubtedly had taken the intrepid efforts of local secessionists and their quasi-military adjuncts, the Knights of the Golden Circle.\(^{57}\) Thus, Lubbock's big success there was unusual and might be explained in several ways: either he had mustered a potent local following that
included county election officials; or Clark's political career since January, 1861, had oscillated too much to satisfy any faction; or San Antonians had decided—all candidates being equal—to stand with the western man; or fraud had indeed been perpetrated. An accurate recipe for Lubbock's important victory in Bexar County would probably mix all of those possibilities to some degree.

It seems clear, however, that the key to Lubbock's statewide victory, whether or not achieved fraudulently, was the Democratic organization in the large western counties. Clark had an organization, or at least the assistance of important Democrat leaders in the East and there he polled an exceptionally strong vote. In the Fifth (Confederate) Congressional District extending from Harrison westward through Palo Pinto, he carried every county by margins varying from 86% to 44%. In those counties Clark profited from being an easterner since any easterner was preferable to a westerner, unless of course a convention had arbitrated the opposing claims and decided on a balanced ticket. But to compensate for Lubbock's anticipated strength in the West, Clark would have had to sweep all counties east of the Trinity River and directly south of the Red River and that he failed to do.

Although some aspects of the election of 1861 remain enigmatic, that the war had not eliminated politics or public interest in politics is plain. Because the three gubernatorial candidates agreed on the paramount issue, support of the Confederate experiment, historians have been lulled into believing that the election pivoted simply on personalities. They have even projected onto later
statewide elections what they perceived to be the chief characteristic of that first wartime election. That was, of course, the candidates' similarity in outlook and ideology that has been assumed to preclude a real political contest waged against a backdrop of controversial issues. The same historians have attributed the voters' choices to the candidates' personalities without looking closely at either the voters or at what the candidates' personalities represented. And they have accepted uncritically declarations that Texas civil government "was not called upon to exercise more than perfunctory acts of administration," that with "nearly every able-bodied man ... in the army, ... the happenings at home were not eventful."59 The home front, however, was "eventful" because, among other things, political activity, intrigue, controversy, and accommodation persisted unabated. Public issues such as aid to railroad companies, frontier defense, and state finance that had engrossed Texans for years continued to interest and occasionally to confound them. As the war dragged on and its impact mushroomed, the Texas governors and legislators were forced to broach new problems and to rehash the old. And they almost always did so within a framework of past political consciousness.
NOTES

CHAPTER I


2 Llerena Friend, "The Texan of 1860," Southwestern Historical Quarterly, LXII (July, 1958), passim, but especially 1, 2-4, 6-7, 9, 13-14; Barnes F. Lathrop, "History from the Census Returns," Southwestern Historical Quarterly, LI (April, 1948), 293-312; Lathrop, "Migration into East Texas," Southwestern Historical Quarterly, LII (July and October, 1948, and January, 1949), 4-7, 11, 13, 21, 31, 199, 340-42; Ralph A. Wooster, "Foreigners in the Principal Towns of Ante-Bellum Texas," Southwestern Historical Quarterly, LXVI (October, 1962), 208-220; and county and town population statistics from the Texas Almanac, any recent edition. The idea of intrastate migration from east to west has never been worked out, but it may have been dramatic. O. M. Roberts attributed part of his political success to "the constant emigration from the East" where he had lived "to the West and northwest parts of the State." In other words, his friends had remained political allies and assets as they moved westward in Texas. See O. M. Roberts to W. D. Miller, Miller (W. D.) Collection, Archives Division, Texas State Library, Austin. (Hereinafter cited as State Archives.)


4 M. F. Locke to Edward Clark, May 30, 1861; J. W. Knowles to
Clark, June 4, 1861, Governors Letters (Clark), State Archives. See also G. B. Lipscomb to Jack Campbell, June 10, 1861, Jack Campbell Letters, Eugene C. Barker Texas History Center Archives, University of Texas at Austin. (Hereinafter cited as Barker Center Archives.)

5. Texas State Gazette (Austin), April 27, 1861.


8. J. N. Dodson's comment seems to have been typical: "I shall oppose any nomination unless there is a prospect of opposition." That was written after Dodson had been weighing the merits of three Congressional candidates in the Fifth District; all three candidates, R. B. Hubbard, M. D. Graham, and Pendleton Murrah, were avid secessionists. Therefore, Dodson did not object to having several loyal Confederates in the race, but if faced with Unionist opposition, he wanted to settle on one loyal candidate. See J. N. Dodson to O. M. Roberts, May 15, 1861, Roberts (Oran Milo) Papers, Barker Center Archives.


11. See Texas Republican, June 29, 1861; Billy D. Ledbetter, "Confederate Texas: A Political Study 1861-1865" (unpublished M.S. thesis, North Texas State University, 1969), pp. 46-47. Stockdale apparently organized a movement to obtain the gubernatorial nomination at the Dallas convention; he not only failed in that effort but also failed to solidify his support in the southwestern counties. See W. M. Cook to Clark, June 12, 1861, Governors Letters (Clark). Stockdale was young enough (thirty-four) and prominent enough, however, to try again for statewide office. He was also a loyal party man willing to defer to the wishes of the party chiefs. After his inauguration, Lubbock appointed Stockdale aide-de-camp with the rank of Colonel of the Cavalry. See Lubbock to Stockdale, December 6, 1861, Governors Letterbooks (Lubbock), State Archives.
Thomas Jefferson Chambers, "To The People Of Texas," Circular, April 6, 1861, July 10, 1861, Texas Broadside Collection, Barker Center Archives.

Ibid.

Chambers was listed in the 1860 census as owning $550,000 in real property, $30,000 in personal property, and sixteen slaves. See Ralph A. Wooster, "Wealthy Texans, 1860," Southwestern Historical Quarterly, LXXI (October, 1967), 173. Chambers owned a substantial amount of land in Falls County, Texas, on which he paid no taxes. See Wm. M. Wright to Edward Hanrick, April 25, 1861, Edward Hanrick Papers, Barker Center Archives.

Chambers, "To The People Of Texas." See also Lubbock, Memoirs, pp. 321-324.

According to Chambers' biographer, he was present at the first open meeting of the state Know-Nothing party. See Llerena Beaufort Friend, "The Life of Thomas Jefferson Chambers" (unpublished M.A. thesis, University of Texas [at Austin], 1928), p. 139. It is not known whether Chambers was an active Know-Nothing; he had returned to the Democratic fold by 1858 in any case. See Lubbock, Memoirs, p. 233; and the Southern Intelligencer, January 20, 1858. If Chambers had been an active Know-Nothing, his influence in the state rights faction of the Democratic party would certainly have declined.

The phrase is from Justin Whitlock Dart, Jr., "Edward Clark, Governor of Texas, March 16 to November 7, 1861" (unpublished M.A. thesis, University of Houston, 1954), p. 28.

Lubbock, not an unbiased observer, thought Clark was an awkward campaigner. The two lieutenant gubernatorial contenders canvassed much of the state together in 1859. See Lubbock, Memoirs, pp. 248-254; and Dart, "Edward Clark, Governor of Texas," p. 123.

The phrase is from Dart, "Edward Clark, Governor of Texas," p. 31.


The description of Flournoy is from John C. Robertson to O. M. Roberts, October [?], 1861, Roberts Papers. George Flournoy to Roberts, July 8, 1861, Ibid.

S. G. Sneed to [?], June 13, 1862 [1861?], Sebron G. Sneed Family Papers, Barker Center Archives.
23. T. S. Anderson to Dr. [C. G.] Kennan, April 11, 1861, Governors Letters (Clark).

24. That Clark had decided to enter the race several weeks before he issued a public statement is evident. See Richard H. English to Clark, May 14, 1861, ibid. Clark wrote on the English letter, "Am a candidate for Gov & shall be thankful for his help." Clark eventually carried Kaufman, English's home county, with 69% of the vote.

25. Texas State Gazette, June 22, 1861.

26. See, for example, English to Clark, May 14, 1861; Locke to Clark, May 30, 1861; and J. M. Maxcy to Clark, June 30, 1861, Governors Letters (Clark).

27. G. B. Lipscomb to Jack Campbell, July 8, 1861, Jack Campbell Letters, Barker Center Archives.

28. See T. S. Anderson to Dr. [C. G.] Kennan, April 11, 1861, and A. P. Wiley to Clark, April 4, 1861, Governors Letters (Clark).

29. A. P. Wiley to Clark, April 4, 1861, ibid. Clark received several letters urging him to retain Carothers. Most of the correspondents acknowledged that the dismissal of Carothers "would be ruinous to the Secession party." See, for example, W. H. Randolph to C. H. Randolph (State Treasurer), April 4, 1861; R. H. Archer to Clark, April 6, 1861; and James Gillaspie to Clark, April 6, 1861, ibid. Carothers was Sam Houston's cousin, in 1859 his unofficial campaign manager, and one of the executors of his estate. Llerena Friend, Sam Houston, The Great Designer (Austin: University of Texas Press, Texas History Paperbacks, 1969), pp. 310-317, 352.


31. Governor Clark to Gentlemen of the House and Senate, 8th Adjourned Session, March 29, 1861. Correspondence and Proclamations of the Governor, 1846-1879, Records of the Secretary of State, State Archives.

32. Dallas Herald, April 24, 1861.

33. After Lubbock was inaugurated in November, 1861, he recommended continued state aid to the railroad companies. See Senate Journal, Ninth Legislature, p. 56. See also Chapter II, infra.

34. Proclamation By the Governor of the State of Texas, June 8, 1861, Texas Broadside Collection, Barker Center Archives.
Clark to S. M. Swenson, July 4, 1861, Governors Letterbook (Clark).

See, for example, W. D. Newton & Brother, Mayer & Co. to Col. P. N. Luckett, June 17, 1861; and R. & D. G. Mills to Clark, June 22, 1861, Governors Letters (Clark). Swenson's petition, dated June 12, 1861, and Clark's reply were printed side by side in the State Gazette, July 13, 1861. After Swenson's petition was publicized, J. M. Swisher, another Austin Unionist and merchant wrote Dr. James H. Starr that Governor Clark and the Gazette were as usual "endeavoring to make 'much ado about nothing' out of [Swenson's letter]." Swisher to Starr, August 1, 1861, James H. Starr Collection, Barker Center Archives.


Dr. F. Bracht to Clark, August 31, 1861, Governors Letters (Clark).

According to William G. Webb, Clark was blamed for having permitted any state troops to go to Virginia. Webb despaired that because of the active campaigns waged by Chambers and Lubbock and because of prejudiced charges made against Clark, the governor would lose the county. Webb to Clark, August 3, 1861, Governors Letters (Clark). See also John McCreary to James H. Starr, September 27, 1861, Starr Collection; and Dart, "Edward Clark, Governor of Texas," p. 123.

Lubbock, Memoirs, p. 324.

Lubbock claimed that he made "very few speeches" in the 1861 campaign, but that his opponents made "an active canvass." Ibid., p. 324. Although he probably did not cover the state, Lubbock made several speeches in counties near Harris. See, for example, Webb to Clark, August 3, 1861, Governors Letters (Clark); and H. A. McPhail to Clark, July 15, 1861, ibid.

According to Leann Cox Adams, "Francis Richard Lubbock," Ten Texans In Gray, ed. W. C. Nunn (Hillsboro, Texas: Hill Junior College Press, 1968), p. 81, fn. 35, the State Gazette endorsed Lubbock on June 22, 1861. This writer was unable to find an endorsement of Lubbock, but the extant issues of the Gazette are irregular. It appears, however, that the newspaper hedged on an endorsement for either Lubbock or Clark. See, for example, the State Gazette, July 6, 1861, and September 21, 1861. Nevertheless, the probable activities of the Democratic organization in Lubbock's behalf indicate, as Lubbock himself contended, that Marshall backed his candidacy. Marshall wrote Wigfall that if he wanted to be the "next Gov . . . there would be no opposition." See Charlotte M. Wigfall to Halsey [Wigfall], April 26, 1861, Louis T. Wigfall
Family Papers, 1860-1862, Barker Center Archives. Although Marshall was among the most important and influential Democrats in the state, very little is known about him or his role in organizing and energizing the Democratic party. But see Larry Jay Gage, "The Texas Road to Secession and War: John Marshall and the Texas State Gazette, 1860-1861," Southwestern Historical Quarterly, LXII (October, 1958), 191-226. Clark's return to the state rights-secessionist fold did not mollify Marshall, who remembered Clark's departure in 1857. See Dart, "Edward Clark, Governor of Texas," p. 123.

These percentages are based on voting returns, Senate Journal, Ninth Legislature, pp. 6-8. As a resident of Harris County, Lubbock might have been expected to carry it by a wide margin. He was also well-known and popular in Galveston. See Earl Wesley Fornell, The Galveston Era: The Texas Crescent on the Eve of Secession (Austin: University of Texas Press, 1961), pp. 203-205, 229, 258-259, 274. A. W. Terrell of Travis County predicted that Lubbock would carry his part of the state. Terrell believed that "it was bad policy" for Clark to send troops to Virginia but queried, "[W]hat can you expect from a drunken Governor?" Terrell to Maj. Ed Burleson, August 5, 1861, Edw. Burleson, Jr. Papers, Barker Center Archives.

Clarksville Standard, July 27, 1861.

Houston to F. R. Lubbock, August 9, 1862, Amelia W. Williams and Eugene C. Barker, eds., The Writings of Sam Houston, 1813-1863 (8 vols.; Austin: University of Texas Press, 1943), VIII, 316.

The figures are based on a comparison of voting returns, in Senate Journal, Ninth Legislature, pp. 6-8, and the "Counties Voting Against Secession" map in Ernest Wallace, Texas in Turmoil: The Saga of Texas, 1849-1875 (Austin: Steck-Vaughn Company, 1965), p. 70. Clark's loss of support among Unionists is revealed further by a comparison of the counties he carried with counties that reflected the most solid Unionist sentiment in Texas between 1856 and 1861. There were thirty-eight "Unionist" counties; Clark carried only ten of them in 1861. See Frank H. Smyrl, "Unionism in Texas, 1856-1861," Southwestern Historical Quarterly, LXVIII (October, 1964), 194-195.

Nichols to Clark, July 27, 1861, Governors Letters (Clark).

See especially Wallace, Texas In Turmoil, p. 116.

Senate Journal, Ninth Legislature, pp. 6-9. For the 1859 vote, see Winkler, comp., Platforms of Political Parties in Texas, 645; for the vote on the secession referendum, see Winkler, ed., Journal of the Secession Convention of Texas, 1861 (Austin: Texas Library and Historical Commission, 1912), pp. 88-91. In a recent study, Joe T. Timmons concludes that there were several errors made in recording the vote on the Ordinance of Secession. His revised

50 Senate Journal, Ninth Legislature, p. 9. There were also eighty-five "scattered" votes cast.

51 In 1851 Chambers received 2,320 votes or 8.2% of the total vote cast; in 1853 he received 2,449 votes or 6.9% of the total. Election Returns 1851, 1853. Records of the Secretary of State, State Archives. Chambers' vote in 1861 was 24% of the total. Chambers' vote may have reflected in part the desires of Texans who preferred to return to the old independent republic rather than join the Confederacy.

52 The Clarksville Standard, July 20, 1861, revived allegations of Clark's connection with Know-Nothingism in the 1850's. The governor was described as belonging to that "uncertain tribe who recognize no guide, no light, or tie, except self-promotion."

53 Lubbock, Memoirs, p. 251.

54 Oakes to Clark, August 27, 1861, Governors Letters (Clark).

55 Senate Journal, Ninth Legislature, p. 6.

56 Lois Council Ellsworth, "San Antonio during the Civil War" (unpublished M.A. thesis, University of Texas [at Austin], 1938), p. 17. The Mexican citizens in Bexar County may have contributed to the secessionists' "superior" diplomacy. A. Supervie acknowledged in 1865 that "the weight of his patronage was not what it had been "for the reason that hundreds of Mexicans have left the country." See A. Supervie to Guy M. Bryan, March 5, 1865, Guy M. Bryan Papers, Barker Center Archives. In other words, Supervie may have been precursor of the more modern South Texas "jefe".

57 See, for example, Dale A. Somers, "James P. Newcomb: The Making of a Radical," Southwestern Historical Quarterly, LXXII (April, 1969), 449-469. Roy Sylvan Dunn estimates the foreign-born population of Bexar County at 36.5%. His figure includes the foreign-born population of Wilson County which was carved out of Bexar and Karnes counties in 1860. See Dunn, "The KGc in Texas, 1860-1861," ibid., LXX (April, 1967), 564. Kenneth W. Wheeler estimates that between one-third and one-half of San Antonio's population was of Mexican origin; Mexicans had little independent political or economic influence, however, in the city or the state. See Wheeler, To Wear A City's Crown: The Beginnings of Urban Growth In Texas, 1835-1865 (Cambridge, Mass.: Harvard University Press,
1968), p. 147. See also Ralph A. Wooster, "Foreigners in the Principal Towns of Ante-Bellum Texas," Southwestern Historical Quarterly, LXVI (October, 1962), 208-220. The Knights of the Golden Circle were very active in San Antonio during the secession crisis and probably for several months after secession. See Dunn, "The KGC in Texas," and A. Superviecle to Governor Clark, June 27, 1861, Governors Letters (Clark).

58 These percentages are based on the voting returns, Senate Journal, Ninth Legislature, pp. 6-8.

CHAPTER II

A CONSIDERABLE AMOUNT OF BUNCOMBE LEGISLATION:
THE SESSION OF NOVEMBER, 1861-JANUARY, 1862

Legislators who assembled in Austin on November 4, 1861, the State Gazette reported, were generally unknown to the "political world." Fewer than twenty per cent of them had served in the previous Legislature; the great majority had not served in any Legislature. This lack of experience combined with the absence of party discipline and specific legislative objectives might, of course, make legislators more dependent on the advice of the governor, more easily trapped in the complicated parliamentary maneuvers of skilled lawmakers, and more susceptible to the pleas of railroad lobbyists. But in the earnest optimism of 1861, the newspapers could only extol the presence of new faces, of men "fresh from the people" who would, it was anticipated, practice "a greater self-denial than former [legislative] bodies" while they concentrated on the general problems confronting the state.1

Certainly there was no paucity of problems. In a brief valedictory intended to stir the Legislature to action, retiring Governor Clark alluded to defective militia laws, insufficient finances, and the manner by which he had assumed the governorship as obstacles to his managing the state in wartime. He hesitated,
he said, to recommend specific policies since he was the "creature of the Convention and not directly of the people"; but, as he recounted the measures already taken to defend the state, he outlined the tasks remaining as he perceived them. Foremost was the defense of the state against threatened invasion. The Legislature needed to reorganize the militia, procure arms, and establish training camps. Arms required funds, however, and Clark harped frequently on the financial condition of the state. For instance, the Treasury had a balance of only $36,866.34 on August 31, 1861, and although the Eighth Legislature in its adjourned session had authorized the negotiation of a $1,000,000 loan, no bonds had been sold. Consequently, the state lacked sufficient funds to pay for defense and maintain the civil lists. Not only were the state's finances suffering because of the unexpected costs associated with defense and because of the inability to market its bonds, but the generally depressed economic conditions had led at least five railroads to default the interest payments on their debts to the state. Believing that a forced sale of the delinquent railroad companies to the state, as authorized by law, would be profitless to all concerned, Clark suggested that the Legislature consider extending some kind of relief to the railroad companies.²

Scruples which prevented Clark's recommending specific legislation did not affect Lubbock. The new governor, in a message to the Legislature dated November 15, focused on the problems mentioned earlier by Clark and for some, at least, suggested particular remedies. In asking for revision of the militia laws, Lubbock
proposed subjecting all able-bodied men between seventeen and fifty to duty. The governor reiterated Clark's suggestion that railroad companies be granted relief, perhaps an extension of the time during which interest payments to the state could be made. To this he added that the people, because of recent crop failures, pressures on the money markets, generous voluntary contributions to the defense effort, and the blockade, required relief from personal debts and private creditors in order to "protect [themselves] from ruinous sacrifices or utter bankruptcy." On the other hand, Lubbock, noting that the Comptroller had estimated the state treasury's deficit would reach nearly $600,000 by August, 1863, recommended an increase in the ad valorem tax rate from 12½¢ to 25¢ per $100 of taxable property: the people, relieved from private debt collections, could expect to make public sacrifices in the form of higher taxes. The Comptroller had advised a reduction in the price of public lands from $1.00 per acre to 50¢ per acre, but Lubbock seemed convinced that land sales even at the lower price would bring in far less than the amount needed to sustain the treasury. Consequently, he did not press cheaper public lands on the Legislature but instead affirmed his belief that the state must "rely almost entirely on taxation" to finance its civil and military expenditures.

Because Texas' currency was specie-based and because the treasury was devoid of gold or silver, Lubbock was forced to recommend the issue of non-interest bearing warrants to cover the cost of civil government. Since current treasury warrants—both
those bearing 10% interest and those bearing no interest—were selling at huge discounts, Lubbock urged the Legislature to make them receivable for taxes and public dues. That, he suggested, would appreciate the warrants to a point near face value. And in a gesture that was practical as well as patriotic, Lubbock suggested that the Legislature place Confederate treasury notes on the same footing by making them receivable in payment of public dues. The details of legislation relating to these issues Lubbock left to the lawmakers, but not before expressing confidence that they would limit themselves to "matters of general interest and . . . pressing necessity."³

According to the State Gazette, the main item of business before the Legislature was the election of Confederate Senators.⁴ However important the election may have been to the State Gazette, it nevertheless consumed little of the Legislature's time or energy. No legislator seems to have minimized the need for capable Texas Confederates in the national Congress, but in the absence of Unionist opposition, the only matter to be resolved was who among the leading Texans would represent, in customary fashion, the eastern and western sections of the state. Louis T. Wigfall, outspoken secessionist, fire-eater, and one-time United States Senator, won the eastern senatorial post against minimal opposition. The election of a western senator, however, required three ballots before W. S. Oldham won the seat by a bare majority of votes. There is no record of the individual votes of the Representatives, but the Senate roll calls indicate stiff and durable opposition to Oldham.⁵
Not until December did the Legislature pass any important general acts. One representative wrote that "we are having a considerable amount of Buncombe legislation" and ten days later reported that the House of Representatives had spent one full week debating a bill to limit the spread of "scab" in sheep and an amendment to the estray law. The writer, S. B. Hendricks, represented the East Texas counties of Harrison and Panola and disdained those bills such as the "act to protect the wool growing interests . . . from scab," the estray law amendment, and a further proposal to encourage frontier defense by granting settlers one hundred acres from the public lands. That Hendricks, A. Parker, and probably other eastern representatives could decry proposals designed to advance the specific interests of the western and especially frontier areas of the state demonstrated a wide diversity in agricultural pursuits and in economic matters generally. Instead of limiting themselves to "matters of general interest and . . . pressing necessity" as Governor Lubbock had hoped, the legislators spent nearly ten weeks examining and debating bills, both public and private, general and special, which reflected sectional—rather than state—loyalties.

Perhaps the strongest jealousies were engendered by those acts whose effects would be general but whose advantages would vary sectionally. A case in point was the so-called Stay Law ("An Act suspending all laws for the collection of debts and liabilities on bonds . . . and contracts for the payment of money, until the first day of January, 1864 . . . ") enacted in December. Public
desire for a stay law of some kind antedated Lubbock's request that the Legislature provide relief for the burdened debtors of the state; early in the session, therefore, several senators submitted either bills or resolutions relating to exemptions from forced sales and to suspension of the collection laws. While the Senate Judiciary Committee considered these bills and resolutions, opposition to a stay law developed among senators from the grain and stock-raising regions of the state. "Prairie country" farmers, ranchers, and stock raisers had ample quantities of grain, cattle, and wool to sell and a ready market, in the form of the army, to sell to. Consequently, anticipating a superabundance of money, the last thing they wanted was a law to prevent the collection of debts. On the other hand cotton planters, presumably suffering the effects of the blockade and the constricted cotton market, would benefit from a stay law; in fact, the State Gazette reported that the law was drafted specifically to aid the cotton planters. The Judiciary Committee itself could not agree on a stay law. The division within the committee probably represented the division of economic interest within the state; Chairman John T. Harcourt, however, objected on constitutional grounds to the bill reported by the committee. To Harcourt and perhaps to other lawyer-legislators, the bill "so materially [impaired] the obligation of contracts as to bring it within the prohibition of the [State] Constitution." Despite sentiment against the bill, which one legislator called "strong and violent," the Senate passed the measure by a vote of sixteen to fourteen. In the House where the opposition to the Stay Law was
"violent but powerless," the bill passed by a vote of sixty-seven to eighteen.  

A survey of the Senate's vote on the Stay Law does not show a straight east-west or prairie-cotton division. A majority (nine) of the negative votes came from senators representing the grain, stock-raising, and frontier regions, but three eastern Texas senators also voted against the bill. There is some evidence to indicate that frontier members in the House of Representatives tried to link passage of the Stay Law, which was to their disadvantage, to the passage of a frontier protection bill. A similar bargain might have been arranged in the Senate and would account for the four affirmative votes on the Stay Law registered by senators usually identified with economic interests other than cotton. At any rate, opposition to the frontier bill, which passed the Senate several days after the Stay Law, was limited to those senators from the eastern counties of Titus, Smith, Cherokee, Houston, Angelina, and Jasper.

The Stay Law represented a relatively comprehensive effort to provide relief from debt payments especially for cotton planters and for those whose financial security was tied to them, who found themselves short of money and markets as the war progressed. Because the law was designed to benefit a special interest, it was open to charges of "class legislation"; moreover, as one critic suggested, it would be a "fruitful source of litigation," the effect of which would be to make the men who had gone to war even more anxious about their property. The editor of the State Gazette predicted
that within a year the call for an extra legislative session to repeal the Stay Law would ring louder than the demand for its passage. The Stay Law, he wrote, would dry up credit and eventually permit the monied "sharks," "Shylocks," and "shavers" to control the business of the country. The *Tri-Weekly News* expressed the same opinion editorially adding that more "bad men" would take advantage of the law than "good men" would benefit from it.\(^1\)

Once the Stay Law was enacted and relief for debtors, especially cotton planters, was obtained, the Legislature turned to aid the railroad interests of the state. Both Ex-Governor Clark and Governor Lubbock had acknowledged the difficulties facing the railroad companies the state had chartered. Encouraging the development of an intrastate railroad network as well as tying in with a transcontinental rail system had been goals of state politicians and railroad promoters for a decade. How the state might use its resources to foster internal improvements—whether, in fact, the state should use its resources to advance such programs—were questions around which many of the political controversies of the 1850's had pivoted.\(^2\) By the middle of the decade, a law had been enacted authorizing the state to grant public lands to the railroad companies and to lend them, at the rate of $6,000 per mile of track completed, some of the 5% United States indemnity bonds which Texas had received upon surrendering its claims to New Mexico under the provisions of the Compromise of 1850. About $2,000,000 of the 5% indemnity bonds had been placed in a special School Fund and when lent to the various railroad companies, were secured by 6% first
mortgage bonds. The law required the railroad companies to pay interest in specie and to maintain a 2% Sinking Fund. Because of the war, the railroads' inability to attract capital, the scarcity of construction materials, and the general malaise of the economy, several of the companies had reneged on their interest payments, while others had halted work on track which they were by law committed to complete at designated times. To fall short on their contracts meant forfeiture of their charters and of the lands already granted; the state would then become the owner of the roads by default. Obviously the railroad promoters and investors wanted relief; just as obviously the state wanted to avoid assuming ownership and control of the indebted railroad properties.

Coupling the state's interest with the railroad companies' interest prompted firm but essentially impotent resistance in the Senate. (There are no recorded votes in the House on railroad relief measures.) Four senators from sparsely populated northern frontier counties consistently opposed railroad relief bills; they usually were joined by M. W. Wheeler from the "maverick" eastern county of Angelina, the only eastern county to vote against the Ordinance of Secession, and by R. K. Hartley, senator from Galveston, Liberty, Jefferson, and Chambers counties. It is not known whether these six senators objected to tampering with the sacred School Fund, or whether they resented special relief on behalf of any interest (four of the six had opposed the Stay Law; another had not voted on that measure), whether they registered constitutional opposition to relief, or whether they merely tilted at colleagues on extraneous political
grounds. At any rate, their persistent attempts to stall railroad bills, to burden the bills with amendments, and ultimately, to defeat them indicates an enduring sectional division when combined with the strong support for the bills among eastern, coastal, and central Texas senators.

The first railroad relief bill to pass the Senate suspended until six months after the war the interest and 2% Sinking Fund payments due on the loans from the special School Fund. Perhaps because the bill affected the School Fund, ten senators opposed the measure. The Senate passed two additional general relief acts: the first extended the time for the performance of railroad company contracts; the other halted any forfeiture of charters or land grants on account of failure to fulfill contracts, specifically those relating to the miles of track completed. Although both these bills passed by wider margins than the first, they were amended in a curious manner. Each included a provision, introduced by Jefferson Weatherford, an anti-railroad senator from Dallas, denying to the Houston and Texas Central Railroad Company all benefits bestowed by the acts until the company restored the rights and privileges of bona fide stockholders who had been divested of them when the corporation was sold to W. J. Hutchins and other railroad entrepreneurs. Weatherford voted against all the railroad relief measures, but in those two instances at least he was able, probably with some help from House members, to tap some latent animosity toward the influential Houston railroad interests.

Occasionally some legislators—for example, A. N. Jordan,
C. B. Shepard, S. W. Beasley, S. B. Hendricks, Horace Cone, M. M. Potter, and J. H. Parsons—doubled as lobbyists for the railroad bills. In the case of special relief for the Southern Pacific Railroad Company, however, agents of the company arrived in Austin to lobby for a bill which would extend extraordinary aid to the company. Pendleton Murrah and Colonel James S. Holman, along with the East Texas members for whom the railroad had long been a pet project, labored diligently to obtain, through special legislation, United States indemnity bonds for the company although it had not completed its prescribed miles of track nor graded the road on the prescribed route. Following a futile effort by B. T. Selman to force the road to be constructed through Tyler in his home county of Smith, the Senate passed the bill by a vote of nineteen to six, Selman joining the inveterate foes of railroad relief in opposition. The Legislature also granted assistance beyond that furnished through the general laws to three other railroad companies, the Eastern Texas; the Houston, Trinity, and Tyler; and the Texas and New Orleans. While the war may have changed the condition of many Texans, it apparently did not alter the legislators' determination to encourage the development of an internal improvements system; in fact, the war and military necessity may have bolstered that determination. In other words, politicians during the early stages of the war generally attended to the same kind of legislative business which had preoccupied them before the war.

Of the several controversial measures enacted by the Ninth Legislature, only the "revenue bill" produced as much excitement
and intrasectional strife as the Stay Law. The "revenue bill" was but one of several bills relating to the dismal financial condition of the state that the Finance Committee reported to the House of Representatives, but it quickly earned the label "monster of the session." Horace Cone, representative from Harris County and chairman of the important House Finance Committee, recommended the same ad valorem tax increase previously suggested by Governor Lubbock and Comptroller C. R. Johns, that is, an increase from 12½¢ to 25¢ per $100 of taxable property. In addition, Cone and his committee proposed to increase the poll tax (required of all white males over twenty-one) from 50¢ to $1.00, to raise substantially the occupation taxes, and to impose an income tax of sorts. The general objective of the revenue bill was to place the state on a "pay up as it goes" basis; according to Chairman Cone, the proposed revenues would be sufficient to finance the civil government and retire the state debt in two years. A desire to obtain revenues through increased taxation and a corresponding reluctance to defer the debt through comprehensive funding and issuing of bonds pervaded the committee's report. In fact, Cone could not resist the opportunity to chastise the Eighth Legislature for its lack of foresight in financial matters. With a war at hand, with the probability of an extensive blockade, and with potential money markets closing, the preceding Legislature had failed to increase taxes, thus necessitating higher taxes later from a people less able to pay them.

The "revenue bill" rolled around the House during December,
exciting greater opposition, it appears, each day it was discussed. Critics of the bill, originally eight in number and most of them from the eastern counties, questioned the need to pay off the state's debt in the next two years. Why, they asked, should not the state's creditors await their money until more prosperous times? And why, when even the Confederate war tax was difficult to collect, when a stay law had to be enacted, was it so "imperiously necessary" to raise taxes? One member suggested that all Tax Assessors and Collectors resign so that taxes could not be collected; he later moderated his proposal, however, and suggested that the state debt be funded while a tax was levied to finance civil expenditures.  

If S. B. Hendricks' reasons for opposing the "revenue bill" were typical, the bill's opponents were neither unpatriotic nor fiscally irresponsible. They merely reflected the plight of a section (or more accurately, a sub-section) of the state hurt more than any other by the blockade. Grain growers and stock raisers, themselves unaffected by the blockade, sold their produce, beef, and wool to the state and Confederate government at what Hendricks called "double its value." The cotton planters west of the Trinity River transported their cotton to the border and sold it at a profit to buyers in Mexico. But the blockade cut the eastern cotton farmers from their markets in New Orleans and Galveston; their alternative was the long and economically prohibitive trip to the Rio Grande. "Remove the blockade," Hendricks declared, and "the people of the cotton section of the east would respond as readily to the calls of the State for a large revenue by increased taxation" as would men
In other sections. 31

In the meantime Hendricks and his colleagues from the eastern counties fought the "revenue bill" over "every foot of ground." When, after several parliamentary maneuvers, the bill came to a vote, they defeated it by three votes, 42 to 39. 32 Almost immediately the bill's sponsors, probably Cone, M. M. Potter, and other members of the House Finance Committee, successfully moved to reconsider the vote. Then, in an attempt to induce various members to change their votes, the sponsors of the "revenue bill" evidently threatened to set aside the frontier protection bill, repeal the Stay Law, even dismember the state. They enticed some men to change their votes with offers of government patronage and military commands. Nor was pressure to change votes restricted to the House; the Austin merchants who held between $200,000 and $300,000 in 10% treasury warrants began reducing their value from near par to about 30¢ on the dollar. That tactic caused a panic that "forced timid members into the traces." Even some of the eastern representatives voted for the bill upon its reconsideration, and it passed by a majority of twenty-three votes. 33

By this time either opponents of the "revenue bill" had spent themselves or the monetary crisis precipitated by the Austin merchants' quick depreciation of the warrants had quieted resentment against a tax increase because the Senate barely quibbled over the bill. Or perhaps the lawmakers, wearied by the long session and baffled by the complexities of crisis-induced legislation such as stay laws, simply wanted to adjourn and return to their homes.
Whatever the reasons, they complied with the Senate Finance Committee's report which itself disagreed with the House action on financial matters only in a few particulars. For example, the Senate committee report, unlike that of the House, emphasized borrowing. The committee urged establishment of a revenue system that combined moderate taxation with provisions for borrowing $2,000,000 from citizens of the state. The committee justified loans on the grounds that these could be more quickly subscribed than taxes could be assessed, collected, and disbursed; furthermore, the committee believed that under the extraordinary circumstances facing the state it was only fair to divide the burden of taxation with posterity.\textsuperscript{34} Because the committee stressed borrowing $2,000,000 rather than funding the outstanding debt, the proposal was probably more amenable to the eastern representatives in the House than a system which relied too heavily upon increased taxation. How much the Senate trimmed the tax levels set by the House on occupations and incomes is not known; the Senate Finance Committee did record its objections to income taxes, but the bill finally adopted by the Senate—without a roll call—included an inconsequential tax on incomes exceeding $500 \textit{per annum}.\textsuperscript{35}

During the final week of the session, Pryor Lea, an elderly Southwest Texas land speculator and railroad promoter who chaired the Senate Finance Committee, carefully steered the sundry financial measures through an apparently acquiescent Senate. No roll calls were taken on the bills; thus, if any battle lines had been formed, they were quietly abandoned. The Legislature passed and Governor
Lubbock signed several important acts related to the state's revenues, credit, debt service, and expenses. That state Treasury warrants and Confederate treasury notes should be receivable in payment of taxes and all other public dues was established by law; however, a recommendation that Confederate money constitute legal tender was rejected.36 Several acts recognized the principle of borrowing on the credit of the state and reflected simultaneously a commitment to service the debt as quickly as possible.

Shortly before adjournment, Governor Lubbock signed two measures, perhaps passed in secret session, which proved to be immensely important: "An Act to provide arms and ammunition ... for the military defense of the State" and "An Act to provide funds for Military purposes."37 The first of these acts created a Military Board composed of the Governor, Treasurer, and Comptroller. The Military Board was directed to purchase arms and ordnance; to accomplish these objectives, the Legislature set aside $500,000 in bonds that had been authorized by an act passed in the previous (Eighth) Legislature. The Board could sell the bonds for money with which to buy arms, or it could simply exchange the bonds for arms and ammunition. The second act extended broader authority to the Military Board because it empowered the members (or a majority of them) to dispose of any bonds in the Treasury on any account, provided that an equal amount of Confederate bonds be substituted in the tapped accounts and that the disposal of bonds not exceed $1,000,000. Curiously, neither the press nor the public nor, it appears, the legislators gave much notice to these measures. Yet
the acts granted extraordinary power to the Executive in a state which customarily had restrained executive authority. And they created and energized the only new governmental agency designed to meet the abnormal conditions of wartime.

Disharmony and disagreement among legislators characterized much of the session, but at least the lawmakers maintained satisfactory relations with Governor Lubbock, that is until he penned a caustic message vetoing a bill providing for mileage and per diem compensation for the legislators. According to the outraged governor, the Legislature intended to appropriate for itself virtually all the specie that remained in the state treasury, about $8400. In addition, the members would receive warrants from the Comptroller permitting them to draw on their county tax collectors for any balances due. In short, the legislators would be paid in money more valuable than that used to pay other state officers, employees, or soldiers. Austin residents had an opportunity to read the bill with the subsequent veto message in the State Gazette, which until January 4, 1862, had been sluggish in reporting legislative activities. At that point, however, the State Gazette began a campaign in support of the governor while roundly condemning the grasping legislators. Lubbock noted that some members claimed that his veto message was "demagogical," that his attacks upon the Legislature were unwarranted, and that some of his comments cast "unjust reflections upon their patriotism." If the sponsors of the mileage and per diem bill were angry with the governor, they were even more annoyed with the State Gazette
for publishing the bill and the veto message. Consequently, the bill's sponsors in the House initiated a two-pronged attack. First, the House voted fifty-two to twenty-four to override the governor's veto; and then the House, apparently at the insistence of A. S. Broaddus, representative from Burleson County, voted to amend a routine public printing bill so that the State Gazette would be excluded from bidding on state printing jobs.\(^{41}\)

The fate of the mileage and per diem bill, the editorial integrity and independence of the State Gazette, and perhaps even the influence of the governor now depended on the Senate. Three days after the House overrode the governor's veto, the Senate voted sixteen to ten to sustain the veto and thereby defeat the mileage and per diem bill.\(^{42}\) The State Gazette termed the Senate's vote an "act befitting its dignity," and the Galveston Tri-Weekly News agreed, declaring that the Senate had "[relieved] the Legislature from a stigma of reproach which would have redounded to their everlasting disgrace."\(^{43}\) A few days later the Senate refused to concur in the House's amendment to the public printing bill, hence preserving what I. R. Worrall, the interim editor of the State Gazette, chose to call "the freedom and sanctity of the press."\(^{44}\)

Outside the Legislature, Lubbock's veto was popular and many newspapers around the state supported him. Edward Clark, the former governor, wrote Lubbock that on his way to Marshall, he had heard nothing but "expression[s] of approval" regarding the veto. From Lampasas County came a plea from several citizens that the governor
"blob, scratch, or otherwise obliterate" their names from a petition recommending a military appointment for their representative, James P. Magill, who had voted for the mileage and per diem bill.45 Inside the Legislature, the veto was less popular. Despite the vote sustaining Lubbock's veto, the sponsors of the defunct bill persuaded both houses to appoint a Joint Committee to report on the Governor's veto message, a document they charged contained prejudicial remarks about the Legislature. The Joint Committee submitted both majority and minority reports, the former defending the mileage and per diem bill and the patriotism and sound policy of those who voted for it, the latter defending the governor's veto and the financial wisdom of those who opposed the bill. The Senate adopted the majority report, but the House apparently did not.46 Although Lubbock contended that "the momentary irritation arising from [the veto] was soon allayed," it is doubtful that the seven signers of the majority report or their supporters shed their resentment quickly.47

Late in the session Governor Lubbock complained that many of the legislators had failed to "rise up" to the emergencies that faced the state during wartime. Timid lawmakers, he said, hesitated to increase the state's indebtedness or prepare for effective self-defense.48 Coming as it did before passage of the financial measures and the military reorganization, Lubbock's criticism may have been premature, but it was not altogether wrong. Undoubtedly the governor expected the legislators' zeal for the Confederate cause to match his own; since his constituency was
the state, his perception of necessary legislation encompassed the state, and he thus assumed legislators would see problems as broadly as he saw them. In that, Lubbock was too optimistic. He had run for governor as a Democrat and Texas Confederate; he had campaigned without a platform or specific plan of legislative action. And the legislators with whom he worked had done the same. That is, they ran as Texas Confederates, won as Texas Confederates, and went to Austin as independent representatives, bound neither to Lubbock nor to a tight party organization. Consequently, without special ties to Lubbock or to a functioning party that had definite objectives, most legislators simply concentrated on the regional needs of their constituencies. Much of their time was spent defining county boundary lines, creating new counties, incorporating schools and companies, scheduling district court sessions, granting private relief, and systematizing county patrols, a process required because many whites had left the state for military duty in the eastern Confederacy. Only belatedly did they seriously consider the issues upon which successful operation of the state during wartime depended.

The Legislature displayed, however, a determination not to be panicked into drafting legislation to meet the supposed exigencies of the war. The House Judiciary Committee, for example, rejected both a resolution instructing them to "inquire into the expediency of enacting a law more clearly defining treason," and a bill "to define and punish treason and treasonable conduct." The bill called for the death penalty for anyone found "levying war against
the State [of Texas] or adhering to its enemies, giving them aid and comfort." To transmit information to the enemy, to sell any property or goods to the enemy, or to assist the enemy in locating beef, corn, or other articles of subsistence would have been deemed punishable by death. The Judiciary Committee argued that treason was "as well and comprehensively defined in the constitutions of the Confederate States and of [Texas]" as it could be; any further attempt at definition would leave some case uncovered, thus enabling an offender to escape the penalties of the law. The committee also spurned a proposition in the bill that would have made "disparaging words a high crime punishable by confinement in the penitentiary" because it violated the Bill of Rights in the State Constitution. 49 Although the Legislature followed the committee's recommendation to reject that bill, it passed a sedition act framed in relatively mild language. 50

Until the military fortunes of the Confederacy declined, until the war itself pinched Texans, until the citizens and their representatives recoiled from the pressures, sacrifices, and inconveniences of the war, the Legislature would spend as much time haggling about local issues as it did about those of more general significance to the state. The Legislature had indeed granted relief to individuals and railroad corporations, a modicum of protection to the frontier counties, and unprecedented authority to the governor and the Military Board to finance the defense of the state. But it was too early and except for the blockade, the war was too far away in January, 1862, for the public or the press to worry about what
steps should be taken to prepare Texas for a prolonged war. Some editors simply assumed that an extra session would be required to correct the "very bad" legislation passed in the regular session, but they were not ready to suggest alternatives.
NOTES

CHAPTER II

1 State Gazette (Austin), November 9, 1861, and Tri-Weekly News (Galveston), December [?], 1861.

2 The Secession Convention had justified its actions--framing an Ordinance of Secession, holding a popular referendum, protecting the public safety, seceding from the Union, and joining the Confederacy--on the grounds that it represented the sovereign people. Clark was certainly its "creature," having taken the oath of loyalty to the Confederate States that Sam Houston refused to take; but he was also by the Convention's reckoning a representative of the people. Curiously, although Clark had qualms about his position, no one else seemed to entertain any doubts about it. Besides, a new governor had been elected and was about to be inaugurated, so that in practical terms, whatever anomaly was involved would soon be straightened out. For Clark's comments, see Governor Edward Clark to the Legislature, November 1, 1861, James M. Day, comp. and ed., Senate Journal of the Ninth Legislature of the State of Texas, November 4, 1861-January 14, 1862 (Austin: Texas State Library, 1963), pp. 21-35. (Hereinafter cited as Senate Journal, Ninth Legislature.)

3 Governor F. R. Lubbock to the Senators and Representatives of the Ninth Legislature of the State of Texas, November 15, 1861, ibid., pp. 49-59.

4 State Gazette, November 9, 1861.

5 Senate Journal, Ninth Legislature, pp. 47-49. Wigfall received 30 votes in the Senate and 82 votes in the House. His only opponent was R. H. Guinn, President pro tempore of the Senate, who received two votes. Prior to the Legislature's convening, there was a movement to elect O. M. Roberts senator from the eastern part of the state. It is not clear why the attempt failed. See Thos. J. Devine to Roberts, August 27, 1861 and John C. Roberts to Roberts, October [?], 1861, Roberts (Oran Milo) Papers, Eugene C. Barker Texas History Center Archives, University of Texas at Austin. (Hereinafter cited as Barker Center Archives.) Besides Oldham, the Legislature nominated westerners, Thomas N. Waul and John Hemphill; the contest centered on those three men although Fletcher S. Stockdale,
George W. Kendall, and W. B. Ochiltree, a state rights Whig, received votes on the first ballot. W. P. Ballinger, a whiggish opponent of secession who had been appointed an agent under the authority of the Confederate Sequestration Act, regretted the election of Oldham. He later learned that R. K. Hartley and several western senators had tried to block Oldham's election. See entries for November 21, 1861, and May 2, 1863, William Pitt Ballinger Diary (typescript), Barker Center Archives. Evidence of the western senators' stalling in hopes of gathering support against Oldham can be found in Senate Journal, Ninth Legislature, pp. 38-39, 48. Oldham's close association with John Marshall may have been a factor in provoking opposition. Reluctant rebels, such as Ballinger found Marshall's strict Democrat party discipline and control loathsome. Moreover, Marshall had been a leading proponent of secession since at least 1858 and had never advocated any attempt at compromise or conciliation with the forces of Unionism in Texas or elsewhere.

6 Texas Republican (Marshall), December 14, 1861, and January 4, 1862.

7 Ibid., December 14, 1861, and January 11, 1862.


9 On November 8, 1861, Senators Parsons, Scarborough, and Erath introduced bills that touched on these points; on November 11, 1861, Senators Burnet and Casey introduced similar bills, all of which were referred to the Judiciary Committee, Senate Journal, Ninth Legislature, pp. 19, 20, 37. The literature on Texas stay laws is sparse, but see Leroy Jeffers, "The Texas Moratorium Law," Texas Law Review, XII (June, 1934), 383-409 (esp. 384). East Texans hoped to fashion a stay law similar to the act passed earlier in 1861 by the Mississippi Legislature. See Hendricks to the Texas Republican, December 14, 1861. The most concise discussion of wartime stay laws is Paul W. Gates, Agriculture and the Civil War (New York: Alfred A. Knopf, 1965), esp. pp. 324-340. Informing his wife that the session might be a long one, Sam A. Maverick, representative from San Antonio, wrote that bills had been introduced for suspending the collection of debts; he seemed more interested, however, in those designed to reduce the expenses of the state government. ("Retrenchment" was an issue in the Ninth Legislature.) See Sam A. Maverick to Mary, November 10, 1861, Maverick Collection (Correspondence, 1825-1907), Barker Center Archives.

10 See, for example, State Gazette, December 14, 1861, and Texas Republican, December 14 and 21, 1861. Gates suggests that stay laws may, in fact, have aided planters more than the yeoman farmers and stockmen for whom the laws were ostensibly enacted. See Gates, Agriculture and the Civil War, p. 327.
For Harcourt's Judiciary Committee report to the Senate, see *Senate Journal, Ninth Legislature*, p. 66. The actual division within the Committee is unknown.

The quotation is from *Texas Republican*, December 14, 1861. *Ibid.*, December 21, 1861, shows a Senate vote of 18 to 12 in favor of the Stay Law; the Senate Journal shows a vote of 16 to 15, but my count of 16 to 14 in favor of the bill is based on the actual roll call in the *Senate Journal, Ninth Legislature*, p. 104. A careful reading of the printed journal reveals many errors; although it is helpful to have access to the printed journals, it is unfortunate that the editor did so little editing or proofreading.

The quotation is from *Texas Republican*, January 4, 1862. The House vote was published *ibid.*, December 21, 1861. Although that account may not be reliable, the manuscript journal for the House has been lost; thus, the printed journal is actually a compilation of other pertinent materials in what the editor believed to be chronological order.

*State Gazette*, December 7, 1861.

The four senators were S. H. Darden from Gonzales County, J. N. Houston from Bell County, Jefferson Weatherford from Dallas County, and J. F. Crawford from Fannin County. Those counties were usually classified as stock-raising or grain-producing counties.

*Senate Journal, Ninth Legislature*, p. 127. The only important roll call vote on the frontier protection bill followed a motion December 12, 1861, by R. H. Guinn of Cherokee County (East Texas) to postpone the bill indefinitely. There were six votes for postponement, that is, six votes against the bill and twenty votes against postponement, or twenty votes for the bill. On December 17, the Senate passed by a vote of 20 to 11 a modified bill reported by a Senate-House Committee of Conference. The six East Texas senators who had opposed the original bill were joined by three other eastern senators and two western senators who changed their votes. *Ibid.*, p. 143. S. B. Hendricks and A. Parker, representatives from East Texas counties and resolute correspondents, both wrote R. H. Loughery, editor of the *Texas Republican*, that they had voted against the frontier protection bill. Hendricks speculated that the frontier regiment would end up costing the state $1,000,000 a year because there were no guarantees that the Confederate Government would assume the expense. Parker's opposition was more general; he simply denounced every measure sponsored by frontier representatives for their own benefit, however indirect. See *Texas Republican*, January 4, 1862, and January 11, 1862.

*Tri-Weekly News* (Galveston), December 14, 1861.

*State Gazette*, December 14, 1861; *Tri-Weekly News*, January [?], 1862.

Although various laws to aid railroads had been enacted in the early 1850's, the question of how the state would use its resources to encourage internal improvements was not resolved until the Adjourned Session of the Sixth Legislature met in the summer of 1856. The Legislature then passed "An Act to Provide for the investment of the Special School Fund in the bonds of Railroad Companies." which became law without the signature of Governor E. M. Pease. See Gammel, *Laws of Texas*, IV, 449-455. The Texas debt and the Texas claim to New Mexico are central themes in Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (New York: W. W. Norton & Company, Inc., The Norton Library, 1966).

Actually, the state was in debt to the Special School Fund and would continue to borrow from it throughout the war. See Edmund T. Miller, *A Financial History of Texas* (Austin: University of Texas Bulletin), XXXVII (1916), esp. Parts III and IV.

M. W. Wheeler had also voted against the Stay Law and the frontier protection bill. According to O. M. Roberts, Wheeler left Texas during the war, returned as a Republican, and served as District Judge in Shelby County. See Roberts' penciled note on a letter from Wheeler to Roberts, January 11, 1862, Roberts Papers.


Weatherford's original amendment was offered December 18, 1861. It failed by a vote of 16 to 13, *Senate Journal, Ninth Legislature*, pp. 148-149. Weatherford offered the amendment again on
December 23, 1861; a motion to table it lost by a vote of 15 to 14, the deciding vote cast by Lieutenant Governor John M. Crockett, like Weatherford, from Dallas. Ibid., p. 162. The Extra Session of the Eighth Legislature had passed a special relief law for the Houston and Texas Central Railway Company on the condition that it route its line through Dallas. Gammel, Laws of Texas, V, 417-418. Some Dallas residents may have been stockholders in the company prior to its sale to Hutchins; this might account for Weatherford and Crockett's particular interest in the amendment. Because the Senate secretary or recorder labeled three different bills "railroad relief bills," it is impossible to determine the course followed by two of them through the Senate; furthermore, the absence of a House journal handicaps the researcher. Nevertheless, the amendment appears in the two laws cited ibid., 487, 490-491. A circular dated Houston, April 3, 1861, announced the purchase of the Houston and Texas Central Railway Company by W. J. Hutchins, D. J. Paige, and others. The purchase price was $1,175,000. A later circular announced the passage of an act "for the Relief of Railroad Companies" and called a meeting of stockholders, an action required by the law itself. The circulars are in the William Pitt Ballinger Papers, Barker Center Archives.

25 Both Parker and Hendricks mentioned that Murrah and Holman had come to Austin to press for the relief bill. Texas Republican, January 4, 1862.

26 For Selman's amendment, see Senate Journal, Ninth Legislature, p. 176; for the roll call on the Southern Pacific relief bill, see ibid., p. 184. For the special railroad relief bills, see Gammel, Laws of Texas, V, 528, 542, 549, 565.

27 Texas Republican, January 4, 1862.


30 Texas Republican, December 21, 1861, and January 4, 1862.

31 Ibid., January 18, 1862.

32 Ibid., January 4, 1862. The House Journal, Ninth Legislature, p. 103, records the defeat of the revenue bill on December 17; that Parker wrote his letter to the Texas Republican on December 16
suggests the printed journal is incorrect. The vote of 42 to 39 is also from Texas Republican, January 4, 1862.

33 Texas Republican, January 4, January 11, and January 18, 1862. According to the House Journal, Ninth Legislature, p. 106, the revenue bill was reconsidered and passed on December 20, 1861. The House's passage of the bill was announced in the Senate on December 21, 1861, Senate Journal, Ninth Legislature, p. 156.


35 Ibid., p. 231; and Gammel, Laws of Texas, V, 494-495. For a brief discussion of the income tax, see Miller, A Financial History of Texas, p. 143.

36 Gammel, Laws of Texas, V, 481. On January 11, 1862, a Joint Committee reported against adopting a resolution to ask the Texas Congressional delegation to exert its influence on behalf of legislation making Confederate Treasury notes legal tender. Senate Journal, Ninth Legislature, p. 248. Since Harcourt wrote the report, the committee's opposition was probably based on constitutional scruples.

37 The suggestion of secrecy comes from Charles W. Ramsdell, "The Texas State Military Board, 1862-1865," Southwestern Historical Quarterly, XXVII (April, 1924), 258. According to the Senate Journal, Ninth Legislature, secret executive sessions were rare. The Senate did close its doors, however, to hear a message from Governor Lubbock relating to a proposed exchange of 8% Confederate bonds for 5% United States bonds belonging to Texas. Three senators, Harcourt, George B. Erath, and R. K. Hartley, protested the executive session. Senate Journal, Ninth Legislature, pp. 238-239. Lubbock applauded the acts that created the Military Board and granted it the necessary authority to sell bonds, buy or manufacture arms, and provide generally for the defense of the state. See Francis Richard Lubbock, Six Decades in Texas; or, Memoirs of Francis Richard Lubbock, Governor of Texas in Wartime, 1861-63, ed. C. W. Raines (Austin: Ben C. Jones and Co., Printer, 1900), pp. 362-363. For the acts, see Gammel, Laws of Texas, V, 484-485, 499.

38 Governor Lubbock to the House of Representatives, December 31, 1861, House Journal, Ninth Session, pp. 114-118.

39 State Gazette, January 4, 1862.

40 Lubbock, Memoirs, p. 352.

41 Ibid. The Galveston Tri-Weekly News, January [?], 1862, reported that the House on January 2, 1862, failed to override the
veto by a vote of 52 to 26, short of the two-thirds necessary to override. But the House reconsidered the next day and overrode the veto by a vote of 52 to 24, "two of those previously voting in the negative finding it convenient to be absent." Mid-nineteenth century Texas governors seem to have used their veto power rarely. Unless some private bills became laws without Lubbock's signature, there is no evidence that he used either the veto or the pocket veto at other times during his term. See House Journal, Ninth Legislature, p. 135, for the vote on a motion to table the amendment that would have excluded the State Gazette from bidding on state printing jobs; twenty-nine representatives voted to table the amendment, thirty-five voted not to table, that is, to adopt the amendment. Broaddus, whom the State Gazette tagged the "Prime Minister of the Finance Committee," defended his attempt to eliminate the State Gazette from the public printing lists; he claimed their previous performance was poor and their bids too high. See State Gazette, February 8, 1862. Broaddus may have been an honest, well-meaning critic--the state officers suffered the inconvenience of having no public printer--or he may have been prejudiced against the State Gazette, the avid secession-Democrat newspaper published by John Marshall. At any rate, the Legislature eventually passed a public printing act which required that a $12,000 bond accompany each sealed bid for printing contracts. Gammel, Laws of Texas, V, 487.

42 Senate Journal, Ninth Legislature, p. 206. The Senate reconsidered its vote and a second time, by a vote of 17 to 11, refused to override the governor's veto. Ibid., p. 207. One result of the Senate vote was to provide an issue in the election of a new Attorney General to succeed George M. Flournoy, resigned. The State Gazette preferred Nathan G. Shelley, the Travis County senator who had voted to sustain the veto, over A. N. Jordan, the Harris County senator who had voted to override. State Gazette, January 25, 1862. Shelley won the election, the returns for which cannot be located.

43 State Gazette, January 18, 1862; Tri-Weekly News, January [?], 1862.

44 Senate Journal, Ninth Legislature, p. 247; State Gazette, January 11, 1862. Of course, it was to the State Gazette's advantage to elevate the issue to one involving freedom of the press.

45 The Houston Telegraph, Galveston News, San Antonio Herald, Paris Advocate, and Gonzales Inquirer were among the papers supporting Lubbock's veto. State Gazette, January 25, 1862. Edward Clark to Lubbock, February 1, 1862; Thomas Pratt to Lubbock, January 30, 1862; and Citizens of Lampasas to Lubbock, January 28, 1862, Governors Letters (Lubbock), Archives Division, Texas State Library, Austin, Texas. (Hereinafter cited as State Archives.)
"Report of Majority," Senate Journal, Ninth Legislature, pp. 250-254; "Minority Report," ibid., pp. 254-260. The Senate adopted the majority report by a vote of 14 to 13, ibid., p. 261. Frank Brown, for many years Travis County clerk, reported that when the House sponsors of the mileage and per diem bill tried to pass the majority report, they found that "an indignant people were back of [the Governor], and the attempt proved abortive." Frank Brown, "Annals of Travis County and of the City of Austin (From the Earliest Times to the Close of 1875)," typescript (Austin Public Library), Ch. XXI, pp. 87-88.

Lubbock, Memoirs, p. 355. Lubbock singled out for special praise as able legislators the three men who signed the minority report defending his veto. Ibid., p. 353.

Records of the Legislature, State of Texas, 9th Legislature, Extra Session, Packet 55, Committee reports, "undated." State Archives. This report, written by Zimri Hunt of the House Judiciary Committee to N. H. Darnell, Speaker of the House was misfiled; it belongs to the reports for the 9th Legislature, Regular Session. The original bill (#119) upon which the committee report was based can be found correctly filed with the Records of the Legislature, 9th Legislature, Regular Session, ibid.

Gammel, Laws of Texas, V, 483.
CHAPTER III

AUTHORITY SHOULD BE LODGED SOMEWHERE:
GOVERNOR AND LEGISLATURE, 1862-1863

Governor Lubbock, as the state's chief executive officer and chairman of the Military Board, devoted himself almost exclusively to state business after the adjournment of the Ninth Legislature in January, 1862. Claiming that his objectives were "to advance the cause of the Confederacy" and to serve as an auxiliary "in the Revolution," Lubbock tacked the numerous tasks facing the war-conscious state.¹

Lubbock was determined, for example, to quiet the "vile tongues" of Unionists who, because of Confederate military reverses in 1862, were emboldened to speak out against the government; the governor also hoped to check the traitorous conduct of "tories" who were resisting efforts of Confederate enrolling officers to place them in the military service. Because of the "exigencies of the country," Congress had, in April, 1862, enacted a national draft of men between eighteen and thirty-five. Although the law replaced state recruitment with direct calls for men, it did not strain state-Confederate relations at the time nor did it generate political waves in the state, except in provoking public antagonism toward the recalcitrant Tory element. Lubbock, at any rate, was prepared to aid Confederate
authorities in executing the law.²

To that end he applauded General H. P. Bee's declaration of martial law in Bexar and surrounding counties and General P. O. Hébert's subsequent proclamation authorizing martial law throughout the state. In fact, when Lubbock heard that President Davis had annulled Hébert's proclamation (on grounds that Hébert had assumed unwarranted authority), he suggested to Hébert that martial law should nevertheless be maintained in some localities (especially those in which merchants deliberately depreciated Confederate and state currency) or at least that some plan be adopted "by which the Country will be kept quiet, and our citizens required to remain at home, and perform such duties as may be demanded of them. . . ."³ Besides cooperating with the Confederate authorities in protecting internal security, Lubbock spent untold hours assisting the army in executing the Conscription Act, wrestling with the insoluble problems of frontier defense, and filling quotas levied by the War Department. One of his most persistent and annoying local problems was the operation of the state penitentiary. But by the end of 1862, Lubbock had managed to reorganize its administration, put it on a cash rather than credit basis, and direct that its products be distributed in such ways as to benefit Texas soldiers and their families.⁴

As governor of the largest and most important state in the western Confederacy, Lubbock occasionally felt compelled to don the mantle of defender and apologist for the Confederate government among his less ardent peers in the Trans-Mississippi states. When, for example, in the summer of 1862, the Federals controlled virtually
all of the Mississippi River, Governor H. M. Rector threatened to "carve a new destiny" for Arkansas unless the government should cease its policy of neglect and initiate a policy of protection for states west of the river. Lubbock, confident that the Richmond government had no intention of abandoning the Trans-Mississippi states, wrote President Davis an unofficial letter designed to allay any uneasiness that might have developed in the wake of Rector's pronouncement.

Texas, he wrote, was "true and firm in the support of the Southern Confederacy." To persuade his colleagues that Richmond had not forgotten them, Lubbock (at the request of Davis) invited the governors to meet at Marshall to discuss their mutual concerns and to suggest measures for the defense of the territory. Only Lubbock and Governor Claiborne F. Jackson of Confederate Missouri attended the conference, but their requests of the Richmond government—for the appointment of a commanding general with jurisdiction over the entire Trans-Mississippi territory, for the establishment of a treasury branch, and for a supply of arms and ammunition—were endorsed by Governors Rector and Thomas O. Moore of Louisiana.

Lubbock's responsibilities on the Military Board were equally taxing because the Legislature had empowered the Board to procure arms, sell state bonds, erect foundries and factories, transport cotton to the border, and in general provide for the defense of the state and the needs of the people. In none of these roles was the Military Board particularly successful, but each of them required time and energy. In short, Lubbock was an extremely busy governor.

There were, of course, some matters which Lubbock could not
solve without the aid, direction, and authorization of the Legislature. Some of the newspapers had urged a special session of the Legislature for February, 1863, to discuss the unenthusiastic response to the governor's most recent call for troops. One editor had even suggested disbanding the Frontier Regiment because it drained the state treasury; but if the frontier counties were to be protected and if the Frontier Regiment were to be disbanded, another mode of defense would have to be substituted. As important as that issue was what action, if any, the state should take in response to Lincoln's recent Emancipation Proclamation. Rather than list the pressing concerns of the state, Lubbock simply summoned the Legislature into extra session because of "the condition of public affairs."

Not until February 5 was Lubbock able to deliver his message to the legislators, who had been straggling into Austin for several days. The optimism of the year before was missing as the new session began: the lawmakers had adjourned anticipating a speedy recognition of the Confederacy and an enduring peace, but neither was in sight in the winter of 1863. As the "condition of public affairs" had changed, so had Lubbock's tone. The governor, whose dedication to the Confederate cause never faltered, abandoned his practice of heaping praise on the state, its soldiers, its patriots, and its people and stressed instead the hard issues before the lawmakers, the hard work ahead of them. Lubbock's message ranged from a harsh indictment of Lincoln, whose "studied purpose" was to "africanise the Southern Confederacy," to a plea for authority to close all distilleries in the state, to
an attack against the charge that he had surrendered control of
the penitentiary to Confederate officers. But the speech was
basically a summary of actions the governor had taken during the
preceding year and a statement of recommendations for 1863. The
document exhibited Lubbock's thorough familiarity with affairs of
state, but it also revealed a willingness to endorse novel legislation
and a tendency to bend the law if necessary.

Lubbock, following Congressional recommendations, urged the
Legislature to restrict the cultivation of cotton in order to promote
an increase in the cultivation of corn. He explained that with the
majority of the "white laboring population" away in the armies, the
people of Texas would be dependent for subsistence on slave labor
heretofore employed in cotton cultivation in the state's rich river
bottom lands. Lubbock acknowledged that any legislative limitations
on cotton cultivation might be considered "unjustifiable interference
with a legitimate calling," but for such an accusation he had a ready
reply: "self preservation is the first law of nature." The
governor was also prepared to justify the seizure of surplus goods,
especially foodstuffs, for the indigent families of soldiers.

These were tough propositions that reflected the tenor of the times,
the governor's commitment to a separate national existence for the
Confederacy, and a modification of his views regarding the proper
exercise of power within the state.

When the Legislature finally got down to the business of the
state, Lubbock's recommendations formed the basis for most of the
bills introduced. The governor undoubtedly was better informed about
state finances, defenses, demonstrations of disloyalty, and shortages of supplies than the legislators. Up to a point at least, they conceded his expertness in these matters and used his proposals to define and direct their own deliberations. Some members may have been aware that, because of excessive "personal interest" legislation, the "public odium" had settled upon them during the regular session.\textsuperscript{11} One widely-read newspaper editor, in fact, opposed the called session altogether, insisting that the lawmakers could not deal calmly with important issues in such critical and exciting times.\textsuperscript{12} Certainly not all of the discussions were calm--Lubbock after all had submitted several controversial proposals--but the Legislature did demonstrate a determination to forego the kind of private legislation that had consumed so much time in their previous meeting.

It became apparent early in the extra session that a division existed between the cotton planting interests and the non-cotton planting interests.\textsuperscript{13} Representative Sam Maverick from San Antonio, who had disapproved of Lubbock's calling the special session, wrote his wife that "a mean jealousy [was] indulged by many against the rich negro holding, cotton planter" and that there was even "a Bill to limit cotton planting to 3 acres per hand because it is said they wont \textsuperscript{sic} plant corn for poor neighbors &c."\textsuperscript{14} That particular cotton restriction bill, based on Governor Lubbock's specific recommendation to limit cotton cultivation to three acres to the adult male field hand represented the first test of the relative strength of the cotton and non-cotton interests.

The Senate, where the real battle over the cotton restriction
bill was fought, established the pattern for the debate. When the Committee on Agriculture reported against the bill, Senator John T. Harcourt, leading spokesman for the cotton interests, moved quickly to adopt the committee's report, but Pryor Lea, a cagey and experienced South Texas lawmaker, blocked Harcourt's motion and managed to obtain a postponement of several days. Lea, chairman of the Finance Committee and leader of the non-cotton interests in respect to this bill, probably used the time obtained to whip his forces into line. He negotiated, at any rate, not only the tabling of the committee's adverse report on the bill but also the adoption of a substitute bill that limited cotton planting to not more than one-third of the land cultivated by any farmer or planter. This new proposition was more generous, certainly, than Lubbock's, but it was hardly designed to mollify the irreconcilable supporters of the cotton interests, a contingent that included Harcourt, R. K. Hartley of Galveston, and C. B. Shepard of Washington County, none of whose specific arguments against either bill are known. The editor of the State Gazette, however, charged that cotton restriction was unconstitutional while "Observer," a correspondent for the Tri-Weekly Telegraph, labeled it dangerous "class legislation." The remarks of J. B. Reid, representative from Victoria, furnish perhaps the best clue to the cotton spokesmen's arguments against the bill. Reid, a member of the House Agriculture Committee, had been absent when his committee reported in favor of a cotton restriction bill. Subsequently, Reid submitted a minority report in which he too claimed that the bill was unconstitutional and dangerous in its tendencies; moreover, he
contended that the bill would infringe upon privileges and rights "too sacred to be taken away upon every cry of expediency." Finally, he suggested that such legislation discriminated in favor of the wheat and stock regions and encouraged distinctions among a people who should be united.18

Allied with Senator Lea in vocal support of his substitute bill were Senators Guinn of Cherokee County, Maxey of Lamar County, Quayle of Tarrant County, Cooper of Houston County, and Durant of Leon County. Each of these senators probably echoed Lubbock's arguments for a cotton restriction bill, but Cooper, a new and "ardent" member, declared simply that the issue was between the soldier on the one hand and the Shylock and speculator on the other.19 No one who watched the intricate parliamentary maneuvering in the Senate could have thought the issue that simple. It required two weeks and countless stratagems before Lea was able to obtain a vote on the engrossment of the bill. Then the Senate divided equally--fourteen to fourteen--and thereby forced its president, Lieutenant Governor Crockett, to decide. Crockett, from the Dallas wheat region, had observed the path of this "leading [measure] of the session," and evidently had hoped to avoid the predicament in which he found himself. As he voted to engross the bill, Crockett announced that he did so "for the preservation of the institution of slavery--for the protection of the slave holder ... in favor of Government, the only security of property."20

At that point, on February 21, the planters seemed to be defeated, but they made one further attempt to save their cotton, this time by a shrewd parliamentary device. Before the engrossment
vote and in an effort to stall proceedings, the senators—on either or both sides depending on the subject at hand—had regularly requested calls of the Senate. A call suspended debate temporarily and allowed factional leaders time to regroup their forces. Throughout the calls, three senators, J. N. Jordan of Bell County, A. N. Jordan of Harris County, and N. A. Mitchell of Bexar County, had been absent; but the Senate had each time been declared full and business continued. After the engrossment vote, however, the planters questioned whether the Senate was in fact full since three of its members had not reported for the session. When Crockett replied that the Senate was full, Harcourt and Shepard appealed for a vote on the question, "Shall the decision of the President be the decision of the Senate?" Lea's line wavered just enough to nullify Crockett's decision and thus to open debate on the issue of the Senate's fullness.21

The possibility, if not the probability, that a friend of the planters might arrive late in the session must have occurred to advocates of the cotton restriction bill because Durant and Guinn in particular moved that calls for absent members cease during the remainder of the session. On the following day, however, A. N. Jordan arrived from Houston and, despite a series of resolutions calculated to keep him out, he was present and could hardly be ignored. Realizing that they had lost the battle, the advocates of the cotton restriction bill offered a compromise resolution enabling Jordan to take his seat but disallowing further calls for J. N. Jordan and Mitchell (who were out of state).22 It was no coincidence that Jordan
arrived in Austin on the day that the final vote on the cotton restriction bill was scheduled. David Richardson and E. H. Cushing, editors of the State Gazette and the Tri-Weekly Telegraph, respectively, and foes of the bill, had informed Jordan of the status of the measure and had rushed him to the capital to vote against it. Jordan's arrival upset the neat balance in the Senate which had earlier forced upon Lieutenant Governor Crockett responsibility for engrossment; the final vote on the bill stood fifteen yea's and sixteen nay's with Jordan playing the role of deus ex machina in the cotton planters' drama.23

The death of the cotton restriction bill in the Senate guaranteed its similar fate in the House of Representatives. Although the House Committee on Agriculture had reported favorably a substitute cotton restriction bill early in the session, the House delayed debating the bill, either because the representatives were preoccupied with other measures or because they were awaiting a decision from the Senate where the issue had created a major furor. Not until the day before adjournment did a representative attempt to resurrect the bill; his effort was futile, however, and the bill was allowed to rot in the Agricultural Committee.24

That the House virtually ignored the cotton restriction bill did not signify the absence of the same division of interests that dominated senate politics. On the contrary, House members who represented the cotton interests clashed with spokesmen for the non-cotton interests several times during the session. And, as in the case of the cotton restriction bill, these collisions resulted from attempts to translate Lubbock's recommendations into law. For
example, Lubbock had also asked the Legislature for a law empowering him to command slaves to work on fortifications when necessary.\textsuperscript{25} He carefully avoided the term "impressment" in his request, but legislators were fully aware of the real object of Lubbock's proposal—and aware that the burden of slave impressments would fall on the planters.

As early as November, 1861, Confederate military authorities had invited slaveowners to lend their Negroes to the army to assist in fortifying the coast, especially Galveston; and when the owners refused to volunteer their slaves, the officers had resorted to impressment.\textsuperscript{26} There was no explicit warrant for impressment (Congress did not enact a general impressment law until March, 1863), but President Davis had already sanctioned military seizure of slave labor. Nevertheless, in an attempt to quiet further outcries against impressments, Davis had urged Lubbock to ask the Legislature for statutory authority to command a slave labor force. From Davis' letter sprang Lubbock's request.\textsuperscript{27}

A. S. Broaddus, a representative unfriendly to the cotton interests, now seized the opportunity to introduce an impressment bill in the House, but the Committee on Military Affairs, to which the bill was referred, reported a substitute which was probably more temperate than Broaddus' bill. While it is not clear what powers either the original bill or the substitute bestowed upon the governor, the use of the word "impressment" exercised M. M. Potter to such a degree that he asked the House to strike the term wherever it appeared in the bill and to substitute "call into."\textsuperscript{28} No vote was taken on
Potter's motion, however, because R. T. Flewellen from Washington County, a cotton-slave center, quickly offered a Joint Resolution to replace the committee's bill and Potter's amendment. Flewellen's resolution was hardly controversial; it merely approved Major General J. B. Magruder's impressment policy on the grounds that such action was necessary to protect Texas "from the depredation of the abolition army."29 Passing without a roll call, the resolution prevented, for the time being at least, a bitter contest between the representatives from counties with small and those from counties with large slave populations. While the former could endorse slave impressments and risk little or nothing, the latter stood to lose a great deal in terms of labor, cotton, profits, and even occasionally, the life of an impressed but neglected slave. As the resolution stood, however, neither group granted the governor any power over the slave population nor did either group sanction any steps beyond those already taken by Magruder. The resolution therefore was an artistic if bland compromise which recognized the realities of Magruder's power.30

Even a tactful compromise, however, went beyond the desires of the planters in the Senate. Although Senator Harcourt's report for the Judiciary Committee recommended passage of the Joint Resolution, the Senate tabled it by a vote of seventeen to seven.31 Later, during the evening session, R. H. Guinn, an active supporter of the cotton restriction bill, was permitted to introduce another resolution pertaining to slave impressments. The net effect of Guinn's resolution as amended would have been to requisition all counties for their fair proportion of slaves and to pay slaveowners what soldiers normally
received for their services. But the planters were no more amenable to the resolution with amendments than without and once more stuck together to defeat the proposal. Consequently, the Legislature failed to govern the impressment of slaves and thus left the problem to the military officers for the remainder of the war.

Governor Lubbock's rather vague recommendation to provide food-stuffs for the families of soldiers caused another more intense clash in the House. The counties had been authorized early in the war to collect a tax by which to purchase and supply the material needs of soldiers' families. Although they initially had provided generously, the prolonged war, the accelerated enlistment of men into the army, the resultant increase in the number of indigent families, and the inequitable distribution of wealth among the counties had combined to deplete county resources and thereby necessitate a liberal state appropriation. Provisioning families would not only serve a humanitarian purpose; any legislator must have realized that any army could be maintained in the field only if the soldiers knew their families were being amply supplied. With Lubbock's general proposal there was no quarrel even though state-financed relief for the indigent was unprecedented in Texas. The quarrel—and it was a bitter one—resulted from attempts to translate into law Lubbock's assertion that persons who refused to sell foodstuffs "at a fair price for the currency of the country" should find their goods subject to seizure at prices fixed by law. In other words, "authority should be lodged somewhere" so that necessary articles could be impressed.

Several House members submitted bills in response to Lubbock's
request for state aid; at least one representative submitted a bill to authorize the county courts to fix prices on commodities. The same bill, in keeping with Lubbock's willingness to invent authority if necessary to prevent speculation and extortion, also permitted the county courts to prescribe penalties for persons refusing to sell their surpluses at current prices in paper money. 36 Since the governor had not offered specific suggestions on how to punish persons who were reluctant to cooperate with the county authorities, the legislators enjoyed a brief license to introduce what one observer dubbed "ultra bills." 37 One such "ultra bill" made it a misdemeanor to refuse Confederate notes for past or future debts; another required any seller who distinguished between prices in specie and prices in Confederate notes to forfeit the articles he offered for sale. 38 Many lawmakers obviously saw an intimate connection between the state's ability to provide relief for indigent families and its power to end speculation and extortion. Indeed Lubbock had already lamented that planters and farmers had been counted among the extortioners, monopolizers, and speculators of the state. 39 Until their nefarious activities could be halted, neither state nor county assistance would prove sufficient to the needs of the soldiers' families.

For more than three weeks the House debated the issue of relief and the auxiliary measures designed to stop or at least penalize speculators and extortioners. The exact contents of the original bill to provide relief for soldiers' families are not known, but Horace Cone proposed a substitute from which any novel provisions for enforcing cooperation undoubtedly had been deleted. 40 During
the same week, Cone reported that his committee had rejected a bill authorizing the county courts to fix prices of commodities. The committee, Cone explained, had condemned as impracticable the proposed plan to fix prices, to determine the availability of surpluses, and to penalize persons who refused to sell their alleged surpluses. Such authority would, in his judgment, have converted the county courts into an "inquisition"; furthermore, this kind of legislation was dangerous, perhaps even unconstitutional. And although the committee had conceded that some restraints upon speculators and extortioners might be beneficial, Cone declared it better to "bear the ills we have than to fly to others we know not of."41

The Finance Committee's report actually reinforced judgments expressed earlier by the equally cautious, conservative House Judiciary Committee. At that time M. M. Potter had delineated his committee's opposition to the bill that made it a misdemeanor for any person to refuse Confederate notes for past or future debts. Potter argued that despite the exigencies of war, the state and Confederate Constitutions had to be maintained inviolate. Since the Confederate Constitution prohibited a state's making "anything but gold or silver coin a tender in payment of debts," a state could hardly make it a penal offense for a person "to refuse to do what the Constitution expressly says [the Legislature] shall not have the power to require to be done."42 Potter and a majority of his committee applied a similar argument several days later when they reported against a bill punishing persons who differentiated between prices in specie and in Confederate notes. In that instance, the
committee questioned the advisability of enacting a law so easily evaded. In short, it became apparent throughout the debates over the indigent families' relief bill that a majority of the Finance and Judiciary Committees balked at legislation that defied explicit constitutional proscriptions or augmented the power of the county courts. Both committees again and again registered conservatism, restraint, and a determined, practical recognition of the pitfalls inherent in the "ultra" bills.

Other representatives, however, apparently did not share the committees' prudence. That Speaker of the House C. W. Buckley, for example, recommended that a Committee of the Whole consider the Finance Committee's substitute relief bill indicates not only the importance of the subject but also the discordant reaction to it. Several days after the House had agreed by a vote of fifty-four to fifteen to sit as a Committee of the Whole to discuss the bill "to provide for the families of Texan soldiers," and after hours of debate, the bill's opponents trotted out their "ultra" amendments, probably designed to restore the bill to its original, pre-Cone, pre-Finance Committee form. First E. A. Blanch proposed that the county courts (or the chief justices) "determine and fix prices to be paid [for] the several articles of essential comforts," and that the appointed county agents by forbidden to exceed those fixed prices. Secondly, W. B. Moores proposed to permit seizure of surplus articles from anyone refusing to sell them at fixed prices to county agents. Potter moved immediately to vote on engrossment of the bill without the "ultra" amendments. He lost his motion but somehow managed to
rally enough support to delay for a few days further consideration of the bill and the amendments.46

Meanwhile the opposing factions were taking shape. Potter and Cone commanded a group of conservatives who held the proposed amendments were unconstitutional and inexpedient; these included Speaker Buckley, Sam Maverick, and E. D. Townes of Travis County. If it meant anything to the Potter-Cone contingent, E. H. Cushing editorialized on their behalf in the widely-circulating Tri-Weekly Telegraph, urging the "conservative element" to resist "agrarian" relief bills that allowed searches and seizures.47 Cushing's Austin correspondent, "Observer," consistently chided the other faction, supporters of the "ultra" amendments--including Blanch, Moores, and the outspoken Broaddus--for treating constitutional matters lightly. To strike at extortioners, these "agrarians" would crowd the "statute books with laws inoperative and unconstitutional," he opined; and "Observer" feared members were "writing a book for themselves" that they would "not desire their enemies to peruse hereafter."48

At the end of the first round of sparring, Moores withdrew the search and seizure amendment, and Blanch agreed to endorse Broaddus' substitute for his own price-fixing amendment. The Broaddus substitute amendment actually combined the price-fixing features of Blanch's proposal with the search and seizure features of Moores' amendment. In effect, the new and more comprehensive amendment authorized impressment at prices set by the county courts. Broaddus, however, in an attempt to overcome objections to fixing prices and
paying for articles in Confederate notes, added a clause that allowed the county agents to give drafts on the state treasury, payable in specie, to anyone who refused the proffered Confederate notes. 49 That clause did not appease Broaddus' critics, and, as he tried to steer the amendment through the divided House, his foes erected every parliamentary obstacle imaginable. But Broaddus persisted and eventually persuaded a majority of one (thirty-seven ayes, thirty-six nays) that his substitute amendment was necessary "to give the soldiers in the army a positive assurance that the State or the Confederate government if not individuals, [would] certainly take care of their families. . . ."50

Any satisfaction Broaddus may have felt was premature, however, because the "conservative element" merely fell back, regrouped, and attacked again. Speaker Buckley and Cone offered specious amendments to Broaddus' substitute; Cone even sarcastically suggested that since it was "the received opinion of the House that every man should construe the Constitution for himself," the Broaddus amendment should be "inoperative so far as all citizens are concerned who believe that under the bill of rights no power can be delegated to any [one] to exercise the right of search" unless some illegal offense had been committed. 51 After tabling Cone's motion, the House voted again on the Broaddus substitute (amended in inconsequential ways). The majority of one originally registered for "impressment" now shifted to a majority of one against. Then, having disposed of the "agrarian" amendments, the House voted sixty-four to nine to enact the bill to provide relief for the soldiers' families. 52
There was similar strife, though not so intense, in the Senate over relief for soldiers' families. Because the Senate was engrossed in the acrid debate over cotton restriction, it did not linger over the relief bill, a State Affairs committee substitute for several bills related to relief, extortion, and price regulation. The substitute, which the Senate adopted, excluded a "tariff of prices," but R. H. Guinn quickly remedied that omission by offering a new first section that would have authorized the county courts to set lawful prices on "articles of prime necessity." The Senate Journal does not reveal the nature of the arguments against Guinn's substitute nor does it characterize the bill as an "impressment" measure. Nonetheless the senators probably discussed the bill and amendment in much the same constitutional terms that the House had used. Certainly the Senate split along the same conservative-agrarian lines that had appeared in the House. Guinn, already fighting the cotton interests over the cotton restriction bill, now embroiled himself in the battle over price-fixing. He must be counted among those who believed, as did Broaddus, that the exigencies of war required a variety of new measures, some of which in peacetime would have smacked of blatant infringement of personal and property rights.

On the other hand, opponents of Guinn's amendment--and ultimately of the relief bill itself--must be counted among the cautious, conservative, planter interests. Led by Hartley and Shepard, who were simultaneously maneuvering to defeat the cotton restriction bill, they may also have represented some persons who actually possessed surplus goods and had refused to sell them for Confederate
notes or at fixed prices. "Observer," for example, seemed to be
defending the "conservative element" when he wrote that the "laws
of trade . . . , supply and demand, [could] not be overthrown" by
statute because they were "fixed and determined." And in an honest
effort to do good, he added, the danger is in doing too much. 54
The chief justice of Texas, Royall T. Wheeler, in Austin during
the legislative session, expressed his conviction that "the greatest
[evil] is the prevalent disposition to derive individual gain from
the necessities of the country." Wheeler insisted that the men
who had to be reached by legislation were those who "produce &
consequently control the means of subsistence," and they, he added,
have "too strong representation in that body [the Legislature] for
the good of the country." 55 At any rate the Senate adopted Guinn's
amendment, then tabled the entire bill. 56 Eventually the Legislature
enacted two relief bills but neither of them fixed prices, punished
extortion, or authorized searches, seizures, or impressments. 57
According to Cushing, editor of the Tri-Weekly Telegraph, "there
was barely enough conservatism to hold in check the agrarians,"
but there was enough. 58

Monetary inflation had already proved to be a persistent
problem for Texans, and although Governor Lubbock was probably more
sanguine about the state's ability to control it than he had any
right to be, he never skirted the issue. Lubbock blamed the depre-
ciation of Confederate notes and the concomitant inflation of prices
on the overabundance of notes in circulation and on the proximity
of Mexico, almost the only market open to Texas exporters, where
trade was conducted on a specie basis. Virtually nothing could be done to alter the latter situation, but Lubbock expressed his hope that the Confederate government would impose and collect a higher tax, continue its funding program (at higher interest rates if necessary), and amend the Sequestration Act in order to collect outstanding debts. All these measures would help to reduce the redundant Confederate currency. Since the Legislature had voted in 1862 to allow payment of most public dues in Confederate notes, Lubbock recommended doubling the current state property tax to 50¢ per $100 valuation. Such a tax increase, coupled with the forced de-circulation of corporate and individual "shinplasters," would reduce the money supply and help to curb inflation. He also asked for the Legislature's opinion on whether the Confederate Congress could make the nation's treasury notes legal tender; if the Congress had such a right, now was the time to exercise it, Lubbock declared.

Lubbock's proposals to support the Confederate currency, however, never took precedence over his efforts on behalf of the state currency. He insisted that the state continue to pay interest on its bonds in specie and asked for authority to obtain sufficient specie so that Texas would never renege on its pledge to its creditors. Moreover, Lubbock requested the Legislature to repeal the law that limited the Treasurer's payment of Confederate notes to military purposes only. Obviously that law was too restrictive because most of the revenues were collected in Confederate notes, thus leaving the state with abundant but often unusable paper. If the law were changed to allow the inclusive payment of Confederate notes, the state would be
able to decrease its own liabilities, that is, reduce the number of treasury warrants it normally issued. These warrants could be funded for bonds paying 8% interest in specie semi-annually, a fact which appreciated them in relation to Confederate bonds. Lubbock, therefore, suggested repeal of the law authorizing funding; failing that, he recommended a reduction of the interest from 8% to 6%, a level approximating Confederate rates. But his real aim was to eliminate the need to issue warrants or sell bonds except in special cases. 61

In his various financial proposals Lubbock revealed his devotion to the Confederate nation, interest in his own state, and "sound money" views. But at several points in his message to the Legislature Lubbock also demonstrated a tendency to equate disaffection for the depreciated currency with disloyalty to the state and the Confederacy. 62 While there were some cases, in San Antonio, for instance, of persons intentionally deprecating the currency, deliberately diminishing confidence and public morale, not everyone who refused Confederate notes could have been justly charged with disloyalty. 63 Yet Lubbock urged stiff penalties for those who rejected Confederate notes, who deprecating them, or who differentiated between specie and currency prices. Consequently, when some legislators rushed forth with bills establishing penalties for the uncooperative and the uncommitted, the Finance Committees, always judicious and cautious, felt obligated to chastise the governor indirectly even while they reported favorably on bills covering his major financial recommendations. 64
Key legislators also defended the state's fiscal soundness. Both the House and Senate Finance Committees showed remarkable agility in maneuvering through their respective assemblies a specie procurement bill designed to aid taxpayers and, ultimately, the entire currency system. The bill which authorized the Military Board to procure "specie equal to four cents on each one hundred dollars" of the tax assessment was probably written by Horace Cone and Pryor Lea, committee chairmen; at any rate, they reported the bill on the same day and used similar arguments to justify its passage. The committees realized that people simply could not get the specie to pay the 4¢ tax and that many taxpayers were shouting for repeal of the specie clause of the current tax law. Two East Texas legislators even offered bills to suspend collection of the specie tax until January 1, 1865. But as Lea carefully explained in his report to the Senate, the specie tax could not be repealed constitutionally. Even if repeal were legally possible, "political and moral necessities" would preclude it. In short, the state must sustain its credit and honor its contractual obligations. Hence, the only salient question was whether the taxpayers would have to find specie on their own or whether the state would obtain it and arrange for its commutation for paper currency through the Comptroller. Tacitly agreeing that the state's credit must not be impaired, the legislators could hardly contest the fact that few taxpayers could get specie. Consequently, despite futile attempts by B. T. Selman in the Senate and Broaddus in the House to block the bill, the lawmakers voted to let the Military
Board furnish specie through the sale of cotton and thereby alleviate a pressing burden on the taxpayer. 69

The Finance Committees, apparently working in tandem, also enjoyed substantial success in pushing a new tax bill through the Legislature very late in the session. That is, the committees were able to persuade the legislators, whose ranks were thinning rapidly, that a hefty increase in the ad valorem tax rate was essential to meet the operating costs of the state. As far as Cone was concerned the tax increase represented about the only prudent suggestion that Governor Lubbock had made in his recent discussion of currency and high prices. In fact, Cone announced that his committee did not believe it was possible for the Legislature to cure all the "evils" to which the governor had alluded. The plethora of currency could be corrected ultimately only by the Confederate Congress acting as a "skillful surgeon" wielding the "sharp knife of taxation." Cone also explained to the House that although "many distinguished jurists and statesmen [believed] that the Confederate Congress [had] the right to make the treasury notes a legal tender," the committee had not wanted to interfere with Congress on the subject. 70 Thus the House Finance Committee simply agreed to revise the tax bill adopted in the regular session to the extent of doubling the ad valorem tax.

At that point, however, having won its objective, the committee watched its discipline and managerial capacities disintegrate. Several legislators proposed amendments to increase to 50¢ per $100 valuation the tax on money, goods, wares, merchandise, vinous or spiritous liquors, and "all cotton not in the hands of the producer." 71 Most
representatives probably considered the proposal consistent with
the ad valorem tax increase, but the idea of taxing "cotton not in
the hands of the producer" created a momentary stir. The Finance
Committee earlier had rejected a resolution on that subject because
the members believed that to tax "cotton not in the hands of the
producers" would be equivalent to taxing cotton "in the hands of
the producers." In other words, merchants and cotton buyers would
simply compensate for the tax by paying less for cotton. As Cone
so frequently remarked, "In our efforts to benefit the country by
legislation, the committee are awakened to the danger of legislating
too much. . . ." But apparently the advocates of the cotton tax
saw it as a way to strike at speculators; certainly almost every
other attempt to check them had failed. Cone, E. A. Blanch, Sam
Maverick, Potter, and Judge Townes of the Finance Committee joined
with others in attempting to table the cotton tax amendment, but
they were defeated. But apparently the advocates of the cotton tax
saw it as a way to strike at speculators; certainly almost every
other attempt to check them had failed. Cone, E. A. Blanch, Sam
Maverick, Potter, and Judge Townes of the Finance Committee joined
with others in attempting to table the cotton tax amendment, but
they were defeated. 73

When the Senate received the bill the next day, Lea admitted
that his committee had scarcely had a chance to study the measure;
consequently, the committee could only reiterate the need for a
revenue increase and advise the prompt passage of the bill without
amendments. 74 C. B. Shepard, occasional spokesman for the cotton
interests, wanted to ferret the rat in the bill, however, and moved
to delete the portion relating to cotton. When he lost that motion,
he proposed to tax in addition to cotton, "wheat, flour, corn, and
all other products of the soil." On the second vote, Shepard won
a Pyrrhic victory for the cotton producers. 75
The Legislature adopted two additional financial measures over which there was virtually no disagreement. One of them, "an act to authorize the State Treasurer to pay Confederate notes for civil and military purposes," grew out of Lubbock's specific recommendation to that effect. Although the bill passed late in the session when time for debate was minimal, the fact that there was no discussion and no roll call indicated strong support for the policy designed simultaneously to sustain the Confederate currency and to decelerate issuance of state treasury warrants. The other measure, a joint resolution in relation to Confederate indebtedness, was based upon a veiled request from Jefferson Davis to the states asking each to guarantee Confederate bonds. These pledges would assist in restoring Confederate credit and public confidence. Curiously, the resolution declared that should Texas withdraw from the Confederacy "from any cause," the state pledged to pay its pro rata share of the remaining Confederate indebtedness. Why the lawmakers chose to preface the state's guarantee with a reference to withdrawal is not at all clear. A Texas congressman in Richmond dubbed the language of the resolution "unfortunate," but there is no evidence to suggest that the legislators contrived to intimidate either the Confederate government or its military commanders. Whatever provoked the singular language, the state at least had bound itself to the Confederacy's creditors.

Lincoln's Emancipation Proclamation, part of his design to "Africanise the Southern Confederacy" and a message impossible to conceal from the Negroes, evoked a rare unanimity among the
legislators.  

Divisions between cotton and non-cotton interests, between slaveholders and non-slaveholders, between overzealous Texas Confederates and more temperate Texans vanished, at least temporarily, when the Legislature turned to drafting laws to prevent servile insurrection, to punish any person offering weapons (guns, pistols, swords, bowie knives, or daggers) to slaves, and to frustrate any hostile invasion of Texas by "persons of color." The judicious Potter wrote the bill defining the criminal offense of inciting servile insurrection so that it embraced any commissioned officer of the United States who invaded (or entered with hostile intent) Texas lands or waters. In other words, the state would regard the very act of military or naval invasion as an "unholy" attempt to incite rebellion or insubordination among slaves and would forthwith subject any invader to the laws of the state. Although national officers were subject to state prosecution for acts that violated the state's criminal laws, Potter apparently did not want to "produce any conflict" between state and Confederate authorities over matters growing out of the war. Therefore, the bill designated as persons to be tried under its provisions those whom Confederate authorities decided to turn over to state civil authorities. 

Unarguable in 1863 was the need to punish Yankee invader-insurrectionists, and the proper status of free "persons of color" was hardly more open to question. But at least one free Negro, a Houston barber, Peter Allen, appealed to the Legislature for an exemption from the law which required free Negroes either to leave the state or to select masters and submit themselves to slavery.
That the Legislature considered Allen's petition at all was probably due to the prominence and reputation of the Harris county citizens, including railroad entrepreneur A. M. Gentry, and merchant William M. Rice, who signed it. Their support for Peter Allen notwithstanding, the House Committee on Slaves and Slavery rejected the petition for special relief. Slavery, wrote Frank Williams for the committee, was the natural condition of the Negro race; consequently, any legislation which encouraged freedom for a Negro would be "unwise and unpoltic" and could eventually lead to a potentially dangerous mixture of free Negroes and slaves. The House adopted the committee's negative report by a vote of forty-six to twenty-four, but several members explained during the roll call that they favored an exemption for Allen whose honesty, industry, Southern sympathies, and conduct with Terry's Regiment at Woodsonville and Shiloh merited special consideration. Even so, the supporters of Allen's memorial accepted the wisdom of the general law excluding free Negroes from the state; they merely desired to make one exception. In a sense, then, Peter Allen was the silent victim of a singular consensus in the Legislature.

A determination on the Legislature's part to protect the credit of the state, to supply the needs of the indigents and the soldiers' families, to support the Confederacy, and to carry on the usual and the unusual functions of the state eclipsed any incipient disenchantment with the Confederate government or its policies in early 1863. Despite their diminished hopes for an early peace, most legislators seemed to catch Lubbock's continued enthusiasm for the cause of the
Confederacy. Some—namely Potter, Cone, Buckley, Maverick, and Townes in the House, Hartley, Harcourt, and Shepard in the Senate—were more cautious and less strident than Lubbock but their patriotism was unquestioned. Whatever pique loyal Texans may have felt as a result of Confederate policies was not acute enough in February to yield widespread expression.

Irritants there were. Sam Addison White, a senator from Victoria and himself arrested by a Confederate provost marshal, introduced a Joint Resolution "to restrain the exercise of illegal military authority" in Texas. The Senate quietly tabled his resolution. Nor did the Senate act on a proposal requesting Texas congressmen to work toward a repeal of the Confederate exemption law. Echoing an outraged people who believed that "the power to press" had been carried too far in the southwestern counties, Senator Hord of Brownsville introduced a bill to punish anyone unlawfully seizing (impressing) wagons and teams. Both houses considered the bill, but it did not become law. About only one issue, open trade with Mexico, were the legislators sufficiently annoyed with Confederate policy to express their sentiments. In that instance, the members adopted a Joint Resolution which asserted that military control over the transport and export of cotton was an unwarranted "encroachment upon the rights of the people and upon the power of Congress." Such control, the resolution continued, tended to impoverish the planter, corrupt the speculator, and produce a scarcity of supplies and attendant high prices. The lawmakers urged their congressional delegation "to see that the Rio Grande trade is not unlawfully
closed or obstructed. . . ."  

When the Legislature adjourned in early March, the acerbic editor of the *Tri-Weekly Telegraph*, E. H. Cushing, breathed a sigh of relief. The results of its deliberations had been a "grand totality of nothings," he wrote, and added that he hoped the next legislature would do as little harm.  

His assessment of the Legislature, however, was not altogether correct. It had indeed failed to restrict cotton planting, or authorize impressment of Negroes for military purposes, or establish a tariff on commodity prices; of these failures Cushing could approve. But it had tried to be fiscally responsible; it had increased taxes--probably too little--and it provided a way to honor the state's specie obligations to bondholders. The Legislature considered all of Lubbock's recommendations, and when it stopped short of enacting some of them, that was because fiscal conservatives, strict constructionists, and planter interests were as yet unready to give way to the exigencies of war. Furthermore, the legislators were caught in unexpected currents that not only perplexed them but also exposed and exacerbated their deep divisions. Shared beliefs in the inferiority of the Negro and the greatness of the Confederate experiment simply were not enough to enable them to pursue in concert the welfare of the state.
NOTES

CHAPTER III

1 F. R. Lubbock to General Sam Houston, October 22, 1862, Governors
Letterpress (Lubbock), Archives Division, Texas State Library, Austin,
Texas. (Hereinafter cited as State Archives.)

2 Lubbock to General P. O. Hébert, September 26, 1862, War of the
Rebellion: A Compilation of the Official Records of the Union and
Office, 1880-1901), Series I, vol. LIII, 829-830. (Hereinafter cited as O. R.) Texans frequently referred to the allegedly disloyal as
"Tories." See, for example, Lt. Col. A. T. Obenchain to Lubbock,
April 14, 1862, Governors Letters (Lubbock), State Archives. Lubbock's
files contain several letters accusing persons in San Antonio and in
Austin, Fayette, and Colorado counties of treason. For a discussion of
"unionism," see Claude Elliott, "Union Sentiment in Texas, 1861-
1865," Southwestern Historical Quarterly, L (1946-1947), 449-477;
Robert W. Shook, "The Battle of the Nueces, August 10, 1862," ibid.,
LXV (July, 1962), 31-42; Sam Acheson and Julie Ann Hudson O'Connell,
ed., "George Washington Diamond's Account of the Great Hanging at
Gainesville, 1862," ibid., LXVI (January, 1963), 331-414; and Thomas
Barrett, The Great Hanging at Gainesville, Cooke County, Texas,
October, A.D., 1862 (Austin: Texas Historical Association Reprint,
1961). The conscript act is in James M. Matthews, ed., Public Laws
of the Confederate States of America (Richmond, 1862-1864), First
Congress. Sess. 1, Ch. 31, April 16, 1862, pp. 29-32.

LIII, 829-830. General H. P. Bee's declaration of martial law was
announced in an extra edition of the San Antonio Herald, April 28,
1862. (A copy is in Governors Letters [Lubbock].) Lubbock not
only congratulated Bee for having declared martial law in San Antonio,
but urged him to do so in Brownsville. See Lubbock to Bee, May 1, 1862,
Governors Letters (Lubbock). General Hébert announced statewide
martial law on May 30, 1862. See General Orders 45, Department of

4 Lubbock to the Gentlemen of the Senate and the House of
Representatives, February 5, 1863, James M. Day, comp. and ed.,
Senate Journal of the Ninth Legislature, First Called Session, of

For a discussion of Lubbock's role in the first conference of Trans-Mississippi governors, see Francis Richard Lubbock, Six Decades in Texas; or, Memoirs of Francis Richard Lubbock, Governor of Texas in Wartime, 1861-63, ed. C. W. Raines (Austin: Ben C. Jones and Co., Printer, 1900), pp. 388-395. President Davis understood that governors could be helpful in carrying out Confederate policy, but he did not look upon them as aids in formulating policy. And since the Confederacy's "popular front" retarded the development of political parties, Davis was handicapped by the absence of a set of governors who, as loyal members of his "party," would assist him in carrying out objectives both national and partisan. Lincoln took advantage of his party connections with Republican governors and, according to Eric McKittrick, was the more successful of the wartime presidents because of it. See Eric McKittrick, "Party Politics and the Union and Confederate War Efforts," in The American Party Systems, ed. by William Nisbet Chambers and Walter Dean Burnham (New York: Oxford University Press, 1967), 117-151, passim. See also E. Merton Coulter, The Confederate States of America, 1861-1865, Vol. VII of A History of the South, ed. by Wendell Holmes Stephenson and E. Merton Coulter (10 vols.; Baton Rouge: Louisiana State University Press, 1950), p. 400. Davis apparently did not intend the first Marshall Conference to accomplish more than issue requests and reaffirm national loyalties.

Ibid., p. 463. See also State Gazette (Austin), September 3, 1862.

Lubbock, Memoirs, p. 463. See also Proclamation By The Governor, December 30, 1862, Senate Journal, Ninth Legislature, Extra Session, pp. xi-xii.

Senate Journal, Ninth Legislature, Extra Session, p. 5. For the entire message, see Ibid., pp. 5-40.

Ibid., p. 23. Congress and then President Davis called on farmers to raise less cotton and more corn and foodstuffs. Robert L. Kerby, Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-1865 (New York: Columbia University Press, 1972), p. 78.

Ibid., pp. 22-23.

Texas Republican (Marshall), January 22, 1863.

Tri-Weekly Telegraph (Houston), December 17, 1862.

The distinction drawn here is not between agricultural and mercantile interests, but rather between cotton interests and grain and/or stock-raising interests. That is, Texas had a cotton culture
based on farm and plantation--centered in the rich bottom lands of the Trinity, Brazos, and Colorado rivers--and a grain and stock-raising culture--centered in the northern and central counties. The mercantile and quasi-banking interests, especially in Galveston and Houston, seem to have been closely allied with the cotton farmers and planters; the available evidence suggests that lawyers, in and out of the legislature, were also closely--and logically--allied with the cotton producers. Ralph Wooster, who has written several studies of Texans based on information culled from the 1850 and 1860 censuses, notes that there were fifty-two "farmers or planters" (Texas census takers used the terms variously) and thirty lawyers in the 1860 (Eighth) Legislature. That is, 46% of the members were "farmers or planters"; 26.5% were lawyers. See Wooster, "Membership in Early Texas Legislatures, 1850-1860," Southwestern Historical Quarterly, LIX (October, 1965), 163-173. Although no data based upon census information has been published for the Ninth or Tenth (Civil War) Legislatures, it is probable that cotton "farmers or planters" and lawyers joined to advance their common interests. Eugene D. Genovese's contention that "southern banking . . . tied the bankers to the plantations" might apply equally to mercantile interests, quasi-banking interests, and lawyers. Genovese, "The Slave South: An Interpretation," The Political Economy of Slavery: Studies in the Economy and Society of the Slave South (New York: Vintage Books, 1965), p. 22. The cotton-slave culture tied to itself certain interests, in the Legislature especially lawyers, that were readily distinguishable from the other agricultural groups in the state. This is a subject that needs investigation; presently there is little available data.


15Senate Journal, Ninth Legislature, Extra Session, pp. 53-54, 57, 58.


17State Gazette, April 1, 1863, and Tri-Weekly Telegraph, March 2, 1863.

Tri-Weekly Telegraph, February 18, 1863.

Tri-Weekly Telegraph, February 25, 1863. For Crockett's feeling about the vote and for his comment, see Senate Journal, Ninth Legislature, Extra Session, p. 85.

These parliamentary maneuvers are recorded in Senate Journal, Ninth Legislature, Extra Session, pp. 101-102. The vote to overturn Crockett's decision was 16 to 15. Ibid., p. 102.

Ibid., pp. 102, 106-107.

State Gazette, April 1, 1863. The Tri-Weekly Telegraph, March 4, 1863, reported that Jordan arrived in Austin just in time to vote against the bill. For the final vote on the cotton restriction bill, see Senate Journal, Ninth Legislature, Extra Session, p. 108.

The House Committee on Agriculture reported its substitute on February 16; the first reading of a bill "to restrict the planting and culture of cotton" occurred on March 5. See House Journal, Ninth Legislature, Extra Session, pp. 57, 197.


For Davis' circular to the governors appealing for their cooperation in securing slave labor, see O. R., Series IV, vol. II, 211. The impressment of slave labor in Texas has received very little attention from historians, but see J. Villásana Haggard, "A Brief Study of the Impressment of Slave Labor in Texas, 1861-1865," unpublished typescript (1938), Eugene C. Barker Texas History Center Archives, University of Texas at Austin (hereinafter cited as Barker Center Archives); and Jonnie Mildred Megee, "The Confederate Impressment Acts in the Trans-Mississippi States" (unpublished M.A. thesis, University of Texas, 1915).

Broadus introduced his bill on February 10; A. S. Richardson reported the substitute on February 25. House Journal, Ninth Legislature, Extra Session, pp. 51, 143-144.

Ibid., p. 144.

For a comment on some legislators' willingness to impress slaves, see Charles W. Ramsdell, Behind the Lines in the Southern Confederacy (Baton Rouge: Louisiana State University Press, 1944), p. 78.

the actual vote was 17 to 6.

32 Ibid., p. 143.

33 Section 9 of the Confederate Impression Act authorized the Secretary of War to regulate impressment when there were no state laws pertaining to the subject. James M. Matthews, ed., Public Laws of the Confederate States of America. First Congress, Sessions 1-4; Second Congress, First Session (Richmond, 1862-1864), p. 104. For examples of Lubbock's desire to cooperate with Confederate military authorities in impressing slave labor and of General Magruder's desire to execute his orders relating to slave impressments firmly but fairly, see J. Y. Dashiell to Magruder, June 4, 1863, O. R., Series I, vol. XXVI, Pt. II, 36; and Magruder to Lubbock, ibid., 33-36.

34 H. P. N. Gammel, comp., The Laws of Texas, 1822-1897 (10 vols.; Austin: Gammel Book Company, 1898), V, 450-51. Ramsdell suggested that although relief had been left to the counties, state officials were anxious to exert greater control over the distribution of funds and supplies. See Ramsdell, Behind the Lines in the Southern Confederacy, p. 66. For a brief but uncritical discussion of state aid to soldiers' families, see William Frank Zornow, "Texas State Aid for Indigent Soldiers, 1861-1865," Mid-America, XXVII (April, 1955), 171-175.


36 See House Journal, Ninth Legislature, Extra Session, pp. 62, 73. J. E. Harwell of Lavaca County introduced the bill to fix commodity prices. The House Finance Committee reported adversely on Harwell's bill on February 18. See ibid., pp. 95-96. N. W. Bush of Austin County introduced the bill to prohibit speculation and extortions and thereby provoked a lengthy and unfavorable reaction from the Judiciary Committee. See ibid., pp. 77-78.

37 Tri-Weekly Telegraph, February 18, and March 2, 1863. "Observer" wrote that "black books, unreasonable seizures and searches, dis-franchisements, etc., are all being discussed and have their advocates and yet there is not a man in favor of this ultra legislation who does not believe that it is necessary for the country." Ibid., March 2, 1863.

38 House Journal, Ninth Legislature, Extra Session, pp. 56, 100. W. B. Moores' bill was designed to punish a "Certain Offense," namely to refuse to accept Confederate notes. The bill is in Records of the Legislature, Ninth Legislature, Extra Session, State Archives.


Ibid., pp. 95-96.

Ibid., pp. 77-78.

Ibid., pp. 117-118.

Ibid., p. 67.

Ibid., p. 68, for the roll call vote to sit as a Committee of the Whole.

Ibid., pp. 120-121.

Tri-Weekly Telegraph, February 27, 1863.

Ibid., March 2, 1863.


For the vote, see ibid., p. 135. Broaddus' comment is from his letter to the Tri-Weekly News (Galveston), March 2, 1863.

The proposed amendments are in House Journal, Ninth Legislature, Extra Session, pp. 137, 138, 146.

Both Townes and Cone offered reasonable and non-substantive amendments to the Broaddus' substitute; the House adopted Townes' amendment and one of Cone's. House Journal, Ninth Legislature, Extra Session, pp. 138, 145. These particular amendments against which no one could quarrel were probably calculated to force a second vote on the Broaddus substitute. Although the vote was tallied at 35 votes for the amendment and 36 against it, a count of the nay votes shows only 35 names—Cone's was missing. See ibid., pp. 153-154. Apparently the clerk omitted Cone's name, but the Broaddus group assumed it had lost the battle because no further attempt was made to broach that issue. The final vote on the bill was 64 to 9, although again only 63 names appear in the "yea" column. See ibid., p. 154. On the day following the vote (February 28), several members, including Broaddus, asked permission to change their votes on the final bill. At that point, their switching made no difference since the bill had carried by a huge majority, but the die-hard supporters of price-fixing, search, seizure, and impressment would have a ready issue when they once again faced their constituents. That is, they had voted for a stringent measure; it had lost, but there was still a relief bill. If it failed to meet the needs of soldiers' families, Broaddus and his ilk could always blame the "conservatives." See ibid., 155, for the vote changes and the Tri-Weekly News, March 2, 1863, for an example of how Broaddus probably intended to use his vote.
53 Rice Maxey of the Committee on State Affairs reported the substitute. See Senate Journal, Ninth Legislature, Extra Session, p. 71. For Guinn's substitute, see ibid., p. 100.

54 "Observer" to the Tri-Weekly Telegraph, March 2, 1863.

55 Wheeler to O. M. Roberts, February 12, 1863, in Roberts (Oran Milo) Papers, Barker Center Archives.

56 Senate Journal, Ninth Legislature, Extra Session, p. 103.

57 Gammel, Laws of Texas, V, 601, 617-618.

58 Tri-Weekly Telegraph, March 9, 1863.


60 Gammel, Laws of Texas, V, 481.


62 See, for example, ibid., pp. 21-22, 25.


64 See, for example, Horace Cone's summary report to the House on the activities of the Finance Committee, House Journal, Ninth Legislature, Extra Session, pp. 171-175.


66 The committee chairmen acknowledged in their respective reports that obtaining specie with which to pay the specie tax would be nearly impossible for most Texans. See House Journal, Ninth Legislature, Extra Session, p. 103; and Senate Journal, Ninth Legislature, Extra Session, p. 80. For public concern about the specie tax, see, for example, "Observer" to the Tri-Weekly Telegraph, February 13, 1863; and E. A. Blanch to the Texas Republican, March 5, 1863.

67 Senator Leroy W. Cooper and Representative G. F. Alford, both from District 11 (Anderson, Houston, and Trinity counties) submitted


69 For Selman's substitute, which would have suspended the collection of the specie tax for 1863, see ibid., p. 94. The stubborn Broaddus tried to table the bill after a motion to suspend collection of the tax for 1862 had failed; he lost. House Journal, Ninth Legislature, Extra Session, pp. 119-120.

70 Ibid., pp. 171-175. The Finance Committee earlier had registered its opposition to a resolution requesting the Texas congressmen to exert their influence toward amending the Confederate Constitution. The committee deemed it "inexpedient . . . to legislate on the subject" and contended that "to memorialize the Congress to alter or amend [the Confederate] Constitution" might result in accusations "of vacillation and instability." See ibid., pp. 87-88.

71 See ibid., pp. 175-180, for proposed amendments.

72 Ibid., p. 139.

73 Ibid., p. 179.

74 Senate Journal, Ninth Legislature, Extra Session, p. 146.

75 Ibid., p. 147.

76 See Gammel, Laws of Texas, V, 611. Lubbock included the recommendation in his message to the Legislature, Senate Journal, Ninth Legislature, Extra Session, p. 36.

77 James D. Richardson, comp. and ed., The Messages and Papers of Jefferson Davis and the Confederacy, Including Diplomatic Correspondence, 1861-1865 (2 vols.; New York: Chelsea House- Robert Hector, 1966), I, 294. Even before the Legislature convened, an East Texas editor recommended that every state "formally assume its proportion of the war debt, and pass the most binding resolutions against repudiating any portion of it." Texas Republican, January 29, 1863.


79 P. W. Gray to W. P. Ballinger, April 3, 1863, William Pitt Ballinger Papers, Barker Center Archives.

80 See Lubbock's message, Senate Journal, Ninth Legislature, Extra Session, p. 5; and Lubbock, Memoirs, p. 463.

81 The original draft of the bill, in Potter's distinctive
handwriting, is in Records of the Legislature, State of Texas, Ninth Legislature, Extra Session, State Archives.

82 Gammel, Laws of Texas, V, 601-602.

83 Peter Allen had lived in Texas for seventeen years prior to his petition, but according to Frank Williams, chairman of the House Committee on Slaves and Slavery, "The legislation of the country prevented the residence of free negroes in our midst. . . ." House Journal, Ninth Legislature, Extra Session, pp. 60-61. Laws passed in 1856 and 1858 prescribed penalties for anyone's assisting a free negro into Texas and provided means by which a free negro could select a master. See Gammel, Laws of Texas, IV, 466, 947. The amended 1861 Constitution of Texas denied the possibility of emancipation of slaves by deed or will. See ibid., V, 22-23. Allen's petition appears in the House Journal, Ninth Legislature, Extra Session, p. 46. Among other signers were T. W. House, Paul Bremond, and William T. Austin.

84 Ibid., pp. 81-83.

85 Ibid., pp. 81-83.


88 Gammel, Laws of Texas, V, 625. Curiously, the Senate Committee on State Affairs and the House Committee on Confederate Relations had rejected joint resolutions relating to the Rio Grande trade. See Senate Journal, Ninth Legislature, Extra Session, p. 63; and F. M. Hays to the Speaker of the House, Records of the Legislature, State of Texas, Ninth Legislature, Extra Session, "Committee Reports." State Archives. The Tri-Weekly Telegraph, February 20 and February 25, 1863, reported that Senators Harcourt and Hord were instrumental in pressing resolutions relating to free trade on the Rio Grande. R. T. Flewelling submitted a Joint Resolution to the House which was the basis of the one finally adopted. His draft is in Records of the Legislature, State of Texas, Ninth Legislature, Extra Session, "Joint Resolutions," State Archives. Harcourt and Flewelling were leaders of the cotton faction; Hord was a Brownsville merchant who undoubtedly had an interest in keeping the river trade open. Harcourt
argued that cotton planters "languished" because of military encroachment on the cotton trade through Brownsville. See *Tri-Weekly Telegraph*, April 3, 1863.

89 *Tri-Weekly Telegraph*, March 9, 1863.
CHAPTER IV

AN EMPIRE OF DISCORDANT AND DIVERSE FEELINGS:
STATE ELECTIONS, 1863

Shortly after the extraordinary session of the Ninth Legislature convened in Austin in February, Governor Lubbock announced that he did not intend to seek re-election. Although he explained his decision to the legislators by asserting that "the impulses of his heart" counseled him to join the ranks of fighting men, Lubbock may have wished to avoid the biennial gubernatorial contest for other reasons. His victory over Edward Clark in 1861, after all, had been very narrow, and since then Lubbock had had countless opportunities to add to the list of his political enemies, or at least to intensify their antagonism. To some Texans Lubbock's cooperation with Confederate civil and military authorities smacked of subservience to either Richmond rule or military rule. His efforts to restrict the activities of "traitors" were unstinted; his support of martial law in 1862 had been neither quiet nor passive. David Richardson, editor of the Texas State Gazette, suggested that "the widespread criticism of his strict adherence to the Confederate conscription law" might have caused Lubbock to doubt his chances for re-election.¹

Whatever his reasons, Lubbock's decision left the political
arena open to any and all who cared to enter—and many moved to seize the chance. By early spring the newspapers had launched trial balloons for the candidacies of many of the most prominent men in the state. Some of those mentioned as possible candidates in the press—Frank B. Sexton, Confederate Congressman from the Fourth District; Nathan G. Shelley, Attorney General; John R. Baylor, recent governor of Confederate Arizona; John H. Reagan, Confederate Postmaster General; and C. W. Buckley and Horace Cone, members of the Legislature—seemed to have entertained no serious ambitions for the executive post.² There were enough serious candidates, however, to cause E. H. Cushing to question whether there could be a "quiet canvas." Perhaps, as Cushing suggested, since "Texas [was] fast becoming an empire of itself, . . . an empire of discordant and diverse feelings," with a "free-spoken" and "equally free-acting" people, it was normal that several men were earnestly seeking the governorship.³

T. J. Chambers was the first to announce formally that he would run for governor. He issued a circular to the people of Texas in which he outlined his plans for the defense of the state, condemned martial law, invoked the supremacy of civil over military authority, and inveighed against the Confederate government in general and Jefferson Davis in particular for their refusal to grant him a commission in the army contrary to recommendations made in 1861 and 1862 by both state officials and the congressional delegation. Chambers chastised the Confederate authorities and "a small clique of jealous and selfish politicians" for having "[defeated] the wishes
of the State in [his] behalf," then tweaked them for appointing a stranger, the "unsympathetic" General Paul O. Hébert, to command the military district of Texas. Chambers admitted he might have "indulged in some intemperate expressions on the subject" during the early months of the war, but he insisted that he had ridded himself of all "unkind feelings" toward President Davis. Nevertheless, throughout the gubernatorial campaign, Chambers' opponents regarded him as "anti-Administration," one of them even going so far as to suggest that Chambers had entered the race in order to vindicate himself against Jefferson Davis.

Despite his single-minded determination to defend Texas at all costs, including possible collision with the Richmond government, Chambers evidently supported the Confederate cause of national independence. At least he had been an early proponent of secession; he had represented his district at the Secession Convention; and he had served as chairman of the convention's Committee on Federal Relations. Yet after surveying his earlier political career, Chambers' biographer called him more of a Texan than a Democrat, and in 1863 he appeared to be more of a Texan than a Confederate.

But however much and however often he attacked the policies of the Confederate authorities, Chambers had joined the "revolution" at the outset. The same could not be said of another prospective candidate, former governor Sam Houston. The old governor's conduct during the secession winter, plus his refusal to take the oath of allegiance to the Confederacy in March, 1861, had convinced many Texans that Houston could not be trusted. It mattered not that
Houston had sent a son to the Confederate ranks or that he pledged his "hearty support of the cause which is now of life and death to us all."\textsuperscript{8} What did matter was that Houston was identified with Unionists: with those who had never taken the oath to the Confederacy and with those who had remained loyal to the Union.\textsuperscript{9} That Sam Houston seriously considered making the race in 1863 is doubtful—he was seventy years old—but William Pitt Ballinger believed that he had come down to Houston to survey "the field for Gov." And after Houston delivered an address to the local citizens on "the aspect of affairs," public men grew even more convinced that he intended to toss his proverbial hat in the ring.\textsuperscript{10} The prospect of Houston as a gubernatorial candidate hung heavy. Nat Terry, a political friend of Governor Lubbock's in Fort Worth, thought that with so many "true Patriots" out of the state there was a real danger that Houston could be elected. Terry added that "even [Houston's obtaining] a respectable vote . . . would affect us unfavorably."\textsuperscript{11}

Perhaps no one feared Houston's candidacy more than Guy M. Bryan. The two men had suffered a long and bitter enmity, and the very hint of a Houston candidacy persuaded Bryan to remove himself from the race. Bryan confided to Governor Lubbock and to Ballinger that, with Louisiana rapidly falling into the hands of the Federals, the consequences of a Houston victory "would be calamitous indeed." If anarchy prevailed in Louisiana and Sam Houston in Texas—"God forbid such a state of things,"\textsuperscript{12} Thus for Confederate nationalists such as Cushing and Ballinger, and for staunch Confederates across the state, the political scene in early spring was not particularly
bright: "Old Sam Houston, General Chambers, bah—you have men at home, cant [sic] the people put them into office [?]" wrote one soldier from the field. But the problem was to concentrate on one man who could muster support throughout the state to contest either Chambers or Houston or both. With several possible candidates still receiving attention from the press as late as April, the task of "pro-Administration," pro-Confederate politicians would not be easy.

In the continued absence of formal party organization, it fell to interested men to discuss the merits of their friends for public office. Since the Legislature remained in session until early March, during which time General Chambers published the Circular announcing his candidacy for Governor, legislators probably had myriad opportunities to examine the qualifications and availability of the "best men" in the state—to operate, in fact, as a political caucus or convention would. Although "Truth" wrote from San Antonio "that no time was occupied by the members [of the Legislature] in making a Governor," and that apparently "no particular Eastern or Western man was chosen to be the successor of our . . . Chief Magistrate," two members of the session, John M. Crockett and M. M. Potter, left Austin showing at least temporary signs of political strength.

Crockett, a native of South Carolina and, according to Sam Maverick, "one of the ugliest red headed, angular-jawed men who perhaps you ever saw," was the Lieutenant Governor, an officer with more legislative than executive responsibilities. As presiding officer of the Senate, Crockett had cast the tie-breaking vote to
engross the bill restricting cotton planting and thereby had
estranged the delegates from the cotton-producing districts.\textsuperscript{16}

Potential support for Crockett centered in North Texas. The \textit{Dallas
Herald}, in an April endorsement of Crockett, pointedly shunned
sectionalism, but nevertheless urged the northern section, which
had never asked much from the state, "to lift its voice in this
campaign." The editor added that the wheat-producing section needed
an executive "whose watchful eye should guard the welfare of all
interests alike, and not squint with one eye upon the wheat region
while with the other, he glares with the effulgence of the meridian
sun upon the coast and its cotton interest."\textsuperscript{17} But down in Houston
where the cotton interests enjoyed influence, editor Cushing dismissed
the \textit{Herald}'s endorsement of Crockett with an admonition against
introducing the "sectional ingredient" into the governor's race.\textsuperscript{18}
It is not clear whether Crockett assumed his decisive vote on the
cotton restriction bill had cost him any chance of support in the
cotton belt, or whether he recognized that he represented both a
region and an interest which generally had been ignored in a state
where political battles were drawn on an East-West line. At any
rate, when Crockett withdrew from the race in May, declaring that
he opposed wartime elections and suggesting a constitutional amend-
ment to dispense with them, any hope of finding a candidate from
the northern sections faded.\textsuperscript{19}

M. M. Potter, the other gubernatorial aspirant who left the
legislative session with some support among influential men, had,
of course, been identified with the "conservative" element in the
Legislature. And according to the accepted political division of the state, Potter was a western man whose potential support reached from his own coastal district to San Antonio and Austin. That Potter wanted to be governor and thought he could be elected is evident. But he was indecisive; although he knew he commanded substantial support, he never believed that sufficient "demonstrations in his favor" had been made. William P. Ballinger, Potter's friend and occasional legal partner, noted that even with the backing of Cushing of the *Telegraph* and Willard Richardson of the Galveston News, Potter "[took] alarm and [withdrew] at the 11th hour." Potter did not reach his final decision until May 7 and then only after several days of consultation with friends, among them Ballinger, Richardson (of the News), A. N. Jordan, state senator from Harris County, and Fletcher S. Stockdale, a gubernatorial aspirant himself. Stockdale and Potter had been political friends for several years, but, according to Ballinger, "there [had] been some little sheering off between them." Stockdale confided to Ballinger that "Potter's indecision about being a candidate, has been an injury" to both Potter and his friends. Consequently, because of the "sheering off" between Potter and Stockdale, because of Potter's vacillation, and because of Stockdale's annoyance with Potter's indecision, the participants in the Houston meeting concentrated on the broader objective of securing a good governor rather than on that merely of choosing between the two aspirants present.

Fletcher Stockdale, a prominent South Texas Democrat, had served two terms in the state senate, one of them while he was a delegate to
the Secession Convention in 1861. As a member of the Democratic organization before the war, Stockdale apparently developed lines of communication around the state which enabled him to glean abundant information about political matters. Even before he went to Houston to consult with Ballinger and Richardson about his political future, he dispatched a summary of the problems that faced "the friends who entertain[ed] views in common." First, he wrote, General Chambers was gaining friends because no capable man had appeared to oppose him; besides "the absence of a proper candidate [encouraged] the appearance of improper ones" thus giving an advantage to Houston or, barring his candidacy, giving an advantage to Chambers. Second, Stockdale argued, as long as it was doubtful whether a candidate would take the field, friends would hesitate to be active in his favor. Third, Stockdale noted, the eastern part of the state had had ample time to "point to its man" and had not done so. Since Stockdale did not consider John M. Crockett the East's man, he preferred putting a good western man "on the track" even if later he had to be withdrawn in deference to eastern opinion. Finally, Stockdale insisted that with the election only about one hundred days away, no man could delay his decision in order to survey his chances one more time. Instead, "each of those of concurring views with reference to the danger to be apprehended from Houston & Chambers should at once determine that [he] either will or will not take the chances of defeat and the consequence if it comes."26

Stockdale's summary broached the ticklish subject of whether an eastern or a western man of "concurring views" should take the
field against Chambers or the enigmatic Houston. It had been commonplace in Texas to distribute the burdens, benefits, and high offices as equally as possible on both sides of the Trinity River, the dividing line between East and West. Stockdale himself admitted that he had never thought "the East [had] a positive right, by custom or otherwise, to name their own man, and call upon the west to elect him." He was aware, however, that the East now felt itself entitled to the governor, the last one having been a western man. What Stockdale, Potter, and the other conferees at Houston wanted to avoid was the creation of a sectional issue. If, ignoring custom, they united around a western man, they stood to divert the people of the East from the question of the merit of the candidates. And to toy politically with the sectional issue would almost certainly end in failure to gain their objective: "the securing [of] a good and true man no matter who he was or where from, for Governor."  

Shortly before the Potter-Stockdale contingent met in Houston, the Tri-Weekly Telegraph published a column (written by "A.B.") in support of Colonel Henry McCulloch for governor. McCulloch was a western man and, as Ballinger noted, he would cut into Stockdale's strength and perhaps hurt Potter too. McCulloch's possible candidacy doubtless contributed to both the drama and the indecision of the meetings; but more important was the news from Marshall via the Texas Republican that the East seemed willing to unite in support of a Harrison County lawyer, Pendleton Murrah. If in fact the East could find an acceptable candidate upon whom the popular vote could
be concentrated, then the state could "avoid the misfortune of having a governor elected by the minority of the votes cast." These factors probably influenced Potter's public withdrawal from consideration for the governor's post on May 7. At the same time, Stockdale also declined to run for governor although he was soon to enter--reluctantly--the contest for lieutenant governor.

By early summer, support for the eastern man, Pendleton Murrah, had crystallized. One by one the names of other gubernatorial candidates disappeared from the state's newspapers. Sam Houston, boasting to the end of his popularity with the people of Texas, insisted that although he could be elected, he would not be a candidate nor would he back any candidate in the field. With Old Sam out of the race, only T. J. Chambers remained as an "anti-Administration" hopeful. By mid-June, McCulloch was forced to abandon the field of politics for the field of battle. Thus the Texas State Gazette could write that month that the race had "narrowed down to a very small affair," Murrah against Chambers. That was what friends and supporters of the Administration had wanted; now they could turn to the business of insuring a friendly face in the Governor's Mansion.

An almost solid phalanx of newspapers--including the Tri-Weekly Telegraph, Tri-Weekly News, Dallas Herald, San Antonio Herald, and Texas Republican--endorsed Murrah during the campaign. In addition to editorial assistance, Murrah found he could expect the active support of McCulloch's friends in the West, of the legislators who had solicited him to run, and of the Stockdale-Potter circle in Houston. For what it was worth, Murrah would also receive the vote--
perhaps the active support—of Governor Lubbock. And if all this were not enough, Confederate military authorities in Shreveport, who attached real significance to the results of the upcoming gubernatorial election, stipulated that slaves should not be impressed before election day nor should cotton be impressed east of the Nueces River. General Kirby Smith apparently supposed that Murrah was the "Administration" candidate, and he therefore wanted to avoid creating any "additional exciting cause" that could turn the anxious and disgruntled element against Murrah.

It is not clear whether Murrah considered himself the "Administration" candidate. Speaking in Houston, where he was virtually unknown, Murrah showed himself to be a "strictly conservative statesman of the States Rights School." He did not denounce the Davis Administration, the military authorities, or the impressment law either in his Houston address or in the extended statement he had drafted earlier in the campaign. He acknowledged instead that the Confederate authorities had the right and duty—indeed the power—to control whatever resources were necessary to prosecute the war and protect the country. Murrah observed, however, that the state would be required to employ her own means—her militia, credit, and resources—in the event of an invasion that could not be handled by the Confederate authorities. To this he added that the frontier demanded protection and that the state was willing to provide it if the Confederacy could not. In fact, he concluded, the people who lived in the frontier counties probably could "protect themselves in a better and more effectual manner than whole regiments of
temporary sojourners."\textsuperscript{40}

But more important to Murrah was the boundary between state and Confederate authorities which he felt should be "rigidly observed." He did not accuse the Confederate authorities of having overstepped that boundary which, except for the distinction between local and general concerns, he did not define. Rather Murrah emphasized the necessity of electing sound men under whose administration the state government would not be "dwarfed." An executive of good judgment, discretion, and resolution could meet emergencies produced by the war: if the state constitution was not sufficient to the needs of the times, then the people should amend it. It would have been difficult for the seekers of a "good and true" governor to quarrel with those vague sentiments.\textsuperscript{41} Even one of the more ardent rebel nationalists, E. H. Cushing, characterized Murrah as "calm and unimpulsive," and "free from personal or political prejudice [toward] the Administration." Cushing, who claimed to have had several opportunities to discuss national affairs with Murrah, insisted that the candidate's judgment was reliable.\textsuperscript{42} Perhaps because Murrah was relatively unknown, comparatively inexperienced, and untested as a statesman, the friendly press refrained from quizzing him intensively about his position on public issues; instead it chose to promulgate platitudes about Murrah's steady defense of the Confederate cause.

General Chambers, on the other hand, did not fare so well with the press. In addition to his being the "anti-Administration" candidate and therefore subject to abuse from "pro-Administration" newspapers,
Chambers nettled the editors by charging that an "editorial oligarchy," whose members were free from battle because of the "odious exemption law," was scheming to defeat him. "No despotism could be worse than an editorial oligarchy," trumpeted Chambers, unless of course, it was a despotism of editors and hackneyed politicians. The old General insisted that he had been misrepresented in the press and by the politicians, that he was not opposed to the Davis administration, and that his policies would not put Texas on a collision course with Confederate authorities; only his refusal to kneel before the plotting press and petty politicians set them against his candidacy. Few of the state's newspapers rushed in to defend Chambers or to elaborate charges that malignant conspirators were out to beat him. The Clarksville Standard, for example, merely compared the candidates' military records; and certainly Murrah, who had served in the army very briefly—and then in the Quartermaster's Corps—suffered by comparison.

Only David Richardson, editor of the Texas State Gazette, earnestly lent his caustic pen to Chambers' bid for election. Residing in Austin, Richardson no doubt heard every rumor that floated through the capital streets. At least he heard enough to persuade him that a caucus—presumably composed of legislators and interested friends—had met during the recent extra session of the Legislature to study the feasibility of M. M. Potter's running for governor. With Murrah's friends already active on his behalf, however, the caucus had turned to adjusting the claims of the potentially rival candidates. According to Richardson, Potter had emerged from the conference as
the "caucus candidate" and had returned to his coastal home at the adjournment of the session only to find that the so-called "Houston clique" had decided to abandon him in favor of Murrah and to back Stockdale for lieutenant governor. It sounded convincing and it fit well with Chambers' theme of conspiracy, but Richardson's account ignored the fact that the process of selecting a proper candidate had been neither neat nor well-planned. R. K. Hartley, senator from Galveston and Potter's personal and political friend, contended that no caucus for Potter was held in Austin. Potter's own indecision about making the race coupled with his apprehensiveness regarding sufficient "demonstrations in his favor" would seem to substantiate Hartley's comment.46

And as for the machinations of the "Houston clique," Cushing conceded that "several citizens [had] met together [to] discuss the aspect of affairs," but he denied that Murrah had been substituted for Potter in the governor's race or that Stockdale had been offered the consolation prize. Cushing, however, may not have been aware that Stockdale and Willard Richardson of the Galveston News had in fact agreed that the best way to defeat Sam Houston (who had not yet withdrawn) was to run Murrah, the eastern man, and that Stockdale had explicitly consented to stand aside and seek the second place instead.47

How decisions were reached among the political leaders in eastern Texas is not at all clear, but communications between the eastern politicians and the "Houston clique" were certainly prompt. Murrah himself confirmed, in a letter he wrote to Judge O. M. Roberts only four days after Stockdale and Potter declined the race for the
governorship, that he was in the race with substantial western support and that Stockdale would run for lieutenant governor. 49 Political caucuses were not uncommon in the nineteenth century and although the party nominating conventions had been designed in part to replace them, it was perhaps normal that caucuses would reappear, and serve a useful function, when the conventions and formal party organizations disappeared. 50 Whereas the evidence does not support the notion of a "caucus candidate," it obviously does suggest the existence of a group, or more likely several groups, determined to thwart the election prospects of "anti-Administration" gubernatorial candidates. His opponents' tactics should not have surprised General Chambers. He was, after all, as Cushing put it, "a monomaniac on the subject of combinations, cliques, and politicians . . . who [were] as stubborn about getting out of his way as was Banquo's ghost" at Macbeth's banquet. 51

All four candidates in the contest for lieutenant governor were western men; besides Stockdale of Indianola (Calhoun County), they were Dr. P. W. Kittrell of Huntsville (Walker County), A. M. Gentry of Houston (Harris County), and Stephen H. Darden of Gonzales (Gonzales County). Because both Murrah and Chambers were eastern men, it appears that the western lieutenant gubernatorial candidates were consciously attempting to strike the customary sectional balance. (There is no evidence to suggest that any eastern man considered making the race for lieutenant governor.) Kittrell, a native of North Carolina, had served in the legislatures of Alabama and Texas. A Know-Nothing in 1855, he had repented, had rejoined the Democratic
party, and during the heated Democratic convention in 1859, had advocated reopening the African slave trade. Kittrell explained that he sought the office because his age—he was fifty-seven—prevented his serving on the battle fields, because his "knowledge of parliamentary rules and business generally" qualified him for the post, and because he wanted to contribute to the achieving of "a separate national existence."

Described as "a plain practical businessman," A. M. Gentry was the president and agent of the Texas and New Orleans Railroad. As befitted a successful businessman and railroad promoter, Gentry, in his public announcement, focused on the need to develop the resources of the state while pursuing a "prudent and sound financial policy" that would free the citizens from the onerous taxation of the war. This entrepreneur, despite his inclination toward whiggish economic views, promised to support strict construction and to fight any encroachment upon the constitutional rights of the people. Gentry's legislative experience had been limited to one term in the state senate, but he had taken an active role in the San Jacinto Battle-ground Assembly, which had met in 1860 to nominate Sam Houston for President of the United States. Later that year he had attended the National Union Convention in Baltimore. Gentry's Unionist stance and his relative inexperience irritated Stockdale to the point that the latter admitted he would suffer "considerable mortification" if defeated by Gentry—or by Kittrell, for that matter.

Neither Gentry nor Kittrell, however, seems to have posed a major threat to Stockdale, the one candidate with the advantage of
holding a place on a quasi ticket. The real challenge came from Stephen H. Darden, like Stockdale from southwestern Texas, but utterly unlike his principal opponent in having been at various times a Know-Nothing, a Unionist, and an anti-secessionist.\textsuperscript{56}

Notwithstanding the dearth of materials related to the campaign for the lieutenant governorship of 1863, it is probable that Darden played the role of Administration critic. He carried, as did Chambers, several counties generally conceded to be hostile to Administration policies, wheat counties in northern Texas opposed to impressment and central Texas counties critical of conscription. Darden had been endorsed by the Victoria \textit{Advocate}, moreover, whose publisher, Sam Addison White, had won a state senate seat by opposing martial law.\textsuperscript{57}

That "multiplicity of candidates" which had barely been avoided by the choice of Murrah to run for governor was a fact in the lieutenant governor's race.\textsuperscript{58} The appearance of four contenders stymied any chance to depict the contest in simple "pro-" or "anti-Administration" terms. Stockdale, for instance, feared "the race [had fallen] down . . . to a mere choice upon local or personal considerations--without reference to qualifications."\textsuperscript{59} To elicit general rather than local support Stockdale drafted a broad but incisive policy statement. The crux of the argument in Stockdale's circular to the people was his conviction that the office of lieutenant governor carried such responsibility and power that it could be entrusted only to a man of "high qualifications." The lieutenant governor was much more than the presiding officer of the Senate,
which Stockdale labeled the "conservative branch of the Legislature."\textsuperscript{60} The candidate pointed out that when the Senate sat as the Committee of the Whole, he could debate and vote; in addition the lieutenant governor appointed the committees, a job that permitted him to exercise extraordinary control over the business of the Senate. Therefore Stockdale felt himself justified in concluding that the office offered opportunities for a man of "high qualifications" to set aside personal or sectional interests for the good of the state.

Stockdale then proceeded to sketch his position on a wide variety of issues including frontier defense, finances, education, internal improvements, and constitutional restraints upon the arbitrary exercise of power. Without carping at Confederate authorities, he explained that the sovereign people possessed legal remedies when they felt themselves victimized by the use of questionable or excessive power.\textsuperscript{61} Based on the extant evidence, Stockdale's address seems to have been the most complete statement of principle and policy to come out of the campaign. Ballinger, who supervised its publication in the \textit{Tri-Weekly Telegraph} and the \textit{Galveston News}, called the address "a fine thing." It was also Ballinger who, in an apparent effort to attract local moderates to Stockdale, wrote a fervent endorsement in which he saluted the nominee as a man who had "[prescribed] safe bounds to the [secession] convention, [prevented] the undue assumption of powers, [protected] the rights of the minority, and [stood] fast on the foundations of constitutional government."\textsuperscript{62} Yet ironically, in Harris County where both newspapers printed the address and the endorsements, Stockdale was to finish a poor second
to the local favorite, A. M. Gentry. And as if to prove the accuracy of his fears that the race hinged on mere "local or personal considerations," Stockdale was to carry only one county in the senatorial district that he had twice represented in the legislature. Darden would win the other five counties, helped apparently by the backing of Sam Addison White, Stockdale's long-time local adversary, and W. M. Cook, a candidate for state representative, whose "nefarious land stealing schemes" required a complacent lieutenant governor.

By the time Texans trekked to the polls in early August, the Federal jaws had closed around Vicksburg, effectively cutting off the Trans-Mississippi Department from the rest of the Confederacy. The election results reveal some facets of the varied attitudes of Texans as they began to comprehend the meaning of their isolation. Despite historians' assertions to the contrary, there was an overriding issue in 1863: the favorable or unfavorable view that the candidates, especially Murrah and Chambers, took toward Confederate civil and military policy. Historians have assumed that Murrah and Chambers were equally dedicated to the cause of the Confederacy. Perhaps they were. But dedication to the cause cannot be equated with devotion to the Davis administration and its policies, or with a willingness to cooperate with General Smith, Davis' "vice-regent" in the West.

Whether Chambers intended it or not, his denunciation of impressment, his jealous regard for Texas, his resentment over the scarcity of Texans in high military posts, his desire to keep Texas
troops at home, all exposed or intensified antagonism toward Confederate authorities in Richmond and Shreveport. The editor of the Galveston News charged that Chambers' position was "ultra" and that he would cripple Confederate military power at a time when the preservation of the new nation depended on the army. And Guy M. Bryan, a prominent Texan on General Smith's staff, remarked that Chambers' reliability was questionable; "we could not tell when he might explode the whole machine." In the minds of rebel nationalists, "pro-Administration" Confederates, and men for whom independence from the United States was the paramount consideration, there was little doubt that Chambers represented a threat. Even if he were sincerely committed to the experiment in nation-making, his public stance would draw the "disaffected" men to the polls, and their votes would indicate to a watchful world that Texans lacked unity of purpose. Although Murrah was not widely known and his campaign remarks were not elucidated in the press, it is clear that his supporters were satisfied that he was a "good and true" man. Admittedly, sectional considerations played a major role in his selection as a candidate, but he was nevertheless chosen to oppose a recognized "anti-Administration" candidate.

In electing Murrah, the majority of Texas voters demonstrated their preference for a relatively unknown politician they judged to support the Confederate authorities rather than a well-known three-time loser they believed to oppose Administration policies. Murrah polled 17,511 votes to Chambers' 12,455, which was by far the largest vote Chambers had ever received. Curiously, Murrah carried
only twenty-three of the forty-one eastern counties reporting returns, although his candidacy had been advanced by politicians who thought an eastern man stood the best chance. He fared well, however, in the coastal cotton counties, in some of the northern wheat counties, and in the western counties (those west of the Trinity River) generally. Chambers, on the other hand, ran well in the extreme northeastern tier of counties and in the central Texas counties, areas where resistance to conscription and impressment had combined with quiescent Unionism.

In addition to the central issue of the contest, "local and personal considerations," many of which are unfathomable because of the very meager evidence, certainly played a part in the race. For example, Murrah failed to carry Harrison, his home county, or any of the adjacent and nearby counties, except Panola where he won with only 45% of the vote. The issue of the subordination of military to civil authority may not have been as important in those counties as Murrah's unpopularity, because Stockdale, the other half of the "pro-Administration" ticket so highly touted by the Marshall Texas Republican, won every county in that particular congressional district plus others in the section. General Chambers met defeat in his home county also; nor did he win any of the coastal counties from the Rio Grande to the Sabine. Chambers, who called himself a farmer and a stock raiser although he was listed as a lawyer in the 1860 census, was the wealthiest man in Chambers County and one of the eight men in the state with property valued at half a million dollars or more. But one critic's charges that Chambers had valued his
Chambers County land at $1.00 per acre on the assessor's tax roll when he would not accept $10.00 an acre for it, reflected some resentment toward a man of great wealth who appeared to be less than patriotic.\(^{72}\)

The victory of Murrah and Stockdale coupled with the strong vote for Chambers and Darden (who, like Stockdale, collected a sizeable vote outside his own immediate section) did not engender much rejoicing. The news of Lee's retreat from Gettysburg and of Pemberton's surrender at Vicksburg darkened further the already clouded optimism of Texans. Some probably sensed that underneath Chambers' bravado, under that intense, vigilant concern for the state, rested a willingness to pursue a new independence for Texas rather than a fresh cooperation with the Confederacy. Texas Unionists had never seemed to rally to the banner of the Lone Star; nevertheless, the rebirth of the Republic, at a time when the customary rights of citizens appeared everywhere trampled by the military, must have become an appealing possibility. Some Texans understood too that the power of the military authorities in a Department now forced to be self-sustaining would increase. One did not have to relish an extension of military authority; one only had to weigh the alternatives. The key was endurance; Stockdale had written in his address to the people that "our final victory must be of 'endurance born'."\(^{73}\). But that was the rub. The thoughtful Ballinger confided to his diary that the revolution had been the "work of political leaders" and that "the evils" which had precipitated it were not "such as affected the feelings of the mass
of the people without property to that extent which will sustain the extremities of suffering and resistance." In short, he feared "a reaction against the leaders of the Revolution & the Slaveholders."74 If he could not find that reaction reflected in Murrah's victory, he could see it in the heavy vote cast for Chambers and in the congressional elections which added further ambiguity to state politics in the summer of 1863.

Texas congressional elections produced mixed and baffling results with respect to the "pro-" and "anti-Administration" issue. All six incumbents sought re-election; three of the six met defeat, but their victorious opponents defy classification. A former Know-Nothing and secessionist, incumbent John A. Wilcox of San Antonio defeated John Bunton in the huge but sparsely populated First District. Far to the north and east in the Fifth District, John R. Baylor, the Indian fighter who had served briefly as governor of Confederate Arizona, narrowly defeated incumbent Malcolm D. Graham. Of the Baylor victory Frank B. Sexton, a Texas Congressman, simply wrote, "It is humiliating. . . ."75 In the Sixth District Simpson H. Morgan defeated William B. Wright, the incumbent. Election returns reveal a substantial voter interest in each of these races, but the issues which prompted men to vote as they did remain obscure.76

It is known, however, that in two other congressional districts incumbents were constrained to run on their legislative records. In the Second District, the state's largest, lawyer-legislator Eggleston D. Townes of Travis County challenged C. C. Herbert of Colorado County, the incumbent.77 During the summer political campaign, the
two candidates canvassed their district, appearing together at least once at Brenham. The views they expressed signaled a curious shift from earlier, pre-secession stands. For example, both Townes and Herbert had been members of the state Senate in January, 1861, when the Legislature resolved to recognize the legitimacy of the coming meeting of the Secession Convention. Townes was one of five senators who had voted against the resolution while Herbert had voted with the majority. Consequently, during their campaign, Herbert was able to charge that at the beginning of the secession movement, Townes had been "very weak in the knees." Herbert conceded that Townes had grown stronger, but even so, the Travis County lawyer had given secessionists only silent and feeble support.

Herbert, of course, possessed the credentials of a sound secessionist who had embraced the movement in its early stages. By the time he arrived at Richmond for the first session of the Congress in 1862, the travails of the Confederacy had reached the point where President Davis had recommended to the lawmakers a conscription act. Herbert then became the only Texas congressman to vote against conscription, refusing to abandon his state-rights scruples for expedient wartime measures. Again in August, 1862, when Congress voted to extend the conscript age to forty-five, Herbert opposed the measure and admonished the Congress not to "press the conscription law too far upon the people." Failure to heed his warning might, he had threatened, cause him to favor "raising in his State the 'lone star' flag that had twice been raised before." Presumably the congressman believed that the conscript act with its accompanying
exemptions arrayed the poor against the rich and violated the Constitution. While his vote may have reflected genuine democratic sympathies and ideological considerations, it was also a prudent one because many voters in his district had manifested opposition to secession in 1861 and open defiance of the conscript law in 1862.

That Herbert was an astute politician is undeniable. A wealthy farmer and large landowner, he aligned himself with the common men who owned no slaves and could afford no substitutes to keep them out of the war. A state-rights secessionist, he registered his disdain for the centralizing tendencies of the Richmond government and thus collected some Unionist friends. And to enhance his appeal among the soldiers while affirming his devotion to state-rights, Herbert opposed the Confederate Sequestration Act on the grounds that only the states could sequester alien enemies' property and that to place such sequestered property on sale precluded the soldiers' bidding on it.  

Challenger Townes had little choice but to attack Herbert's voting record and show that the incumbent was indifferent toward the cause of the Confederacy. Seizing his opportunity at the Brenham rally, he asked: if Herbert had been so "warm for secession," why was it that the "Union men," even those in Travis and Bastrop counties (Townes' western section of the district), and the anti-conscription Germans in Austin, Fayette, and Colorado counties supported Herbert? No novice himself, Townes declared that he would get the secessionist vote in the district not only because he had "bruised [Union men's] heads" during the secession crisis, but also
because had he been in Congress, he would have supported the war tax (which Herbert opposed) and the conscription bill without exemptions. Taking a final jab at his opponent, Townes told his audience that he hoped that if Herbert were elected, he would take all of the Union men to Richmond and deliver them under a flag of truce to the Lincoln government. Townes' desire to uphold the conscription acts and the war tax and his willingness to scoff at "union men" earned him the endorsement of Cushing's Telegraph, but newspaper backing failed to swing the district toward Townes. Herbert, having assembled a diverse coterie of supporters, defeated him handily.

In the Third District Peter W. Gray, the incumbent, ran into unexpected trouble in his bid for re-election. This congressman, whom Ballinger considered the best representative Texas had sent to Richmond, had decided in December, 1862, to seek a second term, and until six weeks before the election he had no opponent. Then several citizens in Walker County, northeast of Gray's home county, Harris, announced that Gray, by his support of the exemption clauses of the conscription act, had lost his right to represent them. Consequently, they "called out" A. M. Branch (of Walker County) to contest Gray for the congressional seat. Branch, a Huntsville lawyer and legislator, had been a partisan of Governor Houston's during the politically hot summer of 1860, but he had voted for the Ordinance of Secession because he saw "the necessity of a change in [Texas'] political relations." Even after Texans had approved the Ordinance and Texas had been admitted to the Confederacy,
Branch argued that the voters should have an opportunity to ratify the permanent Confederate Constitution; the Secession Convention in adopting the Constitution without submitting it to the people had, in his opinion, usurped its authority. Several of the more ardent secessionists rebuked Branch, but his constituents had ignored his lukewarmness and had elected him to the state senate in 1861.87

Gray, on the other hand, had joined the secession movement early, but his judicial background and judicious temperament had kept him in the moderate (though anti-Houston) wing of the state Democratic party. For example, when the slave trade issue threatened to split the anti-Houston wing of the party before the gubernatorial election in 1859, Gray, then a district judge, agreed to deliver a "conservative," anti-slave trade address to the citizens of Houston.88 His moderation reaped benefits later when, during his 1861 congressional campaign against A. P. Wiley (an engineer in the movement to reopen the slave trade in the 1850's), a voter wrote, "We who are in favor of Gray said that Wiley will do very well to assist in overturning a Govt but we prefer Judge Gray to help put up another."89 Thus, superficially the Gray-Branch contest resembled the Herbert-Townes race as again a committed secessionist opposed a man who had espoused the cause belatedly and reluctantly.

Gray opened his campaign with a speech in Houston in which he defended his record in Congress. An unadroit and blunt but forceful speaker, he asserted that the Conscription Act was constitutional because Congress possessed the power and prerogative to wage war. He added that since he had not anticipated conflict
between the rich and the poor, between the slaveholders and non-slaveholders, he had voted for the exemptions, but not until he had endeavored to change them. As for the twenty-Negro exemption, Gray explained that "it was deemed advisable not to interfere with the States which had exempted a slave police, and it was thought best to put the other States on the same footing." Although he admitted having voted to suspend the privilege of the writ of habeas corpus, he emphasized his opposition to martial law. The impressment bill he regarded as a code for legalizing and systematizing impressments that had occurred and would continue to occur. He also addressed himself to local and state issues. For instance, he believed that "the popular feeling [respecting retaliation against traitors and invaders] should be restrained." Punishment for commanders of Negro troops might be right and expedient, but "the black flag should be approached with very great caution." Gray claimed responsibility for forestalling a measure whereby the Confederate government would grant public lands to soldiers; since Texas had the most land to lose, he opposed the government's interfering with the public domain.  

In sum, it was a plain speech, a straightforward account of Gray's course in Congress and, if the newspaper editors were correct, a convincing explanation of his affirmative vote on the exemption bill, which seemed to be more unpopular than the conscription act itself. At any rate, the Houston-based newspapers, both of which had denounced exemptions, endorsed Gray, confident that his judgment could be trusted and that he would win the election.  

A month later, however, Willard Richardson of the News expressed
surprise and alarm at the energetic campaign launched against Gray. Richardson insinuated that Branch was following rather than leading his supporters, a theme Gray picked up when he toured the district and spoke in Huntsville.\(^92\) There he charged that the Citizens' card announcing Branch had betrayed uncharitable and demagogic overtones; Branch's friends had not "weighed" their language. They had instead, according to Gray, spread principles calculated to arouse class against class, the poor against the rich. They had sprung "doctrines agrarian and leveling" designed to break up "the very foundations of social and civil order."\(^93\) A. P. Wiley, one of Branch's supporters and Gray's old nemesis, tried, through the Galveston News, to refute a rumor that he had initiated the movement to defeat Gray. He added, however, that he and Gray were far apart on matters of public policy.\(^94\) As it turned out, Gray and the majority of his constituents were far apart on matters of public policy. Branch defeated him badly, even in Houston. Ballinger attributed Gray's defeat to his vote on the exemption measure, a vote that had enabled Wiley, Charles Stewart, J. D. McAdoo, and others to exploit the issue among "the soldiers & poorer people." "The days of demagoguery are not over," lamented Ballinger.\(^95\)

To the east of Houston in the Fourth Congressional District, James M. Anderson, who had challenged incumbent Frank B. Sexton, echoed complaints similar to Ballinger's. "Cunning tricks and demagoguism" had decided the contest, Anderson contended.\(^96\) A dedicated Confederate himself, Anderson opposed a man of the same ilk in Sexton, whose voting record hardly lent itself to the kind
of criticism that had greeted Gray in the Third District. Sexton, for example, although supporting the Conscription Acts (while admitting doubts regarding their constitutionality) had voted against the second exemption act (October, 1862) "because the clause 'exempting all those exempted by the laws of any state' was striken [sic] out."\(^97\) Nor had he supported the bill empowering the President to suspend the privilege of the writ of \textit{habeas corpus}. Sexton was less than satisfied with his negative vote on the \textit{habeas corpus} bill, however, because he believed that in some cases the privilege of the writ ought to be suspended. He also had taken the floor of the House to repudiate Herbert's "very foolish speech" that had intimated that Texans were prepared to float the Lone Star banner again if the conscript age were extended. On the contrary, Sexton had declared, Texans had accepted the conscript law; a recent trip home had revealed "no serious dissatisfaction" with the measure.\(^98\) Indeed, he had proclaimed, Texans "would never raise the standard of revolt, but would remain with the Confederacy, and share her fortunes through all the scenes of strife."\(^99\) To reproach an incumbent who had supported the cause and who had sought at the same time to avoid jeopardizing the rights of states or of individuals was difficult at best. Whether or not Anderson attempted to demonstrate a greater devotion to the Confederate cause is not known. Since both of the contenders had been secessionists, the issue of Unionism could not have entered the race. What seems to have swayed the voters was a series of "slanderous calumnies," among which was the charge that Anderson "advocated a system of taxation that made the poor man pay
all the taxes and placed him on a level with negro." That was Anderson's explanation, at least, and it is evident that his candidacy was actively opposed by several prominent men in his district. Nevertheless, the contest was close; Sexton defeated Anderson by a mere seventy-eight votes—"truly 'nothing to brag of,'" conceded the winner. Overall the elections of 1863 yielded ambiguous results. For example, the vote for Murrah and Stockdale can be interpreted as a revitalized commitment to the Confederate government and its policies, especially in the face of major military setbacks suffered in July. That Murrah and to some extent Stockdale were the "Administration" candidates seems to have been widely believed. In 1863 neither General Smith nor General Magruder would have meddled directly in the domestic politics of a state, but their concern about the impact of the new impressment orders and their determination to avoid "additional exciting cause[s]" indicates their firm understanding of which candidates shared their views on public policy.

On the other hand, Chambers' large vote and that of Darden, coupled with the victories of Herbert and Branch reveal a diminished enthusiasm among Texans for a war prosecuted according to the designs of Richmond officials. Chambers, Darden, Herbert, and possibly Branch tapped Unionist strongholds for some of their votes; Unionists responded affirmatively not because they thought a restoration or reconstruction of the Union was possible or even desirable, but because they had no other means, except by taking up arms against their friends, of showing their disgust for the high-handed officials
in Richmond, the potent military authorities in Shreveport, and the zealous Confederates who decided state policy in Austin. Appeals to class consciousness, especially in regard to the war tax and the twenty-Negro exemption, proved successful plows for Herbert and Branch (and possibly for Darden). Peter W. Gray might have labeled such tactics "agrarian and leveling," but they worked well among those people who were losing their will to endure.\textsuperscript{102}

One thing, at least, is perfectly clear about the 1863 elections: there were issues important enough and candidates controversial enough, if only on a local level, to draw a sizeable electorate to the polls. The total gubernatorial vote of 31,045 (32,409 including "informal votes" submitted by five counties) compared favorably with the gubernatorial vote in 1859 and 1861 and with the secession referendum vote in 1861. The vote in 1863 was particularly impressive considering the fact that thousands of Texas soldiers, including many of the "best men," were out of the state in the Confederate armies.\textsuperscript{103}

In a state now separated from the eastern Confederacy and forced to look to the military for direction, it was only natural that Texans, including many who remained staunch Confederates, would grow anxious about military power.\textsuperscript{104} The election results in some instances, at least, reveal that anxiety. Chambers, for example, was less a popular candidate than a symbol of protest against measures, policies, and attitudes that seemed inimical to the interests of Texas. On the other hand, the results reflect a tendency to choose candidates—Murray, for example—who, it was anticipated, would cooperate with the military authorities to advance the revolution begun in 1861.
NOTES

CHAPTER IV

1 For Lubbock's speech to the Legislature, see James M. Day, comp. and ed., House Journal of the Ninth Legislature, First Called Session of the State of Texas, February 2, 1863-March 7, 1863 (Austin: Texas State Library, 1963), pp. 4-38. For Richardson's comment, see the State Gazette (Austin), June 24, 1863. See also James T. De Shields, They Sat in High Places: The Presidents and Governors of Texas (San Antonio: The Naylor Company, 1940), p. 235. For Lubbock's uncivil conduct toward Unionists, especially those in Austin, see Fletcher S. Stockdale to William Pitt Ballinger, June 5, 1864, William Pitt Ballinger Papers, Eugene C. Barker Texas History Center Archives, University of Texas at Austin. (Hereinafter cited as Barker Center Archives.) See also James W. Throckmorton to B. H. Epperson, April 6, 1865, B. H. Epperson Papers, 1836-1878, Barker Center Archives. Lubbock asserted to Guy M. Bryan that he could have beaten any "named individual" had he consented "to be a candidate for election." Lubbock wrote these words, however, after the field had narrowed to Pendleton Murrah and Chambers. Lubbock to Bryan, June 18, 1863, Governors Letters (Lubbock), Archives Division, Texas State Library, Austin. (Hereinafter cited as State Archives.)

2 Frank B. Sexton may have been an exception because he declared publicly that inadequate support for his gubernatorial candidacy had led him to seek re-election to Congress. Tri-Weekly Telegraph (Houston), June 8, 1863. The Tri-Weekly Telegraph, February 25, March 11, 1863, mentioned as possible candidates O. M. Roberts, Judge Charles Cleveland of Liberty County, William B. Ochiltree, P. W. Kittrell of Walker County, A. M. Lewis of Washington County, and Judge Maxcy of Polk County. William Pinckney Hill, Confederate Judge of the Eastern District of Texas, was a prospective candidate, but he contended that he "would not accept the office under any circumstances" nor would he ever "be a candidate for any office." Hill to Ballinger, April 17, 1863, Ballinger Papers. Hill, who was in severe financial straits throughout the war, hoped also to receive an appointment to the Confederate States Supreme Court (which was never organized). These factors may have persuaded him to avoid elective office. For an account of some of Hill's wartime activities, see Nowlin Randolph, "Judge William Pinckney Hill Aids

3 Tri-Weekly Telegraph, February 25, 1863.

4 "To The People of Texas," Austin, February 20, 1863, Texas Broadside Collection, Barker Center Archives.

5 Tri-Weekly Telegraph, June 26, 1863. Texas Congressman Peter W. Gray wrote Ballinger that "so many little things have occurred to raise the idea that there is a feeling for independence in Texas," that the election of a "hostile Govr." would be particularly unfortunate. Gray to Ballinger, April 3, 1863, Ballinger Papers.

6 See Francis Richard Lubbock, Six Decades in Texas; or, Memoirs of Francis Richard Lubbock, Governor of Texas in Wartime, 1861-63, ed. C. W. Raines (Austin: B. C. Jones and Co., Printer, 1900), p. 233; and Ernest W. Winkler, ed., Journal of the Secession Convention of Texas, 1861 (Austin: Texas Library and Historical Commission, 1912), pp. 20, 35. One critic claimed that Chambers had not contributed significantly to either the committee or to the convention; he had received the chairmanship out of deference to his age and "supposed" ability. Tri-Weekly Telegraph, June 29, 1863.


9 Galveston News, April 28, 1863.

10 William Pitt Ballinger Diary, March 13, March 18, 1863 (typescript), Barker Center Archives.

11 Terry to Lubbock, April 20, 1863, Governors Letters (Lubbock).

12 Bryan to Lubbock, May 22, 1863, ibid.; Bryan to Ballinger, April 25, May 24, and June 8, 1863, Ballinger Papers.

13 James E. Harrison to Ballinger, March 31, 1863, Ballinger Papers. The term "Confederate nationalist" refers generally to those southerners who supported a centralized government in Richmond whose
successful prosecution of the war would facilitate the remodeling of the South into a relatively self-sufficient and absolutely independent nation. See, for example, Emory M. Thomas, "Rebel Nationalism: E. H. Cushing and the Confederate Experience," Southwestern Historical Quarterly, LXXIII (January, 1970), 343-355. For a comment on varieties of nationalism, see Introduction, supra.

14 Tri-Weekly Telegraph, March 13, 1863.

15 Sam A. Maverick to Mary Maverick, November 10, 1861, Maverick Family Papers, Barker Center Archives.


17 Dallas Herald, April 8, 1863.

18 Tri-Weekly Telegraph, April 20, 1863.

19 Dallas Herald, May [?], 1863. Crockett was the only prominent Texan publicly to suggest dispensing with wartime elections.

20 According to the Galveston News, March 28, 1863, Potter received a "nomination" from a group of citizens who met in San Antonio. The reclusive Austin Unionist and jurisprudent George W. Paschal, wrote Ballinger that "if Potter runs for Governor he will get most of the western votes." Paschal to Ballinger, May 4, 1863, Ballinger Papers.

21 Ballinger Diary, May 2, 1863. Indications of Cushing's support for Potter appeared in the Tri-Weekly Telegraph, June 22, 1863; Richardson indicated his support of Potter in the Galveston Tri-Weekly News, May 16, 1863. Potter was a stockholder of the Buffalo Bayou, Brazos & Colorado Railroad, and as a corporate attorney, he represented that company and other railroads in the Houston-Galveston vicinity. See Andrew Forest Muir Papers, Archives, Rice University, Houston, Texas. Potter and Ballinger were among the advocates of the "Loan Plan" during the controversy over internal improvements in the administration of Governor E. M. Pease, 1853-1857. See Earl Wesley Fornell, The Galveston Era: The Texas Crescent on the Eve of Secession (Austin: University of Texas Press, 1961), pp. 157-179, passim.

22 Stockdale had not been mentioned regularly as a possible candidate for governor, but his reputation must have been formidable. Colonel Freemantle reported: "At this little town [Richmond] I was introduced to a seedy-looking man, in rusty black clothes and a broken-down 'stove-pipe' hat. This was Judge Stockdale, who will probably be the next governor of Texas. He is an agreeable man,

23 Ballinger Diary, May 2, 1863.

24 Ibid.

25 According to the President of the Secession Convention, "it was a fortunate circumstance that . . . Stockdale, . . . and others were members in both bodies" because the legislature and the convention were thus kept informed about actions and objectives and "kept in harmonious co-operation." See Oran M. Roberts, *Texas,* *Confederate Military History,* ed. Clement A. Evans (12 vols.; Atlanta: Confederate Publishing Company, 1899), XI, 35.

26 Stockdale to William Pitt Ballinger, April 20, 1863, Ballinger & Jack Correspondence, Ballinger Collection, Special Collections, M. D. Anderson Library, University of Houston, Houston, Texas. (Hereinafter cited as Ballinger & Jack Correspondence.)


28 Stockdale to Ballinger, May 20, 1863, Ballinger & Jack Correspondence. See also Galveston *Tri-Weekly News,* May 16, 1863.

29 *Tri-Weekly Telegraph,* April 27, 1863.

30 Ballinger Diary, May 4, 1863.

31 Galveston *Tri-Weekly News,* May 2, May 21, 1863.

32 *Tri-Weekly Telegraph,* May 11, 1863. Potter dated his withdrawal announcement May 7, 1863, and Ballinger noted on May 8 that both Potter and Stockdale had declined to run. Ballinger Diary, May 8, 1863. Stockdale explained his decision to run for the "second place" to Ballinger, June 25, 1863, Ballinger & Jack Correspondence. Potter eventually agreed to run again for the Legislature although he was "sore at not being a candidate for higher position." Ballinger described Potter as a man of "fine judgment & experience," "upright in his public motives," whom few equalled in terms of "real usefulness."
Ballinger Diary, July 6, 1863. Potter was elected to the Legislature, but died October 18, 1863.

33Sam Houston to the Huntsville Item, May 27, 1863, Williams and Barker, eds., Writings of Sam Houston, VIII, 347-348. The Tri-Weekly Telegraph, June 1, 1863, reprinted Houston's letter to the Item.

34Texas State Gazette, June 18, 1863. Edward Clark, the former governor who had been solicited to make the race, also withdrew because of pressing military commitments. His agreement to run for the office appeared in the Tri-Weekly Telegraph, June 10, 1863; the announcement of his withdrawal appeared in the same newspaper, June 24, 1863. Editor Cushing, in extolling Murrah, never attacked McCulloch or Clark; he merely stated that they were both needed in the army. See, for example, the Tri-Weekly Telegraph, June 22, 1863. Prior to McCulloch and Clark's withdrawals, Guy M. Bryan had confided to Ballinger that he did not think "McCullough [sic] was equal to the crisis," or that Clark was strong enough. Bryan to Ballinger, June 8, 1863, Ballinger Papers.

35Texas State Gazette, June 23, 1863.

36The Dallas Herald, July 1, 1863, cited endorsements from the Houston Tri-Weekly Telegraph, the Texas Republican, the San Antonio Herald, and the Fort Brown Flag. The Galveston Tri-Weekly News which endorsed Murrah on June 25, 1863, also noted the support of the Crockett Courier. The Corpus Christi Ranchero gave Murrah a rather left-handed endorsement when it agreed to support him if Edward Hord, a South Texan, ran for lieutenant governor. See the Tri-Weekly Telegraph, June 27, 1863. Although Robert L. Kerby, Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-1865 (New York: Columbia University Press, 1972), p. 154, contends that "half the state's newspapers endorsed each candidate," he offers no list of Murrah or Chambers newspapers. Only the Texas State Gazette, the Clarksville Standard, and Texas Times (Leon County) came out for Chambers. In general, Murrah's newspapers had much wider circulations than those which endorsed Chambers.

37The Texas State Gazette, June 18, 1863, in noting McCulloch's withdrawal, declared that Murrah would enjoy an advantage because "friends of Mr. Murrah and Gen. McCulloch are to a great extent mutual." Jno. Henry Brown, who had encouraged McCulloch to run and who was among those withdrawing his name, wrote from Austin that "it is now believed that McCulloch's friends will unite on Murrah & beat Chambers." Jno. Henry Brown to Ed Burleson, June 18, 1863, Edward Burleson, Jr. Papers, Barker Center Archives. Murrah mentioned his support among legislators to Oran M. Roberts, May 11, 1863, Roberts (Oran Milo) Papers, ibid. Lubbock acknowledged he would support Murrah in a letter to Bryan, June 18, 1863, Governors Letters (Lubbock).


40. Dallas Herald, July 1, 1863.


42. Tri-Weekly Telegraph, June 22, June 26, 1863. For an assessment of Cushing's nationalism, see Thomas, "Rebel Nationalism: E. R. Cushing and the Confederate Experience."

43. T. J. Chambers' Card to the People of Texas, Clarksville Standard, July 18, 1863.

44. Clarksville Standard, July 4, 1863.

45. See Texas State Gazette, June 16, June 30, July 1, and July 8, 1863; and Tri-Weekly Telegraph, June 26, June 29, and July 3, 1863. Potter had worked diligently for Hartley's election to the state senate in 1861. Curiously, Hartley's opponent in that campaign was William N. Chambers, a nephew of gubernatorial candidate, T. J. Chambers. See M. M. Potter to H. N. Potter, July 20, 1861, Ballinger Papers.

46. The quotation is in the Ballinger Diary, April 3, 1863.

47. Tri-Weekly Telegraph, July 3, 1863.

48. Stockdale to Ballinger, June 25, 1863, Ballinger & Jack Correspondence.


50. For an appraisal of the importance of the convention method of nominating candidates, see for example, George Smythe to O. M. Roberts, August 14, 1855, Roberts Papers.


53 Kittrell to James Harper Starr, July 16, 1863, James H. Starr Collection, Barker Center Archives.

54 *Tri-Weekly Telegraph*, June 24, 1863. Gentry was a member of both the Committee on Resolutions and the Committee on Correspondence of the San Jacinto Battleground Assembly. See Ernest W. Winkler, *Platforms of Political Parties in Texas* (Austin: University of Texas Bulletin), LIII (September, 1916), 85, 87. For the activities of the Texas delegation at the National (Constitutional) Union Convention in 1860, see Friend, *Sam Houston*, pp. 315-316.

55 Stockdale to Ballinger, June 25, 1863, Ballinger & Jack Correspondence.


57 Stockdale to Ballinger, July 14, 1863, Ballinger & Jack Correspondence.


59 Stockdale to Ballinger, June 25, 1863, Ballinger & Jack Correspondence.

60 F. S. Stockdale Speech [1863] ("To The People of Texas"), Xerox copy, Barker Center Archives. Ralph A. Wooster has concluded that senators were merely wealthier and older but not more conservative than representatives. See Wooster, *The People in Power: Courthouse and Statehouse in the Lower South, 1850-1860* (Knoxville: University of Tennessee, 1969), and Wooster, "Democracy on the Frontier: Statehouse and Courthouse in Ante-Bellum Texas," *East Texas Historical Journal*, X (Fall, 1972), 83-97. The general thrust of Wooster's studies is that democracy flourished in mid-nineteenth century Texas from the Governor's Mansion to the Justice of the Peace court.

61 Stockdale Speech, [1863].

62 See Ballinger Diary, June 29, July 6, 1863; and Galveston *Tri-Weekly News*, July 2, 1863.


64 Stockdale to Ballinger, July 14, 1863, Ballinger & Jack Correspondence.

Galveston Tri-Weekly News, August 1, 1863.

Bryan to Ballinger, June 8, 1863, Ballinger Papers.

James M. Day, comp. and ed., Senate Journal of the Tenth Legislature, Regular Session of the State of Texas, November 3, 1863-December 16, 1863 (Austin: Texas State Library, 1964), pp. 35-37. With the addition of the "informal" vote of five counties—Angelina, Jack, Mason, Smith, and Wood—the total vote count was Murrah, 17,916, Chambers, 13,003, and 1,490 scattered.

Ballinger Diary, May 4, 1863.

Murrah's unpopularity in his own section was mentioned in a letter from Bryan to Ballinger, June 8, 1863, Ballinger Papers.


Tri-Weekly Telegraph, July 8, 1863.

Stockdale Speech [1863].

Ballinger Diary, July 29, 1863.

Frank B. Sexton to James Harper Starr, August 17, 1863, James H. Starr Collection, Barker Center Archives. Baylor polled 2,494 votes to Graham's 2,386, a victory margin of 108 votes. Wilcox defeated Bunton by a vote of 2,853 to 1,762. Election Returns, 1863. Records of the Secretary of State, and Lubbock (F. R.), Proclamations and letters sent by Executive and State departments, 1861-1863. State Archives. Although no information seems to exist in connection with the Wilcox-Bunton contest, there is a possibility that the Baylor-Graham race turned on Baylor's charge that Graham had not served in
the army and on the fact that Baylor, because of his malevolent
treatment of Indians, had been cashiered by the Davis administration.
At any rate, there seems to have been "a dissatisfaction in the
country . . ." and "a disposition to change." See Sam J. Richardson
to the editor and also an editorial, Texas Republican, July 18, 1863.

76 The vote in the Sixth District was Morgan, 2,585; Wright, 2,061;
James Moseley, 196; and scattering, 61. Election Returns, 1863.
Records of the Secretary of State, and Lubbock's Proclamations, 1861-
1863. State Archives.

77 Wooster, "Wealthy Texans, 1860," 173, lists Herbert among the
very large landholders of the state and the largest in Colorado
County (346,082 acres). Townes, although not included among the
"wealthy Texans," was one of the wealthiest men to serve in the
state legislature between 1850 and 1860. His real property holdings
amounted to $120,000. See Wooster, "Democracy on the Frontier," 87.

had been a delegate to the Convention of the National Democracy of
Texas which met in the spring of 1860 to bolster Unionism in Texas
and boost Sam Houston toward the Presidency. See Friend, Sam
Houston, p. 312.

79 Tri-Weekly Telegraph, July 29, 1863.

80 Jefferson Davis to the Congress, March 28, 1862, James D.
Richardson, comp. and ed., The Messages and Papers of Jefferson
Davis and the Confederacy Including Diplomatic Correspondence
1861-1865 (2 vols.; 2nd edition; New York: Chelsea House-

81 Herbert's votes against the conscript bill are recorded in
Journal of the Congress of the Confederate States of America, 1861-
1865 (7 vols.; Washington: Government Printing Office, 1905), V,
228, 400. Accounts of Herbert's speech can be found in "Proceedings
of the First Confederate Congress," Southern Historical Society
Papers, XLVI (January, 1928), 213; and in Mary S. Estill, ed.,
"Diary of a Confederate Congressman [F. B. Sexton], 1862-1863,"
Southwestern Historical Quarterly, XXXVIII (April, 1935), 277-278.
Cushing remarked in the Tri-Weekly Telegraph, June 17, 1863, that
"Herbert got off the track once in talking about raising the standard
of revolt," but otherwise his conduct had been satisfactory. Peter W.
Gray's comment to W. P. Ballinger that "so many little things" had
occurred to cause men to feel that Texans were contemplating
independence undoubtedly referred in part to Herbert's speech.
See supra, n. 5.

82 Galveston News, July 15, 1863. Herbert had offered a bill to
repeal the Sequestration Act during the First Session of the First
Congress. See Journal of the Congress, V, 45. W. P. Ballinger
claimed to have written an article for E. H. Cushing on the subject of confiscation of alien enemies' property. Ballinger contended that the power belonged to the Confederate government rather than to the states. Herbert's stand on sequestration probably prompted Ballinger's defense of the measure. See Ballinger Diary, July 19, 1863.

83. Tri-Weekly Telegraph, July 29, 1863.


85. Ballinger Diary, December 29, 1862, and August 5, 1863.

86. The announcement appeared in the Tri-Weekly Telegraph, June 26, 1863, and in the Tri-Weekly News, June 27, 1863. The editor of the Weekly State Gazette paraphrased the announcement by writing that the citizens of Walker County "seem determined not to have Hon. Peter W. Gray for their next Representative. . . ." Weekly State Gazette, June 27, 1863.

87. See the Clarksville Standard, April 27, 1861, for an account of Branch's position during the secession crisis. Branch had served as a vice-president of the "National Democracy" of Texas, the Unionist-Houston wing of the Democratic party in 1860. See Friend, Sam Houston, p. 312. During the 1857 gubernatorial campaign between the Democratic convention nominee, Hardin R. Runnels, and the Independent candidate, Sam Houston, Branch canvassed some southeastern Texas counties for Houston. His opponent in several debates was Frank Lubbock, the convention nominee for lieutenant governor, who asserted that Branch had been a Whig and had drifted into the Know-Nothing camp. According to Lubbock, Branch did not attempt to refute those charges, but finally quit the canvass in disgust. See Lubbock, Memoirs, pp. 215-216.


89. John M. McCreary to James Harper Starr, September 27, 1861, Starr Collection.

90. Tri-Weekly Telegraph, June 26, 1863. See Journal of the Confederate Congress, V, 228, 400, 476-477, 518, for Gray's votes on conscription, exemptions, and suspension of the privilege of the writ of habeas corpus, respectively. For his vote on impressments, see ibid., VI, 107.


93 Tri-Weekly Telegraph, July 8, 1863.

94 A. P. Wiley to the Galveston News, July 17, 1863.


96 Anderson to James Harper Starr, September 5, 1863, Starr Collection.


98 Ibid., 277-278.


100 Anderson to James Harper Starr, September 5, 1863, Starr Collection. See also Thos. B. Greenwood to Starr, July 17, 1863, ibid.

101 Sexton to Starr, September 14, 1863, ibid.

102 In electing three new Congressmen in 1863, Texas was following the pattern of other Confederate States; there is, however, no evidence to show that Texans noted the elections in other states. The lack of political exchange among candidates who had served together in the First Confederate Congress, and the absence of newspaper comments about the congressional elections generally merely point up Texas' isolation. Baylor's election simply cannot be analyzed on the basis of available evidence. But the re-election of Herbert, now a critic of the Administration and especially of its military-executed policies such as cotton impressment, and the election of former Unionist Branch reveal the kind of war weariness and discontent that contributed to a huge turnover in congressional membership in 1863. See, for example, Richard E. Beringer, "The Unconscious 'Spirit of Party' in the Confederate Congress," Civil War History, XVIII (December, 1972), 316-317, n. 19.

Such men as Frank Sexton and Guy M. Bryan, who had energized the secession movement and embraced the Confederate experiment, frequently registered their concern about the military power. Sexton, for example, had expressed his fear that "military ideas [were] becoming too prevalent" as early as 1862. See Estill, ed., "Diary of a Confederate Congressman," 276. Later Sexton wrote that the military leaders, "mere soldiers by trade," had not seemed "to understand or to be sufficiently interested in the cause for which we are fighting." Their lack of appreciation for the cause had been an obstacle against which Congress had had to contend. See Sexton to Oran M. Roberts, March 12, 1864, Roberts Papers. Bryan's alarm about Houston's running for governor was based in part on his belief that a Houston victory would be an open invitation to the enemy to begin an invasion, or that such a victory could only be neutralized by a "purely military rule." See Bryan to Lubbock, May 22, 1863, Governors Letters (Lubbock). Oran M. Roberts emphasized the subordination of the people to "military rulers" in "The Political, Legislative, and Judicial History of Texas," p. 145.
CHAPTER V
THIS SIDE OF THE RIVER MUST BE SELF-SUSTAINING:
THE LEGISLATURE, NOVEMBER-DECEMBER, 1863

Major Guy M. Bryan, a member of General Kirby Smith's staff in Shreveport, lamented a few days after Pemberton's surrender of Vicksburg that the Trans-Mississippi Department was effectively "cut off from the other side" of the river. The loss of the last Confederate bastion on the Mississippi River (except for doomed Port Hudson), which had been anticipated, seemed less important to Bryan, however, than the fact that no provisions had been made for sustaining the western Confederacy. In a letter to W. P. Ballinger, he chided the western congressmen for failing to alert President Davis and Congress to the problems that were bound to follow the division of the Confederate States. The congressmen, Bryan wrote, "had it in their power to have done everything"; they had done nothing. Specifically, they had not arranged to establish branches of the Treasury, War, or Post Office Departments. (Bryan, in fact, had wailed, "what shall we do for money?") They had not obtained from Davis a statement of what roles their western states were to play in the continuing Confederate drama, nor had they pressed Davis to define what exceptional powers might have to be invested in the Department's commanding general.
President Davis undoubtedly would have had difficulty defining the powers to be invested in Kirby Smith before the fall of Vicksburg; imprecision marked his comments to the General following the disaster. The disruption of communications between Shreveport and Richmond had placed the Trans-Mississippi Department "in a new relation" to the rest of the Confederacy, Davis acknowledged in a long dispatch to Smith. Because Davis had been warned that some men favored a separate organization of western states, that others felt they had been neglected by the Richmond government, and that still others thought they could rejoin the Union on better terms if they were not tied to the Confederacy, he informed Smith that he faced "not merely a military, but also a political problem . . . in [his] command."

And while he carefully avoided any comment about how Smith might handle "a political problem," Davis suggested that the General should regard the four western governors--Lubbock, Moore of Louisiana, Flanagan of Arkansas, and Reynolds of Missouri--as "valuable coadjutors" and confer with them about the conditions and prospects of the Department.²

Smith had recognized the potential benefits to be derived from conferring with the governors even before Davis had suggested it. But the difficulties involved in organizing his command, obtaining supplies, and directing minimal efforts to thwart the Federal advance on the Mississippi had delayed his convening the governors until the fall of Vicksburg made a meeting imperative. Probably hoping to receive instructions from Richmond, Smith set August 15 (1863) as the date for the state leaders to meet at Marshall, Texas. Since he
had invited governors, supreme court justices, and "representative
men" to join him, Smith may also have chosen the mid-August date out
of deference to the Texas election schedule.³

By the time the delegates— including Governor Lubbock, Governor-
Elect Murrah, Confederate Senator W. S. Oldham, and Bryan—arrived in
Marshall, Smith had received President Davis' letter and a less
restrained missive from Secretary of War James A. Seddon that implied,
as Davis' had not, that Smith must "exercise powers of civil adminis-
tration" as well as conduct military operations in his Department.
Still unsure of the real extent of his civil powers, Smith nevertheless
submitted the two letters to the delegates as evidence that he had no
intention of establishing a military despotism, that extraordinary
circumstances had perhaps thrust upon him novel responsibilities,
but that in any event, he needed their advice, support, and confidence.⁴
Then, in order to circumscribe and expedite the discussions, Smith
handed the conferees a six-point agenda that solicited their advice
concerning the current temper of the people, the resources of the
states, the best ways to restore public confidence and check disloyalty,
the possibilities of diplomatic overtures to French and Mexican
officials, the least objectionable method of buying and selling cotton,
and finally the actual extent of his authority. Lubbock, who served
as chairman, appointed several subcommittees to examine the topics,
draft recommendations, and report to a Committee of the Whole.⁵

Since the conference lasted only three days, the subcommittees
were compelled to explore their respective topics quickly and report
their conclusions in general terms. The upshot of their deliberations
was to sanction General Smith's assumption and exercise of "the Power and Prerogatives of the President of the Confederate States and his Subordinates." Whether in administering and defending the Department or in negotiating financial and material assistance from French officials in Mexico, Smith was given a virtual carte blanche. Of course, theoretical restraints were imposed upon the General because, as Judge Merrick of Louisiana noted in his report, the states in the Department possessed organized governments that continuously performed their normal civil functions. As a kind of brief for state rights, Merrick's report was satisfactory; as an exposition of Smith's practical authority, the report was useless since it did not clarify for Smith or the politicians the actual extent of the General's powers.

The Committee of the Whole unanimously adopted the reports that touched on Smith's duties and recommended, in addition, several specific measures, including impressment of Negroes as teamsters, appointment of an agent (without portfolio) to consult with foreign governments, and creation of a Committee of Public Safety to revive the sagging spirits of the people. The Committee was unable to agree, however, on that part of Senator Oldham's report dealing with the tiresome and complex subject of raising money to pay for cotton. According to Oldham's subcommittee, the isolation of the Department would prevent the receipt of sufficient Confederate notes to buy the cotton required for imports. And since circulating additional treasury notes would only accelerate their depreciation, the subcommittee recommended that General Smith execute 6% coupon bonds,
the interest on which would be payable semi-annually in specie. Planters, the subcommittee contended, would prefer these "specie certificates" to treasury notes, thus giving the Department a decided edge in competing with and eventually driving out cotton speculators. To pay for imports, especially arms and munitions, the military authorities would need to buy or impress virtually all the cotton in the Department. Thus, despite frequent outcries against cotton impressments, what Oldham's subcommittee recommended was the nationalization of the Trans-Mississippi cotton trade. Apparently willing to defend before their constituents the proposed military monopoly of cotton, the Committee of the Whole accepted that particular portion of Oldham's report, but balked at the proviso requesting Smith to execute 6% bonds, thereby depriving the military of its only potential advantage in the cotton trade.6 If unable to compete with speculators, the military's only recourse would be widespread impressment of cotton.

After the Marshall Conference had adjourned, Bryan wrote Ballinger that the meeting had been beneficial, that its results would "strengthen the bonds of Gen'l Smith." Enough had been said at the conference, according to Bryan, to persuade all present that "this side of the river must be self-sustaining."7 Certainly Governor Lubbock left Marshall convinced that the success of the war depended on the perseverance and cooperation of all southwestern--especially Texas--leaders. He apparently never doubted that the governors of the occupied states in the Department would cooperate with—or submit to—Smith; the survival of their states, they knew, hinged on Smith's successful
defense of the area. But Lubbock recognized that many Texans and some legislators, tended "to cavil and croak about everything the Military do"; consequently, he asked Bryan to send him copies of the Davis and Seddon letters in order that he could prove to any carping legislators that Smith's powers flowed directly from the President. In other words, Lubbock, despite his own willingness to be guided if not governed by the military authorities, questioned whether the majority of Texas leaders would be as acquiescent as he.

Texas, after all, had not suffered a Federal invasion or the dismemberment of its territory. Consequently, the Ninth Legislature, for instance, had been able to attack and resolve what were essentially local concerns--finance, military supplies, frontier defense, individual and corporate relief, internal loyalty, speculation, and myriad routine items. Although several of these issues had resulted from or been aggravated by the war, Texans tended to view them through particularistic lenses. That is, because of Federal military strategy, Confederate political neglect, and entrenched localism, Texans had developed a sense of detachment from the Richmond government that Federal control of the Mississippi merely reinforced. For Lubbock and Bryan, then, the test of the people's ability to "rise to the emergency" that many of them could hardly comprehend would come when the new Legislature assembled in November.

Provoked by the new problems and enlarged responsibilities facing Texas, E. H. Cushing began to fret about the composition of the Tenth Legislature weeks before it convened. He conceded that enough familiar names appeared in his published list of newly-elected members to give
the people some notion of the "complexion" of the upcoming assembly; nevertheless, Cushing added, the membership was not all that he would wish. He remembered too well how the previous Legislature, under potentially less severe strain, had tampered with "experimental and dangerous legislation" that was finally checked only by the cohesiveness of a bare conservative majority. And he wondered whether there was enough wisdom in the state either in or out of the Legislature to withstand the . . . impulses of ambition or of popular clamor."10 Bryan, of course, was equally apprehensive; the responses of the Legislature and the governor to the Department's predicament might well dictate its future. In June he had written that the people must elect "the best men" for the Legislature.11 Consequently, when in October, he glanced over the list of members, he was dismayed to see that "very few old members'" names appeared. "I almost wish I were there myself," Bryan confided to his brother-in-law, "when I contemplate the future in connection with bad & reckless legislation."12

Neither Cushing nor Bryan proved to be accurate prophets. Although some of the conservative leaders of the Ninth Legislature were absent (M. M. Potter had died and Horace Cone had lost his bid for re-election), others had returned to Austin determined not to be panicked into "reckless" legislation. In fact, as Cushing's Austin correspondent wrote on the opening day of the session, "a smart sprinkling of the conservative element" sat in the Legislature. The correspondent anticipated a "somewhat stormy session," however, because the conservative element would have to contend with Governor Lubbock's "warm supporters" who had been steered toward "wild"
legislation by the governor's "extremely radical" message to the Legislature.\textsuperscript{13}

Some of Lubbock's proposals undoubtedly seemed radical; indeed, some of his critics charged him with doing too much toward the war effort. Lubbock could aver, however, that this was no time for punctiliousness. He tried to impress upon the legislators, many of whom had had no experience with the state's business during the war, the total isolation of the Trans-Mississippi Department. "We must realize the fact that the country is at war," he declared to the assembly, and "private affairs must cease to occupy so much of our attention..."\textsuperscript{14}

Apparently in hopes of minimizing the Legislature's opportunities to discuss "private affairs" or enact the usual special relief bills, Lubbock surveyed urgent problems and sketched a broad mix of legislative solutions. Reflecting recent public sentiment expressed in the Confederate Congressional elections, Lubbock called for repeal of the exemptions allowed under Confederate and state conscription acts. Exemptions and substitutions he regarded as "doubtful policy"; although he could have added that exemptions were keeping thousands out of military service when recruiters were beating the bushes in search of enlistees, he did not do so. The exemption law, he admitted, had been designed to advance the "public good," not to subserve the private interests of those exempted. But the law had been abused by planters, farmers, stock raisers, mechanics, and professional men who, instead of supplying the government and the people with goods and services at fair remunerative prices, had
exploited the country for their personal benefit. The practice of permitting substitutions had been equally demoralizing because it had served almost exclusively the interests of wealthy individuals. The war clearly demanded universal sacrifices, Lubbock insisted, and if men were needed for specialized tasks, let them be detailed, or better yet, let Negroes be used as teamsters and drovers and the old, the very young, and the infirm as clerks and laborers around army posts. Although the Ninth Legislature had rejected a bill authorizing the governor to impress Negroes to work on fortifications, Lubbock resurrected the proposal, this time with the public support of Cushing and the Trans-Mississippi governors and the private encouragement of Generals Kirby Smith and J. B. Magruder.\textsuperscript{15}

The retiring governor evidently thought that the altered condition of Texas and the Trans-Mississippi Department would make more palatable to legislators the proposals they had spurned previously. Consequently, Lubbock also revived his recommendation to permit counties to fix prices on goods, but expanded it by calling for a broad state impressment law to accompany the one enacted by the Confederate Congress in March, 1863. Having been scored by the Ninth Legislature for proposing a limit on cotton cultivation, Lubbock circumvented that issue by merely expressing his hope that the Confederate Congress would establish its control over the entire cotton, tobacco, and naval stores trade.\textsuperscript{16} Such a Confederate statute would, of course, have been no more agreeable to the planters of southwestern Texas than the attempt to restrict cotton cultivation had been. Indeed, even the Federal capture and occupation of Brownsville and the subsequent
re-routing of the cotton trade through points northward on the Rio Grande would fail to swing the planters toward submission to Confederate military control of the trade.

Lubbock, always an inveterate foe of "Toryism," continued to berate those who were "untrue" to the "Southern Cause." He announced to the legislators, who had learned only two weeks before that General Magruder had arrested a group of conspirators that included the prominent Dr. Richard R. Peebles, that the state had been too lenient with the Tory element for too long. Any man who could not give palpable evidence of his devotion to the Cause must be treated as an enemy under laws fashioned during the revolutionary crisis to protect the Revolution; otherwise, Lubbock argued, the loyal citizens would resort to the rule of violence and inflict their own brand of punishment on Tories. Never one to quibble about the niceties of the Constitution and laws, Lubbock also exhorted the Confederate officials to hang "without benefit of clergy" any government agent engaged in speculating. He exhorted the Legislature to prescribe hard labor in the state penitentiary for deserters and for those who encouraged desertion or harbored deserters. Nothing short of a forfeiture of all the rights of citizenship and property should be the lot of deserters and citizens who had fled the state to avoid military service, Lubbock insisted.17

In those portions of his message that were not shot through with perfervid patriotism Lubbock occasionally demonstrated his ability to approach strictly local problems in a practical way. He suggested, for example, that the Legislature repeal the current restrictions
placed on the Frontier Regiment's transfer to the Confederate army. Those restrictions had allowed the Regiment's transfer only on the condition that the troops remain in Texas to defend the western frontier against continually increasing Indian attacks. Because President Davis had refused to accept the Frontier Regiment on that basis, the state had been forced to maintain a regiment the support for which Lubbock believed to be the Confederacy's responsibility. In addition, the ranks of the Regiment were constantly thinned out as conscription took effect. And although Lubbock had exempted frontier troops from some of the calls for men, their relatively meager numbers combined with five hundred miles of frontier to make their defensive efforts negligible if not laughable. Besides, the Regiment represented a constant drain on the state's financial resources. In suggesting the transfer of the Frontier Regiment to Confederate service, Lubbock expressed his opinion that General Smith, whose experience on the frontier and familiarity with its topography were well-known, would provide the region with adequate protection.\(^8\) At any rate, hazardous conditions on the frontier necessitated a modification of the protection policy.\(^9\)

Although Cushing had labeled debt "extinguishment" the major problem facing the new Legislature, Lubbock skirted the issue, and offered no panacea to cure the disease of depreciation that was crippling Texas finances as it had already crippled those of the Confederacy.\(^20\) The antidote for Texas' financial woes according to the governor, lay in congressional, not state, action. If Congress would only increase Confederate taxes and fund redundant Confederate
notes, Lubbock suggested, the effects in Texas would prove salutary. (Neither Lubbock nor the comptroller recommended an increase in state taxes.) The state treasury, for instance, held enough Confederate notes to redeem the state's liabilities, but until the notes were appreciated, the state's creditors would hoard their treasury warrants. Therefore positive if painful action by Congress would aid in reducing the state's debt. There was, of course, an alternative: the state could retire a portion of its debt by making treasury warrants alone receivable for taxes and public dues. Lubbock was unwilling, however, to recommend that policy for two reasons: it would drive the value of treasury warrants to a level near specie and thereby impose an enormous burden upon the average taxpayer; and it would push the value of Confederate paper still lower. For a governor committed to the success of the Confederacy, such a policy would have proved obstructive and heretical. 21 In other words, any steps that Texans might take to remedy their own financial problem and alleviate the burden of debt could easily have been interpreted as a detachment from the Confederacy that bordered on independence.

In commenting on Lubbock's message, Cushing acknowledged that the ex-governor's friends had never claimed "for him transcendant ability." But the editor conceded (while holding that many of Lubbock's policies were misguided) that the governor had been able and honest and unafraid to make recommendations. 22 Curiously, it was with Lubbock's recommendations that the Legislature first began to grapple because the governor-elect offered none of his own. Instead Murrah chose, in his inaugural address, to reiterate his campaign pledge to maintain
a distinct boundary between state and Confederate authority. Exactly where that boundary lay was no clearer to Murrah than it had been to his colleagues who had tried in vain to delineate it during the recent Marshall Conference. That is, simply insisting that the powers to be employed by the state and Confederate governments were "well distinguished and defined" did not make them so. Murrah did not accuse the Confederate government of infringing on state authority; he merely observed that the "universal demands" of war were testing the character of both local and general governmental institutions, in part because the war had brought "into action a large class of powers" that normally "lie dormant in the organism of a complicated political system."23

By emphasizing the theme of federalism and by urging his listeners to distinguish between deliberately unconstitutional acts and "mere irregularities" in the execution of them, Murrah was attempting to retard the "tendencies to partisan organizations and partisan strife."24

Since he believed that those tendencies, which had sprouted during the summer election campaigns, were based on differences of opinion regarding the legitimate extent of Confederate authority, he may have envisioned himself as a peacekeeper in Texas as well as a prominent actor in the Confederate revolution. But at the beginning of the session, he could speak only in generalities; thus, the legislators referred either to Lubbock's proposals or their own perceptions to define the boundaries of their business.

Wasting no time, legislators introduced bills that, according to Cushing's Austin correspondent "R", showed the "same spirit of
liberality in some things and restrictions in others" that had characterized the extra session of the Ninth Legislature. Bills to restrict cotton cultivation, to donate land to Texas soldiers, to levy a tax-in-kind, and to set a ceiling on prices (by now called the "Law of the Maximum") were "some of the inklings of the coming storm." Certainly the leading measure of the session—and the one that quickly established its tenor—was "that hackneyed subject," the currency question. Because the Senate had twelve new members (out of thirty-three) whose public views were generally unknown, "G," another of Cushing's faithful reporters, believed that it was more to be dreaded than the House of Representatives.

On currency questions, however, the Senate would prove to be as conservative—and as tied to Confederate financial policy—as it had been in the previous (Ninth Extra) session. J. W. Moore, a new senator from the northeastern counties of Davis (Cass) and Bowie, first broached the currency issue when he asked the Judiciary Committee to inquire into "the expediency and constitutionality of stopping interest on all debts where Confederate money has been tendered in payment and refused." The committee promptly reported its opposition to Moore's resolution, arguing that the state constitution prohibited ex post facto and retroactive laws and laws impairing the obligation of contracts; in addition to those restrictions, the Confederate constitution also forbade the states' making anything but gold or silver a tender in payment of debts. John T. Harcourt, reappointed to chair the Judiciary Committee, contended that Moore's proposition was actually designed to make Confederate notes legal.
tender since it would have inflicted the same penalty as any refusal to receive legal tender in payment of debt. That is, the legal effect of refusing legal tender was simply to stop the accrual of interest from the date of tender; the debt itself was not extinguished. Since the states could not make paper notes legal tender, and since Texas was doubly proscribed from impairing contractual obligations, any attempt, whether direct or indirect, to create legal tender would, Harcourt argued, be unconstitutional, "unoperative [sic], and void."³⁰ Ignoring the possible expediency of a legal tender bill, the committee pitched its objections on constitutional grounds, obtained quick adoption of its report, and thereby notified potential legal tender advocates that a similar fate awaited their proposals.³¹

The battle over the "hackneyed subject" was more rigorous, however, in the House where three currency proposals were introduced early in the session. The first, a Joint Resolution offered by J. L. Lovejoy of Denton County, instructed the state's congressional delegation to use its influence to secure a law making Confederate notes legal tender in payment of any and all debts.³² (The Ninth Legislature, Extra Session, had defeated a similar resolution.) The other two resolutions, like their counterpart in the Senate, urged stopping the interest on debts when Confederate money had been tendered and refused.³³ The opposing lines formed quickly after J. G. McDonald, chairman of the Committee on Confederate Relations, reported his committee's rejection of Lovejoy's resolution.³⁴ McDonald rallied to his conservative side the experienced ex-Speaker and Judiciary Committee chairman, C. W. Buckley; Finance Committee chairman,
J. T. Brady of Harris County; and Judge J. H. Banton of Walker County. But neither their parliamentary talents nor personal influence could check what was apparently a public ground swell favoring legal tender. The initial clash occurred when R. H. Guinn, a leader of the "agrarians" in the Ninth Legislature, moved to table the committee's adverse report. Guinn's motion carried by a vote of thirty-nine to thirty-three, a surprising margin since the House had been dubbed the more conservative chamber.

For the next two days, the representatives debated the controversial measure, usually before crowded galleries. Among the leading legal tender advocates were Lovejoy, Guinn, W. M. Moores of Freestone, J. M. Willis of Davis, and G. M. Brazier of Houston County, all of whom defended the measure "under plea of patriotism": they felt that a legal tender law would appreciate the value of Confederate treasury notes. On that basis, at least, the proposition was somewhat dubious because both the Confederate and state governments had been treating the notes as quasi-legal tender when paying salaries, buying supplies, and compensating owners of impressed goods. Yet, rather than appreciate, the notes had continued to decline in value. Legal tender proponents may have resorted to other familiar arguments: a legal tender law was expedient and necessary as a war measure; and the Confederate constitution contained no specific prohibition against legal tender except where states were concerned. They certainly did not argue that Congress had the express power to make Confederate money legal tender. Expediency under the guise of patriotism had little attraction for Cushing, who insisted that the objective of
legal tender advocates was the chance to pay their debts at 10¢ to 20¢ on the dollar. Not that he would "impute unworthy motives" to any of the resolution's supporters, Cushing wrote, but it was "strange how far interest warped the judgement. . . ."\textsuperscript{40}

Lovejoy, Guinn, and the legal tender faction appeared formidable as they managed to stave off two conservative attempts to table the resolution. They erred tactically, however, when they let the seasoned parliamentarian Buckley arrange consecutive postponements; he gained only one day's grace by the maneuver, but that was time enough to enlist Brady and Banton to charm the galleries and sway the representatives.\textsuperscript{41} Brady focused his argument on the absence of any express power enabling Congress to make paper notes legal tender. Rejecting "latitudinarianism," Brady repeated one of Buckley's statements: "The prohibition against the states' making anything but gold or silver a legal tender does not imply that Congress has the power thus prohibited." Nor would it be expedient to exercise such questionable authority because treasury notes did not possess gold's "intrinsic value" and hence would not appreciate. Brady capped his comments by insisting that the Legislature had no right to instruct the Congress to do what "we do not believe they have the power to do," that is, make Confederate notes legal tender.\textsuperscript{42}

However "plain," "logical," and constitutional Brady's speech and McDonald and Buckley's earlier remarks may have been, Judge Banton delivered "the speech on the subject."\textsuperscript{43} Banton, blending state rights and sound money views, tacked from his colleagues to argue that the object of legal tender was to protect debtors from creditors'
oppressions; the object of laws that permitted creditors to use the
courts to collect debts was to safeguard the creditor. Both kinds
of statutes, he claimed, were designed to govern and regulate contracts
between persons, and therefore belonged exclusively to the jurisdiction
of the state. In other words, such statutes were "as much questions
of internal [state] policy . . . as laws on the subject of interest,
[or] statutes of fraud, limitations, [and] registry . . . ." Thus,
the resolution was clearly unconstitutional; moreover, it was
inexpedient because it would damage the creditor, injure the currency,
and remove "none of the causes of currency depreciation." In short,
to Banton a legal tender act would be a "monstrous fraud." 44

Whether or not the audience grasped the details of Banton's
lawyer's brief, they were captivated by his rhetorical style--two
observers reported that the Judge had converted members "to his
side of the question." 45 Although Banton failed to persuade all the
opposition, when the House reconsidered the resolution following
his speech, a majority defeated it by a vote of forty-four to
thirty-three. 46 Representative M. W. Baker, who had predicted that
the House would defeat "all extreme measures," must have been grateful
for the outcome of the legal tender vote. 47 Cushing, of course, was
relieved: "sober-minded, conservative" men could now be assured that
the Legislature was controlled by "views of sound policy." 48 The
editor's confidence was perhaps premature--facets of the currency
question kept cropping up--but his assessment of the Legislature's
temper was correct.

The legal tender resolution represented the Legislature's sole
attempt to influence Confederate financial policy. After its defeat, the lawmakers focused on currency questions that pertained to Texas, questions for which they might effect solutions regardless of policy decisions made in Richmond and relayed to Shreveport for implementation. As they knew and as Governor Murrah observed, it was impossible actually to divorce local from national money problems, but the state could act to sustain its own credit and stabilize its own money.\textsuperscript{49}

To achieve these objectives, Murrah recommended disbursing Confederate notes rather than state treasury warrants, a policy that could be executed without a new statute, and balancing expenditures with collections, the latter a policy that implied changing the basis of property valuation from cash to Confederate paper.\textsuperscript{50} To lure warrants into the state treasury, Murrah further proposed allowing railroad companies to pay the interest due the School Fund in treasury warrants. His proposal possessed some merit; for example, it would help revive the moribund Common School system, enable the railroad companies to honor their obligations despite the relief provided them through the stay laws, and reduce the state's liabilities.\textsuperscript{51}

Although the handiwork of a seasoned railroad lobbyist was visible in Murrah's proposal, the legislators were aware of both the railroad companies' plight and the amount of the state debt ($3,340,619.80 on August 31, 1863). Therefore, they passed a bill authorizing the comptroller to receive interest payments from railroad companies in state bonds or treasury warrants.\textsuperscript{52} Most members were probably more anxious to reduce the state's debt than to lighten the railroad companies' load, but whatever their motives they did not reenact the
often bitter pro- and anti-railroad battles of earlier sessions.

When Murrah recommended equalizing collections and expenditures, however, he precipitated another clash between conservatives and radicals. Since his primary financial objective seems to have been to stop the outflow of treasury warrants by using Confederate notes for all state expenses, he could have urged the lawmakers to raise state taxes. A stiff tax increase would have absorbed redundant Confederate paper and provided a revenue equal to anticipated expenditures. But because nobody seems to have considered a tax increase, the lawmakers wrestled instead with the possibility of assessing taxes in the same Confederate currency in which they were payable. For such proposals Cushing had a label: "experimental legislation."53

Pryor Lea, chairman of the Senate Finance Committee, initiated the legislative debate when he asked his committee to consider the propriety of assessing the value of properties other than money in Confederate notes. Senators apparently confined their discussion, however, to the possibility of using Confederate notes as the basis for assessing taxes on liquor.54 The House, on the other hand, lingered on the subject for several days, probably because it was a significant provision in the Finance Committee's bills on revenue and on tax assessments and collections. Chairman Brady, disciple of fiscal conservatism and strict constructionism, outlined his objections to evaluating property in Confederate notes in a minority report that he and two other members of the Finance Committee signed. Confederate notes, Brady said, were "greatly" depreciated "credits"--promises to pay--and therefore unsound bases of value. Furthermore,
the notes fluctuated in value from county to county, making equal taxation, as required by law, impossible. The "old basis" of assessment at the current rate of 50¢ per $100 valuation would, he contended, supply the necessary revenues for the biennium. And, in a final flourish, Brady reminded the House that the people were not ready for radical "innovation upon principles of long standing."\textsuperscript{55}

On the following day C. W. Buckley and F. M. Hays (who had joined Brady in signing the minority report) began to work in tandem first to eliminate the objectionable provision from an otherwise satisfactory revenue bill and then to scrap the assessment and collection bill. Just how they and their conservative cohorts managed to disarm the revenue bill's advocates is impossible to determine because the journals from December 3 through adjournment December 16 have been lost.\textsuperscript{56} That they managed to do so is evident, however, because the revenue act, although authorizing a \(\frac{1}{2}\) tax-in-kind on specie, treasury warrants, Confederate notes, and bank notes, contained no provision to modify the basis of property valuation.\textsuperscript{57} Only one measure enacted by the Tenth Legislature designated Confederate notes as the "standard of value" and that one pertained to the assessment and collection of income taxes on liquor sales.\textsuperscript{58} Thus, the application of the new "standard of value" to a specific form of property suggests that the opposing groups compromised their differences at least to that extent.

Despite predictions of a "stormy session," the legislative journals reveal, except for the conflicts over legal tender and property valuation, a rather amicable approach to issues. The absence
of strife stemmed in part from the radicals' recognition of their relative weakness in the Legislature, in part from altered circumstances. For example, the so-called "agrarians" at the extra session of the Ninth Legislature had seldom yielded to the conservatives without a fight. But when, in the Tenth Legislature, the House Committee on Agriculture reported against A. Emmert's bill to restrict cotton cultivation, the House adopted the report without comment and no representative attempted to revive the subject. Cotton, after all, had become the source of state as well as personal credit by the winter of 1863; and if the recommendation of civilian leaders at the Marshall Conference was followed, cotton would become the sole medium through which to supply the wants of the entire Trans-Mississippi Department. Therefore, the planters could argue that Emmert's bill was unpatriotic and if enacted would diminish the defensive capabilities of the state and the Department. Furthermore, the demand for foodstuffs that had provoked the cotton restriction efforts in the earlier assembly was no longer urgent; Texas had harvested an extraordinary grain crop during the summer. As Representative Baker had predicted at the beginning of the session, the Legislature also rejected price-fixing and Negro impressment bills. Both had been volatile issues in the previous Legislature, but their advocates obviously could not muster enough support to get them before the membership for debate. Moved by a determination to do justice to the state's business—whether routine or novel—in as short a time as practicable, the lawmakers could not afford the luxury of debilitating discord.
Throughout the session the legislators seem to have concentrated on state rather than national, or more precisely departmental, issues. Their natural provincialism did not signify a desire to break away from the Confederacy, although they seem to have been less exuberant about the southern cause; it indicated instead an increasing feeling of isolation that manifested itself in simultaneous efforts to develop a self-sustaining economy and to cooperate with the military leaders without relinquishing civilian control or state primacy in local matters. Whatever distrust of military authority that had reverberated through the summer election campaigns had not infected the majority of legislators. While they knew that military officials and government agents had occasionally abused their authority, especially in connection with impressment, the lawmakers still were not inclined in December, 1863, to leap to the conclusion that the military sought to subvert civil government.\textsuperscript{61} Nor were they ready to assume that the military authorities, either those in Houston or Shreveport, wanted to dictate rather than merely influence or guide certain aspects of state policies.\textsuperscript{62} (To help assure their moderation, Lubbock had, in fact, put the report of the Marshall Conference at the Legislature's disposal.) In other words, their sincere desire to cooperate with departmental and district commanders to achieve a common objective precluded unreasoned responses to what appeared to be—and sometimes was—military encroachment upon civilian affairs.

When General Magruder, for example, arrested five civilians on charges of "plotting treason" against the Confederacy, the Legislature
did not protest formally even though there was no operative statute suspending the privilege of the writ of habeas corpus when the arrests were made. The senators refused to pass N. A. Mitchell's resolution approving Magruder's "transport of disloyal persons" beyond the Texas frontier. Yet, they were equally unwilling to adopt G. H. Wootten's substitute that combined praise for Magruder's vigilance with a trenchant reminder that the Texas Bill of Rights prohibited exile "except by due course of the law of the land." That the alleged conspirators had been incarcerated in the Bexar County army stockade rather than exiled to Mexico did not exculpate Magruder because he had in fact violated judicial due process. And although the General justified his action on the grounds of duty, responsibility, and military necessity, he nevertheless urged the Legislature to enact a "stringent law" that would relieve military authorities from the need to arrest and punish "men for acts which should legitimately come before Civil tribunals."

Lubbock had given the lawmakers a cue when he remarked that he could see no reason why traitors "should be allowed to correspond, plot, and incite others to treason with impunity" simply because the state could not prove overt acts of treason. By incorporating his opinion into the state Penal Code, the legislators could insure the courts' ability to protect the state from alleged treasonable conspiracies and prevent further military interference in civil affairs. Moving, therefore, beyond the standard view that treason consisted "only in levying war against" the state or "adhering to its enemies, giving them aid and comfort," the Senate Judiciary
Committee specified that any act whose tendency was to aid the enemy was an overt act of treason. Moreover, the committee's amendment declared that as long as the war continued, it was not necessary for the state to prove actual communication between the alleged traitor and the enemy; any attempt to advise a citizen to join the enemy, any public or private assertion that citizens owed no duty to the state (or Confederacy) constituted treason under the law. The sweeping amendment also required any person who had knowledge of treason committed or intended to inform the governor or a district judge. Failure to do so in itself constituted misprision and treason. If legislators registered opposition to the measure, it was not revealed in the journals. Caught in a quandary—anxious to check conspiracies and limit military encroachment on civil domain—they apparently assumed their drastic measure was warranted.

Governor Murrah, whose own recommendations relating to treason and sedition were no more punctilious than Lubbock's had been, signed the bill; he did so in part because he detested disloyalty, and in part because he believed it to be the duty of "civil Government to define and provide modes" for the prevention and punishment of the "offenses and crimes" bred by revolutions. Several weeks after adjournment, Murrah wrote General Magruder that the Legislature had enacted laws "comprehensive enough to embrace every class of offenders" against the state or the Confederacy. But their effectiveness, he implied, depended on their faithful execution by the state judiciary. At any rate, the governor was confident that the Legislature had provided laws adequate to meet the problems of disaffection.
In another instance the Legislature tried to accede to the spirit if not the substance of a request from General Magruder. According to Lubbock (in his message to the Legislature), Magruder had asked permission in March, 1863, to confine prisoners of war in the state penitentiary. Lubbock had approved Magruder's request at that time on the condition that the "material interests" of the penitentiary would not be affected by the presence of war prisoners. Because Lubbock subsequently reconsidered his policy and concluded that the "sole manufactory of cloth west of the Mississippi River" must not be jeopardized by the incarceration of enemy soldiers, he ordered them to be removed from the Huntsville prison. Magruder renewed his request in October, however, after he had taken charge of more than 350 Federal sailors captured at Sabine Pass in September. Lubbock declined his request, and asked the Legislature to consider the "propriety of using the penitentiary for such purposes." 71

Impressed with the increasing importance of the penitentiary as the only state "manufactory of cloth" for either civilian or soldier and as a consistent source of revenue, the legislators rejected Magruder's request. To confine prisoners of war, deserters, or "other offenders against military laws" in the penitentiary would, according to the House Committee on the Penitentiary, compromise the safety of the invaluable institution. 72 If Magruder needed places to incarcerate prisoners of war and "political prisoners" the Legislature offered him several by authorizing the use of county jails, provided that the military officers paid for the subsistence of any persons so confined. 73
More important to the Legislature than either the suitableness of the penitentiary as a place for confining federal prisoners or unauthorized military arrests of civilians was the development of a self-sustaining economy. Like so many other issues before the assembly, it could not be separated from the overall concerns of the Trans-Mississippi Department, but the economic measures enacted in 1863 represented a continuation of state policy—admittedly under more urgent conditions—rather than an answer to entreaties from Shreveport. As both Lubbock and Murrah had noted, for instance, the key to self-sufficiency was the creation of a manufacturing complex, temporarily geared to the war effort, that would relieve both the state and the Department from reliance on foreign producers. Realizing that scarcity of capital, lack of skilled mechanics, and inexperience in manufacturing enterprises would be impediments to economic self-sufficiency, the Legislature had to devise ways to finance purchases of machinery, secure details of competent laborers from the army, and encourage the "association of individuals and . . . capital."  

Concerned more with the "needful wants" of the people than with war matériel, Senator R. K. Hartley proposed the formation of a Board of Commerce and Manufactures, composed of three commissioners authorized to spend up to $10,000,000 supplying and distributing goods such as cotton cards and spinning jennies for civilian use. Although Pryor Lea's Finance Committee did not explain its objections to Hartley's bill, the proposal hardly jibed with any general plan for self-sufficiency. It not only represented a vast and expensive public dole, but it also threatened to increase the state bureaucracy and
duplicate purchasing operations of the existing Military Board.76 The senate decided, therefore, to reorganize the Military Board and expand its duties to include some that Hartley probably had intended. The new Military Board, comprised of the governor and two appointed agents to replace the overworked treasurer and comptroller, was empowered to erect factories and obtain whatever machinery and supplies needed to begin operations.77 The Board would manage state-owned iron and spinning jenny factories, using the iron for military purposes, selling the spinning jennies to civilians. To support these ventures into state socialism, the Legislature appropriated $1,200,000.78 Evidently the lawmakers preferred to employ the state's resources in permanent and potentially more fruitful projects than the purchase and distribution of civilian goods.

State-owned factories represented only one solution to the pressing economic problem, however, and given the traditional laissez-faire principles of most Texans, probably a less than satisfying solution at that. On the other hand, state subsidization of private business, primarily railroad companies, had been commonplace since 1857. Consequently, it was not surprising that Governor Murrah, a beneficiary of railroad subsidies himself, suggested that the state provide inducements to enable private groups to undertake new and "daring" enterprises.79 Without private efforts no manufacturing plan could succeed; without state subsidies, few, if any, private groups could afford the risks involved in trying to construct and equip factories during wartime. Amenable to Murrah's suggestion,
the Legislature authorized land grants of 320 acres for every $1000 worth (specie value) of machinery put into "efficient operation" by individuals, companies, or corporations. By adjournment, the Legislature had chartered twelve companies and corporations that proposed to manufacture iron, cotton cards, and a dozen other products. Whether some of the companies were merely promotional schemes, as one historian has speculated, is not known; but it is clear that because of scarcities of capital, skilled labor, and machinery, most of them never began operation.

Private corporations expected to finance their purchases of machinery through the medium of cotton, the only negotiable asset available to them. Cotton was also the asset upon which Lubbock, Murrah, and the Legislature predicated the state's manufacturing ventures. Interested initially in purchasing arms and munitions for a state isolated and "thrown upon its resources," Lubbock had recommended raising $1,000,000 through the sale of cotton bonds. Murrah's recommendation was less exact, but the Finance Committees, forced to estimate expenditures for the biennium, doubled the amount and successfully pushed a bond sale bill through both houses. The measure authorized the governor to sell bonds bearing interest up to 6% per annum, the bonds to be based upon and secured by cotton that the state owned or would buy. Furthermore, the act pledged the state to deliver cotton to any Texas port designated by the bondholder; the state would pay the export duties and procure export permits to accompany the transfer of cotton to the bondholder. To facilitate the sale of bonds, the Legislature authorized Governor Murrah to
appoint agents to seek buyers in Europe and in Texas. Murrah selected Galveston financier E. B. Nichols to supervise the operation of what came to be called the Texas Loan Agency.84

In order to hawk the bonds the agents had to be assured of substantial supplies of cotton, thus requiring the Legislature to enact a second bill authorizing the governor (or his agents) to purchase cotton either with $2,000,000 appropriated from the state treasury or with so-called "gilt-edged" 7% bonds, the interest on which was payable twelve months after the war ended.85 For creditors who preferred prompt payment, the bill authorized redemption of the face value of the bonds in land script at the rate of fifty cents per acre.86 The two bills represented a complicated system of financing purchases of arms, munitions, and machinery by utilizing the state's basic resources, cotton and land. That the comprehensive plan met no resistance from legislators suggests either that they believed in its reasonableness or that they failed to understand its complexities and simply relied on the advice of the resident financial experts, Lea, Brady, Buckley, Banton, and James W. Throckmorton. In any case, contrary to the assertion of one historian of the Trans-Mississippi Department, the Legislature seems to have been attempting to boost the state's economic and defensive self-sufficiency rather than deliberately trying to thwart the cotton purchasing plans of the Texas Cotton Office.87

That office had been established in November to direct the Department's cotton-buying efforts in southwestern Texas. Since Colonel W. J. Hutchins, the Houston businessman tapped to head the
Texas Cotton Office, did not announce his purchasing scheme until December 4 and since the Senate and the House passed the $2,000,000 bond sale on November 27 and November 28, respectively, it seems unlikely that they designed their bill so that it would block the military's plans. The second bill, authorizing the governor to issue 7% bonds in payment for cotton, was passed just before adjournment and may have represented an attempt to give the state a competitive advantage in the cotton market, but the available evidence is insufficient to prove that the Legislature was motivated by a determination to undermine completely the military plans to purchase cotton. Instead, the lawmakers seem to have continued their policy of subordinating the needs of the Trans-Mississippi Department to the requirements of Texas. In other words, the legislators thought that they could serve the Department best by serving Texas first.

Following the Tenth Legislature's adjournment, Cushing's reliable correspondent "R" wrote that the session had been the most harmonious since 1843 and, he added, "far superior" to the Ninth. Texas legislators had demonstrated a rare degree of solidarity considering that they not only had legislated for a state that because of its "variety of soil, productions, climate, and interests" was more like a nation, but also for a Department whose officers necessarily emphasized military rather than civilian needs. In most cases, the legislators regarded the state's needs and those of the Department as compatible. And although the lawmakers had found it impractical or impolitic to accommodate the Department in some matters, they were not inclined in the winter of 1863 to launch the state on a collision course with the
General who had been invited by western politicians to exercise the powers of the Confederate executive. In short, if Lubbock and Bryan had assumed that the Tenth Legislature would be a test of the people's ability "to rise to the emergency," they had no cause for disappointment.
NOTES

CHAPTER V

1 Bryan to W. P. Ballinger, July 10, 1863, William Pitt Ballinger Papers, Eugene C. Barker Texas History Center Archives, University of Texas at Austin. (Hereinafter cited as Barker Center Archives.)


3 For an early reference to Smith's contemplated meeting with the governors, see Bryan to Governor Frank R. Lubbock, May 22, 1863, Governors Letters (Lubbock), Archives Division, Texas State Library, Austin, Texas. (Hereinafter cited as State Archives.)

4 Robert L. Kerby, Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-1865 (New York: Columbia University Press, 1972), p. 136. According to Kerby, the letter from Seddon to Smith has been lost, but subsequent references to it indicate that Seddon was more specific than Davis had been concerning Smith's new powers. That Smith showed both letters to the governors was attested by Lubbock. See Lubbock to Major Guy M. Bryan, September 1, 1863, Governors Letterbooks (Lubbock), State Archives. See also Florence Elizabeth Holladay, "The Powers of the Commander of the Confederate Trans-Mississippi Department, 1863-1865," Southwestern Historical Quarterly, XXI (April, 1918), 333-359.


6 Senate Journal, Tenth Legislature, pp. 171-180, passim.
Bryan to Ballinger, August 19, 1863, Ballinger Papers.

Lubbock to Bryan, September 1, 1863, Governors Letterbooks (Lubbock).

The thought and the phrase are in Bryan to Ballinger, August 19, 1863, Ballinger Papers.

Tri-Weekly Telegraph (Houston), October 16, 1863.

Bryan to Ballinger, June 11, 1863, Ballinger Papers.

Bryan to Ballinger, October 24, 1863, ibid.

"R" to the Tri-Weekly Telegraph, November 9, 1863. Cushing apparently had arranged an express between Austin and Houston because he was often able to publish "R's" communiques within two days. What Bryan and Cushing meant by "bad," "dangerous," and "reckless" legislation was not necessarily the same. Bryan seemed to fear inexperienced legislators who, in frantically thrashing about for solutions to Texas' myriad problems, might finally adopt a kind of military government for the state. He was worried, for instance, that too many Texans had joined the Sons of the South, a super-patriotic order that was formed soon after the fall of Vicksburg, probably as a result of the Marshall Conference. John S. ("Rip") Ford, who had written a pamphlet for the organization, claimed that its chief purpose was to inculcate in citizens the principle of military subordination to civil authority. For Ford's description of the order and its activities, see Senate Journal, Tenth Legislature, p. 134, n. 22. Bryan believed, however, that the "SS" were dangerous; he cautioned Ballinger "about making military men out of Texas leaders." See Bryan to Ballinger, September 19, 1863, Ballinger Papers. Bryan preferred the Confederate Association, created at the Marshall Conference to sustain the Confederate cause. The Association was designed to act as both Committee of Correspondence and Committee of Vigilance "in the true sense of [that] word and without conflict with the law." Bryan invited Ballinger to organize a unit in Houston. See Bryan to Ballinger, August 30, 1863, ibid. For a copy of the Confederate Association membership form and statement of purpose, see Thos. C. Reynolds Circular (1863), Texas Broadside Collection, Barker Center Archives. During the legislative session, Rice Maxey offered a bill to incorporate the Sons of the South; although it passed the Senate, the bill was never acted on in the House. See Senate Journal, Tenth Legislature, pp. 134, 137. In contrast to Bryan, Cushing seemed to fear "radical" economic legislation, such as price-fixing laws, legal tender statutes, and "crop control" measures. But he was also concerned that the Legislature might refuse to cooperate with the military authorities. See, for example, his editorials in the Tri-Weekly Telegraph, October 5, October 7, and November 25, 1863.

Lubbock to the Gentlemen of the Senate and House of Representatives,
November 4, 1863, Senate Journal, Tenth Legislature, p. 9.

15 Ibid., pp. 9-10, 13-14, 21. The civilian leaders who had assembled at the Marshall Conference had unanimously adopted a proposal to impress Negro teamsters. See ibid., p. 177. W. P. Ballinger proposed a more comprehensive impressment policy which he justified on the grounds that Negroes were indeed property, but that they were persons, too—"capable of service in defence [sic] of the country." Ballinger believed that the power to impress Negroes for "public use without compensation" was "a power clearly within the war-making power of the Genl. Govt. & its duty to provide for the public defence [sic]. . . ." Negroes, he added, were "subject to do what the public good—the preservation of society—the safety of the Govt. [required] fully as much as white people." Ballinger to Bryan, August 26, 1863, Guy M. Bryan Papers (Bryan-Ballinger Correspondence, 1857-1887), Barker Center Archives. Bryan transmitted Ballinger's proposal to General Smith who regarded the "ideas as valuable." Smith agreed with Ballinger, however, that state legislation "upon the use of slaves for the public good" would facilitate public acceptance of the policy. See Bryan to Ballinger, September 8, September 9, 1863, Ballinger Papers. Cushing picked up the theme and endorsed the idea provided Negroes were conscripted to work, not to soldier. Tri-Weekly Telegraph, October 28, 1863.

16 Lubbock to the Legislature, Senate Journal, Tenth Legislature, pp. 20-21, 29, 33. Delegates to the Marshall Conference had already invited General Smith to take "possession of the entire amount of cotton" in the Department. See ibid., pp. 177-179. Smith had not waited for an invitation, however; on August 3, he announced the creation of a Cotton Bureau, thus exercising a power that he had not been explicitly granted. See Kerby, Kirby Smith's Confederacy, p. 138; and General Orders, No. 35, August 3, 1863, O. R., Series I, vol. XXII, Pt. II, 953. Cushing began to prepare his readers for the authority that could be exercised by the Cotton Bureau, or perhaps a local branch of it, in early October. See his editorial, "The Cotton Question," Tri-Weekly Telegraph, October 7, 1863.

17 Lubbock to the Legislature, Senate Journal, Tenth Legislature, pp. 20, 24, 32. The governor undoubtedly was referring to Peebles and his "co-conspirators" because news of the arrests had spread quickly. Cushing minced no words: Tories must either join the Confederacy or leave the state. See Tri-Weekly Telegraph, October 19, 1863. See also William Pitt Ballinger Diary, October 11, October 15, 1863, (typescript), Barker Center Archives; [Mrs.] S. A. Wharton to Ballinger, October 23, 1863, Ballinger Papers; Gideon Lincecum to R. B. Hannay, October 22, 1863, in Lois Wood Burkhäler, Gideon Lincecum, 1793-1874: A Biography (Austin: University of Texas Press, 1965), p. 161; Magruder to Kirby Smith, October 11, 1863, O. R., Series I, vol. XXVI, Pt. II, 301; Guy M. Bryan to Magruder, October 14, 1863, ibid., 312-313; Magruder to Kirby Smith, October 14, 1863, ibid., 327-328; A. G. Dickinson to Capt. E. P. Turner,
November 30, 1863, ibid., 458; and Cushing to Major-General [J. B.] Magruder, November 24, 1863, ibid., Series II, vol. VI, 560-565. Among the citizens who had fled the state to avoid military service were two prominent Austin Unionists, S. M. Swenson and Thomas H. Duval, federal judge for the Western District of Texas; Lubbock may have had them in mind when he pleaded for an act requiring forfeiture of property. See Mrs. Duval to Tom, January 31, 1864, and Thomas H. Duval to Honorable James Guthrie, May 31, 1864, Thomas Howard Duval Papers, Barker Center Archives. According to Ballinger, Swenson was one of those good men "whose fidelity might have been preserved, & usefulness may have been very great, if he had been rightly dealt with." As it was, Swenson "drifted into hostility to the country & co-operation with our enemies." Ballinger Diary, October 26, 1864.

18. Lubbock to the Legislature, Senate Journal, Tenth Legislature, pp. 15-17. Lubbock presented the Comptroller's report to the assembly and predicted that the state would show a surplus in 1865 if the Confederacy assumed the cost of the Frontier Regiment. Ibid., p. 28. Murrah, determined that the Confederacy must assume its financial responsibilities, asked for and received authority to do whatever necessary to settle the state's claims. See Murrah to Senators and Representatives, November 24, 1863, ibid., p. 100. For the act, see K. P. N. Gammel, comp., The Laws of Texas, 1822-1897 (10 vols.; Austin: Gammel Book Company, 1898), V, 670. Nathan G. Shelley, whom Murrah appointed commissioner, was still haggling with the Treasury Department in Richmond when Lee surrendered. See Kerby, Kirby Smith's Confederacy, p. 262.

19. Legislative leaders apparently decided to hand the subject of the Frontier Regiment to representatives from areas subject to attacking Indians and marauding Jayhawkers and bushwhackers. The Select Committee on Frontier Defense hammered out a bill that authorized the transfer of the Frontier Regiment to Confederate service. Gammel, Laws of Texas, V, 677-679. The bill also exempted from conscription men from fifty-four frontier counties. That provision provoked a heated exchange between Smith, Magruder, and Murrah and was a factor in the deteriorating relationship between civil and military authorities. See infra, Chapter VI.

20. The phrase is in the Tri-Weekly Telegraph, November 2, 1863.


22. Tri-Weekly Telegraph, November 9, 1863.

23. Murrah to the Gentlemen of the Senate and House of Representatives, November 5, 1863, Senate Journal, Tenth Legislature, pp. 48-55.
24 Ibid., p. 49.

25 *Tri-Weekly Telegraph*, November 11, 1863.

26 Ibid., November 11, November 16, 1863.

27 Ibid., November 11, 1863.

28 Ibid., November 16, 1863.

29 *Senate Journal, Tenth Legislature*, p. 56.


31 Ibid., p. 66. Correspondent "B" notified the *Telegraph* that the Senate Judiciary Committee had rejected the legal tender bill and that it could "be inferred" that, because "the report was adopted with but little objection," "all similar propositions will meet with the same fate in that body." *Tri-Weekly Telegraph*, November 16, 1863. The First Permanent Confederate Congress had discussed the constitutionality of legal tender acts during each of its four sessions. Neither President Davis nor Secretary of the Treasury Christopher G. Memminger favored legal tender measures; consequently, a majority of the Congress, remaining unconvinced of the constitutionality or expediency of a legal tender law and receiving no encouragement from the executive officers, rejected each legal tender bill introduced. After the Congress (Fourth Session) passed the Funding Act of February 17, 1864, there apparently were no further discussions of legal tender. See John Christopher Schwab, *The Confederate States of America, 1861-1865: A Financial and Industrial History of the South During the Civil War* (1901; reprint ed., New York: Burt Franklin, 1968), pp. 84-105, passim; and Richard Cecil Todd, *Confederate Finance* (Athens, Georgia: University of Georgia Press, 1954), pp. 118-120.


34 Ibid., p. 79.

35 A. W. DeBerry of Panola County offered a substitute resolution in which he claimed that it was "the desire of a majority" of Texans that "Confederate Treasury Notes should be made a legal tender ... provided Congress [had] the power under the Constitution to do so."
See ibid., pp. 113-114. DeBerry's resolution took into account the possible constitutional problems regarding legal tender; Lovejoy's resolution, on the other hand, considered legal tender an expedient, regardless of any constitutional proscriptions. Neither resolution was acceptable to the fiscal conservatives.

36 Ibid., p. 113. Correspondent "G" had asserted that "conservative" men dominated the House of Representatives. Tri-Weekly Telegraph, November 16, 1863.

37 Tri-Weekly News (Galveston), November 25, 1863, lists the legal tender advocates. The phrase is in Tri-Weekly Telegraph, November 23, 1863.

38 For a summary of arguments used to defend legal tender laws, see Schwab, The Confederate States of America, p. 94. Texas was, of course, treating Confederate notes as legal tender in the sense that the treasury paid them out for virtually all purposes. The Confederate government treated them similarly. The problem in Texas—and throughout the Confederacy—was whether to declare the notes legal tender by statute, thus sanctioning their use in private transactions.

39 Tri-Weekly Telegraph, November 25, 1863.

40 Ibid., November 23, 1863.

41 House Journal, Tenth Legislature, pp. 116-118.

42 Tri-Weekly Telegraph, November 25, 1863. Ballinger was undoubtedly surprised to learn about Brady's fiscal conservatism because he had noted in his diary: "Frazier & Brady elected Reps. from from [sic] this Co.—the least qualified of all the candidates. Whiskey is sd. to have elected Brady. The days of demagoguery are not over—The community are ripe for it." Ballinger Diary, August 5, 1863.

43 Tri-Weekly News, November 25, 1863.

44 Tri-Weekly Telegraph, November 25, 1863. Any of the opponents of the legal tender act could have noted, as did Cushing's correspondent, that legal tender acts would be unenforceable in the state courts which enjoyed exclusive jurisdiction in all suits for money. Ibid.

45 Ibid. See also Tri-Weekly News, November 25, 1863.


47 Baker to W. W. Browning, November 13, 1863, W. W. Browning Papers, Barker Center Archives. Baker sounded the membership early in the session and reported to Browning that both cotton restriction
and slave impressment would be defeated. See ibid. Browning was among the most affluent planters in wealthy Washington County. He owned sixty-two slaves and real property valued at $138,590. See Ralph A. Wooster, "Wealthy Texans, 1860," *Southwestern Historical Quarterly*, LXXI (October, 1967), 179.

48 *Tri-Weekly Telegraph*, November 25, 1863.

49 For the governor's comments, see Murrah to the Senators and Representatives, November 24, 1863, Senate Journal, Tenth Legislature, pp. 91-108. For some unexplained reason Murrah waited three weeks after the Legislature convened to deliver his gubernatorial message.

50 Both the state Constitution and statutes were vague about the measure of valuation of property. The state Constitution, ratified in 1846 and amended in 1861, called for "equal and uniform" taxation of all property "in proportion to its value." See Article VII, Section 27, Constitution of the State of Texas, in Gammel, *Laws of Texas*, V, 20. The measure of valuation was imprecisely expressed in statutes as "valuation," "cash valuation," "true value," and "average value." See Miller, *A Financial History of Texas*, p. 101. An editorial writer had chastised the Ninth Legislature (Extra Session) for evading its responsibility with respect to tax assessment. He contended that the Legislature should have required the assessment and the tax to be in the same currency, and added that the plan of valuing property in one currency and paying the tax in another greatly depreciated currency (Confederate notes), besides encouraging speculation, tended to depreciate even further "the only money we have." *Tri-Weekly News*, April 28, 1863. Murrah detested the notion of valuing paper money in terms of specie. He thought it was senseless, under the circumstances, to establish "gold as a standard by which the value of the credits, promises and solemn pledges of the [Confederate] Government were to be determined." See his remarks to the Legislature, Senate Journal, Tenth Legislature, pp. 101-102. His remarks support the view that state taxes were assessed in specie values; thus taxes paid in Confederate notes on the face value of the assessment would not have supplied the required revenues. To change the basis of assessment to Confederate money would have increased revenues.

51 Murrah to the Senators and Representatives, November 24, 1863, Senate Journal, Tenth Legislature, pp. 91-108.

52 Gammel, *Laws of Texas*, V, 691. Although Louisiana, Florida, Alabama, and Mississippi were generous in granting land and advancing capital and credit to railroad companies, one historian asserts that the Texas and Mississippi legislatures responded to "special interest groups" by granting them permission to repay loans in depreciated currency. She contends, moreover, that by the law cited above, Texas went beyond other states in its efforts to ease the railroad companies' financial crises. See May Spencer Ringold, *The Role of the State


54. **Senate Journal, Tenth Legislature**, p. 65. The difficulty of tracing bills through the legislative labyrinth is exacerbated by the loss of the manuscript journals for the period from December 4 through adjournment. The journals' editor noted that the proceedings for the House after December 3 were excerpted from the **Tri-Weekly State Gazette** (Austin). He does not make a similar statement in the Senate Journal, but undoubtedly the journal is substantially abbreviated after that date.


56. See supra, n. 54.


58. Ibid., 670-674. Loss of the manuscript journals made it particularly difficult to trace the tax assessment and collection bills. Brady reported the Finance Committee's recommendation of a bill for tax assessment and collection that was probably based on Lubbock's request to draft a measure streamlining collection procedures. **House Journal, Tenth Legislature**, pp. 190-191. There is no evidence to suggest that the bill recommended by Brady was the same bill that eventually passed establishing Confederate treasury notes as the "standard of value" in the assessment and collection of income taxes on liquor. See Gammel, Laws of Texas, V, esp. 672-673. Had Brady's Finance Committee included the same "standard of value" in the assessment and collection bill it recommended, Brady undoubtedly would have registered his objections—as he had done regarding the revenue bill. No such objections can be found in the manuscript journal, and these questions had been covered before the printed journal resorted to newspaper accounts of the sessions. Texas enacted quasi-prohibition laws belatedly. For discussions of state prohibition laws, see Ringold, The Role of the State Legislatures in the Confederacy, pp. 43-45; and Charles W. Ramsdell, Behind the Lines in the Southern Confederacy (Baton Rouge: Louisiana State University Press, 1944), pp. 40-41. When the practice of licensing and taxing distilleries failed to limit distillers' purchases of grains or to reduce the amount of liquor available, the Legislature adopted a different policy. Both Lubbock and Murrah (Senate Journal, Tenth Legislature, pp. 21, 102) had recommended outright prohibition, for economic reasons—to conserve foodstuffs and keep prices lower—rather than for social reasons. The general breakdown of law and order and the lack of adequate police forces would have made prohibition unenforceable. Recognizing that, and clinging to individualism and to laissez-faire concepts, the Legislature set a complicated tax schedule for liquor. See ibid.
In addition, the Legislature allowed the county courts to exercise their police powers and declare "the distilling of spirits to be prejudicial to public subsistence." Ibid., pp. 702-703. The liquor taxes yielded more than $101,000 or about 62% of the receipts other than ad valorem receipts in 1864. See Miller, A Financial History of Texas, pp. 143-144.

59 House Journal, Tenth Legislature, pp. 84, 115, 160. Emmert's bill would have restricted cotton planting to one-fourth of the ground cultivated by any person or his laborers. Emmert's bill is in Records of the Legislature, Tenth Legislature. (Original Bills.) State Archives.

60 Baker to W. W. Browning, November 13, 1863, W. W. Browning Papers. The Senate rejected the price-fixing proposal. See Senate Journal, Tenth Legislature, pp. 76, 83, 113, 120. The upper house apparently never formally discussed Negro impressment. See ibid., p. 133. Similarly, the House ignored price-fixing, but considered and rejected a Negro impressment proposal. See House Journal, Tenth Legislature, pp. 84, 100, 106, 131, 153. Despite support for Negro impressment among Confederate nationalists such as Cushing and Ballinger, the planters, and perhaps other Texans, continued to resist the policy. One writer, fearful that the Legislature would pass a bill to impress Negroes, called the plan "the worst move" that could be adopted. He predicted famine if such a policy were adopted and argued, moreover, that for the Legislature to pass such a law would "show at once that there is some panic--when there is no necessity for it." See Geo. W. Behn to Murrah, December 3, 1863, Governors Letters (Murrah).

61 Two resolutions regarding impressment of property by Confederate officers were introduced in the House, but the representatives apparently took no action on either of them. See House Journal, Tenth Legislature, pp. 90, 184, 190. (The contents of neither bill are known.) The Senate debated seven resolutions related to impressment offered by E. R. Hord of Brownsville. His resolutions cited discrepancies between published price lists and actual values of some article impressed, frequent waste and spoilage of goods impressed unnecessarily, and general abuse of the impressment law. That the Senate failed to adopt the resolutions was due to the constant "calls" kept up by Parsons, Selman, Kinsey, Guinn, and Hartley. In other words, those senators who opposed the resolutions literally wore down their adversaries. See Tri-Weekly Telegraph, December 21, 1863. Confederate military authorities and agents in Texas concentrated on impressing cotton, slaves, and wagons, but as one historian noted, the state Legislature, despite the stepped-up impressment activity during the summer of 1863, failed to appreciate the seriousness of the situation or the public's outrage until May, 1864. See Jonnie Mildred Megee, "The Confederate Impressment Acts in the Trans-Mississippi States," (unpublished M.A. thesis, University of Texas [at Austin], 1915), esp. pp. 46, 155. See

62 General Magruder had maintained a steady correspondence with Lubbock; he continued that policy with Governor Murrah. Magruder apparently added a new twist in November, 1863, however, when he sent "unofficial" lobbyists to Austin. See, for example, Magruder to Murrah, November 13, 1863, Governors Letters (Murrah); and Captain E. P. Turner to Horace Cone, November 26, 1863, letters sent, Headquarters, District of Texas, New Mexico and Arizona, Ch. II, Vol. 122, pp. 121-122, Record Group 109, National Archives.

63 The phrase is from Horace Cone, Judge Advocate General, to Murrah, November 17, 1863, Governors Letters (Murrah). The alleged conspirators were Dr. Richard R. Peebles of Hempstead, D. J. Baldwin and A. F. Zinke of Houston, Reinhardt Hildebrand of Fayette County, and E. Seelinger of Austin County. For a brief discussion of the episode, see Kerby, *Kirby Smith's Confederacy*, pp. 270-274.


65 Ibid., p. 59. See also *Tri-Weekly Telegraph*, November 20, 1863. Cushing believed Wooten's resolution was out of place because someone had to take responsibility when treason was abroad in the land. As long as the public sustained Magruder's action—and the public seemed to be doing so—Cushing believed it was legitimate. See *Tri-Weekly Telegraph*, November 23, 1863.

66 Cone to Murrah, November 17, 1863, Governors Letters (Murrah).

67 Lubbock to the Gentlemen of the Senate & House of Representatives, November 4, 1863, Senate Journal, Tenth Legislature, p. 32.

68 Gammel, *Laws of Texas*, V, 666-667. R. H. Guinn introduced the measure in the Senate where it was eventually debated in Committee of the Whole. Senate Journal, Tenth Legislature, pp. 87, 90, 116, 121, 122. Senator Harcourt, who had already registered his disapproval of an attempt to deny the suffrage to "certain persons," urged the Senate to strike Article 234A of the Penal Code which prohibited virtually any statement, uttered or written, of sympathy for the "public enemy." See ibid., p. 70, and *Tri-Weekly Telegraph*, December 9, 1863. The House passed the amendment without debate or roll call. House Journal, Tenth Legislature, p. 206.

69 Murrah to the Senators and Representatives, November 24, 1863, Senate Journal, Tenth Legislature, p. 104.

70 Murrah to Magruder, January 4, 1864, Governors Letterbooks (Murrah).

71 Lubbock to the Gentlemen of the Senate and House of Representatives, November 4, 1863, Senate Journal, Tenth Legislature, p. 19. See also


74 Murrah's interest in manufacturing self-sufficiency was more pronounced than Lubbock's. See *Senate Journal, Tenth Legislature*, p. 54. The delegates at the Marshall Conference had stressed manufacturing development, but Murrah, because of his long association with railroad interests, probably would have urged economic stimulants regardless. In hopes of securing details for skilled craftsmen and mechanics, the Legislature addressed two Special Joint Resolutions to General Magruder. Gammel, *Laws of Texas*, V, 750-751. The Legislature also urged Congress to repeal exemptions from conscription for any class of property holders. See ibid., 705.

75 See *Senate Journal, Tenth Legislature*, p. 88; and *Tri-Weekly Telegraph*, November 27, and December 25, 1863.

76 "Retrenchment" had been an issue early in the session when the Senate Finance Committee recommended raising the salary of the governor's secretary from $900 to $1200 per year. D. C. Dickson, the Know-Nothing gubernatorial candidate in 1855, and J. W. Throckmorton, Union Democratic leader in 1860-1861, submitted a minority report opposing the increase as "injudicious," as unfair when soldiers were paid a paltry $11 per month, and as frivolous in view of the mounting state debt. See *Senate Journal, Tenth Legislature*, pp. 73-75. Despite their opposition, the bill carried 16 to 14. Ibid., p. 80. Texas was hardly overstaffed with government clerks or agents in 1863 (there were salary appropriations made for sixty of them including porters), but to distribute the amount of goods that Hartley proposed would certainly have required more state employees.

77 Lubbock had recommended the reorganization of the Military Board. See ibid., p. 170. The Senate passed the reorganization bill without a roll call. Ibid., p. 114. For the act, see Gammel, *Laws of Texas*, V, 680.


Gammel, Laws of Texas, V, 676, 677. The Legislature had been generous in appropriating aid, support, and supplies (sometimes through the agency of the penitentiary) to the families of soldiers; it had been equally generous with its land grants to railroads and after 1863, those to corporations. It was, however, niggardly when it came to granting land to soldiers in either the Confederate or state service. In fact, the Tenth Legislature suspended the sale of public lands and reduced the Land Office staff to a skeleton crew. See ibid., 669-670. Murrah recommended "suspending the operations of the Land Office," because so many men were out of the state. His was the first attempt, and an imprecise one at that, to explain why the office should be closed. Not until May, 1864, did any legislator explain the reasons for that act or for previous refusals to grant lands to soldiers. When the Tenth Legislature met in extraordinary session, however, Hartley recommended a reversal of the former policy which he claimed had been based on a desire to give every citizen an equal chance to select lands from the public domain; soldiers out of the state would have been denied that opportunity. See James M. Day, comp. and ed., Senate and House Journals of the Tenth Legislature, First Called Session, of the State of Texas, May 9, 1864-May 28, 1864 (Austin: Texas State Library, 1965), pp. 89-90.

Gammel, Laws of Texas, V, 717-748, passim.

See Ramsdell, Behind the Lines in the Southern Confederacy, p. 100. For one view of the difficulties involved in importing machinery and in paying for it in cotton, see J. B. Earle to Ballinger, May 8, 1864, Ballinger Papers.

Lubbock to the Gentlemen of the Senate and House of Representatives, November 4, 1863, Senate Journal, Tenth Legislature, p. 25.

See Murrah to the Senators and Representatives, November 24, 1863, ibid., p. 94. Both the Senate and the House passed the bill without roll calls. Murrah returned the bill on December 4 because it did not provide for the disposition of the bonds through agents and the governor, of course, could not handle the negotiations alone. See Murrah to the House of Representatives, December 4, 1863, House Journal, Tenth Legislature, p. 270. Because of the abbreviated House journal after December 3, it is impossible to determine exactly when the Finance Committee modified the bill to suit Murrah. The governor signed it on December 10. See Gammel, Laws of Texas, V, 663.

The adjective is from Kerby, Kirby Smith's Confederacy, p. 198.


Kerby implies that Murrah and the Legislature collaborated to check military control of the cotton trade, that is, that they knew about the Texas Cotton Office plan and drafted a bill that would effectively nullify it. See Kerby, Kirby Smith's Confederacy, p. 198.
Kerby insinuates too much; the general attitude of the Legislature, the absence of any specific journal or newspaper comments pointing to hostility directed at the military, even the chronology involved seem to me to cast doubt on his suggestion. (See infra, for chronology.) Moreover, that Lubbock, a model for governors devoted to the Confederacy, originally recommended the measure seems to rule out the suggestion of "conspiracy."

88 See Wm. J. Hutchins to the Cotton Planters of Texas, December 4, 1863, O. R., Series I, vol. XXVI, Pt. II, 480-482. For the pertinent dates, see Senate Journal, Tenth Legislature, p. 115; and House Journal, Tenth Legislature, p. 179. For some of the problems involved in finding the right men to direct the Texas Cotton Office, see Bryan to Ballinger, October 4, 8, 11, 24, 29, 1863, Ballinger Papers; Ballinger Diary, September 29, and October 4, November 6, 8, 11, 1863; and T. J. Devine to Colonel A. W. Terrell, November 2, 1863, Bryan Papers.

89 Tri-Weekly Telegraph, December 25, 1863.

90 See supra, n. 9.
CHAPTER VI

TO SET THE GOVERNOR RIGHT:
GOVERNOR, LEGISLATURE, AND ARMY, 1863-1864

Representative R. R. Haynes, travelling the three hundred miles between Austin and Marshall after the Legislature had adjourned, in December, 1863, acted as Governor Murrah's unofficial reporter commissioned to observe "the condition of the country." Conditions had not changed much since early fall, Haynes wrote, although there were fewer refugees from Louisiana clogging the eastern Texas roads and perhaps because of the "festive season," fewer army trains and Cotton Bureau trains. At home in Marshall, Haynes found that a gallant set of officers without commands, government functionaries, government details, and gamblers had moved in, congregating usually at the "Rialto" where "sperrets" were served. He felt like "a stranger in Venice," Haynes reported, among a people on whose patriotism the war was beginning to tell.

Everywhere the once rabid East Texas enthusiasm for the war had evaporated to be replaced by a low but steady grumbling on account of depreciated money, impressments, enrollment in the militia, and military orders. Haynes dismissed the complaints about money, impressments, and militia service as unjust, as evidence of lack of patriotism; complaints against military orders were a different
matter, however, because General Magruder had recently issued a special call for the farmers and planters of Texas to volunteer their slaves to labor on fortifications along the coast and in the interior as far west as Austin. Haynes, confiding to Murrah that Magruder's order would not be obeyed "except at the point of the bayonet" in the counties from Houston eastward, suggested that the governor ask Magruder to revoke his order or at least delay its execution.¹

Haynes' comments about the people's reception of the new impressment order could hardly have surprised Governor Murrah. Impressments had never been popular; nevertheless, until the winter of 1863-1864, the practice does not seem to have generated extensive public hostility. Magruder's latest appeal, however, followed two impressment orders issued from Department Headquarters calling for slaves to fortify Shreveport and Alexandria in the face of an expected Federal offensive in the Red River region, and to complete the Southern Pacific Railroad line between Shreveport and Marshall. East Texans who had supplied the slaves for those projects considered Magruder's call to fortify Austin an absurdity: "it [would be] better for the enemy to take the Capital than for us to fail in a corn crop," they felt.²

Fear prevailed elsewhere that land could not be plowed or crops planted if Negroes were impressed. Even E. H. Cushing, Magruder's constant champion, at least momentarily sympathized with the dissatisfied planters in the coastal area who had so frequently borne the brunt of slave impressments. "I wish [Magruder] could find enough
to do with fighting the enemy, but his too active temperament admits of no idleness . . . ," wrote the rebel nationalist. And Guy Bryan, who had issued a special order exempting his own Negroes and teams from impressment, warned Ballinger that discontent was growing, that planters had become careless about raising crops since their produce was often taken from them "in the most ruthless manner & without compensation." Bryan urged Ballinger to advise General Smith, who was planning to visit District Headquarters (Houston) later in January, that the public alarm over untimely impressments, inadequate compensation for impressed goods, and arrogant impressment officers would prove injurious to the General's reputation and to the southern cause.

Before Ballinger could discuss the subject with Smith or Murrah could request Magruder to reconsider his order, especially where it pertained to northeastern Texas, General Magruder wrote to the governor explaining his recent appeal to the farmers and planters and his subsequent Order No. 254. This was for Magruder a politic move, inspired not by his sensitivity to the political requirements of his command, but rather by General Smith's veiled suggestion that he consult with the governor. Smith had decided, in fact, that his District Commander had overstepped his authority and thereby threatened to nourish "the spirit of disaffection" that was creeping through the countryside. Smith thought that revocation of the call for slaves from the northeastern counties and closer adherence to General Orders No. 138, the most recent set of slave impressment regulations for states that had drafted no local rules to govern
the subject, would quiet public protests. But he also thought that it was important for Magruder to treat the governor as a partner in an operation in which the people of his state were directly involved. Therefore, Smith had forwarded a copy of General Orders No. 138 to Magruder as a gentle reminder that among the District Commander's political responsibilities was that of consulting with the governor about slave impressments.  

Magruder, expecting Murrah to bow to military dictates as Lubbock had generally done, was surprised at the governor's reply to his overtures. Instead of merely approving Magruder's order, Murrah advised the General that the number of Negroes needed to work on fortifications "should be determined by a sound and discreet judgment" and "limited to the actual necessity." Murrah suggested, moreover, that impressments be uniformly enforced, that overseers be permitted to accompany the slave coffles, and that the type of labor to be performed and the location of it be specified in writing to the owners. Through ten pages Murrah counseled Magruder to heed both the interests and the complaints of Texans--because the impressment law existed there was little else the governor could do--and then, in a pious aside averred that he did not desire to "inflame the public mind," that he desired only to cooperate with the General to prevent widespread dissatisfaction.  

If taken alone, Murrah's readiness to represent complaining citizens and to advise and edify Magruder would not have seemed particularly portentous. But when combined with the governor's conduct in two matters--organization of the militia and procurement of supplies and machinery--that the Tenth
Legislature had turned over to him, it was clear that Magruder was dealing with a different and less amenable executive than Lubbock.

Among the persistent problems that had faced the state was that of frontier defense. The Confederate authorities, although informed as early as 1861 and frequently thereafter that the western Texas frontier was being overrun with deserters and Jayhawkers, had generally ignored the pleas for assistance or at best had simply exhorted the commanders of Confederate troops along the frontiers to persevere in their efforts to halt depredations. By the winter of 1863, however, any hopes had faded that the Confederacy would step in to protect the homesteaders and settlers from the fleet and seemingly ubiquitous savages. Consequently, the Tenth Legislature had attempted to overhaul the state militia system to provide especially for an effective defense along the western edge of settlement.

Acting upon the recommendation of Lubbock and Murrah, the Legislature had voted to transfer the Frontier Regiment to the Confederate States service and to replace it with militia drawn from the able-bodied white men liable to military duty who were bona fide residents of fifty-four frontier counties extending from Cooke in North Texas to Maverick in Southwest Texas. A second act empowered the governor to retain the organized militia in the field six months beyond their stipulated service dates—that is, until August, 1864—and authorized him to order the militia at home to enroll and join their respective commands. The act further provided for a reorganization of the militia, election of officers, and a lottery by which the troops
could be classified so that two-thirds of them would remain in
the field and one-third act as a reserve force. The rotating
reserve force was envisioned by the Legislature to act both as an
auxiliary to the Confederate army in case of an emergency and as a
corps of farmers and stock raisers to produce foodstuffs for the
armies in the field. A third bill expanded the list of classes
and occupations exempt from militia duty, divided the state into
six brigade districts, enjoined the state brigadiers to encourage
the formation of local defense companies composed of men not subject
to military duty, and finally forbade the removal of the militia
from the state. In short, the three acts ordered into the state
troops all able-bodied men between ages eighteen and fifty who were
not actually enrolled in the Confederate service or exempt by state
law.8

Because the Tenth Legislature had displayed a general willingness
to cooperate with the military authorities—-at least anti-military
sentiments were hushed—-to solve problems resulting from the Depart-
ment's isolation, it is difficult to assume that the lawmakers
deliberately enacted defense measures that would conflict either
with military policy or Confederate conscription statutes. Never-
theless, whether deliberate or not, conflicts arose in the course
of the governor's executing the somewhat ambiguous laws. The act
to protect the frontier, for example, General Smith regarded as
an unfortunate contravention of the Confederate conscript law
because, by ordering the enrollment in the state militia of eligible
residents of the western counties, the act in effect excluded them
from Confederate service. At least the frontiersmen and the weary soldiers from the designated frontier counties interpreted the act to mean that they could perform their prescribed military service by riding the brush in search of marauding Indians or skulking Jayhawkers. The upshot was a steady desertion from the Confederate army of men who came from the "exempt" counties. Smith, aware that inhabitants of the frontier and border counties doubted the ability of the Confederate army to protect them, decided in mid-January to avoid an "unpleasant issue" by simply reminding Murrah that men from the "exempt" counties who had been enrolled or mustered into the Confederate service could not be transferred to any state organization. And in a conciliatory gesture, Smith offered to postpone further enrollment of conscripts until Murrah could obtain from President Davis a suspension of the Confederate law in the designated counties.9

The frontier protection bill, although it resulted in decampments from the Confederate army and annoyed General Smith, proved less controversial and less damaging to civil-military relations in the Trans-Mississippi than the so-called militia bill ("An Act to Provide for the Defense of the State").10 The dispute over the execution of the militia bill began in early January, 1864, raged through the next two months, and climaxed in April when Governor Murrah, assured by Magruder that 75,000 blue coats were advancing on Texas from Louisiana and Arkansas, capitulated to the General's demands.

The dispute initially pivoted on the disposition of the
Confederate conscript element which, at the request of Magruder, had been placed in the state troops in August, 1863.\textsuperscript{11} Reeling from the shock of Vicksburg and convinced that Texas would be invaded momentarily, Magruder (who always thought an invasion of the state was imminent) had worked out with Governor Lubbock the details of the plan so that the conscripts could, at the end of the six months term, be transferred to Confederate regiments. Magruder had hoped that the Tenth Legislature would "legislate the state troops into the Confederate service for the war," but the lawmakers instead had overhauled the militia system and merely extended the term of service by six months.\textsuperscript{12} Although the militia law of December, 1863, had specifically excluded the conscript element from the classification and furlough scheme, Murrah suggested to Magruder that the men liable to Confederate service be allowed to remain in the state troops after reorganization. And, more to the point of the dispute, the Governor issued a proclamation calling on men liable to militia duty to join the state troops and participate in the prompt reorganization of the state units. Conscripts in and out of the service heeded Murrah's call and rushed to the shelter of the state militia.\textsuperscript{13}

Whether Murrah had known about Magruder's prior arrangement with Lubbock is not clear.\textsuperscript{14} At any rate, he does not seem to have asserted the state's claim over conscripts until he received information that Magruder, acting under instructions from General Smith, on January 20 had ordered the enrollment of all state militiamen subject to Confederate conscription laws.\textsuperscript{15} According to state Brigadier J. D. McAdoo, Murrah's informant, General Magruder had
been "persuaded to ignore [the governor's] official existence," had decided, in fact, to take control of the men "in case a conflict does arise" before the state could establish its claim. Magruder's "clear, cool, deliberate, snap judgment" provoked the touchy, thin-skinned governor to stand fast on a point that had hardly concerned him earlier in the month.  

With conscripts scurrying home, state defenses disarrayed, and Federals lurking in Louisiana, Murrah agreed to a February meeting with Smith and Magruder in Houston. The governor was primed; the Confederacy had no right to draft men from his embodied militia because "when the Confederate State and the State had concurrent jurisdiction, the party which occupied the ground first was entitled to the exclusive exercise of such jurisdiction." Wanting to avoid a break with the governor, General Smith agreed to allow the conscripts to join either existing Confederate organizations, or the state troops, but he insisted—and Murrah conceded—that at the end of the six months term, the conscripts would be transferred to the Confederate army. It was hardly a satisfactory meeting; Magruder reported that the conscripts were lost to the army and furthermore that the dispute had cost the state and the Confederacy valuable time since organization of the militia had come to a stand still.  

A militia colonel wrote, after news of the Houston settlement had been circulated, that "the militia ... has gone home conscripts and all and I do think if we had one more Governor the Yanks would soon have us." The colonel characterized Murrah's policy as "short-sighted;" it was also short-lived because in mid-March Magruder
received orders from General Smith to dispatch his troops to Louisiana and to urge Murrah to transfer the state troops to Confederate commands. Murrah was recalcitrant, insisting that state law permitted a transfer only under the conditions that the state brigade organizations be retained intact and that the militiamen remain in Texas. The governor evidently had sensed the mood of at least a part of the citizenry, the part that preferred the easier state militia duty, the part that wanted to stay home, detailed to their farms and businesses. He had to consider his political position; he could not submit to the military's demands unless the emergency was grave, unless Texas was unquestionably menaced. In short, Murrah, acknowledging that he might be driven from his position of claiming conscripts and tendering only brigades, needed reasons "so as to justify [himself] before the country."^{21}

Exasperated by Murrah's stubborn insistence on tendering state brigades and by his politically-inspired requests for detailed information defining the gravity of the situation, Magruder, now armed with the new Confederate conscript law (enacted February 17, 1864), declined Murrah's offer of state brigades and threatened to strip Texas of its manpower. The General also informed Murrah that Confederate authority over conscripts was henceforth indisputable; to fail to recognize the "binding force" of Confederate law and to continue the embarrassing controversy, he added, would simply hearten "the demagogues and the disloyal."^{22} Still the governor refused to budge. Even Kirby Smith, trying desperately to repel two advancing enemy columns in Arkansas, entreated Murrah to put
"every armed man in Texas into the field."\(^{23}\)

By April 7, the generals' pleas combined with increasingly dismal news from the Louisiana-Arkansas front to produce results. Murrah, who had been wavering, yielded, informing General Magruder that "in view of the dangers surrounding the state and country," he would cooperate in organizing the troops as required by Confederate law. The governor reiterated his preference for the state organization scheme, however, and insisted that had it been followed, there would have been "no appearance of violence, dictation, [or] arbitrariness." On the contrary, an efficient militia would have been created, the state laws respected, and the Legislature given an opportunity to relinquish freely the state's authority over the troops.\(^{24}\) Whatever reservations Murrah may have had, the effects of his capitulation were twofold: it obviated future civil-military conflict over conscription; and it virtually eliminated the state troops as such.

Realizing that his action would be unpopular, Murrah tried to defend himself before the state troops and the Legislature by charging Magruder with responsibility for the conflict over conscription.\(^{25}\) To a Confederate nationalist like Ballinger, Murrah's course was best described as "Van Burenish"; but to rank and file Texans in the spring of 1864 Murrah appeared as the champion of their rights and property.\(^{26}\) An ambitious but certainly not a disloyal governor, Murrah constantly catered "to what he supposed [would] endear him to the people." He took the same approach in all his conversation, James Love reported. The governor could do little but complain of encroachments by the military powers; and, despite
Murrah's capitulation in the conscript case, the effect of his pointing up the problems was to aggravate public antagonism toward the Confederate government and its most visible agents, the military authorities.\textsuperscript{27} Most Texans were affected by impressment and conscription policies, but when Murrah, through his State Plan, provoked another controversy with the Departmental command, he added to the growing ranks of his admirers cotton planters, their surrogates in the Legislature, and speculators who found in the governor's cotton-purchasing scheme a way to circumvent the (Confederate) Texas Cotton Office, transport their white gold to Mexico, and return with supplies and specie.

Charged with procuring arms and munitions for the Trans-Mississippi Department, Colonel W. J. Hutchins, chief of the Texas Cotton Office, devised a plan that would enable him to avoid impressments—which he detested—and to compensate for a lack of funds. He proposed to buy one-half of the baled cotton owned by planters or merchants and to exempt from military impressment the remaining one-half and the vendor's teams and wagons. Payment would be made at specie value in certificates payable in cotton bonds to be authorized by Congress. Under the Cotton Office plan, vendors were required to deliver their cotton to designated depots before they were given exemption licenses. Despite his appeal to the planters' patriotism, Hutchins realized that the success of his plan hinged on the planter's desire to escape cotton impressment and to utilize cotton for his private purposes. The exemption of one-half his cotton would thus secure the planter's objectives and provide for the defense of the Department simultaneously.\textsuperscript{28}
Cotton Office agents began scouring the countryside for cotton early in January, 1864, two weeks after the Texas Legislature had enacted related bills to provide arms for defense and machinery for manufactures. Left to carry out the laws after the Legislature had adjourned, Governor Murrah had decided that strict adherence to the measures would prove financially disadvantageous to the state. Therefore, he combined the legislative acts and instead of selling 6% bonds for specie, sold "gilt-edged" 7% bonds for cotton. Not only were the 7% bonds more attractive than the Cotton Office's uncertain promises to pay, but Murrah's offer to pay fair market prices allowed for price variations that the Cotton Office could not meet. Moreover, the plan stipulated (although it seems never to have been formally published) that any cotton vendor who would consign his cotton to E. B. Nichols, head of the Texas Loan Agency, or a subagent, could have it transported to the Mexican border in state-managed wagon trains. Because state cotton was immune from impressment, the vendor had nothing to fear from Confederate impressment officers. Once the cotton was across the border, the state agent would surrender half to the planter to do with as he pleased and pay market prices, less transportation costs, for the other half in 7% bonds.

Murrah's State Plan was clever, detrimental to Confederate purchasing operations, and according to W. P. Ballinger, illegal. "But this mere illegality makes no difference," W. A. Broadwell, chief of the Trans-Mississippi Cotton Bureau (Shreveport), wrote Kirby Smith. Texans by 1864 were so irritated by military impressments
that they leaped at the chance to shelter themselves under the governor's plan and in that way, not only realize a greater profit on their cotton but also register their growing antagonism toward Confederate authorities.\textsuperscript{32} It had been apparent in mid-February when Murrah first alluded to his plan that he was about to embark on a collision course with the Confederacy.\textsuperscript{33} And although Murrah insisted that his plan was not designed to interfere with Confederate cotton acquisitions, it did just that. On April 5 General Smith reported to the governor that the execution of the State Plan had "completely paralyzed" Cotton Office operations.\textsuperscript{34}

Had Smith not been preoccupied with checking the Federals in the Red River valley, he probably would have met with Murrah to iron out the difficulties between Confederate and state authorities. The best he could do under the circumstances, however, was to send Bryan (from his staff) "to set the Governor right."\textsuperscript{35} Neither Hutchins nor Ballinger was optimistic about Bryan's mission; Ballinger assured Bryan that the governor was a resolute, ambitious man who sought "to do good, but also to gain a reputation." In addition, the governor had "resentments & jealousies not against military abuses, but against military power & against the Confeder. authority as its origin." In short, Murrah would be "a tough nut to crack."\textsuperscript{36}

Bryan quickly discovered the veracity of Ballinger's characterization because Murrah, throughout the meetings which continued for nearly a week, refused to concede that his State Plan had actually interfered with that of the Cotton Office. He admitted, however, that persons had "intimated" to him that his plan had "embarrassed"
Confederate procurement of army supplies, and consequently consented to cease the operation of his plan until he could investigate the rumors. Murrah's agreement to arrest cotton purchases was coupled with his insistence that the contracts already negotiated must be "respected and facilitated by the Confederate authorities." When Bryan tried to pin the governor to a specific number of bales under contract, Murrah hedged, rejected precise limitations, and reiterated his view that all cotton under state contract should be recognized as state cotton and permitted easy exit across the border. Because Bryan had obtained from chief Loan Agent Nichols a verbal agreement to limit the state's exports to 12,000 bales, he expected Murrah to honor that allotment. The obstinate governor, although "well-disposed" and "in a fine humor," proved tougher to crack than even the skeptical Ballinger had assumed. It was, in fact, Bryan not Murrah who surrendered because, despite Murrah and Nichols' order to halt cotton purchases, the state already controlled "almost all the movable available cotton" in Texas and Bryan could do nothing to limit the amount exported.

For several weeks the governor and the Confederate cotton agents exchanged letters, the governor's insisting that since he had arrested state purchases, his plan could no longer be regarded as an "embarrassment" to the Cotton Office. Hutchins and Broadwell continued to charge that their operations had been crippled, that in the midst of military emergencies they had been unable to supply the army's needs. And as if the dispute were not acrimonious enough, Congress in February had enacted a new set of laws governing exports, one
result of which was to nullify the exemption against impressment that had "constituted the principle [sic] inducement to the people to part with the miserable pittance of cotton" they had agreed to hand to Hutchins and his agents. 42

In addition to export regulations, Congress enacted new currency and conscript laws that required the prompt attention of the state. Believing that the "condition of public affairs" necessitated legislative action, Murrah summoned the representatives to assemble in extraordinary session in May. 43 One of his advisors, John T. Harcourt, had informed Murrah that a special session would be desirable--in fact, was anticipated--if the governor could devise "any plan for organizing and retaining the state militia and any financial measures to relieve the state from the impending troubles." 44 That Murrah had no ready remedies for currency or conscription was less important than his desire to obtain a forum where he could tell his side of each conflict that had arisen in the wake of the military's encroachment upon the civil authority of the state. And the governor was also prepared to inform the legislators that the military authorities had not been content to intrude upon executive domain, but that they had challenged the judicial authority of the state.

The clash between the supreme court of Texas and Confederate military authorities had grown out of General Magruder's arrest in October, 1863, of five persons--Richard Peebles, D. J. Baldwin, A. F. Zinke, Reinhardt Hildebrand, and Ernest Seelinger--accused of conspiring against the Confederacy. The alleged conspirators had been sent from Houston to the military stockade in San Antonio
and while incarcerated there, they engaged Austin Unionist John Hancock as attorney to secure their release from military custody.

On March 7, 1864, Hancock sued out a writ of habeas corpus before the supreme court on behalf of his prisoner-clients. The following week the prisoners were taken before the court by the respondent, Lieutenant T. E. Sneed, commander of the Confederate post in San Antonio. Sneed told the court that the prisoners had been charged with treason and conspiracy and had been confined by order of General Magruder. Since it was apparent that Magruder was the "real respondent," the court appointed two attorneys, Charles L. Robards and state Senator Spencer Ford, to represent the General and to inform him of the court's actions. Then, pending the proceedings in the case, the court placed Peebles and his fellow prisoners in custody of the Travis County sheriff.\(^{45}\)

Not until March 25 were Magruder's attorneys—now including Horace Cone whom Magruder had appointed judge-advocate-general—ready with their return. On that same morning, however, Major J. H. Sparks, commanding the Confederate post at Austin, received an order from Magruder instructing him to take the prisoners from the sheriff and send them immediately to Houston. Magruder's order was in turn presumably based on a request from General Kirby Smith to detain the prisoners under authority of the recent (February, 1864) act suspending the privilege of the writ of habeas corpus.\(^{46}\)

Cone, anxious to avoid any conflict with the court over the habeas corpus act, asked the judges to remand the prisoners to Sparks' custody. The court and the attorneys for all parties agreed to
continue the case until the next day, the prisoners remaining in
the sheriff's custody until a decision could be reached on Cone's
motion. Following the court's adjournment, however, Major Sparks,
feeling responsible for the prisoners' protection and obligated to
obey Magruder's order--instructing him to disregard any writ--
"forcibly wrested" Peebles and his associates from the sheriff.47

In the ensuing excitement, Governor Murrah wrote Sparks
demanding to know by what authority the officer had "violated the
civil laws of the state and insulted its legal and judicial tribunal."48
The court attached Sparks for contempt; and Cone, Robards, and Ford,
appalled by Magruder's insensitivity to "the position of affairs"
and misinterpretation of the habeas corpus act, spent the day trying
to prevent "an ugly collision" between civil and military authorities.49

On March 26, Major Sparks appeared before the court to answer
the contempt charge. He claimed that he had acted in obedience to
orders from a superior officer, and that he had intended no contempt
of the court. But nothing Sparks said satisfied the angry judges;
Justice George F. Moore struck at each of Sparks' statements and
declared that no illegal act, however "high the source" from which
it emanated could be justified.

Nevertheless, while Sparks had obviously violated the law by
forcibly taking prisoners who were under the court's control, he had
done so in obedience to orders and that fact, according to Moore,
went far toward excusing his blatantly contemptuous conduct. That
same fact also went far toward making Magruder the "principal offender"
because by ordering Sparks to disregard the writ of habeas corpus, the
General had perpetrated a "glaring and palpable" outrage against both the law and the authority of the court. 50

To give Magruder an opportunity to show cause why he should not be held in contempt, the court transferred the case to Tyler where it convened for the spring term. Magruder appeared before Judges Moore and James Bell (Chief Justice Royall T. Wheeler did not sit in the case either at Austin or at Tyler), and evidently offered an inept defense of his order to Major Sparks. Magruder claimed, for instance, that he was unaware that the prisoners had passed from military to civil control when they were brought before the court upon the writ of habeas corpus. To that defense, the court retorted that a plea of ignorance was inadmissible. Magruder then claimed the right to detain the prisoners under authority of the recent congressional act suspending the privilege of the writ. To that argument, the court replied that Magruder himself had no authority under the law to detain the prisoners, nor any authority to order a subordinate officer to disregard the writ. The law, as the court pointed out, authorized suspension of the privilege of the writ only in cases of persons arrested under order of the President, Secretary of War, or commanding general of the Trans-Mississippi Department. And, according to the court, there was little evidence to suggest that General Smith had issued an order to arrest the alleged conspirators or later to detain them under authority of the law. In short, there was no doubt after the evidence had been presented and Magruder had stated his case that he had violated the act of Congress, offended the social order, infringed upon
personal rights, and interfered with the authority and process of the state's highest court.

Outraged as the court was, it was still aware that "the situation of the country" mitigated against imprisoning Magruder for contempt. Therefore, Judge Moore discharged the applicable rule and issued a judgment against Sparks and Magruder merely for court costs. Although Moore's decision acknowledged that it had become "the fashion to violate the rights of persons and property upon the plea of 'a military necessity,'" and although Moore believed the case had great political importance, the punishment hardly matched the crime. That is, in yet another example of deteriorating civil-military relations, the judges, while declaring the defendants in contempt of court, let them off with minimal punishment because it was a "military necessity" to do so.\(^{51}\)

David Richardson, editorializing in the State Gazette, and W. P. Ballinger, writing in the Galveston News, apprehended that a legislative session could become merely a place to crystallize anti-military sentiments that heretofore had been dispersed and localized. Both writers urged the Legislature to cooperate with Confederate authorities and Ballinger, the more ardent rebel nationalist, invited the lawmakers to strengthen the military by passing "judicious and vigilant laws." According to Ballinger, the best legislators would devise careful laws to invigorate the "moral courage of the community"; they should, he added, punish deserters and those who evaded conscription and taxation. And, he reminded the representatives, it was not against military power but against "unmilitary license" that the
citizens needed protection. 52

Ballinger's plea to strengthen military power was hardly welcomed by Governor Murrah who, by May, 1864, no longer aimed his criticism at "unnecessary licenses," but in shotgun fashion, fired at the military power itself. In his message to the Legislature, Murrah did not defend state rights so much as he advocated, in typically American fashion, the subordination of military to civil authority. Beginning with his version of the recently resolved conscript controversy, Murrah surveyed "with a caustic pen" his conflict with the Texas Cotton Office, the implications of the new act suspending the privilege of the writ of habeas corpus, and the potential impact of the Confederate currency act on state finances. Neither the military nor the Congress escaped unscathed from Murrah's message: the military was arrogant, the Congress unwise. 53

To Senator G. H. Wootten, Murrah had "[talked] game," and had freely censured the Congress and the military for their departures "from the landmarks of the Constitution and the law"; the governor's patriotism, however, tended to get "the upper hand of his principles, and he [counseled] submission in the general," Wootten added. 54 Indeed, Murrah seems to have been caught in the dilemma that trapped many southerners: to secure the deliverance of the Confederacy required a process of functional centralization inconceivable to a people traditionally attached (as Americans generally were) to localism. Moreover, the agents in that process, especially in the isolated Trans-Mississippi region, were usually military officials.

In the case of conscription, Wootten's assessment of the governor
was correct; Murrah had caviled at military encroachment and then requested the Legislature to acquiesce in his arrangement with General Magruder. To have rejected Murrah's request would have pitted the Legislature squarely against the Confederate Congress and its conscription statute, reopened the argument with Magruder, and further confused and complicated efforts to organize an effective defensive force. Furthermore, since the Texas supreme court had judged national conscription to be constitutional and since, according to Lieutenant Governor Stockdale, the state militia law had not directly claimed the conscripts, the legislators were disinclined to argue that Congress lacked authority to enact a sweeping conscript bill. Consequently, although many legislators probably shared Murrah's aversion to Magruder's brash execution of the conscript law, they saw no alternative but to submit as the governor had submitted—in the interests of harmony—to military exigencies. On one point, however, the lawmakers were adamant: elected or appointed officers of the state government were not subject to Confederate conscription.

Legislative acquiescence to Confederate authority in conscription matters was somewhat misleading, however, because as other issues, especially impressment, intruded into the chambers, the lawmakers proved they could be spiteful and uncooperative. In fact, the cooperative spirit and the internal harmony that had characterized the regular session in November, 1863, had melted away in the midst of the anti-military fever to which legislators, like their constituents, were no longer immune. War weariness took its toll in many ways, not the least of which was the loss of patience and courtesy among
legislators.

Part of the discord could be attributed to the press of time—some legislators wanted to adjourn as soon as they settled the financial question—and another part to the legislators' lack of information. For instance, James Love, whom Ballinger, Hutchins, B. A. Shepherd, and George Ball (all associated with the Texas Cotton Office) had sent to Austin to "prevent the Legislature from marauding on the military and on the C. O.," reported that bills were not printed due to the shortage of paper, and that important sections of bills passed in the regular session were unknown to members. Furthermore, the tactful, judicious Love explained to Ballinger, "members seem to be entirely ignorant of the principles on which the [cotton] Beaureau [sic] was established or [the] manner of its dealing."\(^{58}\) Still another part of the disharmony could be attributed to the lobbying efforts of Confederate Congressman C. C. ("Clabe") Herbert, who had been stirring hatred against the Cotton Office since January. Thomas McKinney, observing the Legislature from his vantage point in Austin, found "great sensitiveness on the part of the members in relation to the military"; "every horse that has been stolen and every outrage that has been committed in Texas has been passed to the [sic] credit," he complained.\(^{59}\)

Whether influenced by Herbert, encouraged by the anti-military tone of Murrah's message, or paid by E. B. Nichols, Senator Harcourt proposed a bill designed not simply to check abuses but to emasculate the Cotton Office.\(^{60}\) Curiously, Harcourt, when he had advised Murrah in April to call a special session, had not mentioned issues other
than finance and conscription; certainly he had not criticized "illegal exactions" or condemned the Cotton Office. But in May he led the Senate in its first explicit attack against military power. According to Harcourt, chairman of the Judiciary Committee, the object of his bill was "to arrest the unlawful and arbitrary restrictions . . . placed upon the transportation of cotton either by unauthorized military orders, or by any self-constituted bureau or mercantile combination," and to halt unlawful impressments. 61 Harcourt knew that Congress had never authorized the creation of the Cotton Bureau or its Houston branch office, and he may also have known that recent congressional regulations governing exports prohibited the kind of exemption policy employed by the Cotton Office. But he undoubtedly realized that the only effective check upon "unlawful and arbitrary" activities of military authorities who were out of the reach of Richmond was to subject them to state law, to fines, or to imprisonment.

No record of the debates over the Senate bill survives, but correspondents described the exchanges as heated. Harcourt found allies in James Throckmorton, a state brigadier who had lost his command via the conscription settlement, A. N. Jordan, a fiery foe of the Cotton Office staff, and B. T. Selman, spokesman for East Texas counties that had endured alleged abuses of press gangs for more than a year. On the other side stood Pryor Lea, J. H. Parsons, and R. K. Hartley, all of whom probably disapproved of a measure that specifically condemned a quasi-military unit, managed, after all, by prominent Texans whose purpose was to effect a purchasing policy
that would prevent military impressments. Hartley, at least, tried to strike the reference to "self-constituted bureau or mercantile combination," but lost his motion.

On May 18, the Senate passed Harcourt's bill by a vote of nineteen to eleven. James Love's efforts to explain to senators the operations of the Cotton Office and the controversy between the governor and Hutchins had failed to stave off a vote adverse to Confederate military authorities. Consequently, Love left Austin "down in the mouth," unaware that, at least indirectly, he had aroused doubts on three counts among some lawmakers: they questioned whether the governor's State Plan was actually authorized by the $2,000,000 bond law of the previous session; whether Murrah's cotton-buying scheme had caused unnecessary conflict with military authorities; and whether the plan encouraged rather than retarded speculation.

These suspicions found expression in three ways. First, R. H. Guinn requested the new Military Board to inform the Senate of the following: how much cotton the state had bought, from whom, the price paid, how paid, the number of purchasing agents, and their names and residences. Second, D. C. Dickson introduced a resolution inviting the Senate Committee on State Affairs to inquire into the necessity of continuing the Military Board, while L. P. Butler and W. J. Darden introduced similar resolutions in the House, and C. W. Buckley proposed a bill to repeal the $2,000,000 bond law and abolish the Military Board. According to McKinney, even "Clabe" Herbert had decided that the Cotton Office was "too small game" and had "gone off in another direction," this time against the governor and the Military Board. And finally,
doubt and confusion about both the Cotton Office and the State Plan prompted the House Judiciary Committee to delete from the Senate bill the provocative reference to the Cotton Office and to prohibit instead "any person or persons within this State" from interfering unlawfully with the exportation of cotton or impressing cotton illegally. 69

McKinney, anxious to see the dispute settled so that he could begin transporting Confederate cotton, reported to Ballinger that the amended bill which passed both houses clearly did "not reach the C. O." Instead, he contended that, because of the new terminology, it "seriously & ruinously" affected the governor's plans, that Murrah believed it would knock his "measures into a cocked hat," and that one state agent, M. T. Johnson, was trying to persuade Murrah to veto the bill. Moreover, wrote McKinney, if only time would permit, Buckley and F. F. Foscue would prevail on the House to repeal the $2,000,000 bond law and to abolish the Military Board. 70

McKinney was too optimistic, however. Even if Murrah had believed that the bill neutralized his State Plan, he could hardly have afforded to veto it because a veto would have aroused more suspicions and produced further investigation into the cotton-buying activities of loan agents and of the Military Board. Certainly the lawmakers—and such peripatetic visitors as Herbert—were becoming disenchanted with the governor as the session wore on (McKinney claimed that Murrah was "losing face very fast"), but the Legislature neither repealed the $2,000,000 bond law nor abolished the Military Board. 71 More important, whether or not McKinney interpreted the bill as failing to reach the Cotton Office, Ballinger, Hutchins, and
Kirby Smith construed it as a direct assault against the military authorities in general and the Cotton Office in particular.72

Despite assurances from Governor Murrah that the bill (which he signed on May 28) was not directed at the Cotton Office but rather was "only intended to prohibit interference with cotton & other property in ways not authorized by Laws of the Confederate Congress," Kirby Smith remained unconvinced.73 Even before receiving Murrah's rationalizations, Smith had written Jefferson Davis urging legislation to give "the Government undoubted control of the cotton of the country," to legalize the Cotton Office, and to redeem the specie certificates issued by Hutchins' agents; he did not withdraw his requests after reading Murrah's repetitive justifications.74 In short, although Smith had probably heard that the Legislature had begun to question both the wisdom and legality of Murrah's State Plan, he also knew that the members had not thereby been deterred from opposing military interference with and impressment of cotton.

Opposition to impressments was general, however, and the Legislature did not confine its penalties to those who unlawfully interfered with cotton. C. W. Buckley's bill authorizing stiff fines and imprisonment for anyone (including army officers) who engaged in illegitimate impressment activities encountered some resistance in the House.75 Two representatives, believing the bill was superfluous, offered as substitutes the Harcourt bill and a joint resolution relating to unfair compensation for impressed goods, both of which had already passed the Senate.76 The joint resolution was not legally binding, of course, and therefore was unsatisfactory to legislators who were
echoing their constituents' concern about impressment of slaves, wagons, teams, and foodstuffs. Nor did Harcourt's bill suffice since its primary thrust was aimed at cotton impressments. Thus, despite a sizeable vote against engrossment, Buckley's eclectic bill passed the House and moved to the Senate where Harcourt, on the final day of the session, managed to obtain passage by a one-vote margin, fourteen to thirteen. 77

Reporting on May 25 the various Senate debates on impressment, the Cotton Bureau, and the congressional act to suspend the privilege of the writ of habeas corpus, the State Gazette noted: "The spirit of all these deliberations has evinced a strong desire to have the distinction between the State and Confederate authority clearly understood and practiced." And the editor added, "if declarations are evidence of intention, our legislators do not mean to have the toes of their constituents trampled upon. 78"

Probably an accurate summary of legislators' sentiments at the time, the editorial was almost outdated by the end of the session a few days later. For instance, the narrow Senate victory for Buckley's anti-impressment bill and failure to enact even a watered-down set of resolutions related to suspension of the privilege of the writ of habeas corpus combined to demonstrate that many lawmakers had begun to question the possible effects of their captiousness. 79 That is, war weary Confederates and staunch Unionists could easily misinterpret both the rhetoric and actions of the governor and the legislators to signify widespread distrust of the Confederate government rather than persistent commitment to civilian supremacy
over the military. Admittedly, it was often difficult to separate the two, especially since the Confederate government was most visible in its military officials, but as correspondent "X" observed in the Galveston News, "let the military shinney on its own side, and all will be well."80

Despite the Legislature's seemingly constant efforts to limit military power in Texas, the lawmakers actually regarded the currency imbroglio as the leading feature of the special session. No issue consumed more time in committee and in floor debates or created as much internal dissension as the various financial bills. Murrah, immersed in his running battle with the Cotton Office, had provided almost no direction for the legislators, who brought to Austin "policies [sic] . . . as various as the minds of men."81 To resolve the money question was urgent because Congress (in its "Act to reduce the currency and to authorize a new issue of notes and bonds" passed February 17, 1864) had stipulated July 1, 1864, as the date by which outstanding Confederate notes above $5.00 denominations had to be funded in 4% bonds; after that date, the notes could be funded at 33-1/3% discount or exchanged at the rate of $3.00 in old notes for $2.00 in new issue notes. Failure to act quickly would result in the loss for state and citizen of at least one-third of their holdings.82

Tied as the state was to the national currency system, the legislators had no alternative but to enact a law that would bring Texas into conformity with that system of compulsory funding and partial repudiation. Thus, after two weeks of debate and inter-house
squabbling, a joint committee of Free Conference recommended a bill
"to regulate the reception and disposal of Confederate Notes and
Bonds. . . ." The bill, which Murrah signed on May 27, prohibited
payment of state dues in Confederate $100 notes after June 30, 1864;
such notes would be funded, the bonds obtained to be deposited in
the Treasury. This requirement virtually compelled holders of
$100 notes to pay their state taxes promptly or incur what amounted
to the state's taxation of the notes at the rate of 100%. (Under
Confederate law, $100 notes were not receivable for public dues
after July 1 in the Trans-Mississippi Department, but they could
be funded until January 1, 1865, at monthly discounts of 10% in
addition to the original 33-1/3% tax.) The new state law also declared
Confederate notes of lower denominations receivable for dues at par
until June 30; after that date and until October 31, these "old
issue" notes would be receivable at one-third less than their
"nominal value" or at a rate of three for two. Perhaps because
Murrah had warned that the state could not afford to fund all notes
flowing to the Treasury in the form of taxes, the lawmakers authorized
the Comptroller to exchange lower denomination notes for the new
issue according to procedures established by the Confederate law. 83

However legislators reshaped the law to fit Confederate require-
m ents, they were still faced with a shortage of funds to meet appropra-
tions made in the regular session. To have increased state taxes--
one possible solution--on the heels of Confederate repudiation could
have proved politically disastrous to the elected representatives,
although it might have been economically sound. In fact, there is
no evidence to suggest that anyone in Austin recommended a tax increase; on the other hand, some senators wanted to suspend the ad valorem tax indefinitely and make up the deficit by issuing treasury warrants that would be receivable for other state dues.\textsuperscript{84} Apparently, those senators and several House members thought that "the time [had] come to divorce the finances of the state from those of the Confederacy." They proposed reassessing taxes, putting them on a specie basis, and making them payable in state treasury warrants at their face value or in Confederate money at its market value.\textsuperscript{85} Not only would such a tax scheme have been difficult to effect in time to meet the state demand for revenue, but it would have smacked of a spirit of independence that a majority of Texans were unwilling to countenance in the spring of 1864. Whether the possible conversion to treasury warrants was associated with anti-military or anti-Confederate attitudes is impossible to determine. Although Representative L. P. Butler, in a letter to O. M. Roberts, dismissed the proposal as merely "the wish of the Jews in Austin and speculators generally," it certainly would not have had a salutary effect upon state-Confederate relations.\textsuperscript{86}

After a week of debate in both houses, endless conference committee reports, and rejections of reports, the Legislature finally passed an amended bill (shaped in the House and reshaped in the Senate) by a vote of sixteen to nine in the Senate and a vote of thirty-nine to thirty-seven in the House.\textsuperscript{87} Because of the probability of insufficient money to liquidate claims against the state and because of a lack of confidence in Congress' ability to bolster the value of the new issue, the Texas lawmakers resorted to a mixed system using
treasury warrants to support civil departments of the government, families of soldiers, and employees of state-supported public works and asylums; and using treasury warrants payable in the new issue notes for general appropriations.

Recognizing that the Treasury might lack enough "new issue" notes, the legislators authorized payment in the old issue at the rate of three for two if the payee was willing to receive them (which he usually was not). The law also made treasury warrants receivable for public dues, and more important—and more controversial—provided for funding the warrants in 6% state bonds, the interest and principal payable in specie. No warrants could be funded, bonds issued, or taxes assessed to pay the interest or principal until twelve months after a peace treaty had been ratified; nevertheless, the proponents of a specie basis had won a partial victory and had fastened upon Texans still another bonded indebtedness whose redemption was pledged in specie.88

What the lawmakers did, in effect, was to recognize by statute the depreciation of Confederate money, treat the old issue as the Confederate Congress had treated it, and attempt to salvage the state's credit by making treasury warrants attractive to claimants and creditors. It proved to be neither a soluble nor successful mixture. Richmond failed to supply the Department with sufficient new issue notes—by Christmas, the army owed more than $40,000,000 to citizens who had sold or surrendered supplies—so that the state treasury offered payment either in the old issue that nobody wanted or could use in treasury warrants, the value of which, in spite of
potential funding in specie bonds, declined by October to eight and ten cents on the dollar. 89 There was a dearth of financial wizards in Austin just as there was in Richmond.

One financial problem remained: how to obtain the specie to purchase and liquidate treasury warrants issued under legislative authorization. Although the controversial act to regulate the liquidation of claims contained a provision permitting the governor to apply $30,000 in surplus specie (when there was such a surplus) to the purchase of warrants, it mentioned no means of procuring the specie. To correct that oversight, the Legislature appropriated any specie received from sales of state cotton, over and above that already committed to pay interest on bonds and to purchase arms and munitions for frontier defense. 90

Passed in the final, hectic hours of the session, the act apparently provoked no comment until it reached Kirby Smith in Shreveport. The General, his impatience with Murrah leaping out of every line in his letters, reminded the governor that he had initiated his State Plan under the aegis of an act "to raise $2,000,000 to provide for ... defense ... and for the purchase of machinery," but according to the new law, the proceeds from cotton would be diverted "to the purchase and liquidation of State treasury warrants." 91 Smith was incredulous. It is possible that the act was calculated to aggravate the conflict between the governor and the military authorities; more likely, however, it was hastily drawn by exhausted and frustrated legislators who had spent nearly three weeks arguing among themselves the proper limits of statutory
assaults against military power and the most expedient means of blocking financial collapse.

Neither Murrah nor the Legislature fared well in newspapers published after adjournment. Cushing scolded both "public and private authorities" for their inclination "to oppose the legal exercise of power by the Confederate Government." Murrah's obstructionism, he complained, had kept 5,000 Texans from participating in the Red River defenses; and the Legislature had accomplished little more than to stimulate a "jealous distrust" of Confederate authority. Cushing's article elicited furious discussion on the streets of Houston and sparked rumors--already circulating in that citadel of military supporters and hangers-on--that Murrah was "friendly . . . to the Jack Hamilton party," that he was in constant communication with Unionist George Paschal, who had spent the war years working on a revised digest of state laws and who hoped to obtain a state contract for its publication. Worried that such rumors might have basis in fact, Isaac Dennis warned Murrah that to extend state patronage to Paschal "would give a powerful handle to your enemies, and much embarrass your friends." Houston Representative John T. Brady persuaded Cushing to retract some of his disparaging comments, but even these retractions were guarded. At best, Cushing could praise the Legislature only for its declaration of confidence in Kirby Smith, and for its endorsement of Murrah's conscription settlement. No such retractions followed rebukes published in the Galveston News and the State Gazette. The News excoriated Murrah, but reserved enough vitriol to portray some
legislators as men "who, for the first time in their lives, have now become State Rights men." Editor Richardson added: "It is unfortunately a convenient disguise with which to cloak opposition to the legislation of Congress, and cripple the powers of the general government. . . ."\textsuperscript{95} Reproaching the Legislature for its "wild and reckless legislation," the \textit{Gazette} criticized Murrah obliquely by printing an anonymous letter to the editor which represented the feelings of those who had supported Murrah in 1863 and who now believed that the governor had "fallen far short" of their expectations.\textsuperscript{96}

Senator J. W. Throckmorton, who had voted for the anti-military legislation, the resolution to exempt state civil officers from Confederate conscription, and the semi-conversion to treasury warrants, thought that the journalistic attacks against the governor and Legislature were unjustified; after all, he, his legislative colleagues, and the governor were merely "standing up for some of the most inestimable rights of the people." And what were Cushing and Richardson but "miserable slaves" and "Sycophantic toadyng creatures bought by the Military & cotton Bureau"?\textsuperscript{97}

Throckmorton's question pointed to the issue that had, since January, threatened the survival of the Trans-Mississippi Department, that is, the relationship of civil to military authority. To Cushing, Richardson, and Ballinger, and even to many legislators, the answer was clear: the power necessary to secure the public good was invested in the Confederate Constitution and through it, in the civil and military authorities; moreover, not only did the power exist but it
had to be exercised in order to deliver the embryonic Confederate
nation from the clutches of its would-be destroyers. To Throckmorton,
Harcourt, Murrah, Stockdale and other Texans, the answer was also
clear—and different: the military's tendency "to absorb all power
and to make the will of the Commander the rule of law" endangered
the experiment in nation-making and the "old English" and American
"principles of civil liberty". 98

Whether legislative efforts to restrain military power over
cotton exportation and impressments would prove successful depended
on Governor Murrah's determination to enforce the new penal acts.
Had he strictly enforced the laws, he would have hamstrung Smith,
his subordinates, and the Cotton Bureau, denuded the soldiers, and
invited defeat. 99 Perhaps Murrah glimpsed the probable result of
his jealous concern for civil and state primacy; perhaps he saw
Unionists taking encouragement from his anti-military posture; or
perhaps he realized that state agents had abused his cotton plan,
that speculators had profited from it. At any rate, and for
whatever reasons, Murrah, in a July conference with Kirby Smith at
Hempstead, Texas, agreed to abandon his State Plan and to withdraw
the state's protection for private cotton shipments. 100

What transpired at the Hempstead Conference is not known--no
records of it survive--but Murrah did not attempt to enforce the
penal acts nor is there evidence to suggest that local officials
brought violators to court. Ironically, although the Legislature
had declared its disapproval of military encroachments and had,
to some extent, forsaken its practice of cooperating with Confederate
officials, a majority of members continued steadfast in their commitment to the Confederacy and demonstrated that loyalty by deciding, before they adjourned, to run former judge and Secession Convention president, O. M. Roberts, for chief justice of the supreme court in the upcoming August election.
NOTES

CHAPTER VI


3 Cushing to Guy M. Bryan, December 24, 1863, Guy M. Bryan Papers, Eugene C. Barker Texas History Center Archives, University of Texas at Austin. (Hereinafter cited as Barker Center Archives.)

4 Bryan to W. P. Ballinger, January 9, 1864, William Pitt Ballinger Papers, Barker Center Archives. For Bryan's order, issued at Shreveport and dated December 30, 1863, see ibid. For comments on anti-impressment sentiment among western Texans, see William C. Webb to Ballinger, January 17, 1864, and James Love to Ballinger, January 27, 1864, ibid.

5 Magruder to Murrah, January 13, 1864, Governors Letters (Murrah).


7 Murrah to Magruder (“copy”), January 17, 1864, Governors Letters (Murrah). No copy of Magruder's Order No. 254 has been found, but Murrah referred to it, ibid.


9 Kirby Smith to Murrah, January 18, 1864, Governors Letters
(Murrah). See also Murrah to Smith, January 3, 1864, Governors Letterpress (Murrah), State Archives. Davis awaited congressional enactment of a new conscript law before replying to Murrah; he refused to grant an exception for conscripts from western counties, but agreed to instruct Kirby Smith to detail men to defend "their own region of the country." Jefferson Davis to Murrah, April 26, 1864, O. R., Series I, vol. LIII, 985.

10 For an official comment on decampments, see General Orders No. 7, Headquarters District of Texas, New Mexico, and Arizona, January 12, 1864, O. R., Series I, vol. XXXIV, Pt. II, 856.


12 Ibid., 974.


14 If Murrah was privy to the arrangement, he nevertheless contended that the troops were unaware of it. See Murrah to Senators and Representatives, May 11, 1864, James M. Day, comp. and ed., Senate and House Journals of the Tenth Legislature, First Called Session of the State of Texas, May 9, 1864-May 28, 1864 (Austin: Texas State Library, 1965), p. 10. (Hereinafter cited as Journal, Tenth Legislature, Extra Session.)

15 A copy of Magruder's General Order No. 14, January 20, 1864, is in Governors Letters (Murrah).

16 McAdoo to Murrah, January 26, 1864, ibid. General Smith, in Houston to confer with Magruder, told Ballinger that Murrah was about to precipitate a conflict with Confederate authorities over conscripts. See William Pitt Ballinger Diary (typescript), January 29, 1864, Barker Center Archives. Bryan expressed his hope that Murrah would "make a Gov. Brown of Georgia" and keep a force at home with which to protect "the State & the Civil power." See ibid., January 29, February 6, 1864; and Bryan and Ballinger, January 26, 1864, Ballinger Papers.

17 For Murrah's comments, see Magruder to Boggs, February 16, 1864, O. R., Series I, vol. XXXIV, Pt. II, 974; and Ballinger Diary, February 6, 1864.


19 N. C. Gould to B. H. Epperson, February 16, 1864, B. H. Epperson
Papers, 1836-1878, Barker Center Archives.


21 Murrah to Magruder, March 17, 1864, ibid., 1091-1092.

22 Magruder to Murrah, March 23, 1864, ibid., 1093-1095.

23 Kirby Smith to Murrah, March 31, 1864, ibid., 1103.

24 Murrah to Magruder, April 7, 1864, O. R., Series I, vol. XXXIV, Pt. III, 747-750. Unable to convince Murrah that his cooperation was crucial, Magruder called on Bryan and E. B. Nichols to impress on Murrah the "absolute necessity" of accepting the General's propositions. See Magruder to Nichols, April 2, 1864, ibid., 726-727; and Magruder to Bryan ("Private"), April 3, 1864, Bryan Papers. Bryan, in Austin to confer with Murrah about cotton matters, was too sympathetic to the governor's position to be very forceful in his arguments. Bryan apparently believed that Magruder was more at fault in the controversy than Murrah. See Bryan to General [Kirby Smith], April 2, 1864, ibid.


26 The description is in Ballinger Diary, April 11, 1864.

27 James Love to Ballinger, May 13, 1864, Ballinger Papers. Murrah's firmness with regard to the military had begun to gain him supporters in northern Texas where he had fared badly in the 1863 election. See, for example, H. R. Latimer to Murrah, April 17, 1864, Governors Letters (Murrah).


29 Gammel, Laws of Texas, V, 663, 683-684.


31 Although many aspects of Murrah's cotton-buying program remain unknown, see Charles W. Ramsdell, "The Texas State Military Board, 1862-1865," Southwestern Historical Quarterly, XXVII (April, 1924), 253-275; Robert L. Kerby, Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-1865 (New York: Columbia University Press, 1972), pp. 198-202; and Sherrill L. Dickeson, "The Texas Cotton Trade
During the Civil War" (unpublished M.A. thesis, North Texas State University, 1967), pp. 35-97. Judith Fenner Gentry, "Government Cotton Exports from Texas during the Civil War" (paper read before the Texas State Historical Association Annual Meeting, Austin, March 9, 1973), explained to this writer the nature of Murrah's scheme. Professor Gentry discovered, while examining records of the State Military Board, that loan agents worked independently of the Board and reported to E. B. Nichols, chief agent. Her discovery clarified several "mysterious" references to loan agents in Governor Murrah's papers. (Except for Gentry, none of the authors mentioned above drew a distinction between the Texas Loan Agency and the Military Board.)

32 Ballinger drafted a long brief disputing the legality of Murrah's plan. He sent the same brief to Bryan who apparently showed it to Murrah. See legal brief, "undated", 1863 folder, Ballinger Papers; and Ballinger to Bryan, March 19, 1864, Governors Letters (Murrah). Since Ballinger, as legal counsel for the Texas Cotton Office, corresponded regularly with W. A. Broadwell of the Cotton Bureau, it is likely that Broadwell drew upon Ballinger's brief for his own comments regarding the illegality of Murrah's State Plan. See Broadwell to Kirby Smith, April 4, 1864, O. R., Series I, vol. XXXIV, Pt. III, 730-732.

33 See, for example, Ballinger Diary, February 14, February 17, 1864; and W. J. Hutchins to Murrah, April 27, 1864, Ballinger Papers.


35 Kirby Smith to Bryan, March 24, 1864, Bryan Papers.

36 See Ballinger Diary, February 22, 1864; and Bryan to Ballinger, April 4, 1864, Ballinger Papers.

37 Murrah to Bryan, April 2, April 4, 1864, Governors Letterpress (Murrah).


39 Bryan to Ballinger ("Confidential"), April 4, 1864, Ballinger Papers.

40 Thomas McKinney, an old Texan engaged in hauling cotton for the Confederate officials, claimed credit for having persuaded Murrah and Nichols to stop buying cotton under the State Plan. McKinney to Ballinger, April 5, 1864, Ballinger Papers. See also Bryan to Ballinger, April 7, 1864, ibid. The notion of Bryan's surrender comes from Ballinger Diary, April 11, 1864. For the Cotton Office's view of the Bryan-Murrah conference, see Hutchins to Kirby Smith, April 18, 1864, O. R., Series I, vol. XXXIV, Pt. IV, 646-650.

41 The correspondence concerning cotton matters was voluminous,
but see: W. A. Broadwell to Bryan, ("copy"), April 26, 1864, Ballinger Papers; Hutchins to Murrah ("copy"), April 27, 1864, ibid., Broadwell to Murrah ("copy"), April 29, 1864, ibid., Hutchins to Murrah ("copy"), April 29, 1864, ibid., Hutchins to Murrah ("copy"), May 3, 1864, ibid., Hutchins to Murrah, May 14, 1864, Governors Letters (Murrah); Murrah to Kirby Smith, June 17, 1864, June 21, 1864; June 23, 1864; June 24, 1864; June 25, 1864, Governors Letterpress (Murrah).

42 Broadwell to Bryan ("copy"), April 26, 1864, Ballinger Papers.

43 Proclamation by the Governor, April 9, 1864, Journal, Tenth Legislature, Extra Session, p. 1.

44 Harcourt to Murrah, April 1, 1864, Governors Letters (Murrah).


46 For Cone's appointment, Magruder to Kirby Smith, October 16, 1863, see O. R., Series I, vol. XXVI, Pt. II, 327-328. See also Cone to General [Magruder], March 25, 1864, ibid., Series II, vol. VI, 1095-1097.

47 Cone to General [Magruder], March 25, 1864, ibid., and 27 Tex. 630.

48 Murrah to Sparks, March 25, 1864, Governors Letterbooks (Murrah).


50 27 Tex. 627-635, passim.

51 The State v. J. H. Sparks and J. Bankhead Magruder, 27 Tex. 704-713, passim. For the congressional act, see Statutes at Large of the Confederate States of America, Commencing with the First Session of the First Congress, ed. by James M. Matthews (Richmond: 1862-1864), First Congress, Sess. IV, Ch. XXXVII, 187-189. The court discharged the prisoners although it had been informed that upon their discharge, they would be arrested under authority of the habeas corpus act. According to the court, the commanding general of the Department had every right under the recent law to arrest and detain the parties charged with certain offenses. See Ex parte Richard R. Peebles, and Others in Synopses of the Decisions of the Supreme Court of the State of Texas, Rendered, Upon Applications for Writs of Habeas Corpus, Original and on Appeal, Arising from Restraints by Conscript and Other Military Authorities, ed. by Charles L. Robards (Austin: Brown & Foster, Book and Job Printers, 1865), pp. 17-18.

52 State Gazette (Austin), May 4, May 11, 1864; Galveston News, May 11, 1864. That Ballinger rather than Willard Richardson wrote the News' editorial is indicated by the entry in Ballinger Diary,
May 10, 1864.


54 Wootten to Epperson, May [?], 1864, Epperson Papers.


56 See infra, Chapter 7. The case was styled *Ex parte Coupland*, 26 Tex. 387-436. See Fletcher S. Stockdale to Ballinger, April 8, 1864, Ballinger Papers.

57 Gammel, *Laws of Texas*, V, 770, 775. See also Proclamation by the Governor, June 3, 1864, Governors Letters (Murrah).

58 See Ballinger Diary, May 10, 1864; and Love to Ballinger, May 13, May 17, 1864, Ballinger Papers.

59 William G. Webb to Ballinger, January 17, 1864; and Thomas McKinney to Ballinger, May 17, 1864, Ballinger Papers.

60 According to McKinney, Nichols had said "he wd. be at Austin & must have plenty of money to control the Legislature..." Ballinger Diary, May 10, 1864.


62 See *State Gazette*, May 18, 1864, and *Galveston News*, May 19, 1864.

63 *Journal, Tenth Legislature, Extra Session*, p. 50.


65 The descriptive phrase is from McKinney to Ballinger, May 20, 1864, Ballinger Papers.

66 *Journal, Tenth Legislature, Extra Session*, p. 41.


68 McKinney to Ballinger, May 23, May 27, 1864, Ballinger Papers.

McKinney to Ballinger, May 27, 1864, Ballinger Papers.

Ibid., May 17, 1864.

See Ballinger Diary, May 28, 1864; and Kirby Smith to Murrah, July 5, 1864, O.R., Series I, vol. LIII, 1012.

Murrah to Kirby Smith, June 24, 1864, Governors Letterpress (Murrah).


Journal, Tenth Legislature, Extra Session, p. 159.

Ibid., pp. 186-187. Nothing that the state or Confederate authorities did could quiet protests against impressments. As inflation spiraled in 1864, citizens objected loudly to having their goods impressed at prices that represented only a fraction of the market value of the articles. See B. H. Epperson to Murrah, June 14, 1864, Governors Letters (Murrah).

The vote to engross Buckley's bill was forty-two to twenty-seven. Journal, Tenth Legislature, Extra Session, p. 187. For the Senate vote, see ibid., pp. 100-101. Of the thirteen senators who voted against Buckley's bill, nine had also voted against Harcourt's anti-cotton impressment bill.

State Gazette, May 25, 1864.

Murrah initiated official scrutiny of the recent congressional act when he invited the Legislature to give "an unequivocal expression" of its views in relation to the act. He admitted that Congress was vested with power to suspend the privilege of the writ, but he doubted the necessity for the act and objected to the manner in which it was to be executed. That is, under the act the writ was suspended as to arrests made by the President, Secretary of War, or commander of the Trans-Mississippi Department; the act embraced thirteen groups of cases. The "Act to suspend the privilege of the writ of habeas corpus in certain cases" is analyzed in William M. Robinson, Jr., Justice in Grey: A History of the Judicial System of the Confederate States of America (1941; reprint ed., New York: Russell & Russell, 1968), pp. 406-411. For an account of the law's political impact, see John B. Robbins, "The Confederacy and the Writ of Habeas Corpus," Georgia Historical Quarterly, LV (Spring, 1971), 83-101. Murrah claimed that the act made military officials "judges of offenses and crimes properly cognizable by the judicial tribunals." Curiously, Murrah, who contended that the state courts could handle such cases, had earlier in his message decried the absence of law and order and urged the judiciary to remain in their posts and discharge their duties. See Murrah to Senators and Representatives, Journal.

80 Galveston News, May 27, 1864.

81 Wootten to Epperson, May [?], 1864, Epperson Papers.


83 Gammel, Laws of Texas, V, 764-765. For Murrah's comment, see Journal, Tenth Legislature, Extra Session, p. 5.

84 D. B. Culberson to Epperson, May [?], 1864, Epperson Papers.

85 Galveston News, May 20, 1864.

86 Butler to O. M. Roberts, May 18, 1864, Roberts (Oran Milo) Papers, Barker Center Archives.

87 Journal, Tenth Legislature, Extra Session, pp. 98, 206. Pryor Lea and James W. Throckmorton were responsible for modifying the House bill and for pushing it through both the Senate and Conference Committees. Ibid., pp. 61, 64-66, 80-81, 95-96.

88 Gammel, Laws of Texas, V, 768-769.


90 Gammel, Laws of Texas, V, 769.


92 Tri-Weekly Telegraph (Houston), June 3, 1864. Ballinger penned in his diary: "I wrote a very strong article for Cushing [in] favr
of sustaining the Confed Govt. I thought it was severer than he would publish but he added to it. Both papers are now committed vs. the Govr." Ballinger Diary, June 4, 1864.

93 Isaac N. Dennis to Murrah, June 4, 1864, Governors Letters (Murrah). James Love was probably the source of the rumor that Murrah and Paschal were frequent companions. See Love to Ballinger, May 17, 1864, Ballinger Papers. Stockdale insisted that Paschal's presence in the Governor's Mansion meant nothing; Paschal had "the impudence to go anywhere," wrote Stockdale, and there was no way to avoid him without "being constantly rude." Stockdale to Ballinger, June 5, 1864, ibid. The Legislature passed an act authorizing the appointment of a competent person to "revise, digest, and arrange" the laws. Gammel, Laws of Texas, V, 763. Paschal, however, never received the state's contract.

94 Tri-Weekly Telegraph, June 4, 1864. It was Dennis who credited Brady with having persuaded Cushing to retract some of his statements. See Dennis to Murrah, June 4, 1864, Governors Letters (Murrah).


96 State Gazette, June 1, July 7, 1864.

97 Throckmorton to Epperson, June 18, 1864, Epperson Papers.

98 Stockdale to Ballinger, June 5, 1864, Ballinger Papers. Stockdale had noted earlier that "officers in the Army and especially those bred to military life and their following, continually express distrust of Republican Government, and contempt for [its] principles." It was on the basis of that notion that he grew alarmed over the conscript controversy. See Stockdale to Ballinger, April 8, 1864, ibid.

99 See, for example, Kirby Smith to Murrah, July 5, 1864, O. R., Series I, vol. LIII, esp. 1014-1015.

100 See Kirby Smith to Murrah, July 4, July 5, 1864, O. R., Series I, vol. LIII, 1008-1015; Murrah to E. B. Nichols, July 16, 1864, Governors Letters (Murrah); Smith to Murrah, August 12, 1864, ibid.; and Murrah to Nichols, July 25, 1864, Governors Letterpress (Murrah). See also Kerby, Kirby Smith's Confederacy, p. 202. Little is known about the Hempstead Conference, but it is probable that Ballinger attended; he had established a solid friendship with Kirby Smith and, although he had developed contempt for Murrah, Ballinger could have been a tactful and competent mediator. At any rate, there is a rough copy, in Ballinger's hand, of the July 5 letter (marked Hempstead) that Smith sent Murrah. That Ballinger had no diary entries for that period in July reinforces the probability that he played a mediating role at the conference. See July, 1864, folder, Ballinger Papers,
Barker Center Archives. After the conference, Murrah tried to rally Texans to the Confederate cotton-buying plans. See Murrah's Proclamation "To the People of Texas," July 19, 1864, Governors Letters (Murrah).
CHAPTER VII

TO CHOOSE AN AVAILABLE MAN:
THE SUPREME COURT ELECTION OF 1864

During the spring and summer of 1864, political activity was not confined to Murrah, the Legislature, or the military's critics and supporters, but included one of the least-known elections in the state's history and involved the Texas supreme court. Supreme court judges had participated in Texas politics from the beginning of the secession movement; in fact, politics and the court had not been separated since 1850 when the state constitution was amended to provide for judicial elections. Of the court's three judges in 1860, O. M. Roberts was the most active politically, playing a major role in the effort to follow South Carolina out of the Union. By December 15, 1860, Chief Justice Royall T. Wheeler, his Whiggish background notwithstanding, had allied himself with Roberts and the secessionists. The latter was delighted with Wheeler's decision particularly because it was, so they believed, "a desideratum with the submissionists to have a majority of the bench on their side." Had the anti-secessionists been able to dominate the bench, they would, according to their opponents, "probably have raised the cry of law & order against mobocracy and revolution. . . ."¹

Wheeler proved to be an ardent ally; he not only agreed "to
occupy the watch tower" in Austin during Roberts' absence from the capital, but he advised the leaders of the Secession Convention that it was within their power "to provide for the public safety . . . & to exercise the functions of government" until a permanent government could be established. In other words, Wheeler sanctioned government by a "Committee of Public Safety"—and the convention accepted his advice. The chief justice, unsure whether the secession crisis of 1860-1861 constituted an actual revolution, nevertheless argued that "in a revolution, we must have recourse to the highest law, the safety of the State." After the popular endorsement of the Ordinance of Secession and the formal admission of Texas to the Confederacy in March, Wheeler, with obvious satisfaction, wrote Roberts that the people in Austin, who had earlier rejected the Ordinance, had finally manifested both a military spirit and a willingness to sustain the Confederate government. Wheeler found at that point that only the anti-secessionist leaders remained "malignant," and even they were silent, or "at least reserved in their conversations."

James H. Bell, the third member of the court, was a native Texan, born at Bell's Landing (Columbia) in 1825. He had read law with William H. Jack in Brazoria, had studied law at Harvard, and had been elected judge of the First Judicial District (Brazoria) at the age of twenty-seven. His initiation into statewide politics occurred in 1858 under circumstances that might easily have damaged his later career. Although the state constitution since 1850 had required popular election of supreme court judges, judicial
candidates were generally supposed to be above politics; therefore, none of the state's political parties had ever nominated judicial candidates. The normal procedure for the nomination of judges had been for lawyers to draft or petition likely candidates. The Democratic Convention in 1858, however, departed from this established method and required instead that all candidates for state office be nominated by conventions. Lawyers (and at least one newspaper editor) throughout the state criticized this unprecedented action; and several of them took steps to offset the convention's nomination of Judge C. W. Buckley by persuading the young Bell to run as an independent for the office of associate justice.

Bell promised to be an intrepid candidate, entirely willing that his name be "used to test whether the people of the State desire Judicial [nominations]." While not optimistic about his prospects, Bell enjoyed two advantages in the contest: first, he stood on a principle that united men of various political views; and, second, he opposed Buckley, a lawyer, legislator, and former district judge disliked by many members of the bar. According to W. P. Ballinger, Buckley had been accused of perjury and was notorious for his drunkenness. Ballinger, of long-established Whiggish inclinations, explained the Democrats' nomination of Buckley as the product of "their drunken . . . political representatives in a sort of mob (rather than a convention) assembled at 2 o'clock on a Sabbath morning."

Ballinger told his brother-in-law, Democratic congressman Guy M. Bryan, that not one lawyer in Houston or Galveston who was acquainted with Buckley and with the charges against him could help but consider him
"morally unfit for and unworthy of the [judicial post]." 10

Nor did Ballinger think the candidate's character would be the only issue, because "if the subject was fairly presented to him, not one Democrat out of ten throughout the State [approved] judicial nominated." 11 The idea, Ballinger complained, "that a Judge . . . should be voted for, because a political convention endorses him, when the very voter believes him corrupt," was the "strangest enigma of modern politics" because "the voters party fealty" was thus made dependent on their swallowing the convention's choice. 12 Even Wheeler, whom the convention had chosen by acclamation to be the Democratic candidate for chief justice, insisted--according to Ballinger, at least--that "he was satisfied he was the choice of the people . . . 'without respect to party.'" Ballinger further claimed that Wheeler's very soul revolted at the idea that he was "to be considered a party nominee for a Judicial office." 13

Among the prominent party leaders who broke with the Democratic organization over the same issue was A. J. Hamilton, who in 1858 was already trying to check the tide of aggressive state rights. 14 But no man was more outraged by the convention's innovation than George W. Paschal--nor, since he was editor of the Southern Intelligencer, had any man a better medium through which to chide the party's actions. To Paschal, personal disapproval of Buckley was less important than the fact "that a new principle or policy has been sprung upon the Democratic party in Texas, which as yet has never been fully, fairly, and plainly discussed before the people." 15

Despite efforts of the Democratic organization to force the
party to swallow Buckley "horns, tail, & hoofs," Bell defeated him by the narrow margin of 421 votes out of 50,229 cast. \(^{16}\) Several years later, David Richardson of the *State Gazette* would remark that Bell "owed his election mainly to the personal influences of his friends, who . . . then regarded him as one of the most promising men in Texas." \(^{17}\) Whether Bell's victory in 1858 was due to his appeal to the principle that judicial candidates ought to be removed from convention politics or to the assaults that he and his friends made on Buckley's character is unclear. But Bell's determination to test statewide acceptance of the new Democratic party strategy regarding judicial nominations most likely cost him affection among the party loyal. Bell reciprocated by developing some strong prejudices of his own, thus prompting one organization Democrat to suggest, as the secession movement was accelerating in January, 1861, that Bell's staunch Unionism had not a little to do with his distaste for the secession leaders themselves. \(^{18}\) Whatever his motives, Bell stumped for the defeat of the Ordinance of Secession and yielded to popular sentiment only after Texas' secession was accomplished. \(^{19}\) Thus, Bell became the only Unionist to serve on the state supreme court during the war.

The wartime supreme court was assiduous, hearing the usual appeals at its Galveston, Austin, and Tyler sessions. \(^{20}\) Since the court included throughout the war two secessionists (Wheeler and Roberts and, later on, Roberts' successor, George F. Moore) and one Unionist (Bell), political loyalties were almost bound to affect its decisions. And the court's decisions, several of them on sensitive
issues, were in turn bound to influence state politics. In April, 1862, for example, the Confederate Congress, "in view of the exigencies of the country," enacted the first national conscription law in American history; the law authorized the President to place in the Confederate military service all white male residents between eighteen and thirty-five. The conscript law represented a radical departure from the previous method of raising armies for the Confederacy; not only did it replace state recruitment programs with direct calls for men, but it also "made compulsory enlistment the cardinal principle of military service."21

Shortly after Congress passed the conscript law, General Paul O. Hébert (commanding the District of Texas) decided to proclaim martial law over the entire state. According to Hébert, Texas had a "large disaffected citizenry" who were determined to harm the Confederate cause by avoiding conscription and by depreciating the national currency. In fact, Governor Lubbock and the "best citizens of the State" had urged upon the General the proclamation as "an absolute military necessity."22 Therefore, on May 30, 1862, Hébert issued General Orders No. 45 proclaiming martial law throughout Texas, but disclaiming any intention of interfering with "the usual civil administration of the law ... except when necessary to enforce the provisions of [the] proclamation."23

To the impassioned Austin Unionist, George W. Paschal, conscription and martial law represented a "declaration of military power over a state," the constitutionality of which demanded testing.24 Paschal's opportunity to challenge martial law in particular came in July, 1862,
when representing draftee Frank H. Coupland, he applied to Chief Justice Wheeler in chambers for a writ of habeas corpus for release of his client who was being "illegally restrained of his liberty." Coupland, arrested in June for disloyalty, had been held incommunicado within the lines of a Confederate regiment camped in Travis County. Several weeks later, however, Confederate Provost Marshal R. J. Townes had discharged Coupland from his "imprisonment" and had caused him to be enrolled in the army in accordance with the conscript law.

During the hearing on the petition for the writ, Paschal, ignoring the fact that Coupland was no longer being detained by order of the provost marshal, nevertheless attempted to drag Wheeler into an argument over the constitutionality of martial law. To Wheeler, however, the question of whether or not Coupland's original arrest and detention on account of alleged disloyalty had been legal was now wholly immaterial since he had been discharged by the provost marshal. Instead, the only proper question was whether the conscript law under which Coupland was currently detained as a soldier was constitutional. Wheeler declared that it was.

Dissatisfied with his own argument, frustrated by Wheeler's abrupt refusal to hear him expound at length, and outraged at Wheeler's abdication of "the civil authority in favor of martial law," Paschal decided to appeal the case to the supreme court at its October session. Associate Justice Moore, former court reporter and colonel in the Texas Cavalry, had been elected in August, 1862, to fill the vacancy caused by Roberts' resignation;
it was Moore who delivered the opinion of the court. Moore declared his appreciation of the magnitude and importance of the constitutional question raised by the Coupland case. The question, he noted, was significant "in respect both to public interest and private rights; the liberty of the citizens, and the power of the government."

Moreover, the conscript law itself had aroused the "fearful apprehensions" of "the over-zealous advocates of state rights" and of those persons who decried any expansion of military power. 29

Moore's opinion itself was a lengthy one which turned, as did Coupland's detention as a soldier in the Confederate army, on the constitutionality of the conscript law. Citing, among other sources, the Federalist, Vattel's Law of Nations, and Hurd on Habeas Corpus, Moore upheld the act and with it Wheeler's earlier ruling relating to Coupland's detention, contending that "the grant of the power to make war carries with it by necessary implication, unless expressly withheld, the right [of Congress] to demand compulsory military services from the citizens." That particular right, Moore insisted, depended upon the will of neither citizen nor state. To the charge that the conscript law had introduced a "novel practice in this country for raising armies," Moore replied that "if the practice of conscription is novel with us, so are the circumstances which now surround the country," circumstances involving "our existence as a nation." More important than expediency, however, was Moore's contention, in a clause reminiscent of John Marshall, that the novelty of conscription did not affect its constitutionality because Congress could use its discretion in exercising the powers granted
under the Constitution. 30

Moore's readiness to uphold Congress' national defense efforts was not shared by Judge Bell whose aversion to the Confederate nation-making experiment was nowhere more clearly stated than in his dissenting opinion. Bell's argument was thoughtful, but as he confessed, long and disordered. He avoided a discourse on martial law, dismissing that subject with the statement "that nothing . . . could be a more palpable violation of the constitution and of the rights of citizens." Instead, he attempted to dismantle Moore's defense by contending that conscription was neither a necessary nor a proper means for carrying into effect Congress' acknowledged power to raise armies. More important, he charged, there were limitations upon the powers of the general government besides those expressed in the constitution. Conscription, and for that matter martial law, violated what Bell called "the spirit of the government." It could be argued "that to deny the general government the right to compel citizens to enlist in the regular army" might render the government less able to wage war efficiently. To this Bell retorted, "... government was not instituted with a view to the greatest possible efficiency in war." The people when establishing government declared their purposes to be "to establish justice, to insure domestic tranquility, and to secure the blessings of liberty to themselves and their posterity." Surely, Bell argued, the people never proposed either to create a government that would foster a military spirit or to erect an arbitrary power with which to destroy both public liberty and private right. 31
Ex parte Coupland was the first of several decisions rendered by southern courts that shored up the efforts of Davis' administration to transform the Confederate armies into truly national instruments for defense. Critics of the conscript law had hoped the courts would, on the one hand, uphold state rights and, on the other, halt expansion of the government's military power; on both counts, they were disappointed.\textsuperscript{32}

General awareness of the Coupland case seems to have been minimal, however; the public understood the conscript act as a law to be obeyed or disobeyed depending on one's loyalties. Most people had neither the time nor the inclination to mull over the niceties of legal arguments. Although newspapers had little to say about the case at the time, the State Gazette later reported that Judge Bell had deliberately sought to cripple the army, that his patriotism was suspect.\textsuperscript{33} Even Ballinger, who had long admired Bell and called him "perhaps the most gifted man of all of my acquaintance," noted, after reading the decision, that Bell had "indulged in personal considerations & resentments" until they had "clouded his judgments and swayed his feelings."\textsuperscript{34} But Ex parte Coupland's significance for state politics was not apparent until 1864 when, in the midst of mounting antagonism toward military authority, the voters were scheduled to elect two members of the supreme court. And even then, the general public was unaware of much of the maneuvering involved in the Coupland case.

Ex parte Coupland showed that both Moore and Bell held straightforward and unequivocal, though different, positions regarding the
conscript law's constitutionality; further, it showed that neither thought martial law to be the paramount issue under consideration in the case. Judge Wheeler, whose behavior while the Coupland case was under review was erratic, chose, in his concurring opinion, to comment on martial law, letting Moore's decision stand without additional remarks. Since Bell's dissent had referred to Wheeler's alleged statement from the original hearing (in chambers) that "his [Wheeler's] mind was made up as to the constitutionality of martial law," Wheeler felt compelled to explain and defend his initial ruling. 35 Wheeler's explanation of the earlier remark would not have been uncommon, but he altered the draft of his formal concurring opinion three times and then informed Bell he intended to withdraw it altogether "if not too late." 36 Wheeler did this by literally cutting his original concurring opinion from the record book and filing—eventually—a second version, evidently the one that appeared in the published report. Wheeler's destruction of the record horrified Paschal who had learned of the incident from the court clerk. "It was hard enough to keep the Court within bounds when the decisions were reported," Paschal wrote; "What we shall have when they are dependent upon memory's [sic] and records, subject to be expunged Heaven knows." Paschal believed, and convinced his correspondent, that "such a vacillating character [as Wheeler] is unsafe upon the bench." If Wheeler decided to run again for office, Paschal was determined to inform the public of the judge's actions in the Coupland case. 37

By 1863 Wheeler had become thoroughly unhappy with the state of
the country, the court, and himself. He had told Bell he "regarded the country as ruined" and could see "nothing but misery looming up in the future." He had been unable to sleep, and had fallen into the "morbid belief that, more than anyone else, he was responsible for the terrible baptism of blood through which the country was passing." A convinced ally of the secessionists in 1861 and "an active participant in the revolution," Wheeler apparently found the ordeal of civil war too rigorous.38 The selfish interests which he saw rampant in the legislature, the increasing worthlessness of his salary, and the declining strength of the Confederacy by 1864 combined to deepen the strains upon his melancholy temperament.39 Thus the question whether, at Paschal's instigation, members of the bar would band together to oust Wheeler became within the year moot. On April 13, 1864, just months before the state elections, the State Gazette announced Wheeler's death. He had "shot himself in the head with a pistol" a few days earlier in Washington County, succumbing to the severe depression that had plagued him for at least a year.40 Wheeler apparently had made little effort to conceal his despondency because the Gazette editor remarked that "it is well known that Judge W. has been laboring for some time under a severe depression of spirits, and occasionally had indicated symptoms of aberration of mind."41

However shocked or saddened by Wheeler's suicide, old friends and colleagues turned immediately to the practical considerations forced upon them by the upcoming supreme court election. Bell, who had been toying with the notion of running for reelection, quickly set
his sights higher and in a letter to Ben Epperson, broached the prospect of a race for the "Ch. Justiceship." Although the distinction between chief and associate justice was "merely an honorary one," Bell no longer felt like taking a "second position." And while he confessed that "a position on the Bench is not, at this time, a desirable thing in itself," he hoped the people of Texas did not think that he had "forfeited their respect and confidence" because of the course he had "pursued during the last three years & a half." Bell was a realist, however; he knew "batteries[vere] already prepared to open upon[him]," if he had "the temerity to ask the people again for their suffrages." Nevertheless, he would be a candidate because he wanted to be in a position that would permit him "to be instrumental . . . in the re-establishment of law and order in the country when this furious blast of war shall have blown itself out."¹⁴²

In Houston, W. P. Ballinger, never too preoccupied with his duties as Confederate States Receiver and legal counsel to the Texas Cotton Office to neglect his diary, followed his entry on Wheeler's death with a note that he had advised P. W. Gray to consider the race for chief justice.⁴³ Gray was a former district judge and a Democrat who had lost the party's associate justice nomination to C. W. Buckley at the 1858 convention. Later a Confederate congressman, Gray had been defeated in his bid for re-election in 1863 and then had been appointed Treasury Agent for the Trans-Mississippi Department. Ballinger thought Gray was the best man in the state for the office of chief justice and, although
doubting his "availability," decided to promote Gray's candidacy "for the public interests." 44

Within the two weeks following Wheeler's suicide, Ballinger launched a trial balloon in Gray's behalf. Replies to Ballinger's inquiries indicated that Gray had qualified support. For instance, J. D. Giddings, Confederate Receiver for the Eastern District of Texas, believed it was the "general wish in Eastern Texas for Judge Gray to run for C. J." With this view Judge W. M. Taylor of Crockett and Reuben A. Reeves, an announced candidate for associate justice, agreed. Giddings planned to support Gray regardless, but expressed some doubt that he could be elected if he had as congressman "voted for the suspension of the writ of habeas corpus; it would be difficult at a time when civil-military relations were deteriorating for Gray to "satisfy the people of the necessity of the grant of such extraordinary powers." 45

At any rate, the matter of a candidate had to be determined. Lieutenant Governor Stockdale, assuming that Bell, Buckley, and Thomas J. Jennings would be candidates, was fearful about the election unless it could be "wisely managed." A proliferation of candidates might even, in Stockdale's opinion, allow the election of someone hostile to the southern cause. Stockdale could not object to Gray--they were personal and political friends--but neither could he advise Gray to run. That Gray had advocated secession, had supported the policies of the Confederate government--including the recent and much-maligned habeas corpus act--and had been defeated for re-election compelled Stockdale to think that it was "too soon for [Gray] to run again." 46
Stockdale was nothing if not flexible, however, and by the time the Tenth Legislature met in special session in May, the lieutenant governor had returned to the camp of Gray's boosters. Gray for chief justice and Reeves for associate justice would be an "excellent and strong ticket," Stockdale wrote Ballinger from Austin. 47

Several political leaders in eastern Texas meanwhile launched a trial balloon of their own, seeking to fill Wheeler's position with Colonel O. M. Roberts, then on "sick leave" after a stint in the army. The former justice possessed certain political advantages in 1864; he had been a secessionist and a soldier, but he had not been identified either with the military power or with the unpopular policies of the Davis administration. He was, in short, an "available" man. For a while at least, Roberts equivocated: he would serve on the bench if the people so desired, yet if "concerted arrangements [had] been made by the leading members of the bar for another," he did not want his name to confuse the matter. Roberts added that with the public mind engrossed with the war, a canvass would be difficult and that "the drifts of public favor [were] fickle and uncertain." 48 Despite his caution, many of Roberts' friends attended the special session of the Tenth Legislature where they endeavored to sell his candidacy to Gray's supporters.

This determination to run Roberts caused Stockdale to reassess the situation. His primary objective was to defeat Bell whom he regarded "as the most dangerous man in the state--ready to sustain the Federals at the first good opportunity." 49 According to Stockdale, Bell would get "the vote of a great many true men in the country who
were opposed to Secession in the outset & who while they are true
to the South can't yet tolerate an original secessionist."; in
addition, of course, "every enemy of the South or of the Confederate
Government and its policy" would vote for Bell.50 There was the
dark prospect, furthermore, that Bell's opinion on the conscript
law would, because of the recent clash between state and Confederate
authorities over the issue, bring him a strong vote. Aware, there-
fore, that a three-way race could only enhance Bell's chances, the
lieutenant governor once more backed off and informed Ballinger he
would not advise Gray to run; personal preferences must be subordinated,
counseled Stockdale, to the first object, Bell's defeat. And in what
appears to have been an afterthought, Stockdale suggested that if
Gray should decide to run, he ought to announce promptly.51

That dispassionate suggestion arrived too late, however, because
Representatives Thomas Smith, M. D. K. Taylor (Speaker of the House),
L. P. Butler, and D. M. Mabray announced Roberts' candidacy "verbally"
to members of the House. In fact, Smith and W. D. Miller, Chief
Clerk of the House of Representatives, had already prepared a formal
announcement to be published in the State Gazette, but they stopped
short when warned by the Speaker that to announce Roberts' candidacy
first in Austin "might raise the cry of Legislative caucus" and
thereby injure his reputation.52

Motive and strategy in the associate justice race are difficult
to see clearly. Reuben A. Reeves, lawyer and former district judge
from Anderson County (East Texas), had declared his intention to
run for associate justice sometime in April.53 Because he commanded
a company in Terrell's Brigade stationed in Louisiana, Reeves did not plan to canvass the state in the coming election. Nevertheless, he received favorable consideration among legislators assembled in the capital, especially as long as Gray was a formidable contender for the informal caucus' endorsement. As an East Texan, Reeves would lend balance to a ticket headed by Gray; but when Gray withdrew from the contest for endorsements—or more precisely, when Roberts' friends held fast, forcing Stockdale and others to abandon Gray--Reeves' eastern identification came to represent a liability. Roberts' friends needed a West Texan to balance their ticket, but no altogether acceptable candidate appeared. West Texan John Sayles, who had originally wanted to run for chief justice only to have Ballinger head him off, enjoyed, according to Stockdale from his observation post in the Legislature, little popularity in either East or West. Serving on Magruder's staff had not endearing Sayles to legislators who were spending the better part of their days denouncing military encroachments.54 On the other hand, as the editor of the State Gazette noted, Sayles was dispensable in his dual positions as assistant adjutant-general of State Troops and judge-advocate-general and therefore preferable to Reeves whose service was needed in the army or to the third candidate, C. W. Buckley, whose service was needed to keep "the legislature straight."55

Buckley was the other westerner in the race. He had planned initially to seek the higher place on the bench--Stockdale had assumed he was a candidate as early as April--but when Buckley arrived at the legislative session late, he discovered that the
politicians and lawyers were fast falling in behind Roberts. Conscious that his support was thin and that he, more than most, had no stomach for Bell, Buckley, at the end of the session, announced he would run for associate justice. As a westerner he might gain support from Roberts' eastern friends who favored sectionally-balanced tickets, from staunch Democrats who remembered Buckley's narrow defeat at the hands of Bell in 1858, and from legislative observers who heralded him as the champion of bills to abolish the Military Board and repeal the $2,000,000 bond law, the basis of Governor Murrah's controversial State Plan for cotton-buying.

Before the Legislature adjourned, W. D. Miller informed Colonel Roberts that on the cards by which Bell had briefly and simply announced his candidacy, many legislators had written the words, "too black." Those trenchant words set the tone of the abbreviated campaign for supreme court positions. With one possible exception, the state's newspapers endorsed Roberts and gave free rein to correspondents who attacked Judge Bell. Willard Richardson of the Galveston News refused to endorse Bell although, ironically, he had backed him in the heated and divisive 1858 election. Richardson printed a provocative letter from "Francis," however, that appealed to the citizens of Brazoria County to support Bell. "Francis" (probably Bell's brother) admitted that Bell had opposed secession but insisted that once secession was accomplished, Bell had recognized his duty and yielded to the majority. The "Francis" letter was a spark that ignited the sentiments of the anti-Bell factions. Bitter letters appeared from "Southern" "One of many in Brazoria," "Voter,"
"X," and "Terry Ranger." Each correspondent tried and convicted Bell on account of the company he kept with such inveterate Unionists as Hancock, Duval, Paschal, Pease, A. B. Norton, and A. J. Hamilton, and "Voter" declared that "Bell's election would be heralded at the North with acclamations of joy amidst the unfurling of banners and roaring of artillery in that modern Sodom in which King Abraham I resides," a view with which even the more temperate Stockdale could agree. 62

Despite such invectives, Judge Bell awaited the election with a degree of optimism. At the beginning of his campaign, Bell had been advised by "judicious friends" not to publish an address to the people stating his position on issues. He had followed that advice but subsequently came to fear the public would neither hear much of his candidacy nor take much interest in the election. Nevertheless, he anticipated majorities in Bexar, Travis, and adjoining counties and a "good vote" in Brazoria, Matagorda, Wharton, Colorado, Fayette, and Austin—all western counties where anti-secession and more recently, anti-Confederate sentiment had been strong. Since Bell assumed that Roberts would carry the eastern counties, he believed the election would hinge on the vote in northern and northeastern Texas where criticism of Confederate impressment practices was rife. 63 There the assistance of Ben Epperson and James W. Throckmorton, two anti-sessionists turned reluctant rebels, could prove decisive. Writing letters and printing election tickets were two means by which Bell hoped Epperson and Throckmorton could "render very essential service." 64

Similar campaign tactics probably were used by the other candidates.
Roberts' friends, for example, who had every reason to be more confident than Bell's, still considered it necessary "to correspond carefully" with potential supporters in different parts of the state. Sayles, on the other hand, seems to have dispensed with the campaign by correspondence and to have concentrated instead on electioneering among the three thousand soldiers stationed at Galveston and among the troops of Terry's Regiment bivouacked near Hempstead. Sayles' campaigning worried J. D. Giddings who was trying to sell his favorite, Reuben Reeves, to the soldiery; Reeves' absence from the state, Giddings feared, would prove detrimental to his election prospects. Therefore, Giddings had tickets printed to distribute in Brenham and urged Ballinger and other of Reeves' supporters to visit influential men in Galveston and Hempstead and "talk with the boys and have the votes already in the right shape."  

Whatever tactics were used to mobilize the voters seem to have worked since nearly 31,000 turned out—-a figure that approximates the vote in the gubernatorial election of 1863. Contrary to Bell's expectations, he carried neither Bexar nor Travis counties, although he won in seven western counties, including Fayette, as he had predicted. Bell also carried five counties in extreme northern Texas where Epperson and Throckmorton's labors proved effective. But the day and the victory belonged to Roberts who polled a lopsided 78% (24,067) of the vote to Bell's 22% (6,918) and swept 100 of the 112 counties submitting returns. Reeves won the three-man race for associate justice with 12,991 votes; Buckley and Sayles trailed with 8,944 and 7,414 votes, respectively.
These figures suggest that the voters considered the supreme court races to be important not only in themselves but as reflectors of the public's attitudes during the summer of 1864. Legislators had assumed the political responsibility of finding a candidate for chief justice whose credentials were appropriate, that is, an experienced lawyer whose devotion to the Confederacy was as unquestionable as his commitment to civil primacy. And although Bell's belief in the traditional American principle of military subordination to civilian authority was not doubted, his patriotism was certainly suspect. For that reason, but also because of widespread disenchantment with the military authorities that might have expressed itself in votes for Bell, the lawmakers during the extra session had resolved the incipient contest between Roberts and Gray by settling on the more "available" man. No similar adjustment was necessary in the race for associate justice since all three candidates--Buckley, Reeves, and Sayles--while not equally acceptable, were considered "good and true men." Consequently, the contest for the lower position, rather than pivoting on the issue of constancy to the Confederacy, turned on the personality, political background, legal competence, wartime activity, and sectional orientation of each candidate. 68

A victory for Bell would have indicated to Confederates and even to Yankees that Texans--long conscious of their isolation--were making a precipitate swing toward independence or perhaps toward reconstruction with the Union. Neither prospect appealed to the majority of Texas voters in August, 1864; on the contrary, the politicians, lawyers, judges, and the voters in general seem to have been
caught up in a final wave of enthusiasm for the Confederacy that all too quickly dissipated.
NOTES

CHAPTER VII

1 M. D. Graham to O. M. Roberts, January 4, 1861, Roberts (Oran Milo) Papers, Eugene C. Barker Texas History Center Archives, University of Texas at Austin. (Hereinafter cited as Barker Center Archives.) See also Lelia Bailey, "The Life and Public Career of O. M. Roberts 1815-1883," (unpublished Ph.D. dissertation, University of Texas [at Austin], 1932), pp. 113-116. The Texas State Gazette (Austin) reported on December 22, 1860, that Wheeler had delivered a "calm, deliberate, and powerful speech" supporting secession.

2 For the phrase, see Bailey, "The Life and Public Career of O. M. Roberts," p. 119. See also Wheeler to Roberts, March 13, 1861, Roberts Papers.

3 Wheeler to Roberts, July 8, 1861, ibid.


6 See Ernest W. Winkler, comp., Platforms of Political Parties in Texas (Austin: University of Texas Bulletin), LIII (September, 1916), 78. For a leading Democratic politician's reaction to the convention nomination method, see John L. Waller, Colossal Hamilton of Texas (El Paso: Texas Western Press, 1968), pp. 15-17. See also Jane Lynn Scarborough, "George W. Paschal, Texas Unionist and Scalawag Jurisprudent" (unpublished Ph.D. dissertation, Rice University, 1972), pp. 48-50. Oran M. Roberts noted that the Democratic party first nominated a judicial candidate for the Supreme Court in 1858. See Roberts' pencilled comments on a letter from James H. Bell to Roberts, June 12, 1860, Roberts Papers.

7 See Waller, Colossal Hamilton, pp. 15-16; Scarborough, "George W. Paschal," pp. 49-50; and W. P. Ballinger to Guy M. Bryan, February 14, 1858, Guy M. Bryan Papers (Bryan-Ballinger Correspondence,
1857-1887), Barker Center Archives. See also the Southern Intelligencer (Austin), December 9, 1857; January 6, January 13, January 20, March 17, July 26, August 4, August 18, September 1, 1858.

8 Ballinger to Bryan, February 14, 1858, Bryan Papers.

9 For a brief sketch of Buckley, see Webb, ed., Handbook of Texas, I, 238. Ballinger was both critical and caustic in several letters to Bryan dated February, March, and May 1858, Bryan Papers.

10 Ballinger to Bryan, May 27, 1858, Bryan Papers.

11 Ibid., February 14, 1858.

12 Ibid., May 1, 1858.

13 Ibid., February 14, 1858.

14 Waller, Colossal Hamilton, pp. 15-16.

15 Southern Intelligencer, March 31, 1858. See also Scarborough, "George W. Paschal," pp. 49-50.

16 The quotation is from Ballinger to Bryan, May 27, 1858, Bryan Papers. Ballinger considered the regular Democratic organization to be particularly formidable that year. Ibid., February 14, 1858. The official election returns were published in the Southern Intelligencer, October 6, 1858. A search of the State Archives failed to produce the individual county returns.

17 State Gazette (Austin), July 13, 1864.


20 Most of the cases decided by the court involved land titles and violations of criminal statutes. See ibid., 57.


23 "Proclamation of Martial Law," General Orders No. 45, Headquarters of the Department of Texas, May 30, 1862, O. R., Series I, vol. IX, 715-716. One of the more interesting proclamations was posted in New Braunfels, Comal County, June 14, 1862; it was printed in both English and German. See "Martial Law-Kriegs-Recht," Texas Broadsides Collection, Barker Center Archives.

24 28 Texas Reports, p. vi. Paschal was the Supreme Court reporter and wrote the preface to this volume.

25 Ibid. For Paschal's view on the unconstitutionality of martial law, see Paschal to Ballinger, April 23, 1863, William Pitt Ballinger Papers, Barker Center Archives. Scarborough, "George W. Paschal," pp. 72-76, summarizes Paschal's role in Ex parte Coupland.

26 Charles L. Robards, Synopses of the Decisions of the Supreme Court of the State of Texas, Rendered, Upon Applications for Writs of Habeas Corpus, Original and on Appeal, Arising from Restraints by Conscripts and Other Military Authorities (Austin: Brown & Foster, Book and Job Printers, 1865), pp. 5-7. (Hereinafter cited as Robards, Synopses.)

27 Ex parte Coupland, 26 Tex. 431-432. See also Robards, Synopses, pp. 5-7.

28 Paschal to Ballinger, April 23, 1863, Ballinger Papers.

29 Ex parte Coupland, 26 Tex. 392, 404.

30 Ibid., 394-395, 405. Judge Moore also asserted that the question of the constitutionality of martial law was extraneous to the case. Ibid., 391.


33 State Gazette, July 13, 1864.
William Pitt Ballinger Diary (typescript), February 23, 1862, and January 17, 1863, Barker Center Archives.

Ex parte Coupland, 26 Tex. 406-407. Bell's comment was based upon his reading the record of the original hearing before Judge Wheeler in Chambers. For Wheeler's concurring opinion, see ibid., 430-436.

Paschal to Ballinger, April 23, 1863, Ballinger Papers, Judge Bell mentioned Wheeler's vacillation when he asked Ballinger to persuade E. H. Cushing of the Houston Tri-Weekly Telegraph to publish his dissent in toto. See Bell to Ballinger, March 18, 1863, Ballinger & Jack Correspondence (Incoming 1862-1863, Routine legal matters; Wartime Activities), Ballinger Collection, Special Collections, M. D. Anderson Library, University of Houston. See also Ballinger Diary, March 22, 1863. This writer has found no evidence that Cushing published Bell's dissent. The opinions of the court (which before the war had usually been published in the Southern Intelligencer) apparently were not published during the war except in pamphlets. Not until June, 1864, did James W. Throckmorton, Bell's friend and political associate, have an opportunity to "peruse" the judge's dissenting opinion. See Throckmorton to B. H. Epperson, June 18, 1864, B. H. Epperson Papers, 1836-1878, Barker Center Archives.

Paschal to Ballinger, April 23, 1863, Ballinger Papers. See also Ballinger Diary, April 28, 1863. Ballinger was reading proof for the pamphlet edition of Ex parte Coupland.

See Paschal to Ballinger, April 23, 1863, Ballinger Papers; 28 Texas Reports, p. viii; and James D. Lynch, The Bench and Bar of Texas (St. Louis: published by the author, 1885), p. 95. Paschal was the source for Lynch's comments on Wheeler's melancholia.

See, for example, Wheeler to Roberts, February 12, 1863, Roberts Papers; and Fletcher S. Stockdale to Ballinger, May 13, 1864, Ballinger Papers. See also 28 Texas Reports, p. viii.

James H. Bell to Epperson, April 13, 1864, Epperson Papers.

State Gazette, April 13, 1864.

Bell to Epperson, April 13, 1864, Epperson Papers.

Ballinger Diary, April 12, 1864.

Ibid.

J. D. Giddings to Ballinger, May 2, 1864, Ballinger Papers. Giddings was a prominent lawyer, landowner, and slaveholder from Washington County. Whether Giddings, like Ballinger, was originally opposed to secession is not known. See Ralph A. Wooster, "Wealthy

46 Stockdale to Ballinger, April 21, 1864, Ballinger Papers.

47 Ibid., May 13, 1864.

48 O. M. Roberts to Ballinger, April 29, 1864, ibid.

49 Stockdale to Ballinger, May 15, 1864, ibid.

50 Ibid., April 21, 1864. Stockdale had approached Ballinger about the possibility of his running for Chief Justice. Stockdale believed Ballinger to be an "available" candidate: Ballinger had the capacity to be a judge; he had been an "old Whig" opposed to secession; and he was now deeply committed to the Southern cause. Ballinger quickly squelched this move, claiming for one thing that he could not afford to hold such an unremunerative position.

51 Ibid., May 15, 1864.

52 Thomas Smith to Roberts, May 13, 1864, Roberts Papers.

53 Giddings to Ballinger, May 2, 1864, Ballinger Papers.

54 Stockdale to Ballinger, May 15, June 5, 1864, Ballinger Papers; and Ballinger Diary, April 13, 1864. In the early stages of the conscription controversy, Sayles had written a brief for Magruder disputing the legality of the controversial militia law enacted by the Tenth Legislature at its regular sessions (November-December, 1863). See Sayles to Maj. Gen. Magruder, January 5, 1864, Governors Letters (Murrah), State Archives.


56 Thomas Smith to Roberts, May 18, 1864; L. P. Butler to Roberts, May 18, 1864, Roberts Papers.

57 Thomas M. McKinney to Ballinger, May 23, 1864, Ballinger Papers. See also State Gazette, June 1, July 13, 1864; and Galveston News, June 7, 1864.

58 W. D. Miller to Roberts, June 1, 1864, Roberts Papers.

59 Galveston News, July 3, July 22, 1864. For a comment on Richardson's stand in the 1858 Associate Justice race, see State Gazette, July 13, 1864.

60 Galveston News, July 3, 1864.

Galveston News, July 27, 1864. Lieutenant Governor Stockdale was equally critical of Judge Bell; to him, Bell's victory would represent a "triumph of Unionism." See especially Stockdale to Ballinger, April 21, 1864, Ballinger Papers.

Bell to Epperson, July 10, 1864, Epperson Papers. Stockdale, who had been in a position to know, had confided to Ballinger that neither Roberts nor Gray enjoyed much support among the "most influential men from the wheat region." See Stockdale to Ballinger, May 15, 1864, Ballinger Papers.

Bell to Epperson, July 10, 1864; Throckmorton to Epperson, June 18, 1864, Epperson Papers.

W. D. Miller to Roberts, June 1, 1864, Roberts Papers. Miller, after the Legislature adjourned, accepted a position in the Trans-Mississippi postal department, headed by James Harper Starr. Miller coveted the clerkship of the state supreme court, however, and appealed to Roberts for an appointment. Roberts hedged, having already committed himself to Thomas Smith who had worked so diligently to secure Roberts' endorsement by legislators during the extra session. See Roberts to Miller, September 28, 1864, Miller (W. D.) Collection, State Archives.

Giddings to Ballinger, July 25, 1864, Ballinger Papers.

Election Returns, 1864. Records of the Secretary of State, State Archives.

Given the inadequate information on Buckley, Reeves, and Sayles, it is virtually impossible to determine the relative importance of each of these factors in the election outcome. On the basis of sources cited in this chapter, however, it appears that they were indeed factors. For Ballinger, at least, Buckley was unacceptable because of his "character" and his willingness to accept, in 1858, a judicial nomination. See supra., nn. 9, 10. Stockdale, on the other hand, believed that Buckley was the best lawyer in the Tenth Legislature and, while not personally committed to his candidacy, preferred Buckley to Sayles, in whom he had "not the slightest confidence." See Stockdale to Ballinger, June 5, 1864, Ballinger Papers. That Sayles had been a Know-Nothing in the 1850's may have contributed to his unpopularity, especially among such critics of the Know-Nothing heresy as George Paschal. See, for example, Ralph A. Wooster, "An Analysis of the Texas Know Nothings," Southwestern Historical Quarterly, LXX (January, 1967), 416, n. 9.
But more important was Sayles' connection with Magruder and the military officials of the District of Texas, headquartered in Houston. Curiously, Reeves is even more obscure than either Buckley or Sayles; apparently he was a competent and popular East Texas lawyer who made politically important contacts while he served as district judge in Anderson County (Palestine). A survey of the county voting returns for 1864 indicates that Reeves ran very well in the East Texas counties and that Buckley and Sayles split the western vote, thus insuring Reeves' victory. In other words, the persistent sectional issue figured in the contest regardless of other factors such as political background and association, legal ability, and wartime issues.
CONCLUSION

THERE ARE WORSE CONDITIONS TO WHICH WE MAY BE DRIVEN:
THE END OF CONFEDERATE TEXAS

Legislators of the Confederate State of Texas straggled into
Austin in mid-October, 1864, responding for the second time to a
special call from Governor Murrah to set the currency straight.
The capital was a "specie" town during that Indian summer and
legislators who had only paper money were turned away by merchants
and inkeepers. More enterprising members, who had anticipated the
scarcities and discomforts of the legislative session, brought
tobacco, kegs of nails, and other articles to barter and exchange
for room and board; so many brought tobacco, in fact, that the
price fell to pre-war levels. No "shoddy aristocrats," according
to sojourner "Sioux," these legislators camped in their wagons on
the capital grounds, donned their coats in the morning, blustered
forth in the chambers all day, doffed their coats, and mixed up
"corn dodgers" which they cooked over open fires in the evenings.¹

They stayed nearly a month in Austin, passing private bills,
systematizing a plan to distribute penitentiary-manufactured cloth
and thread to the state's 74,000 indigents, and searching for a
magic formula to save the state's credit. The salvation of Con-
 federate finances, they conceded, was beyond them or the citizens,
and of course, in the autumn of 1864, beyond the abilities of harried officials in Richmond. On October 19, legislators heard Confederate Senator Louis T. Wigfall defend the conscript law, impressment act, and suspension of the privilege of the writ of habeas corpus. The Texas fire-eater was still stormy and argumentative, denouncing demagogism and disaffection; his speech, the Gazette reported, was just the kind needed to stir the people of Texas to "a proper sense of their duties."² It was also just the kind of speech to alarm Lieutenant Governor Stockdale who believed that Wigfall was "getting radically wrong" because he now supported strong military power. Bryan (who had talked with Wigfall while the senator was in Waco) concurred, adding that the senator spoke of men "as he would of brutes." To Stockdale and Bryan, Wigfall represented the "advance guard" of those in Richmond and Shreveport who looked to a monarchy at best and a despotism at worst--chimerical concepts from men who knew that no southern army could sustain itself much less a non-republican government.³

Two days after Wigfall had inspired the legislators to a new patriotism or, as in Stockdale's case to a greater alarm, Senator W. S. Oldham arrived to stump the city, explaining to the Legislature and assembled citizens why he had opposed the very measures that his colleague had endorsed. The Confederate Constitution, said Oldham, like the "plan of redemption" that preceded it by some 1800 years, allowed a wide range of constructions--and his were unlike Wigfall's. And rather than blame the demagogues and disaffected for the plight of the currency, Oldham placed the
responsibility squarely on the Congress. Its financial failures had left the people to flounder in search of solutions to a problem that could have been solved only at the national level. 4

Nothing, perhaps, was clearer to the eighty-two legislators than the truth of Oldham’s comment on financial matters. Conditioned by experience to expect little appreciation in the value of even the new issue Confederate notes, a majority of legislators, after a lengthy inter-house struggle, opted for a financial system that, to a large extent, divorced the state from the feeble Confederate money, then selling in western Texas for 2½ cents on the dollar. 5 The divorce was neither formal nor final, but the attempt itself indicated that, however firmly attached Texans might have been to the Richmond government, the attachment no longer extended to Congress’ frayed fiscal policy.

Doubts about even the political attachment to Richmond intruded upon the members early in the session. A test of legislators’ attitudes occurred when Senator E. R. Hord, his frequent criticism of the military’s illegal exercise of power notwithstanding, introduced a set of resolutions, violent in language and "ultra in doctrine," denouncing reunion, reconstruction under any circumstances, and peace unless coupled with independence for the Confederacy. Hord also asserted that only the Confederate government could negotiate with foreign governments; hence any attempt by the Federal government or by the "Peace Democrats" of the United States to offer reconstruction terms to Texas would not be entertained by the state government. 6
Dividing informally into "Ultras" (led by Hord, Parsons, Shepard, and Guinn) and "Diplomats" (led by Throckmorton, Stockdale, Lea and Wootten), the Senate in Committee of the Whole debated Hord's resolutions for several days, the discussions "disconcise," "heated," and provocative of "much ill blood." Shepard, speaking for the "Ultras," lashed at all "who talked of reconstruction," and advocated the noose for such heretics. If anyone could be said to have spoken for the "Diplomats" whose views were various and fluid, it was Throckmorton. For two hours, he performed the "unpleasant operation" of laying "bare the hideous [sic] gaping wounds that were festering & cankerling in the public heart." He claimed that Congress had dampened the people's enthusiasm for the Confederate "standard" by enacting first a conscript law, followed by the impressment act, the habeas corpus act, and futile currency laws. Compounding the creeping demoralization of the people was both the mismanagement of the army—like Bryan, he was appalled at the paucity of Texans on Kirby Smith's staff—and the tendency of "petty" officials to heap unwarranted burdens on the people.  

Throckmorton concluded his speech before the silent and astonished senators by asserting that neither he nor other "Diplomats" favored reconstruction or separate state action leading to reunion. He opened the door to possible peace negotiations, however, when he insisted that since Texas had delegated the power to make war and peace to the central government, the state must be consulted if and when the Confederacy attempted to arrange a peaceful settlement. Moreover—and on this point the "Diplomats" evoked the wrath of
"Ultras"--he refused to concur with Hord that "Texas would never
reconstruct."9

His speech was hardly popular, his substitute resolution met
defeat, but Throckmorton at least, had taken a hard--and public--look
at the disagreeable facts: barefoot, blanketless, homesick soldiers;
tired, dispirited citizens sinking into a pervasive malaise; and
leaders who masked the truth and refused to prepare the people for
either a war that would drag on or a war that would somehow end.
Except for Throckmorton and Stockdale (whose fear of military despotism
was pushing him toward what Ballinger labeled "State-Rights ultraism"),
no one else alluded publicly to the painful possibilities.10 Thus,
legislators left Austin in mid-November, pockets stuffed with
treasury warrants which, they blithely said, would soon be "good as
gold." And as if to assure their constituents of their determination
to adhere to Confederate policy--whatever it was--the lawmakers
carried copies of Hord's resolutions to distribute among the people,
many of whom would shortly agree with Lizzie Nesblett who had written
her soldiering husband that only "the Almanac proclaims this to be
Christmas."11

If progress was anywhere visible in the Texas winter of 1864--
1865, it was visible in confusion. Public men groped in the twilight
of the Trans-Mississippi Confederacy for a way to save at least Texas
from military despots, either rebel or Yankee. Bryan, for example,
had been leaning toward secession since October, 1864, but not until
January, 1865, did he devise a scheme by which it might be accomplished.
He proposed putting the "best men" (including himself) in the
Legislature; there a higher caliber of leaders would consider how to maintain 50,000 western troops in the field, establish an alliance with France, force "honorable terms" with the enemy "if the worse comes to the worse," and finally decide whether or not to recommend to the people a state convention to draft a new constitution and form a new government.12

Bryan's was not a solitary effort; C. S. West, another Texan on Smith's staff, submitted similar propositions to the Austin merchant and Unionist, James H. Raymond. And by mid-March James Bell and Throckmorton had joined the quasi-movement to put the right men in the Legislature because, as Throckmorton said, "there are worse conditions, to which we may be driven, than reconstruction."13

That men whose pre-war political attitudes had been so divergent should find themselves stumbling along converging paths in 1865 was probably no coincidence. Bryan evidently had contacted Throckmorton in the late summer of 1864 and had suggested then that where Texas' immediate future was concerned, they could agree.14 That is, they could agree that Texas was the Trans-Mississippi Department, that "self preservation [was] the first law of nature," and that the state must take the lead in preventing, by any means short of hopeless war, a Federal invasion.15 Furthermore, West's letter certainly was not intended for Raymond's eyes alone; Ballinger interpreted it correctly to be an overture to the Austin Unionists, designed to convince them that West was a tough realist fit to serve in the Legislature that would deliberate the future of Texas.16

A legislature composed of the "best men"—assuming they would
be elected to fill the vacancies created by selective resignations—would have represented only a beginning in any move toward separate state action. A governor who recognized the state's interests, who believed that Texas had "a destiny of her own" was also needed. 17 Murrah was a possibility, but he was ill and providing no leadership, whatever his sentiments; Throckmorton was considered, but his pre-war Unionism, self-confessed penury, and outspokenness in the recent legislative session made him both unavailable and suspect. Bryan coveted the office, but his connection with West and presumed involvement in the separatist push (presumed because Bryan had been more discreet and less "public" than West) alienated from him many solid Texas Confederates who deplored the notion of separate action. 18

In the progress of confusion during January and February, 1865, earnest Confederates, certain only that "men of influence" should continue to struggle against the enemy and to cooperate with "their sister states" as part of the Confederate government, began their own disorganized search for gubernatorial candidates. 19 Among the men who recommended themselves or who were proposed by others were: General John A. Wharton, General Henry McCulloch, Colonel Ashbel Smith, General Jerome Bonaparte Robertson, General James Bates, former governor Edward Clark, Confederate Judge Thomas Devine, Chief Justice Roberts, even Ballinger. But the Texas Confederates, like the equally amorphous separation-peace-reconstruction groups, lacked a mechanism, a political process by which to accommodate their differences or settle on a candidate. Therefore, until they could unite politically, they would fight on, quitting the struggle
as Ballinger said, "only like Macaulay's dying wolf 'in silence, biting hard among the dying hounds.'"\(^{20}\)

In the continued absence of leadership and direction, in the "empire of discordant and diverse feelings," the politicians and the people waited. Ill-clothed and ill-disciplined Texas soldiers decamped and headed for their homes, displaying the only acute sense of direction to be found in the state. When news of Lee's surrender reached the Trans-Mississippi in mid-April, it merely added to the confusion. Magruder reported to Smith that he could not control his troops in Houston and Galveston, while commanders throughout the Department dispatched similar reports to the Commanding General. Governor Murrah summoned a reserve of strength and urged his Texans "to rally around the battle scarred and well known flag of the Confederacy and uphold [their] state government in its purity and integrity."\(^{21}\) But the people who read Murrah's patriotic plea lacked the material means and the will to continue. So they waited.

Even the negotiations for surrender were confused and tangled. Smith met with Lieutenant Colonel John T. Sprague, chief of staff to Federal General John Pope, on May 8. Five days later, on May 13, Smith presented Sprague with the terms agreed upon at a conference in Marshall with Governors Reynolds (Missouri), Flanagin (Arkansas), and Allen (Louisiana), and Guy M. Bryan, representing the tubercular Murrah. Sprague, unable to accept the terms, steamed back to the Union lines to await Smith's next move. If Smith was preparing a move, he had no opportunity to act because, during the month of May,
the armies of the Trans-Mississippi Department simply dissolved. On May 30, Smith acknowledged he was "a Commander without an army--a General without troops." Three days later, on June 2, Kirby Smith boarded the Federal steamer, Fort Jackson, anchored off Galveston, and signed a military convention that had been negotiated during the previous week by Confederate Generals Simon B. Buckner, Sterling Price, and J. L. Brent, and Federal General E. R. S. Canby.22

Within two weeks, Smith, Magruder, Ed Clark, Murrah, and a host of rebels were riding toward Mexico and safety. A band of former soldiers celebrated the end of the war by sacking the state treasury of its $5,000 in gold--carefully leaving behind the bundled Confederate currency. But most Texans marked the end by doing what they had been doing for six months: waiting. On July 25, General Wesley Merritt and the Eighteenth New York Cavalry escorted Provisional Governor A. J. "Jack" Hamilton to the capital steps in Austin where he was greeted by Fletcher S. Stockdale who handed him the keys to the capital.
NOTES

CONCLUSION


3. See Stockdale to Guy M. Bryan, November 1, 1864; Guy M. Bryan Papers, Eugene C. Barker Texas History Center Archives, University of Texas at Austin (hereinafter cited as Barker Center Archives); and Bryan to W. P. Ballinger, November 11, 1864; and Stockdale to Ballinger, January 13, 1865, William Pitt Ballinger Papers, *ibid.* See also F. B. Sexton to O. M. Roberts, September 24, 1864, Roberts (Oran Milo) Papers, *ibid.*


7. Wootten to Epperson, October 30, 1864, Epperson Papers; and *Tri-Weekly Telegraph*, October 29, 1864.

8. Throckmorton to Epperson, November 3, 1364, Epperson Papers.
For Bryan's reaction to the situation on Smith's staff, see Bryan to Ballinger, October 24, November 11, 1864, Ballinger Papers; and William Pitt Ballinger Diary (typescript), October 20, 1864, Barker Center Archives.

9 Throckmorton to Epperson, November 3, 1864, Epperson Papers.

10 The phrase is in the Ballinger Diary, December 31, 1864.


12 See Bryan to Governor [Murrah], January 16, 1865, Governors Letters (Murrah), State Archives. See also Ballinger Diary, October 20, 1864, and February 7, 1865; Ballinger to Bryan, January 15, February 16, 1865; and Tom Jack to Bryan, February 11, 1865, Bryan Papers. See also draft, Bryan to President Andy Johnson, July 15, 1865, Bryan Papers.

13 C. S. West to James H. Raymond ("copy"), January 7, 1865, Bryan Papers; and James H. Bell to Epperson, February 22, 1865; Throckmorton to Epperson, March 12, 1865; Throckmorton to Hon. Josiah Crosby, March 19, 1865, Epperson Papers.

14 See Throckmorton to Bryan, September 4, 1864, Bryan Papers.

15 For the most concise statement of Bryan's views, see Bryan to Governor [Murrah], February 7, 1865, Governors Letters (Murrah).

16 Ballinger Diary, March 7, 1865. West tried to back off from his letter and deny its contents, but he had little success. See West to Governor [Murrah], February 15, 1865, Governors Letters (Murrah); West to Colonel [Bryan], March 17, 1865, Bryan Papers; and West to Ballinger, April 19, 1865, Ballinger Papers. Throckmorton—and probably many more public men—assumed that West reflected the attitude of Smith and his officers at Departmental Headquarters. That is, Smith was leaning toward an independent existence for the Department or perhaps toward a protectorate under France. See Throckmorton to Epperson, March 12, 1865, Epperson Papers. West's "imprudent" letter cost him his position on Smith's staff. See Kirby Smith to Murrah, March 16, 1865, Governors Letters (Murrah).

17 The quotation is from Bryan to Murrah, February 7, 1865. Governors Letters (Murrah).

18 See, for example, Ballinger Diary, March 3, March 27, 1865; Ballinger to Bryan, February 16, March 6, 1865; Tom Jack to Bryan, February 11, 1865; A. Supervieal to Bryan, March 5, 1865; Robert Campbell to Bryan, April 12, 1865; and J. B. Earle to Bryan,
April 25, 1865, Bryan Papers.

19 Ballinger to Bryan, January 15, 1865, Bryan Papers.

20 Ibid.

21 Murrah, "Proclamation to the People of Texas," April 27, 1865, Executive Record Book, No. 280 (Murrah), State Archives.

22 See Kerby, Kirby Smith's Confederacy, pp. 414-429, passim.
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Nancy Head Bowen was born on February 23, 1936, in Harlingen, Texas. She is the second child of Juanita Owens and James Laurese Head. After attending public schools in Harlingen, she studied at Rice University, where she received B.A. and M.A. degrees in History in 1958 and 1960, respectively. She studied at the University of Texas at Austin and took course work at the University of Oklahoma, returning to Rice University in 1968 to complete her work toward a Ph.D. in History in 1974. She has been a National Defense Education Act Fellow and a Graduate Fellow at Rice University. She is a member of the Southern Historical Association, the Texas State Historical Association, the East Texas Historical Association, and the Southwestern Social Sciences Association.

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